COUNCIL DECISION

of 28 June 2007

implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC

(2007/445/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism [1], and in particular Article 2(3) thereof,

Whereas:

(1) On 29 May 2006, the Council adopted Decision 2006/379/EC implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism [2], and establishing an updated list of persons and entities to which that Regulation applies.

(2) On 21 December 2006, the Council adopted Decision 2006/1008/EC implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism [3] adding certain other persons, groups and entities to the list of persons and entities to which that Regulation applies.

(3) The Council has provided all the persons, groups and entities for which this was practically possible with statements of reasons explaining the reasons why they have been listed in Decisions 2006/379/EC and 2006/1008/EC.

(4) By way of a notice published on 25 April 2007 [4], the Council informed the persons, groups and entities listed in Decisions 2006/379/EC and 2006/1008/EC that it intended to maintain them on the list. The Council also informed the persons, groups and entities concerned that it was possible to request the Council's statement of reasons for including them on the list (where this had not already been communicated to them).

(5) The Council has carried out a complete review of the list of persons, groups and entities to which Regulation (EC) No 2580/2001 applies, as required by Article 2(3) of that Regulation. In this regard, it has taken account of observations and documents submitted to the Council by certain persons, groups and entities concerned.

(6) Following this review, the Council has concluded that the persons, groups and entities listed in the Annex to this Decision have been involved in terrorist acts within the meaning of Article 1(2) and (3) of Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism [5], that a decision has been taken with respect to them by a competent authority within the meaning of Article 1(4) of that Common Position, and that they should continue to be subject to the specific restrictive measures provided for in Regulation (EC) No 2580/2001.

(7) The list of the persons, groups and entities to which Regulation (EC) No 2580/2001 applies should be updated accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The list provided for in Article 2(3) of Regulation (EC) No 2580/2001 shall be replaced by the list contained in the Annex hereto.

Article 2

Decisions 2006/379/EC and 2006/1008/EC are hereby repealed.

Article 3

This Decision shall take effect on the day of its publication.

[1] OJ L 344, 28.12.2001, p. 70. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).
[2] OJ L 144, 31.5.2006, p. 21.
[3] OJ L 379, 28.12.2006, p. 123.
[4] OJ C 90, 25.4.2007, p. 1.
[5] OJ L 344, 28.12.2001, p. 93.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 28 June 2007.

For the Council
The President
S. GABRIEL

ANNEX

List of persons, groups and entities referred to in Article 1

1. PERSONS

1. ABOU, Rabah Naami (a.k.a. Naami Hamza; a.k.a. Mihoubi Faycal; a.k.a. Fellah Ahmed; a.k.a. Dafri Rèmi Lahdi), born 1.2.1966 in Algiers (Algeria) (Member of al-Takfir and al-Hijra)

2. ABOUD, Maisi (a.k.a. The Swiss Abderrahmane), born 17.10.1964 in Algiers (Algeria) (Member of al-Takfir and al-Hijra)

3. AKHNIKH, Ismail (a.k.a. SUHAIB; a.k.a. SOHAIB), born 22.10.1982 in Amsterdam (The Netherlands), passport (The Netherlands) No. NB0322935 (Member of the 'Hofstadgroep')

4. AL-MUGHASSIL, Ahmad Ibrahim (a.k.a. ABU OMRAN; a.k.a. AL-MUGHASSIL, Ahmed Ibrahim), born 26.6.1967 in Qatif-Bab al Shamal, Saudi Arabia; citizen of Saudi Arabia

5. AL-NASSER, Abdelkarim Hussein Mohamed, born in Al Ihsa, Saudi Arabia; citizen of Saudi Arabia

6. AL YACOUB, Ibrahim Salih Mohammed, born 16.10.1966 in Tarut, Saudi Arabia; citizen of Saudi Arabia

7. AOURAGHE, Zine Labidine (a.k.a. Halifi Laarbi MOHAMED; a.k.a. Abed; a.k.a. Abid; a.k.a. Abu ISMAIL), born 18.7.1978 in Nador (Morocco), passport (Spain) No. ESPP278036 (Member of the 'Hofstadgroep')

8. ARIOUA, Azzedine, born 20.11.1960 in Costantine (Algeria) (Member of al-Takfir and al-Hijra)

9. ARIOUA, Kamel (a.k.a. Lamine Kamel), born 18.8.1969 in Costantine (Algeria) (Member of al-Takfir and al-Hijra)

10. ASLI, Mohamed (a.k.a. Dahmane Mohamed), born 13.5.1975 in Ain Taya (Algeria) (Member of al-Takfir and al-Hijra)

11. ASLI, Rabah, born 13.5.1975 in Ain Taya (Algeria) (Member of al-Takfir and al-Hijra)

12. ATWA, Ali (a.k.a.BOUSLIM, Ammar Mansour; a.k.a. SALIM, Hassan Rostom), Lebanon, born 1960 in Lebanon; citizen of Lebanon

13. BOUGHABA, Mohamed Fahmi (a.k.a. Mohammed Fahmi BOURABA; a.k.a. Mohammed Fahmi BURADA; a.k.a. Abu MOSAB), born 6.12.1981 in Al Hoceima (Morocco), (Member of the 'Hofstadgroep')

14. BOUYERI, Mohammed (a.k.a. Abu ZUBAIR; a.k.a. SOBIAR; a.k.a. Abu ZOUBAIR), born 8.3.1978 in Amsterdam (The Netherlands), (Member of the 'Hofstadgroep')

15. DARIB, Noureddine (a.k.a. Carreto; a.k.a. Zitoun Mourad), born 1.2.1972 in Algeria (Member of al-Takfir and al-Hijra)

16. DJABALI, Abderrahmane (a.k.a. Touil), born 1.6.1970 in Algeria (Member of al-Takfir and al-Hijra)

17. EL FATMI, Nouredine (a.k.a. Nouriddin EL FATMI; a.k.a. Nouriddine EL FATMI, a.k.a. Noureddine EL FATMI, a.k.a. Abu AL KA'E KA'E; a.k.a. Abu QAE QAE; a.k.a. FOUAD; a.k.a. FZAD; a.k.a. Nabil EL FATMI; a.k.a. Ben MOHAMMED; a.k.a. Ben Mohand BEN LARBI; a.k.a. Ben Driss Muhand IBN LARBI; a.k.a. Abu TAHAR; a.k.a. EGGIE), born 15.8.1982 in Midar (Morocco), passport (Morocco) No. N829139 (Member of the 'Hofstadgroep')

18. EL-HOORIE, Ali Saed Bin Ali (a.k.a. AL-HOURI, Ali Saed Bin Ali; a.k.a EL-HOURI, Ali Saed Bin Ali), born 10.7.1965 alt. 11.7.1965 in El Dibabiya, Saudi Arabia; citizen of Saudi Arabia

19. EL MORABIT, Mohamed, born 24.1.1981 in Al Hoceima (Morocco), passport (Morocco) No. K789742 (Member of the 'Hofstadgroep')

20. ETTOUMI, Youssef (a.k.a. Youssef TOUMI), born 20.10.1977 in Amsterdam (The Netherlands), ID-card (The Netherlands) No. LNB4576246 (Member of the 'Hofstadgroep')

21. FAHAS, Sofiane Yacine, born 10.9.1971 in Algiers (Algeria) (Member of al-Takfir and al-Hijra)

22. HAMDI, Ahmed (a.k.a. Abu IBRAHIM), born 5.9.1978 in Beni Said (Morocco), passport (Morocco) No. K728658 (Member of the 'Hofstadgroep')

23. IZZ-AL-DIN, Hasan (a.k.a. GARBAYA, Ahmed; a.k.a. SA-ID; a.k.a. SALWWAN, Samir), Lebanon, born 1963 in Lebanon, citizen of Lebanon

24. LASSASSI, Saber (a.k.a. Mimiche), born 30.11.1970 in Constantine (Algeria) (Member of al-Takfir and al-Hijra)

25. MOHAMMED, Khalid Shaikh (a.k.a. ALI, Salem; a.k.a. BIN KHALID, Fahd Bin Adballah; a.k.a. HENIN, Ashraf Refaat Nabith; a.k.a. WADOOD, Khalid Adbul), born 14.4.1965 alt. 1.3.1964 in Pakistan, passport No 488555

26. MOKTARI, Fateh (a.k.a. Ferdi Omar), born 26.12.1974 in Hussein Dey (Algeria) (Member of al-Takfir and al-Hijra)

27. MUGHNIYAH, Imad Fa'iz (a.k.a. MUGHNIYAH, Imad Fayiz), Senior Intelligence Officer of HIZBALLAH, born 7.12.1962 in Tayr Dibba, Lebanon, passport No 432298 (Lebanon)

28. NOUARA, Farid, born 25.11.1973 in Algiers (Algeria) (Member of al-Takfir and al-Hijra)

29. RESSOUS, Hoari (a.k.a. Hallasa Farid), born 11.9.1968 in Algiers (Algeria) (Member of al-Takfir and al-Hijra)

30. SEDKAOUI, Noureddine (a.k.a. Nounou), born 23.6.1963 in Algiers (Algeria) (Member of al-Takfir and al-Hijra)

31. SELMANI, Abdelghani (a.k.a. Gano), born 14.6.1974 in Algiers (Algeria) (Member of al-Takfir and al-Hijra)

32. SENOUCI, Sofiane, born 15.4.1971 in Hussein Dey (Algeria) (Member of al-Takfir and al-Hijra)

33. SISON, Jose Maria (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines including NPA) born 8.2.1939 in Cabugao, Philippines

34. TINGUALI, Mohammed (a.k.a. Mouh di Kouba), born 21.4.1964 in Blida (Algeria) (Member of al-Takfir and al-Hijra)

35. WALTERS, Jason Theodore James (a.k.a. Abdullah; a.k.a. David), born 6.3.1985 in Amersfoort (The Netherlands), passport (The Netherlands) No. NE8146378 (Member of the 'Hofstadgroep')

2. GROUPS AND ENTITIES

1. Abu Nidal Organisation (ANO), (a.k.a. Fatah Revolutionary Council, Arab Revolutionary Brigades, Black September, and Revolutionary Organisation of Socialist Muslims)

2. Al-Aqsa Martyrs' Brigade

3. Al-Aqsa e.V.

4. Al-Takfir and Al-Hijra

5. Aum Shinrikyo (a.k.a. AUM, a.k.a. Aum Supreme Truth, a.k.a. Aleph)

6. Babbar Khalsa

7. Communist Party of the Philippines, including New Peoples Army (NPA), Philippines, linked to Sison Jose Maria C. (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines, including NPA)

8. Gama'a al-Islamiyya (Islamic Group), (a.k.a. Al-Gama'a al-Islamiyya, IG)

9. Great Islamic Eastern Warriors Front (IBDA-C)

10. Hamas (including Hamas-Izz al-Din al-Qassem)

11. Hizbul Mujahideen (HM)

12. Hofstadgroep

13. Holy Land Foundation for Relief and Development

14. International Sikh Youth Federation (ISYF)

15. Kahane Chai (Kach)

16. Khalistan Zindabad Force (KZF)

17. Kurdistan Workers' Party (PKK), (a.k.a. KADEK; a.k.a. KONGRA-GEL)

18. Liberation Tigers of Tamil Eelam (LTTE)

19. Mujahedin-e Khalq Organisation (MEK or MKO) [minus the 'National Council of Resistance of Iran' (NCRI)] (a.k.a. The National Liberation Army of Iran (NLA, the militant wing of the MEK), the People's Mujahidin of Iran (PMOI), Muslim Iranian Students' Society)

20. National Liberation Army (Ejército de Liberación Nacional)

21. Palestine Liberation Front (PLF)

22. Palestinian Islamic Jihad (PIJ)

23. Popular Front for the Liberation of Palestine (PFLP)

24. Popular Front for the Liberation of Palestine — General Command (a.k.a PFLP — General Command)

25. Revolutionary Armed Forces of Colombia (FARC)

26. Revolutionary People's Liberation Army/Front/Party (DHKP/C) (a.k.a. Devrimci Sol (Revolutionary Left), Dev Sol)

27. Shining Path (SL) (Sendero Luminoso)

28. Stichting Al Aqsa (a.k.a. Stichting Al Aqsa Nederland, a.k.a. Al Aqsa Nederland)

29. TAK — Teyrbazen Azadiya Kurdistan, a.k.a. Kurdistan Freedom Falcons, Kurdistan Freedom Hawks

30. United Self-Defense Forces/Group of Colombia (AUC) (Autodefensas Unidas de Colombia).

COUNCIL REGULATION (EC) No 2580/2001

of 27 December 2001

on specific restrictive measures directed against certain persons and entities with a view to combating terrorism

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Having regard to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism [1], adopted by the Council on 27 December 2001,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) At its extraordinary meeting on 21 September 2001, the European Council declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.

(2) The European Council declared that combating the funding of terrorism is a decisive aspect of the fight against terrorism and called upon the Council to take the necessary measures to combat any form of financing for terrorist activities.

(3) In its Resolution 1373(2001), the United Nations Security Council decided on 28 September 2001 that all States should implement a freezing of funds and other financial assets or economic resources as against persons who commit, or attempt to commit, terrorist acts or who participate in or facilitate the commission of such acts.

(4) In addition, the Security Council decided that measures should be taken to prohibit funds and other financial assets or economic resources from being made available for the benefit of such persons, and to prohibit financial or other related services from being rendered for the benefit of such persons.

(5) Action by the Community is necessary in order to implement the CFSP aspects of Common Position 2001/931/CFSP.

(6) This Regulation is a measure needed at Community level and complementary to administrative and judicial procedures regarding terrorist organisations in the European Union and third countries.

(7) Community territory is deemed to encompass, for the purposes of this Regulation, all the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

(8) With a view to protecting the interests of the Community, certain exceptions may be granted.

(9) As regards the procedure for establishing and amending the list referred to in Article 2(3) of this Regulation, the Council should exercise the corresponding implementing powers itself in view of the specific means available to its members for that purpose.

(10) Circumvention of this Regulation should be prevented by an adequate system of information and, where appropriate, remedial measures, including additional Community legislation.

(11) The competent authorities of the Member States should, where necessary, be empowered to ensure compliance with the provisions of this Regulation.

(12) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those sanctions must be effective, proportionate and dissuasive.

(13) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.

(14) The list referred to in Article 2(3) of this Regulation may include persons and entities linked or related to third countries as well as those who otherwise are the focus of the CFSP aspects of Common Position 2001/931/CFSP. For the adoption of provisions in this Regulation concerning the latter, the Treaty does not provide powers other than those under Article 308.

(15) The European Community has already implemented UNSCR 1267(1999) and 1333(2000) by adopting Regulation (EC) No 467/2001 [3] freezing the assets of certain persons and groups and therefore those persons and groups are not covered by this Regulation,

[1] See page 93 of this Official Journal.
[2] Opinion delivered on 13 December 2001 (not yet published in the Official Journal).
[3] OJ L 67, 9.3.2001, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation, the following definitions shall apply:

1. 'Funds, other financial assets and economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2. 'Freezing of funds, other financial assets and economic resources' means the prevention of any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

3. 'Financial services' means any service of a financial nature, including all insurance and insurance-related services, and all banking and other financial services (excluding insurance) as follows:

Insurance and insurance-related services

(i) Direct insurance (including co-insurance):

(A) life assurance;

(B) non-life;

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts;

(ix) Guarantees and commitments;

(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion;

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money brokering;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

4. For the purposes of this Regulation, the definition of 'terrorist act' shall be the one contained in Article 1(3) of Common Position 2001/931/CFSP.

5. 'Owning a legal person, group or entity' means being in possession of 50 % or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.

6. 'Controlling a legal person, group or entity' means any of the following:

(a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity;

(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year;

(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity;

(d) having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provision;

(e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;

(f) having the right to use all or part of the assets of a legal person, group or entity;

(g) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts;

(h) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.

Article 2

1. Except as permitted under Articles 5 and 6:

(a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;

(b) no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931/CFSP; such list shall consist of:

(i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

(ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

(iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or

(iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).

Article 3

1. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 2 shall be prohibited.

2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States listed in the Annex and to the Commission.

Article 4

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, banks, other financial institutions, insurance companies, and other bodies and persons shall:

— provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2 and transactions executed pursuant to Articles 5 and 6:
  — to the competent authorities of the Member States listed in the Annex where they are resident or located, and
  — through these competent authorities, to the Commission,
— cooperate with the competent authorities listed in the Annex in any verification of this information.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

3. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned and to the Council.

Article 5

1. Article 2(1)(b) shall not apply to the addition to frozen accounts of interest due on those accounts. Such interest shall also be frozen.

2. The competent authorities of the Member States listed in the Annex may grant specific authorisations, under such conditions as they deem appropriate, in order to prevent the financing of acts of terrorism, for

1. the use of frozen funds for essential human needs of a natural person included in the list referred to in Article 2(3) or a member of his family, including in particular payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family, to be fulfilled within the Community;

2. payments from frozen accounts for the following purposes:

   (a) payment of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications to be paid in the Community; and

   (b) payment of charges due to a financial institution in the Community for the maintenance of accounts;

3. payments to a person, entity or body person included in the list referred to in Article 2(3), due under contracts, agreements or obligations which were concluded or arose before the entry into force of this Regulation provided that those payments are made into a frozen account within the Community.

3. Requests for authorisations shall be made to the competent authority of the Member State in whose territory the funds, other financial assets or other economic resources have been frozen.

Article 6

1. Notwithstanding the provisions of Article 2 and with a view to the protection of the interests of the Community, which include the interests of its citizens and residents, the competent authorities of a Member State may grant specific authorisations:

— to unfreeze funds, other financial assets or other economic resources,

— to make funds, other financial assets or other economic resources available to a person, entity or body included in the list referred to in Article 2(3), or

— to render financial services to such person, entity or body,

after consultation with the other Member States, the Council and the Commission in accordance with paragraph 2.

2. A competent authority which receives a request for an authorisation referred to in paragraph 1 shall notify the competent authorities of the other Member States, the Council and the Commission, as listed in the Annex, of the grounds on which it intends to either reject the request or grant a specific authorisation, informing them of the conditions that it considers necessary in order to prevent the financing of acts of terrorism.

The competent authority which intends to grant a specific authorisation shall take due account of comments made within two weeks by other Member States, the Council and the Commission.

Article 7

The Commission shall be empowered, on the basis of information supplied by Member States, to amend the Annex.

Article 8

The Member States, the Council and the Commission shall inform each other of the measures taken under this Regulation and supply each other with the relevant information at their disposal in connection with this Regulation, notably information received in accordance with Articles 3 and 4, and in respect of violation and enforcement problems or judgments handed down by national courts.

Article 9

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.

Article 10

This Regulation shall apply:

1. within the territory of the Community, including its airspace,

2. on board any aircraft or any vessel under the jurisdiction of a Member State,

3. to any person elsewhere who is a national of a Member State,

4. to any legal person, group or entity incorporated or constituted under the law of a Member State,

5. to any legal person, group or entity doing business within the Community.

Article 11

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

2. Within a period of one year from the entry into force of this Regulation, the Commission shall present a report on the impact of this Regulation and, if necessary, make proposals to amend it.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 December 2001.

For the Council

The President

L. MICHEL

ANNEX

LIST OF COMPETENT AUTHORITIES REFERRED TO IN ARTICLES 3, 4 AND 5

BELGIUM

Ministère des finances
Trésorerie
avenue des Arts 30
B-1040 Bruxelles
Fax (32-2) 233 75 18

DENMARK

Erhvervsfremmestyrelsen
Dahlerups Pakhus
Langelinie Alle 17
DK-2100 København Ø
Tel. (45) 35 46 60 00
Fax (45) 35 46 60 01

GERMANY

— *concerning freeze of funds:*

Deutsche Bundesbank
Wilhelm Eppsteinstr. 14
D-60431 Frankfurt/Main
Tel. (00-49-69) 95 66

— *concerning insurances:*

Bundesaufsichtsamt für das Versicherungswesen (BAV)
Graurheindorfer Str. 108
D-53117 Bonn
Tel. (00-49-228) 42 28

GREECE

Ministry of National Economy
General Directorate of Economic Policy
5 Nikis str.
GR-105 63 Athens
Tel. (00-30-1) 333 27 81-2
Fax (00-30-1) 333 27 93

Υπουργείο Εθνικής Οικονομίας
Γενική Διεύθυνση Οικονομικής Πολιτικής
Νίκης 5, 10562 ΑΘΗΝΑ
Τηλ.: (00-30-1) 333 27 81-2
Φαξ: (00-30-1) 333 27 93

SPAIN

Dirección General de Comercio e Inversiones
Subdirección General de Inversiores Exteriores
Ministerio de Economía
Paseo de la Castellana, 162
E-28046 Madrid
Tel. (00-34) 91 349 39 83
Fax (00-34) 91 349 35 62

Dirección General del Tesoro y Política Financiera
Subdirección General de Inspección y Control de Movimientos de Capitales
Ministerio de Economía
Paseo del Prado, 6
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FRANCE

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ITALY

Ministero dell'Economia e delle Finanze
…

LUXEMBOURG

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AUSTRIA

— *Article 3*

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— *Article 4*

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— *Article 5*

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— *Article 3*
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— *Articles 4 and 6*
Finanzinspektionen
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tfn 08-787 80 00
fax 08-24 13 35

— *Article 5*
Riksförsäkringsverket (RFV)
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American Civil Liberties Union - Southern California Docket

International Civil Liberties Cases:
Sison versus Marcos

Sison versus Marcos
U.S. District Court, Multi-District Litigation

Action on behalf of three members of the Sison family and Jaime Piopongco for violations of international law and common law torts committed by former Philippine President Marcos. These violations include torture, political killing and disappearance, and arbitrary arrest and detention during the Marcos regime. We served Marcos in Hawaii where he was living after he was exiled to the United States in February 1986. On July 18, 1986, Judge Fong granted the motion to dismiss based on the "act of state" doctrine which he claimed prevented U.S. courts from inquiring into the actions of sovereign nations within their own territory, even if the acts are alleged to violate international law. We appealed. The argument took place on June 10, 1987, in San Francisco. In July, 1987, the court requested that the Justice Department file an amicus brief concerning certain questions posed by the court. The Justice Department filed this brief in October 1987. The brief supported (grudgingly) our position on the act of state doctrine but argues that there is no subject matter jurisdiction under 28 USC § 1350 over claims against human rights violations present in this country who committed these violations outside the United States. Such a ruling would undermine the ruling in Filartiga v. Pena-Irala, 630 F.2d 876 (2d. Cir. 1980), upon which our suit is based. The "submission" of the case for decision was deferred pending the en banc decision in Republic of the Philippines v. Marcos. In early December, 1988, the en banc panel issued a unanimous decision overturning the panel's "act of state" decision. On July 10, 1989, the Ninth Circuit reversed Judge Fong's dismissal on "act of state" grounds and remanded all of the other issues to him for decision. A request was made to transfer the case pursuant to rules governing multi-district litigation. In early September 1990 all of the human rights cases against Marcos were transferred to Judge Real. The defendant's motion for summary judgment was denied in October 1991. On March 2, 1992, Judge Real granted our motions in limine and substantially narrowed the defense case. We were permitted to assert claims based on the recently passed (in March 1992) Torture Victim Protection Act. Trial started on September 9, 1992, and lasted (despite Hurricane Iniki in the middle) two weeks. On September 25, 1992, the jury, after deliberating three days, returned a liability verdict for the class and for all of our plaintiffs. On June 8, 1992, a related appeal in Trajano v. Marcos, raising many of the key issues in our case, was argued in the Ninth Circuit. The decision came down in October, 1992, and affirmed the default judgment, rejecting all of the Estate's arguments. The Estate's Petition for Cert. was denied. The trial on the exemplary damages phase of the case on February 22, 1994, resulted in an award of 1.2 billion dollars. A trial on the compensatory damages took place in January and Judge Manuel Real dismissed plaintiff Sison's claims, stating that

just because a plaintiff was tortured does not mean that he had been damaged. Our plaintiffs were awarded damages. Judge Real reduced most all of the jury awards to direct action plaintiffs for no apparent reason. Judgment was granted in the Sison case in August, 1995. We appealed on certain issues, including the dismissal of Sison's claims.

In December 1995 Judge Real ordered two Swiss banks to deposit nearly $500 million into the federal court in Los Angeles so that he can decide who gets these assets. The Swiss banks, backed by the Swiss government and the U.S. Government, have appealed. This appeal and the estate's appeals from the class judgment was heard on June 18, 1996. The 9th Circuit upheld the class judgment, but overturned Judge Real's ruling relating to the Swiss banks.

In December 1996 the 9th Circuit reversed Judge Real and remanded our case for further proceedings on Sison's damages claims and Jaime Piopongco's claims relating to the destruction of his radio station. The Estate recently agreed to the entry of judgment in favor of Jose Maria Sison ($750,000) and Jaime Piopongco ($250,00) on the claims the Ninth Circuit sent back for retrial in our appeal. Overall, efforts to enforce the judgments against the Estate have not been successful so far.

In December, 1997, the Swiss High Court allowed the Marcos money to be transferred to the Philippines and urged the Philippine government to take the interests of the human rights victims into account. The actual transfer has not taken place. The ACLU has appealed Judge Real's retroactive sua sponte removal of the exemplary damages award to our clients in 1995. In early 1999 the parties announced a $150 million settlement on the claims of the class; the individual claimants were not part of the settlement. The ACLU filed fee motions and objections of the class settlement in March, 1999, and filed a motion to recuse Judge Real. A fairness hearing was held on the settlement on April 29, 1999. The settlement money has not been transferred to the U.S. and the class counsel moved the court to terminate the settlement. Certain named class plaintiffs also filed an appeal from the approval of the settlement, and several lawsuits have been filed in the Philippines to block the settlement from going through. Judge Real denied the motion to terminate the settlement agreement. The Philippine courts will not allow the money to be transferred to the United States. As of May, 2001, the plaintiffs are still seeking to enforce the judgments against the Estate. (Paul Hoffman, Ellen Lutz, Ralph Steinhardt, Peter Labrador, Romeo Capulong, Laim Millar-Melnick. Dilan Esper)

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ANNEX I-A

APPENDIX 1. ON ARTICLE V OF THE CPP CONSTITUTION

Please pay close attention to Sections 4 and 6 of Article V of the Constitution of the Communist Party of the Philippines.

1. Under Section 4, 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 Political Bureau and to direct the work of the Secretariat and other central organs.

2. Under Section 6, the Chairman of the Central Committee must be able to preside over the plenum of the Central Committee once every six months.

Based on the foregoing points, Prof. Jose Maria Sison who has been continuously away from the Philippines since 1986, more than 16 years ago, cannot be Armando Liwanag, chairman of the Central Committee of the CPP.

Article V Central Organization

Section 1. The National Congress shall be called and convened by the Central Committee every five years, unless it is deemed necessary to hold it later or earlier. If a majority of the regional committees of the Party formally requests that the congress be held, then the Central Committee shall accede to the request.

The announcement of the holding the National Congress shall be made at least one month in advance. The number of delegates and the method of their election by lower Party organizations or selection by lower Party organs shall be decided by the Central Committee.

Section 2. The powers and functions of the National Congress are as follows:

a. to discuss, ratify or amend the Program and Constitution;

b. to decide upon the political line of the Party;

c. to elect the members and candidate members of the Central Committee and other central organs after deciding the appropriate size of membership in every organ;

d. to receive, discuss and endorse reports of the Central Committee and other central organs; and

e. to create central organs other the existing organs, if necessary.

Section 3. Between national congresses, the Central Committee shall lead the entire work of the Party, implement the decisions of the National Congress, make current decisions and solve current problems, establish Party organs and lead their activities, direct and deploy Party cadres and attend promptly appeals from lower Party organizations and individual members in cases involving disciplinary action.

Section 4. The Central Committee at its plenum shall elect the Political Bureau, the Executive Committee, the Secretariat, the chairman of the Central Committee and the deputies, the general secretary and other secretaries of the Central Committee.

a. The Political Bureau, together with its Executive Committee, shall exercise the powers and functions of the Central Committee between plenums.

b. The Secretariat of the Central Committee shall take charge of the daily administration and routine activities of the Party under the leadership of the Political Bureau.

The number of members and candidate-members of the Political Bureau, the Executive Committee and the General Secretariat shall be determined by the Central Committee. Vacancies occurring shall be filled ordinarily by candidate-members.

Section 5. The Central Committee shall elect and shall have, as special organs, the Military Commission, the higher Party school (Revolutionary School of Mao Zedong Thought) and central publishing house, aside from the Secretariat and its departments of organization and education.

Section 6. The Plenum of the Central Committee shall be convened by the Political Bureau once every six months. However, the Political Bureau or a majority of the Central Committee members may decide to hold it earlier or later. Members and candidate-members of the Central Committee shall attend the plenum, with candidate members having speaking rights but no voting rights.

Raad van State

ANNEX I - G
16/469
66
B

No. R02.90.4934.

AFDELING
RECHTSPRAAK

Uitspraak in het geschil tussen:

J.M. Sison, van Filipijnse nationaiiteit (appellant),
vertegenwoordigd door mr. T. Boekman, advocazt te Haarlem

en

de Staatssecretaris van Justitie (verweerder),
vertegenwoordigd door mr. K.O. Bravenboer, ambtenaar ten departemente.

Bij beschikking van 13 juli 1990 heeft verweerder de verzoeken van appellant om toelating als vluchteling en verlening van een vergunning tot verblijf afgewezen.
De beschikking is aan deze uitspraak gehecht.

Bij schrijven van 6 augustus 1990, ingekomen bij verweerder op 11 augustus 1990, heeft appellant bij verweerder een verzoek om herziening ingediend.

Op dit verzoek is niet binnen de in artikel 34, tweede lid, van de Vreemdelingenwet genoemde termijn van drie maanden een beslissing genomen, zodat dit verzoek ingevolge dat artikellid geacht moet worden te zijn afgewezen.

Tegen deze fictieve beslissing heeft appellant bij schrijven van 6 december 1990, ingekomen bij de Raad van State op 10 december 1990, beroep op grond van de Vreemdelingenwet ingesteld bij de Afdeling rechtspraak van de Raad van State.
Het beroepschrift is aan deze uitspraak gehecht.

Desgevraagd heeft verweerder bij schrijven van 11 juli 1991 een verweerschrift ingediend.

Het geschil is op 29 oktober 1992 behandeld in een openbare vergadering van de Afdeling, waarin appellant en verweerder bij monde van hun vertegenwoordigers hun standpunten nader hebben uiteengezet. Tevens zijn ter zitting gehoord de Minister van Buitenlandse Zaken, vertegenwoordigd door mr. A.R. Westerink, ambtenaar ten departemente, en de Vertegenwoordiger in Nederland van de Hoge Commissaris der Verenigde Naties voor Vluchtelingen, vertegenwoordigd door mr. J.H. van der Veen.

In rechte:

1. Ten aanzien van het beroep van appellant voor zover dat is gericht tegen de fictieve afwijzing van zijn verzoek om herziening van de weigering hem als vluchtelins toe te laten

In artikel 1(F) van het Verdrag betreffende de status van vluchtelingen van Genève van **28** juli **1951,** zoals gewijzigd bij Protocol van New York van 31 januari 1967, hierna te noemen: het Verdrag, is bepaald dat de bepalingen van dit Verdrag niet van toepassing zijn op een persoon ten aanzien van wie er ernstige redenen zijn om te veronderstellen, dat:

a. hij een misdrijf tegen de vrede, een oorlogsmisdrijf of een misdrijf tegen de menselijkheid heeft begaan, zoals omschreven in de internationale overeenkomsten welke zijn opgesteld om bepalingen met betrekking tot deze misdrijven in het leven te roepen;
b. hij een ernstig, niet-politiek misdrijf heeft begaan buiten het land van toevlucht, voordat hij tot dit land als vluchteling is toegelaten;
c. hij zich schuldig heeft gemaakt aan handelingen welke in strijd zijn met de doelstellingen en beginselen van de Verenigde Naties.

In het verweerschrift - dat kan worden geacht de motivering van de bestreden beslissing te bevatten - stelt verweerder dat aan de onderhavige beslissing dezelfde overwegingen ten grondslag liggen als vermeld in het advies van de Adviescommissie voor vreemdelingenzaken van **25** februari **1991.** Hieruit volgt, dat verweerder zich primair baseert op het oordeel dat appellant niet aannemelijk heeft gemaakt gegronde vrees te hebben voor vervolging in de zin van het Verdrag. Subsidiair overweegt verweerder dat appellant op grond van het bepaalde in artikel **1(F),** aanhef en onder c, van het Verdrag niet voor toelating in aanmerking komt.

'Verweerder heeft met vorenstaande motivering miskend, dat bij de toepassing van het Verdrag in verband met het ernstige karakter van de in artikel 1(F) bedoelde gedragingen allereerst dient te worden nagegaan of, gelet op dat artikel, de overige bepalingen van het Verdrag wel van toepassing zijn.
In deze miskenning van verweerder ziet de Afdeling in dit geval geen zelfstandige grond tot vernietiging, nu verweerder in zijn verweerschrift ook **op** genoemd artikel **1(F)** is ingegaan en dusdoende

de Afdeling in de gelegenheid heeft gesteld de bestreden beslissing op dit punt te toetsen.

Aldus dient allereerst te worden bezien of verweerder terecht tot de conclusie is gekomen dat op grond van artikel 1(F), aanhef en onder c, van het Verdrag, de overige bepalingen van dat Verdrag niet van toepassing zijn op appellant.
Te dien aanzien overweegt'de Afdeling als volgt.

Artikel 1(F), aanhef en onder c, van het Verdrag dient, als uitsluitingsgrond, restrictief te worden uitgelegd.

Gelet op de aard en de inhoud van de doelstellingen en beginselen van de Verenigde Naties, zoals deze zijn geformuleerd in de preambule en in de artikelen 1 en 2 van het Handvest van de Verenigde Naties, heeft artikel 1(F), aanhef en onder c, van het Verdrag primair het oog op personen die zich als orgaan van de staat hebben schuldig gemaakt aan daden van vervolging (persecution) of andere overheidsdaden welke een schending van de rechten van de mens inhouden, dan wel aan overheidsdaden welke de vrede in gevaar hebben gebracht, terwijl het op handelingen van andere personen slechts van toepassing is, indien deze flagrante schendingen van de rechten van de mens betreffen voor zover deze niet reeds onder artikel 1(F), aanhef en onder a, van het Verdrag, vallen.

Verweerder heeft onvoldoende aangegeven welke vermeende daden van appellant verweerder tot zijn oordeel met betrekking tot artikel 1(F), aanhef en onder c, van het Verdrag hebben geleid, op welke tijdstippen die daden hebben plaatsgevonden en welke betekenis verweerder in dit verband aan de amnestieverlening in 1986 toekent.

De Afdeling wijst er daarbij op dat de door verweerder in het kader van artikel 77, derde lid, van de Wet op de Raad op de State aan de Afdeling overgelegde stukkec, op dit punt onvoldoende duidelijkheid verschaffen. Nu dit gebrek aan duidelijkheid, gelet op het vertrouwelijk karakter van de stukken, niet door hoor en wederhoor

kan worden weggenomen, kan de informatie in de vertrouwelijke stukken, voor zover deze onduidelijk is, niet ten nadele van appellant worden uitgelegd.

Gezien het vorenstaande is de Afdeling van oordeel dat de bestreden beslissing wat dit onderdeel betreft in strijd is met het in het algemeen rechtsbewustzijn levend beginsel van behoorlijk bestuur dat een beschikking moet kunnen worden gedragen door de daaraan ten grondslag gelegde en voor de betrokkene kenbare motivering.
Deze beslissing moet dan ook in zoverre worden vernietigd op de grond, genoemd in artikel 8, eerste lid, onder d, van de Wet administratieve rechtspraak overheidsbeschikkingen.

Voor het geval dat verweerder bij het opnieuw in de çaak voorzien niet langer het standpunt zou huldigen dat de uitzonderingsgrond van artikel 1(F), aanhef en onder c, van het Verdrag op appellant van toepasning zou zijn, merkt de Afdeling het volgende op.

Ingevolge artikel 1(A), onder 2, van het Verdrag geldt, voor zover hier van belang, voor de toepassing van het Verdrag als "vluchteling" elke persoon die uit gegronde vrees voor vervolging wegens zijn ras, godsdienst, nationaliteit, het behoren tot een bepaalde sociale groep of zijn politieke overtuiging, zich bevindt buiten het land waarvan hij de nationaliteit bezit, en die de bescherming van dat land niet kan of, uit hoofde van bovenbedoelde vrees, niet wil inroepen.

Ingevolge artikel 15, eerste lid, van de Vreemdelingenwet kunnen vreemdelingen die afkomstig zijn uit een land waarin zij gegronde reden hebben te vrezen voor vervolging wegens hun godsdienstige of politieke overtuiging of hun nationaliteit, dan wel wegens het behoren tot een bepaald ras of tot een bepaalde sociale groep, als vluchteling worden toegelaten.
In het tweede lid van dit artikel is bepaald dat de toelating niet kan worden geweigerd dan om gewichtige redenen aan het algemeen belang ontleend, indien de vreemdeling door de weigering genoopt zou worden zich onmiddellijk te begeven naar een land als bedoeld in het eerste lid.

Appellant heeft gesteld dat hij in de Filipijnen gegronde reden heeft te vrezen voor vervolging.
Daartoe heeft appellant onder meer het volgende aangevoerd.
Hij is één van de oprichters van de Communistische Partij van de Filipijnen (C.P.P.) en is van **1968** tot **1977** voorzitter **geweest** van het Centraal Comité van die partij.
Voormelde betrokkenheid bij de C.P.P. was een van de redenen waarom appellant in november **1977** werd gearresteerd en veroordeeld tot tien jaar gevangenisstraf. Tijdens zijn gevangenschap werd hij ernstig mishandeld. Op 5 maart **1986,** tien dagen nadat President Marcos was afgezet en het land moest verlaten, werd appellant vrijgelaten. In **1986** was appellant betrokken bij de oprichting van de People's Party. In augustus **1986** bedankte hij evenwel voor een nominatie als voorzitter van deze partij omdat hij zich was gaan bezighouden met intellectuele en literaire activiteiten.
Door de Filipijnse autoriteiten wordt hij er ten onrechte van beschuldigd dat hij weer voorzitter is geworden van het Centrale Comité van de C.P.P., betrokken is bij de New People's Army (N.P.A.) en allerlei subversieve activiteiten ontplooit. In verband daarmee werd op 14 september **1988** een aanklacht tegen hem ingediend wegens schending van de Republic Act **1700** (ook wel de Anti Subversion Law genoemd). Op 16 september **1988** werd zijn paspoort ongeldig verklaard. Indien hij terug moet keren naar de Filipijnen zal hij gearresteerd en vermoord worden. Van een eerlijk proces zal volgens appellant geen sprake zijn.

Blijkens het verweerschrift staat verweerder op het standpunt dat appellant geen vluchteling is en mitsdien niet als zodanig in Nederland kan worden toegelaten.

Daartoe heeft verweerder verwezen naar het ter zake uitgebrachte advies van de Adviescommissie voor vreemdelingenzaken. Deze commissie heeft onder meer het volgende overwogen.
"Weliswaar is aannemelijk dat appellant indien hij naar de Filipijnen zou terugkeren, mogelijk strafrechtelijke vervolging en bestraffing te wachten staat wegens betrokkenheid bij en activiteiten voor de C.P.P. en het N.P.A., waarvan hij aldaar wordt verdacht, doch niet

aannemelijk is geworden dat zodanige vervolging en bestraffing zullen zijn aan te merken als vervolging (persecution) in de zin van evenvermelde verdragsbepaling.
Aan dit oordeel legt de commissie ten grondslag dat geenszins aannemelijk is geworden dat de verdenking van betrokkenheid bij en activiteiten voor organisaties na 1977, die door appellant zijn' ontkend, van iedere grond ontbloot is. Door appellant na zijn vrijlating in 1986 gedane publieke uitspraken, bezien in samenhang met de inhoud van aan de commissie van de zijde van de Staatssecretaris van Justitie overgelegde stukken wijzen naar het oordeel van de commissie veeleer op het tegendeel.
Voorts overweegt de commissie dat van algemene bekendheid is - appellant heeft zulks ook niet bestreden - dat voornoemde organisaties zich ten doel stellen het staatsbestel van de Filipijnen omver te werpen om daarvoor een communistisch regime in de plaats stellen en dat zij gebruik van geweld daarbij niet schuwen.
Onder voormelde omstandigheden kan niet worden geoordeeld dat mogelijke strafrechtelijke vervolging en bestraffing van appellant wegens betrokkenheid bij en activiteiten voor voornoemde organisaties reeds om die reden als vervolging (persecution) in evenbedoelde zin valt aan te merken.
Voorts is niet aannemelijk dat appellant, behalve met als normaal aan te merken strafrechtelijke vervolging en mogelijke bestraffing, ook te maken zal krijgen met discriminatoire vervolging, casu quo onevenredig zware bestraffing, omdat de vervolgende casu quo bestraffende instantie van oordeel is dat appellant de strafbare handelingen uit politieke motieven heeft gepleegd.
In dat verband wordt opgemerkt dat appellant niet aannemelijk heeft gemaakt dat - wat er zij van de gestelde mensenrechten-schendingen op de Filipijnen - juist hem een eerlijk proces zal worden onthouden. Mede vanwege zijn (internationale) bekendheid kan worden aangenomen dat in casu een eerlijk proces voldoende gewaarborgd is en dat de autoriteiten de vreemdeling voldoende bescherming zullen bieden tegen eigenhandig optreden van vigilantes en vergelijkbare groeperingen.
Voor zover appellant aan zijn betoog ten grondslag legt, dat hij opnieuw strafrechtelijk vervolgd zal worden voor feiten, waarvoor hij

reeds geruime tijd in de gevangenis heeft gezeten, totdat hem amnestie verleend werd, leidt dit niet tot een ander resultaat, reeds omdat uit ook aan appellant bekende stukken blijkt dat de hernieuwde interesse van de Filipijnse autoriteiten is gewekt door uitlatingen en gedragingen van de vreemdeling, daterend van na zijn vrijlating in maart 1986."

De Minister van Buitenlandse Zaken heeft ter zitting het standpunt van verweerder onderschreven.

De Vertegenwoordiger in Nederland van de Hoge Commissaris der Verenigde Naties voor Vluchtelingen heeft ter zitting onder meer het volgende naar voren gebracht.
Hij heeft ter inleiding opgemerkt dat zijn zienswijze is gebaseerd op de stukken waar de Vertegenwoordiger in Nederland van de Hoge Commissaris der Verenigde Naties voor Vluchtelingen inzage in heeft gehad. De mogelijkheid dat de zienswijze anders zou uitvallen indien de Vertegenwoordiger ook inzage zou hebben in de in deze zaak bestaande vertrouwelijke stukken kan, aldus de Vertegenwoordiger, uiteraard niet worden uitgesloten.
Ten aanzien van de gegrondheid van de vrees en de bescherming van overheidswege luidt de zienswijze van de Vertegenwoordiger in Nederland van de Hoge Commissaris der Verenigde Naties voor Vluchtelingen als volgt.
"De Afdeling Nederland van Amnesty International heeft in een brief van 17 oktober 1990 geadresseerd aan het Ministerie van Justitie een zienswijze gegeven in deze zaak. Op bladzijde **5** wordt gesteld dat "legale (...) organisaties worden er publiekelijk (...) van beschuldigd dat zij een dekmantel zijn voor de illegale C.P.P. en N.P.A.". "De vertegenwoordigers en leden van deze organisaties komen door deze beschuldigingen in direct levensgevaar te verkeren". Op bladzijde *8* wordt gesteld dat in november 1986 de eerste voorzitter van de People's Party is vermoord, en dat zeven vooraanstaande leden van deze partij sindsdien met de dood zijn bedreigd, dan wel aan moordaanslagen zijn ontsnapt.
Uit de stukken blijkt dat appellant oprichter is van de People's Party en dat deze partij een legale partij is. De tegen de

asielzoeker in zijn land van herkomst gevoerde campagne, zoals beschreven op de bladzijden 8 tot en met 10 van de brief van Amnesty International, vertoont voldoende overeenstemming met de situatie van andere, hierboven in paragraaf 3 aangeduide, vertegenwoordigers en leden van de People's Party en andere legale organisaties, dat vastgesteld kan worden dat asielzoekers vrees - helaas - gegrond is.

De treurige mensenrechtensituatie in asielzoekers land van herkomst is uitgebreid beschreven door Amnesty International. Op zijn best kan men stellen dat de overheid niet in staat is mensen als deze asielzoeker te beschermen. Er zijn echter ook sterke aanwijzingen - eveneens aangegeven door Amnesty International - dat onderdelen van het overheidsapparaat - het leger - betrokken zijn bij campagnes tegen mensen zoals asielzoeker. Het kan daarom geconcludeerd worden dat de overheid niet in staat is deze mensen effectief te beschermen tegen vervolging en zelfs dat de overheid hoogstwaarschijnlijk mede verantwoordelijk is voor deze vervolging."

Naar het oordeel van de Afdeling biedt hetgeen verweerder in het verweerschrift naar voren heeft gebracht onvoldoende grondslag voor het oordeel dat appellant in de Filipijnen ten tijde van de bestreden beslissing geen gegronde reden had om te vrezen voor vervolging.

Naar ook door verweerder is erkend stond appellant ten tijde van de bestreden beslissing in de Filipijnen mogelijk strafrechtelijke vervolging en bestraffing te wachten in verband met zijn vermeende betrokkenheid bij en activiteiten voor de C.P.P. en N.P.A..

.De Afdeling acht het, mede gezien het standpunt van de Vertegenwoordiger in Nederland van de Hoge Commissaris der Verenigde Naties voor Vluchtelingen, door verweerder onvoldoende aannemelijk gemaakt dat appellant naast als normaal aan te merken strafrechtelijke vervolging en bestraffing niet ook te maken zal krijgen met discriminatoire vervolging dan wel onevenredig zware bestraffing, omdat de vervolgende dan wel bestraffende instantie van oordeel is dat appellant de strafbare handelingen uit politieke motieven heeft gepleegd.

Dat de (internationale) bekendheid van appellant een voldoende waarborg zou bieden voor een eerlijk proces en een afdoende bescherming vanwege de Filipijnse autoriteiten, acht de Afdeling geenszins overtuigend.

II. Ten aanzien van het beroev van avvellant voor zover dat is gericht tegen de fictieve afwijzing van zijn verzoek om herziening van de weigering hem een vergunning tot verblijf te verlenen

Aangezien dit onderdeel van de bestreden beslissing eerst naar behoren kan worden beoordeeld, nadat bekend is geworden welke beslissing uiteindelijk op het verzoek van appellant om toelating als vluchteling is genomen en op welke gronden die beslissing berust, ziet de Afdeling in de vernietiging van de weigering om appellant als vluchteling toe te laten voldoende aanleiding om - op dezelfde grond - over'te gaan tot vernietiging van de weigering om aan appellant een vergunning tot verblijf te verlenen.

Uitspraak:

De Raad van State, Afdeling rechtspraak;
Gezien de Wet administratieve rechtspraak overheidsbeschikkingen, de Vreemdelingenwet en de Wet op de Raad van State;

Recht doende in naam der Koningin:

vernietigt de uit artikel 34, tweede lid, van de Vreemdelingenwet voortgevloeide beslissing tot afwijzing van het door appellant ingediende verzoek om herziening.

Aldus vastgesteld te 's-Gravenhage op 17 december 1992,
door mr. P. van Dijk, voorzitter, dr. J.C.K.W. Bartel, lid, en
mr. L. Dorhout, lid i.b.d., in tegenwoordigheid van
mr. L.A. Zegwaard, ambtenaar van Staat.

w.g. Zegwaard
ambtenaar van Staat.

w.g. Van Dijk
voorzitter.

Uitgesproken in het openbaar, overeenkomstig artikel 100, eerste lid, van de Wet op de Raad van State.

Voor eensluidend afschrift
de Secretaris van de Raad van State,
voor deze,

No. R02.90.4934 99-89.

Judgement of the Raad van State, 17 December 1992

Raad van State
No. R02.90.4934

AFDELING RECHTSPRAAK

Uitspraak in het geschil tussen:

J.M. Sison, of Philippine nationality (appellant),
represented by mr T. Boekman, lawyer in Haarlem

and

The State Secretary of Justice (defendant),
represented by mr K.O. Bravenboer, official of the ministry

By decree of 13 July 1990, defendant rejected the request of appellant to be admitted as refugee and be granted a permit for residence.

The decision is attached to this ruling.

By letter of 6 August 1990, received by defendant on 11 August 1990, appellant submitted to defendant a request for reconsideration.

No decision was taken on this request within the three-month period laid down in article 34, second paragraph of the Aliens Law, so that this request, in compliance with this paragraph, must be considered to have been rejected.

Opposing this fictive rejection, appellant submitted to the justice section of the Council of State, an appeal through a letter dated 6 December 1990, received by the Council of State on 10 December 1990, on grounds stated in the Aliens Law.

The letter of appeal is attached to this ruling.

Defendant as requested submitted a written defense dated 11 July 1991.

The case was taken up in a public session of the Section on 29 October 1992 during which appellant and defendant, through oral presentation by their representatives, further explained their positions. The Minister for Foreign Affairs, represented by mr. A.R. Westerlink, official of the ministry, and the Representative of the High Commissioner for Refugees in the Netherlands, represented by mr. J.H. van der Veen, were also heard.

In the law:

I. Regarding the appeal of the defendant in so far as this is directed against the fictive rejection of his request for reconsideration of the refusal to recognize him as a refugee.

In article 1(F) of the Treaty of Geneva concerning t he states of refugees of 28 July 1951, as amended by the Protocol of New York of 31 January 1967, from now on called: the Treaty, it is stated that the provisions of the Treaty are not applicable to a person whom there are serious reasons to suppose that;

a. he has committed serious offense against peace, a crime of war or a serious offense against humanity, as defined by the international agreements created to lay down rules concerning these offenses;

b. he has committed serious, nonpolitical offense outside the land of refuge, before he was admitted to the country as a refugee;

c. he is guilty of actions that are contrary to the aims and principles of the United Nations.

In the written defense--which can be considered as containing the justification for the disputed decisions--defendant states that the same reasons underlie the present decision as contained in the advice of the Advisory Commission for Aliens Affairs of 25 February 1991. Consequently defendant bases itself primarily on the judgment that the appellant has not proven well-founded fear of persecution in the sense of the Treaty.

Corollarily defendant considers that appellant, on the basis of the provision in Article 1(f), opening and sub c, of the Treaty, deserves no consideration of admission.

Defendant, in the above mentioned justification, failed to recognize that in applying the Treaty, in connection with the serious character of the actions referred to in Article 1(F), it is in the first place necessary to consider if, in view of that provision, the other provisions of the Treaty are applicable.

The section in this failure of defendant does not see in this case substantial ground for nullification, now that defendant in its letter of defense also has gone into the mentioned article 1(F), opening and sub c of the Treaty, the other provisions of that Treaty are not applicable to the appellant.

With a view to this the Section considers as follows:

Article 1(F), opening and sub c of Treaty, should, as ground of exclusion, be explained restrictively.

In view of the character and contents of the aims and principles of the United Nations, as they have been worded in the preamble and in articles 1 and 2 of the Charter of the United Nations, article 1(F), opening and sub c of the Treaty, primarily has in view persons who as organ of the state have made themselves guilty of deeds of persecution or other public deeds which have endangered peace, whereas to deeds of other persons it is only applicable, if glaring violations of human rights are concerned, in so far as they do not already fall under article 1(F), opening and sub c of the Treaty.

Defendant has insufficiently pointed out which supposed deeds of appellant have led defendant to his judgment with regard to article 1(F), opening and sub c of the Treaty, on what dates those deeds have taken place and what meaning defendant in this connection attaches to the conferment of amnesty in 1986.

The section also points out the fact that the papers handed to the Council of State, in connection with Article 77, third paragraph of the law, do not give sufficient clarity to this point. Now that this lack of clarity, in view of the confidential character of the papers, cannot be done away with by hearing both sides, the information given in the confidential documents, in so far as they are not clear, cannot be explained to the disadvantage of the appellant.

With a view to the preceding, the Section is of the opinion that the disputed decision, as to this part, is contrary to the general sense of justice of a proper government, that a decision must be supported by the underlying motives knowable by the person concerned.

So this decision must so far be nullified on the ground of what is mentioned in Article 8, first paragraph, sub d of the law: "Administrative Jurisdiction of Government Decrees".

In case defendant should in a review of the matter, no longer hold the point of view that the basis for exclusion of article 1(F), opening and sub c of the Treaty, would be applicable to the appellant, the Section marks the following:

Pursuant to Article 1(F), sub 2 of the Treaty, as far as it is relevant to the application of the Treaty holds as "refugee" every person, who out of well-grounded fear of persecution, because of race, religion, nationality, being a member of a certain social group, or because of his political views, finds himself outside the country of this nationality, and who cannot invoke the protection of that country, or will not call for it out of abovementioned fear.

In compliance with Article 15, first paragraph of the Aliens Law, foreigners, who come from a country where they have well-founded reason to fear persecution because of their religion or political conviction or their nationality, or because of their belonging to a certain race or certain social group, can be admitted as refugees.

In the second part of this article it is decreed that admission cannot be refused, except for important reasons derived from general interest, if the foreigner by this refusal should be forced to go immediately to a country as intended in the first paragraph.

In the second part of this article it is decreed that admission cannot be refused, except for important reasons derived from general interest, if the foreigner by this refusal should be forced to go immediately to a country as intended in the first paragraph.

Appellant has pointed out that he has well-founded reasons to fear persecution.

To this appellant has mentioned the following:

He is one of the founders of the Communist Party of the Philippines (CPP) and has been chairman of the Central Committee of that party from 1968 to 1977.

The aforementioned relation with the CPP was one of the reasons why appellant was arrested in November 1977 and sentenced to 10 years imprisonment. [N.B.: Appellant was never sentenced, he was arbitrarily detained.] During his detention, he was seriously ill-treated. On 5 March 1986, ten days after President Marcos was deposed and had left the country, appellant was set free. In 1986 appellant was concerned with the founding of the People's Party. In August 1986, however, he declined a nomination as present of this party, because he had occupied himself with intellectual and literary activities.

He is unjustly accused by the Philippine authorities of having again become Chairman of the Central Committee of the CPP, has connections with the New People's Army (NPA) and carries out all kinds of subversive activities.

In connection with this a charge was brought against him, on 14 September 1988, because of violation of Republic Act 1700 (also called Anti-Subversion Law). On 16 September 1988 his passport was declared invalid. If he has to return to the Philippines, he will be arrested and murdered. According to appellant, an honest trial will be out of the question.

As it appears from the written defense, defendant is of the view that appellant is not a refugee and therefore cannot be admitted as a refugee into the Netherlands.

For this purpose, defendant has pointed to the advice given on this matter by the Advisory Commission for Aliens Affairs. This Commission has, among other things, considered the following:

"Indeed, it is acceptable that appellant, in case he returns to the Philippines, would have to face prosecution and punishment because of relationship with and activities for the CPP and the NPA, of which he is suspected of having, but it has not become acceptable that such prosecution and punishment could be marked as persecution in the sense of t he aforementioned regulations of the Treaty.

The Committee grounds this judgment on the fact, that it has by no means become acceptable that the suspicion of relations with and activities for organization later than 1977, which have been denied by the appellant, is without any foundation. Public statements of appellant after his release in 1986, together with the contents of documents handed to the Committee on the part of the Secretary of State of Justice, point, according to the opinion of the Commission, far more to the contrary.

Further, the Commission considers that it is generally known--appellant has not even contradicted it--that the aforementioned organizations aim at overthrowing the regime of the Philippines, to put a communistic regime in its place and that they do not deny that they use violence.

Under the aforementioned circumstances, it cannot be said that possible prosecution by Criminal Law and punishment of the appellant, because of connection with and activities for above organizations are, for that reason, to be marked as persecution in just said sense.

Further, it is not acceptable that appellant, besides for what is normally considered prosecution by criminal law and possible punishment, will also be in for discriminatory prosecution and, as the case may be, disproportionate heavy

punishment, because the prosecution, casu quo punishing body, is of the opinion that appellant has committed the offenses out of political motives.

In this connection, it is observed that appellant has not made it acceptable that, whatever may be true of violations of human rights in the Philippines, he of all people will be kept from an honest lawsuit.

Also because of his being (internationally) known, it may be assumed that in his case an honest trial is sufficiently guaranteed and that the authorities will offer sufficient protection to the foreigner against arbitrary actions of vigilante and similar groups. In so far as appellant bases his arguments on the supposition that he will be prosecuted by criminal law again for facts for which he had already been in prison for a considerable time, until he was given amnesty (N.B.: incorrect, Sison was not never given amnesty), this does not lead to another result, already, because out of documents, also known to appellant, it appears that the renewed interest of the Philippine authorities has been roused by utterance and behavior if the foreigner dating from his release in March 1986."

During the session the Minister of Foreign Affairs endorsed the opinion of the defendant.

Representative in the Netherlands of the UN High Commissioner for Refugees, has brought forward among other things, the following:

As introduction, he remarked that his view is based on the documents which have been seen by the representative in the Netherlands of the High Commissioner of the United Nations for Refugees. The possibility that his view might change, if representative would inspect the confidential papers coexisting on this matter, may, as a matter of fact, not be excluded, thus says the representative.

With a view to the justness of the fear and the protection by authorities, the opinion of the Representative in the Netherlands of the UN High Commissioner for Refugees is as follows:

"The Dutch Department of Amnesty International has, in a letter of 17 October 1990, directed to the Ministry of Justice, given an opinion on this matter. On page 5, it is stated that 'legal(..) organizations are publicly (...) accused of being a disguise for the illegal CPP and NPA." 'The representatives and members of these organizations are, by these accusations, exposed to immediate danger of life.' On page 8, it is said that in November 1986, the first president of this Party has been murdered and that seven prominent members of this Party have since then been threatened to be killed , or have escaped murderous attacks. Out of the papers, it is clear that appellant is the founder of the People's Party and that this Party is a legal party. The campaign conducted against the seeker for asylum in his native country, as described in pages 8 to 10 inclusive of the letter of Amnesty International, shows sufficient resemblance with the situation of others, as referred to above in paragraph 3, representatives and members of the People's Party and other legal organizations, that may be ascertained that asylumseeker's fear is--alas--well-founded.

The deplorable human rights situation the refugee's country of origin has been extensively described by Amnesty International. At its best, it may be stated that the authorities are not able to protect the people like this asylum-seeker. However, there are also strong indications--also pointed to by Amnesty International--that units of

government agencies --the army--are connected with campaigns against people like the asylumseeker. Therefore, the conclusion can be made that the Government is not able to protect these people effectively from persecution and that, most probably, the Government is even among those responsible for the persecution.

According to the opinion of the Section, that defendant, in its letter of defense, brought forward insufficient grounds for the judgment that appellant at the time disputed decision was promulgated, had no serious reason to fear persecution in the Philippines.

As has also been admitted by defendant, appellant, in the days of the disputed decision in the Philippines was possibly in for prosecution by criminal law and punishment in the Philippines in connection with his supposed relation with and activities for the CPP and NPA.

The Section judges that, also in view of the opinion of the Representative in the Netherlands of the UN High Commissioner for Refugees, defendant has made it insufficiently acceptable, that appellant, besides the prosecution by criminal law and punishment, which may be marked as normal, he will also be in for discriminatory persecution or disproportionately heavy punishment, because the prosecution/penal body is of the opinion that appellant has committed offenses for political motives.

That, the appellant being internationally known, should offer sufficient guarantee for an honest trial and sufficient protection from Philippine authorities, the Section considers by no means convincing.

II. As regards the appellant's appeal in so far as it is directed against the fictitious rejection of his request for reconsideration of the refusal to grant him a residence permit

Since this part of the disputed decision can only then be properly judged, when it has become known which decision finally has been taken to appellant's request for admission as refugee and on what grounds that decision is based, the Section sees in the nullification of the refusal to admit appellant as refugee sufficient cause --on the same ground--to pass to the nullification of the refusal to render appellant a permit to reside.

Decision:

The Raad van State, Afdeling rechtspraak:

Considering the Law administrative jurisprudence government decisions, the Aliens Law and the Law on the Raad van State;

Handing justice in the name of the Queen:

Destroys the decision consequent to article 34, second paragraph, of the Aliens Law, to reject the request for reconsideration by the appellant.

So decided in Den Haag on 17 December 1992,
by mr. P. van Dijk, chairman, dr. J.C.K.W. Bartel, member, and mr. L. Dorhout, member i.b.d., in the presence of mr. L.A. Zegwaards, official of State.

w.g. Zegwaard
office of State.

w.g. van Dijk
chairman.

Read in public, in agreement with article 100, first paragraph, of the Law on the Raad van State.

Raad van State

No. R02.93.2274.

Datum uitspraak: 21 februari 1995.

AFDELING BESTUURSRECHTSPRAAK

Uitspraak in het geschil tussen:

J.M. Sison, van Filipijnse nationaliteit (appellant)

en

de Staatssecretaris van Justitie (verweerder).

Bij beschikking van 13 juli 1990 heeft verweerder verzoeken van appellant om toelatinq als vluchteling en verlening van een vergunning tot verblijf afgewezen.

Bij schrijven van 6 augustus 1990, ingekomen bij verweerder op 11 augustus 1,090, heeft appellant bij verweerder een verzoek om herziening ingediend.

Op dit verzoek is niet binnen de in artikel 34, tweede lid, van de Vreemdelingenwet genoemde termijn van drie maanden een beslissing genomen, zodat dit verzoek ingevolge dat artikellid geacht moet worden te zijn afgewezen.

Tegen deze fictieve beslissing heeft appellant bij schrijven van 6 december 1990, ingekomen bij de Raad van State op 10 december 1990, beroep op grond van de Vreemdelingenwet ingesteld bij de Afdeling rechtspraak van de Raad van State.

Bij uitspraak van 17 december 1992, no. R02.90.4934, RV 1991, 12, heeft de Afdelinq rechtspraak de beslissing van verweerder vernietigd.
Deze uitspraak is aan deze uitspraak gehecht.

Bij beslissinq van 26 maart 1993, nr. 8702.16.0027, heeft verweerder, opnieuw beslissend op het verzoek om herziening van appellant, dit wederom afgewezen.
De beslissing is aan deze uitspraak gehecht.

Tegen deze beslissing heeft appellant bij schrijven van 23 april 1993, ingekomen bij de Raad van State op 26 april 1993, beroep op grond van dc Vreemdelingenwet ingesteld bij de Afdeling rechtsprank van de Raad van State.

Bij schrijven van 25 mei 1993 heeft appellant zijn beroep gemotiveerd.
Dit schrijven is aan deze uitspraak gehecht.

Desgevraagd heeft verweerder bij schrijven van 17 februari 1994 een verweerschrift ingediend.

Bij schrijven van 29 september 1994, aangevuld bij schrijven van 30 september 1994 en 18 november 1994, heeft appellant nader een memorie ingezonden.

Het geschil is op 12 januari 1995 behandeld in een openbare vargadering van de Afdeling bestuursrethtspraak, waarin appellant in persoon en vertegenwoordigd door mr. R.D. van As, advocaat te Nieuwegein, en verweerder, vertegenwoordigd door mr. K. Bravenboer, ambtenaar ten departemente, zijn verschenen en hun standpunten nader hebben uiceengezet.
Tevens is ter zitting gehoord de Minister van Buitenlandse Zaken, vertegenwoordigd door mr. D.M. Vinkeles Melchers, ambtenaar ten departemente.

In rechte

Op 1 januari 1994 is in werking getreden de Wet van 16 december 1993 tot wijziging van *de Wet* op de rechterlijke organisatie, de Algemene wet bestuursrecht, de Wet op de Raad van State, de Beroepçwet, de Ambtenarenwet 1929 en andere wetten, alsmede intrekking van de Wet administratieve rechtspraak overheidsbeschikkingen (voltooiing eerste fase herziening rechterlijk organisatie), Stb. 1993, 650. Uit de in deel 6, artikel I, van deze Wet neergelegde overgangsbepalingen volgt *dat* het geschil dient te worden behandeld met toepassing van het recht dat gold vóór 1 januari 1994, behoudens ten aanzien van de regeling inzake de proceskostenveroordeling in artikel 8:75 van de Algemene wet bestuursrecht.

I. Ten aanzien van het beroep van appellant voor zover dat is gericht tegen de afwijzing van zijn verzoek om herziening van de weigering hem als vluchteling toe te laten

Ingevolge artikel 15, eerste lid, van de Vreemdelingenwet kunnon vreemdelingen die afkomstig zijn uit een land waarin zij gegrande reden hebben te vrezen voor vervolginq wegens hun godsdienstige „of

politieke overtuiging of hun nationaliteit, dan wel wegens het behoren tot een bepaald ras of tot een bepaalde sociale groep, als vluchteling worden toeqelaten.
In het tweede lid van dit artikel is bepaald dat de toelating niet kan worden geweigerd dan om gewichtige redenen aan het algemeen belang ontleend, indien de vreemdeling door de weigering genoopt zou worden zich onmiddellijk te begeven naar een land als bedoeld in het eerste lid.

In bovengenoemde uitspraak van 17 december 1992 heeft de Afdeling rechtspraak de fictieve beslissing van verweerder tot afwijzing van het verzoek om herziening van de weigeringen van Coelating als vluchteling en veriening van een vergunning tot verblijf vernietigd, omdat naar haar oordeel verweerder onvoldoende had aangegeven onder meer welke vermeende daden van appellant hem tot zijn oordeel hebben geleid dat artikel 1 (F), aanhef en onder c, van het Verdrag betreffende de status van vluchtelingen van Genève van 28 juli 1951, zoals gewijzigd bij Protocol van New York van 31 januari 1967, hierna te noemen: het Verdrag, op appellant van toepassing is.

Met de bestreden beslissing heeft verweerder opnieuw in de zaak voorzien en thans geoordeeld dat appellant geen aanspraak kan maken op de bescherming voortvloeiende uit de bepalingen van het Verdrag, op grond van het bepaalde bij artikel 1(F), aanhef en onder a en b, van dit Verdrag. Dit oordeel heeft verweerder (primair) ten grondslag gelegd aan zijn beslissing om aan appellant om gewichtige redenen aan het algemeen belanq ontleend, op grond van artikel 15, tweede lid, van de Vreemdelingenwet, de toelating als vluchteling te weiqeren.

De Afdeling zal allereerst naqaan of verweerder op basis van deze stellingname aan appellant op grond van artikel 15, tweede lid, van de Vreemdelingenwet de toelating als vluchteling kon weigeren.

Ingevolge artikel 1(F) van het Verdrag zijn de bepaiingen van dit Verdrag niet van toepassing op een persoon ten aanzien van wie er ernstige redenen zijn om te veronderstellen, dac:

a. hij een misdrijf tegen de vrede, een oorlogsmisdrijf of een misdrijf tegen de menselijkheid heeft begaan, zoals omschreven in de internationale overeenkomsten welke zijn opgesteld om bepalingen met betrekking tot deze misdrijven in het leven te roepen;
b. hij een ernstig, niet-politiek misdrijf heeft begaan buiten het land van toevlucht, voordat hij tot dit land als vluchteling is toegelaten:
c. hij zich schuldig heeft gemaakt aan handelingen welke in strijd zijn met de doelstellingen en beginselen van de Verenigde Naties.

Ter onderbouuing van zijn stelling dat appellant geen aanspraak kan maken op de bescherming voortvloeiende uit de bepalingen van het Verdrag, op grond van het bepaaide bij artikel 1(F), aanhef en onder a en b, van dit Verdrag, heeft verweerder in de bestreden beslissing het volgende gesteld:
Uit een brief van de Binnenlandse Veiligheidsdienst van 3 maart 1993 is gebleken dat appellant de tegenwoordige voorzitter en leider is van de Communistische Partij van de Filipijnen (CPP). Voorts is gebleken dat de militaire arm van de CPP, de New People's Army (NPA), ondergeschikt is aan het Centraal Comité van de CPP en derhalve aan appellant.
De Binnenlandse Veiligheidsdienst heeft geconstateerd dat appellant feitelijk sturing geeft aan de NPA. De NPA - en daarmee betrokkene - is verantwoordelijk voor een groot aantal terreurdaden in de Filipijnen.
Als voorbeelden van de genoemde terreurdaden heeft verweerder in de bestreden beslissing yeqeven:
- de moord op 40 inwoners (voornamelijk weerloze vrouwen en kinderen) van het dorp Digos op het eiland Mindanao op 25 juni 1989;
- het neerschieten van 14 personen, waaronder zes kinderen, in het dorp Dipalog in augustus 1989;
- de executie van vier inwoners van het dorp Del Monte op 16 oktober 1991.
Voorts heeft verweerder gewczen op de zuivering die in 1985 binnen de gelederen van de CPP en de NPA heeft plaatsgevonden, waarbij naar schatting 800 leden van deze organisaties zonder vorm van proces zijn vermoord.

Bovendien heeft de Binnenlandse Veiligheidsdienst, aldus verweerder, geconstateerd dat de CPP/NPA contacten onderhoudt met terroristische organisaties verspreid over de gehele wereld, terwijl er ook persoonlijke contacten tussen appellant en vertegenwoordigers van dergelijke organisaties zijn waargenomon.
Ter ondersteuning van zijn stelling dat de NPA zich schuldig heeft gemaakt aan gewelddaden heeft verweerder in de bestreden besïissing tevens verwezen naar een publikatie van Amnesty international met: de titel "The killing goes on", qedateerd februari 1992, alsmede naar perspublikaties waaruit dit zou blijken.
Naar de mening van verweerder zijn de onder verantwoordelijkheid van appellant gepleegde terreurdaden aan te merken als misdrijven tegen de menselijkheid als bedoeld in artikel 1(F), aanhef en onder a, van het Verdrag. Het betreft handelingen waartegen zich richten de in annex VI van het "Handbook on Procedures and Criteria for Determining Refugee Status" van de UNHCR qenoemde "international instruments relating to article 1F(a) of the 1951 Convention". In het bijzonder kunnen naar de mening van *verweerder* de hiervoor omschreven daden worden aangemerkt als schending van artikel 3 (1) van de Geneefse Verdragen van 12 augustus 1949. Verweerder heeft voorts verwezen naar het internationaal Verdrag inzake burgerrechten en politieke rechten van 19 december 1966 en het Internationaal Verdrag tegen foltering en andere onmenselijke of onterende behandeling of bestraffing van 10 december 1984.
Bovendien zijn, zo heeft vemeerder in de bestreden beslissing gcsteld, de op gezag en onder verantwoordelijkheid van appellant gepleegde terreurdaden aan te merken als niet-politieke misdrijven, begaan buiten het land van toevlucht, als bedoeld in artikel 1(F), aanhef en onder b, van het Verdraq. De hierbedoelde daden zijn naar het oordeel van verweerder van buitenqewoon ernstige aard en staan in zijn visie niet in verhouding tot de politieke doelstelling waarvoor zij zijn gepleegd.

De Afdeling heeft met toepassing van artikel 77, derde en vierde lid, van de Wet op de Raad van State kennis qenomen van de produkties 27 tot en met 34 van het départementale dossier, alsmede van het aan de door verweerder in de bostreden beslissing aangehaalde brief van de

Binnenlandse Veiligheidsdienst van 3 maart 1993 ten grondslag liggende operationele materiaal.

De Afdeling overweegt dienaangaande als volgt.

De Afdeling acht op basis van genoemd materiaal **voldoende** aannemelijk dat appellant tcn tijde **van** de bestreden beslissing de voorzitter en leider was van de CPP. Voorts rechtvaardigen de stukken de conclusie dat de NPA ondergeschikt is **aan** het Centraal Comité van de CPP en dat appellant vanuit Nederland ten tijde van de bestreden beslissing althans heeft beoogd mede feitelijk leiding te geven aan de **NPA**. Dat **de NPA** verantwoordelijk is voor een groot **aantal** terreurdaden **in** de Filipijnen acht de Afdeling reeds op qrond **van openbare** bronnen, **zoals** de berichten van Amnesty International, voldoende **aannemelijk.** De stukken bieden verder aanknopingspunten **voor** het oordeel **dat** appellant althans heeft beoogd **sturing** te geven aan activiteiten als hiervoor genoemd, onder verantuoordelifkheid van de **NPA** in de Filipijnen uitgevoerd. Ook komt uit ***de*** stukken naar voren dat er **aanknopingspunten** zijn voor ***de*** juistheid van de **stelling van** verweerder dat *de* CPP/NPA contacten onderhoudt met terroristische orqanisaties, verspreid over de gehele wereld en dat er persoonlijke contacten tussen appellant en vertegenwoordigers **van dergelijke** orqanisaties zijn geweest. Bedoelde stukken leveren echter onvoldoende aanknopingspunten op voor het gefundeerde oordeel dat appellant in die mate mede leiding heeft geqeven aan en **verantwoordelijkheid draagt** voor bedoelde activiteiten, dat staande kan **worden** gehouden dat er ernçtige redenen beçtaan te veronderstellen **dat** appellant de in voornoemde artikelleden genoemde misdrijven heeft begaen. Hierbij heeft de Afdeling nadrukkelijk in aanmerking genomen **dat,** gelijk de Afdeling rechtspraak reeds heeft overwogen in bovengenoemde uitspraak **van** 17 **december 1992,** artikel 1(F) van het Verdrag restrictief dient te worden uitqelegd.
Derhalve is de Afdeling van oordeel dac verweerder op basis van bedoelde stukken niet kon aannemen **dat** appellant **de** bescherming van het Verdrag moet worden ontzegd. Hieruit volqt dat **de door** verweerder gehanteerde (primaire: motivering om appellant op grond van **artikei** 15, tueede lid, van de Vreemdelingenwet de toelating als **vluchteling** te weigeren, ontoereiKend is.

Gezien het vorenstaande is de Afdeling van oordeel dat de bestreden beslissing op dit punt niet in stand kan blijven.

Blijkens de bestreden beslissing staat verweerder voorts op het standpunt dat, zelfs indien aangenomen zou worden dat het Verdrag wel op appellant van toepassing is en appellant als vluehteling wordt aangemerkt, dan nog op grond van artikel 15, tweede lid, van de Vreemdelingenwet appellant de toelatinq hier te lande zou worden qeweigerd. Daartoe heeft verweerder in de bestreden beslissing (subsidiair) qesteld dat de activiteiten die door en op gezag van appellant zijn en worden ontplooid een gewichtig belang van de Nederlandse Staat aantasten, te weten de integriteit en geloofwaardigheid van Nederland als soevereine staat, met name in relatie tot zijn verantwoordelijkheden tegenover andere staten.

De Afdeling ziet hierin aanleiding eerst te onderzoeken of appellant in de Filipijnen gegronde reden heeft te vrezen voor vervolging.

De Afdeling overweegt dienaanqaande als volgt.

Ingevolge artikel 1(A), onder 2, van het Verdrag geldt, vooz zover hier van belang, voor de toepassing van het Verdrag als "vluchteling" elke persoon die uit gegronde vrees voor vervolging wegens zijn ras, godsdienst, nationaliteit, het behoren tot een bepaalde sociale groep of zijn politieke overtuiging, zich bevindt buiten het land waarvan hij de nationaliteit bezit, en die de bescherming van dat land niet kan of, uit hoofde van bovenbedoelde vrees, niet wil inroepen.

In eerdergenoemde uitspraak van 17 december 1992, no. R02.90.4934, heeft de Afdeling rechtspraak reeds aangegeven dat zij het, mede gezien het in deze uitspraak vermelde standpunt van de Vertegenwoordiger in Nederland van de Hoge Commissaris der Vereniqde Naties voor Vluchtelingen, door verweerder onvoldoende aannemelijk gemaakt acht dat appellant naast als normaal aan te merken strafrechtelijke vervolging en bestraffing niet ook te maken zal krijgen met discriminatoire vervolging dan wel onevenredig zware bestraffing, omdat de vervolgende dan wel

bestraffende instantie van oordeel is dat appellant de strafbare handelingen uit politieke motieven heeft gepleegd. Dat de (internationale) bekendheid van appellant een voldoende waarborg zou bieden voor een eerlijk proces en een afdoende bescherming vanwege de Filipijnse autoriteiten, achtte de Afdeling rechtspraak geenszins overtuigend.

De Verteqenwoordiger van de Hoge Commissaris der Vereniqde Naties voor Vluchteiingen heeft bij schrijven van 11 januari 1995 gebruik gemaakt van de hem geboden mogelijkheid zijn zienswijze omtrent deze zaak kenbaar te maken.
De Verteqenwoordiger heeft te kennen gegeven dat hij geen aanleidinq ziet tot wijziging van zijn eerder ingenomen standpunt, inhoudende dat appellant in de Filipijnen gegronde reden heeft om te vrezen voor vervolging.

Amnesty International heeft bij brief van 30 juni 1993 in reactie op de bestreden beslissing van 26 maart 1993 te kennen gegeven dat er vooralsnog geen verandering is gekomen in het in een brief aan het Ministerie van Justitie van 17 oktober 1990 reeds door haar ingenomen standpunt. Amnesty International huldigt derhalve nog steeds het standpunt dat zij meent dat appellant, indien hij gedwongen zou worden teruq te keren naar de Filipijnen, qegronde redensn heeft te vrezen voor vervolqing in vluchtelingrechtelijke zin en dat hij bij geduonqen terugkeer naar de Filipijnen onmiskenbaar het risico loopt slachtoffer te worden van marteling, buitengerechtelijke executie of 'verdwijning'.

Op grond van de bij de Afdeling bekende feiten stelt zij vast, dat appellant in de Filipijnen gegronde reden heeft om te vrezen voor vervolging en mitsdien als vluchteling in de zin van artikel 1(A), onder 2, van het Verdrag dient te worden aangemerkt.
Hieraan doet naat het oordeel van de Afdeling niet af dat, zoals uit een ambtsbericht van het Ministerie van Buitenlandse Zaken van 4 maart 1993 naar voren komt, met het intrekken van de zogenaamde Anti-Subversion Law op 22 september 1992 de CPP is geleqaliseerd en het lidmaatschap van de CPP niet langer strafbaar is. Evenmin kan tot een ander oordeel leiden dat de Filipijnse autoriteiten

herhaaldelijk de bereidheid hebben uitgesproken iedere veiligheidsmaatregel te treffen die appellant nodig acht wanneer hij in de Filipijnen verblijft. In dit verband hecht de Afdeling er nog aan op te merken dat zij onvoldoende aannemelijk acht dat de autoriteiten, ondanks de door hen uitgesproken bereidheid hiertoe, gezien de onoverzichtelijke situatie in de Filipijnen in staat zullen zijn appellant afdoende bescherming te bieden, indien van de kant van gewapenàe burgergroepen of paramilitaire **eenheden** . het plan bestant appellant te executeren.

Gezien het vorenstaande zal de Afdeling vervolgens nagaan of de door verweerder (subsidiair) gegeven motivering om appellant op grond van artikel 15, tweede lid, van de Vreemdelingenwet, de toelating tot Nederland te weigeren, toereikend is.

Hoewel de Ndeling het door verweerder gestelde belang erkent, mede gelet op de door haar geconstateerdc aanwijzingen **voor** persoonlijke contacten tussen appellant en vertegenwoordigers **van** terroristische organisaties, kan **dit** - indien niet gegarandeerd is dat appellant in een ander land dan de Filipijnen zal worden toegelaten - niet leiden tot het gerechtvaardigd inroepen van artikel 15, tweede lid, **van de** Vreemdelingenwet. Hieraan staat in de weg dat een dergelijke weigering om appellant toe te laten als strijdig met artikel 3 van het Europees Verdrag tot bescherming van de rechten **van** de mens en de fundamentele vrijheden, hierna te noemen: het EVRM, moet worden geoordeeld.

Ingevolge artikel 3 van het EVRM mag niemand worden onderworpen aan folteringen noch aan onmenselijke of vernederende behandelingen of straffen.

Met appellant is de Afdeling, mede op qrond van het hiervoor ove-rwogene, met name met betrekking tot het vluchtelingschap van appellant, van oordeel dat deze **bij** terugkeer naar de Filipijnen het reële gevaar loopt onderworpen te uorden aan een behandeling in **strijd** met artikel 3 van hot EVRM.
De Afdeling komt tot haar oordeel dat het **reële** gevaar waarvoor appellant vreest, onmenselijke of vernederende behandellnqen of

straffen betreft, op qrond van een "fair balance" als aangegeven door het Europese Hof voor de Rechten van de Mens in *zijn* arrest van 7 juli 1989, RV 1989, 94, in de zaak Soering. Is eenmaal aldus de conclusie bereikt, dat er reëel gevaar voor onmenselijke of vernederende behandelingen of straffen bestaat, dan is er voor een nadere afweging tussen het belang van appellant daarvan gevrijwaard te blijven en het door verweerder aangevoerde belanq van de Nederlandse Staat bij niet-toelating geen ruimte, gelet op het absolute karakter van het in artikel 3 van het EVRM neergelcgde verbod, dat in hetzelfde arrest in de zaak Soering is beklemtoond.

Hieruit volgt dat de bestreden beslissing ook op dft punt niet in stand kan blijven.

Gezien al het vorenstaande is de Afdeling van oordeel dat de bestreden beslissing, wat dit onderdeel betreft, in strijd is met het in het algemeen rechtsbewustzijn levend beginsel van behoorlijk bestuur dat een beschikking moét kunnen worden gedraqen door de daaraan ten grondslag gelegde en voor de betrokkene kenbare motivering.
Deze beslissing moet dan ook in zoverre worden vernietigd op de grond, genoemd *in* artikel 8, eerste lid, onder d, van de Wet administratieve rechtspraak overheidsbeschikkinqen.

II, Ten aanzien van het beroep van appellant voor zover dat is gericht tegen de afwijzing van zijn verzoek om herziening van de weigering hem een vergunning tot verblijf te verlenen.

Aangezien dit onderdeel van de bestreden beslissing eerst naar behoren kan worden beoordeeld, nadat bekend is geworden welke beslissing uiteindelijk op het verzoek van appellant om toelating ais vluchteling is genomen en op welke qronden die beslissing berust, ziet de Afdeling in de vernietiging van de weigering om appellant als vluchteling toe te laten voldoende aanleiding om - op dezelfde qronden - over te gaan tot vernietiging van de weigering om aan appellant een vergunning tot verblijf te verlenen.

Voorts acht de Afdeling termen aanwezig toepassing te geven aan artikel 8:75 van de Aigemene wer bestuursrecht.

Beslissing

De Afdeling bestuursrechtspraak van de Raad van State;

Recht doende in naam der Koningin:

I. vernietigt de beslissing van verueerder van 26 maart 1993, nr. 8702.16.0027, waarbij het verzoek om herzieninq van de weigeringen van toelating aïs vluchteliny en vergunning tot verblijf is afgewezen:

II. veroordeelt de Staatssecretaris van Justitie *in* de door appellant in verband met de behandeling van het beroep gemaakte kosten *tot* een bedrag van f 1775,--, geheel toe te rekenen aan door een derde beroepsmatig verleende rechtsbijstand.
Het totale bedrag dient aan de Secretaris van de Raad van *State* (girorekening 507590), onder vermelding van het zaaknummer R02.93.2274, te worden vergoed door de Staat der Nederlanden (het Ministerie van Justitie).

Aldus vastgesteld te 's-Gravenhage op 21 februari 1995,
door mr. P.J. Boukema, voorzitter, mr. P. van Dijk en mr. L. Dorhout, leden, *in* tegenwoordigheid van mr. H.J.C. van Geel, ambtenaar van Staat.

w.g. Van *Geel*
ambtenaar van Staat

w.g. Boukema
Voorzitter.

Uitgesproken in het openbaar, overeenkomstig artikel 100, eerste lid, van de Wet op de *Raad* van State.

Voor eensluidend afschrift,
de Secretaris van de Raad van
State,
voor deze,

No. R02.93.2274/61-125
Verzonden:

Judgement of the Raad van State, 21 February 1995

Raad van State

No. R02.93.2274
Date decision: 21 February 1995.

AFDELING BESTUURSRECHTSPRAAK

Judgement in the decision between:

Jose Maria Sison, of Filipino nationality (Appellant)

and

the State Secretary of Justice (Defendant).

In a decision dated 13 July 1990, the defendant rejected the requests of appellant to be admitted as a refugee and to be granted a residence permit.

In a letter of 6 August 1990, received by defendant on 11 August 1990, appellant submitted a request for reconsideration to the defendant.

No action was taken on this request within the three-month period provided for in article 34, second paragraph of the Aliens Law so that this request following that provision must be considered as having been rejected.

Against this fictive rejection, the appellant on the basis of the Aliens Law made an appeal in writing dated 6 December 1990, received by the Raad van State on 10 December, to the rechtspraak department of the Raad van State.

In a decision dated 17 December 1992, No. R02.90.4934, RV 1991, 12, the Afdeling Rechtspraak nullified the decision of the defendant. This present decision relates to said decision.

In a decision dated 26 March 1993, No. 8702.16.0027, the defendant, deciding on the request of the appellant for reconsideration, again rejected this. The decision (beslissing) is relates to this judgement (uitspraak).

Against this decision, the appellant made an appeal in writing dated 23 April 1993, received by the Raad van State on 26 April 1993, to the Afdeling Rechtspraak of the Raad van State on the basis of the Aliens Law.

Appellant justified his appeal in writing dated 25 May 1993. This letter relates to this decision.

Upon request, the defendant submitted an appeal in writing dated 17 February 1994.

Appellant has submitted in writing a further memorandum dated 29 September 1994, supplemented in writing on 30 September 1994 and 18 November 1994.

The dispute was handled on 12 January 1995 in a public hearing of the Afdeling Bestuursrechtspraak, in which the appellant himself and represented by R.D. van As of Nieuwegein, and the defendant, represented b y Mr K. Bravenboer, employee of the department appeared and argued further their positions.

At the same time, the Minister of Foreign Affairs, represented by Mr. D.M. Vinkeles Melchers, employee of the ministry, was heard during the hearing.

In the law

On 1 January 1994 the Law of 16 December 1993 became effective, amending the Law on legal organizations, the General Administrative Law, the Law on the Raad van State, the Appeals Law, the Law on Bureaucrats 1929 and other laws, as well as retracting the Law on administrative decisions of the state (completing the first phase of the reform of legal organization) Stb. 1993.650. From the transitory provisions laid down in part 6, article I of this law follows that the dispute must be handled applying the law that was valid before 1 January 1994, except for to the provisions in article 8:75 of the General Administrative Law concerning the costs of the handling the case.

I. Regarding the appeal of the appellant in so far as this concerns the rejection of his appeal for reconsideration of the refusal to admit him as refugee.

Following article 15, first paragraph of the Aliens Law, foreigners who come from a land where they have valid reasons to fear persecution because of their religious or political belief or their nationality or because they belong to a certain race or to a certain social group can be admitted as a refugee.

It is stated in the second paragraph of this article that admission cannot be refused except on serious reasons in connection with the general interest, in case the foreigner because of the refusal is immediately forced to go to a land as meant in the first paragraph.

In the abovementioned decision of 17 December 1992 the Afdeling rechtspraak nullified the fictive rejection by the defendant of the request of the appellant for reconsideration of the refusal of admission as refugee and the granting of a permit to stay because, according to its judgment, the defendant did not sufficiently show which supposed acts of the appellant led him to his conclusion that article 1(F), introduction and under C of the Treaty of Geneva of 28 July 1951 regarding the status of refugees as amended by Protocol of 31 January 1967 of New York, from hereon referred to as :The Treaty, is applicable to the appellant.

In the contested decision, the defendant again (in zaak voorzien) and now decided that the appellant is not entitled to protection under the provisions of the Treaty, on the grounds defined by article 1(F), introduction and under a and b of this Treaty. The defendant primarily based this decision on his decision to refuse the appellant admission due to serious reasons in general interest on the basis of Article 15.

The decision will first of all examine if defendant on the basis of this interpretation can refuse admission as a refugee on grounds of article 15, second paragraph of the Aliens Law.

Following article 1(F) of the Treaty, the provisions of this Treaty are not applicable to a person of whom there are serious reasons to suppose that:

a. he has committed a crime against peace, a war crime against humanity as described in the international agreements which have been created to make definitions in connection with these crimes;

b. He has committed serious nonpolitical crimes outside the land he has fled from before he was admitted to this land as a refugee;

c. He is guilty of having committed crimes which are contrary to the objectives and principles of the United Nations.

In support of his view that the appellant is not entitled to the protection of the Treaty, on the basis defined by article 10, introduction and under a and b of this Treaty, the defendant in the contested decision asserted the following:

From a letter of the Internal Security Service (BVD) of 3 March 1993 it appears that the appellant is the present chairman and leader of the Communist Party of the Philippines. Furthermore, the military arm of the CPP, the New People's Army, is under the Central Committee and, therefore, the appellant.

The Internal Security Service has ascertained that the appellant is in fact guiding the NPA. The NPA -- and those connected to it -- is responsible for the great number of terror acts in the Philippines.

As example of the so-called terror acts, the defendant in the contested decision has given:
--the murder of 40 inhabitants (mainly helpless women and children) in the village of Digos in the island of Mindanao on 25 June 1989;
--the shooting of 14 persons among them children in the village of Dipalog in August 1989;
--the execution of four inhabitants in the village of Del Monte on 16 October 1991.

Furthermore, the defendant has pointed out to the purge that took place in 1985 among the members of the CPP and NPA of which an estimated 800 members of these organizations were murdered without due process (trial).

Above all, the Internal Security Service, according to the defendant, has ascertained that the CPP/NPA has maintained contacts with terrorist organizations spread out all over the whole world, while there have also been observations of personal contacts between appellant and representatives of similar organizations.

In support of his view that the NPA is guilty of violent acts, the defendant in the contested decision at the same time has pointed to a publication of Amnesty International with the title "The killing goes on", dated February 1992, as well as to press publications on which this is based.

In the defendant's opinion the terror acts committed under the appellant's responsibility are to be considered as crimes against humanity as intended (defined) in article 1(F), introduction and under a of the Treaty. It concerns acts which is opposed by what the UNHCR calls "international instruments relating to article 1F(a) of the 1961 Convention" in Annex VI of the Handbook on Procedures and Criteria for Determining Refugee Status. In particular, according to the opinion of the defendant, these heretofore mentioned acts can be considered as a violation of article 3(a) of the Treaty of Geneva of 12 August 1949. Defendant further pointed to the International Convention on civil and political rights of 19 December 1966 and the International Treaty against Torture and other Inhuman or Cruel Acts or Punishments of 10 December 1984.

Above all, as the defendant put it in the contested decision, the terror acts committed on the authority and under the responsibility of the appellant can be considered as nonpolitical acts, were committed outside the country of flight as intended in article 1(F), introduction and under b, of the Treaty. The here intended acts are, according to the opinion of the defendant, of exceptionally serious nature and are not related in his view to the political objective for which they were committed.

The Afdeling applying article 77, third and fourth part of the law on the Raad van State has studied productions 27 to 34 of the departmental dossier, as well as the letter contained in the contested decision of the BVD addressed to the defendant of 3 March 1993 based on operational material.

The Afdeling judges the foregoing, as follows:

The Afdeling considers on the basis of the mentioned materials as perfectly assumable (voldoende aanemelijk) that the appellant in the period of the contested decision was the chairman and leader of the CPP. Further the pieces justify the conclusion that the NPA is under the Central Committee of the CPP and that the appellant from the Netherlands in the

period of the contested decision at least tried to in fact give guidance to the NPA. That the NPA is responsible for a great number of terror acts in the Philippines the Afdeling considers on the basis of public sources, like the report of Amnesty International, perfectly assumable. The pieces offer further points to anchor on for the judgment that the appellant has tried to give direction to activities committed in the Philippines, such as earlier mentioned under the responsibility of the NPA. It also comes forward in the pieces that there are points to anchor on for the correctness of the supposition of the defendant that the CPP/NPA maintains contacts with terrorist organizations spread all over the world and that there have been personal contacts between appellant and representatives of such organizations. Those pieces, however, do not offer sufficient evidence for the fundamental judgment that the appellant 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 appellant in the sense of the abovementioned article parts have carried out those mentioned crimes. Hereby the Afdeling has emphatically taken the view that similarly as the Afdeling has already carefully weighed in the abovementioned decision of 17 December 1992, article 1(F) of the Treaty must be restrictively taken.

Therefore, the Afdeling is of the judgment that defendant on the basis of the abovementioned pieces cannot suppose that appellant can be denied the protection of the Treaty. From here follows that the primary motivation produced by the defendant to deny on the basis of article 15, second part, of the Aliens Law admission as refugee is insufficient.

Considering the foregoing, the Afdeling is of the judgment that the contested decision on this point cannot be maintained.

It turns out that in the contested decision the defendant further is of the standpoint that even in case it would be supposed that the treaty is applicable to the appellant and the appellant becomes considered as a refugee, then still on the basis of article 15, second part of the Aliens Law the appellant can be refused admission here as a refugee. Upon this the defendant in the contested decision subsidiarily supposed that the activities that by and on the authority of the appellant have and have been launched shall damage a serious interest of the Dutch state, to wit the integrity and credibility of Nederland as sovereign state, in particular in relation to its responsibilities to other states.

The Afdeling sees here the occasion first to find out if appellant has serious reasons to fear persecution in the Philippines.

The Afdeling judges the foregoing as follows.

Following article 1(A), under 2 of the Treaty it is valid to apply the Treaty in so far as it is here of importance to every person who because of valid fears of persecution because of his race finds himself outside of the land of which he is a national and who cannot or will not because of the above fears, calls on its protection.

In the earlier mentioned decision of 17 December 1992, No. R02.90.4934, the Afdeling has already stated that, partly considering the standpoint of the Representative in the Netherlands of the UN High Commissioner for Refugees reported in this decision, it considers that the defendant has not sufficiently taken into account that appellant aside from what is considered as normal legal prosecution and punishment will not undergo discriminatory persecution as well as unjustly heavy punishment, because the prosecuting as well as the punishing organ is of the opinion that appellant has committed the punishable acts from political motives. That the appellant is (internationally) well-known would offer

sufficient guarantee for an honest process and the protection of the Filipino authorities is considered by the Afdeling as not convincing in any way.

The Representative of the UN High Commissioner for Refugees has in writing dated 11 January 1994 made use of the opportunity for him to make his viewpoint known regarding this case.

The Representative has made it known that he sees no reason to change the standpoint he had earlier taken, considering that the appellant has serious grounds to fear persecution in the Philippines.

Amnesty International in a letter dated 30 June 1993 in reaction to the contested decision of 26 March 1993 made it known that there is in the meantime no change in the standpoint it had already taken in the letter of 17 October 1990 to the Ministry of Justice. Amnesty International therefore declared the standpoint that still think that the appellant, in case he would be forced to return to the Philippines would definitely risk becoming a victim of torture, extrajudicial execution or disappearance.

On the basis of the facts made known to the Afdeling, it determines that the appellant has valid reasons to fear persecution and therefore must be considered a refugee in the sense of article 1(a), under 2 of the Treaty.

It does not detract from the decision of the Afdeling that, as shown by a report of the Ministry of Foreign Affairs of 4 March 1993, with the withdrawal of the so-called Anti-Subversion Law on 22 September 1992, the CPP has been legalized and membership in the CPP is no longer punishable. Even less can it lead to another judgment when the Filipino authorities say repeatedly that they are ready to take every security measure that the appellant considers necessary when he lives in the Philippines. Additionally in this, the Afdeling thinks that it considers it not assumable assume that the authorities, despite their stated preparedness for this, considering the confused situation in the Philippines are in a position to offer complete protection to the appellant, in case there is a plan by the armed civilian groups or paramilitary groups to execute the appellant.

Considering the foregoing, the Afdeling shall consequently examine if the (secondary) justification given by the defendant to refuse the appellant admission as refugee on grounds of article 15, second part of the Aliens Law, is sufficient.

Although the Afdeling recognizes the interests stated by the defendant, with attention to the proofs it offers for personal contacts between the appellant and representatives of terrorist organizations, this cannot lead--in case it is not guaranteed that appellant can be admitted to a land other than the Philippines--to the justified appeal to article 15, second part, of the Aliens Law. What stands in the way of this is that a similar refusal to admit the appellant must be judged as contrary to article 3 of the European Treaty for the protection of human rights and the fundamental rights, hereon called: the EVRM.

Following article 3 of EVRM no one may be made to suffer torture nor inhuman or humiliating treatment or punishment.

The Afdeling thinks that the appellant, on grounds of the above considerations, namely in connection with the refugee status of the appellant, upon his return to the Philippines faces the real danger of having to undergo treatment contrary to article 3 of EVRM.

The Afdeling comes to the conclusion that the real danger of which the appellant fears, regarding inhuman or humiliating treatment or punishment on grounds of a "fair balance" as stated by the European Court for Human Rights in its judgment of 7 July 1989, RV 1989, 94 in the Soering case. Once there exists, according to the conclusion reached, real danger of inhuman or humiliating treatment or punishment exists, there is no space for a further balancing of interest between the interest of the appellant and the interest of the Dutch state stated by the defendant by non-admission, taking note of the absolute character of the prohibition in article 3 of the EVRM, which is stressed in the same decision in the Soering case.

From here follows that the contested decision on this point cannot also be maintained.

Considering all the foregoing the Afdeling is of the opinion that the contested decision, regarding this part, is contrary to the generally justice-conscious (rechtsbewustzijn) principle of proper administration that a decision must be based on and for the concerned recognizable justifications.

II. Regarding the appeal of the appellant in so far as that it is directed against the refusal of his request for review of the refusal to grant him a permit to stay.

Considering that this part of the contested decision can be first properly judged after it has been made known which decision in the end has been taken on the request of the appellant to be admitted as refugee and on what ground this decision rests, the Afdeling sees the sufficient occasion in the nullification of the refusal to admit the appellant as refugee--on the same grounds--to proceed to the nullification of the refusal to grant a permit to stay to the appellant.

Further the Afdeling considers that there are grounds present to apply article 8:75 of the General Administrative Law.

Decision:

The Afdeling bestuursrecht of the Raad van State;

Dispensing justice in the name of the Queen:

1. Nullifies the decision of the defendant of 26 March 1993, nr. 8702.160027, with which the request for reconsideration of the refusal to be admitted as refugee and a permit to stay is rejected;

2. Orders the State Secretary of Justice to pay the costs incurred by the appellant in connection with the handling of the case... The total amount must be paid to the Secretary of the Raad van State (girorekening 507590), under mention of case number R02.93.2274, by the State of the Netherlands (the Ministry of Justice).

So decided in Den Haag on 21 February 1995,
By mr. P.J. Boukema, chairman, mr. P. van Dijk and mr. L. Dorhout, members, in the presence of mr. H.J.C. van Geel, official of state.

w.g. Van Geel	w.g. Boukema
State official	Chairman

for a true copy,

the Secretary of the Raad van State,
for this,

No. R02.93.2274/61-125
Sent:

ANNEX I-E

AMNESTY INTERNATIONAL

Over de aanvraag voor politiek asiel van prof. Jose Ma. Sison

door mr. J. C. E. Hoftijzer
Afdeling Vluchtelingen

AMNESTY
INTERNATIONAL
Afdeling Nederland

Keizersgracht 620
1017 ER Amsterdam
Tel. 020 - 26 44 36
Telex 18374 ai nl
Fax 020 . 24 08 89
Postgiro 454 000

onze ref.
uw ref.

AAN: Ministerie van Justitie
Directie Vreemdelingenzaken Regio 4
Postbus 3115
2280 GC **RIJSWIJK**

Amsterdam, 17 oktober 1990

BETREFT: Jose Maria Sison
geboren: 8 februari 1939 te Cabugao (Filippijnen)
nationaliteit: Filippijnse
uw doçciernr : 8702.16.0027 **IV-1**
A & F : 26 oktober 1988
nader gehoor : 1 februari 1989
beschikking : 13 juli 1990

Geachte mevrouw, mijnheer,

Gaarne vragen wij hierbij uw aandacht voor de asielaanvraag van de heer Jose Maria Sison.
De heer Sison heeft **op 26** oktober 1988 verzoeken ingediend om respectievelijk toelating als vluchteling en om verlening van een vergunning tot verblijf. Op 1 februari 1989 werd hij in verband daarnee te Utrecht gehoord door de heer P. Hogewoning, contactarnbtenaar van **uw** Ministerie. Op 13 juli 1990 werd door de staatssecretaris van Justitie een afwijzende beschikking gegeven op deze verzoeken. De heer Sison heeft deze beschikking (anders dan in de beschikking zelf vermeld) eerst op 18 juli 1990 ontvangen, nadat de Filippijnse regering alsmede de internationale pers recds van de inhoud van die beschikking op de hoogte bleken te zijn.
De advocaat van de heer Sison, **Mr** T. Boekman te Haarlem, heeft inmiddels namens hem een verzoek om herziening van deze beschikking ingediend. Aan dit verzoek werd schorsende werking verleend.

Amnesty International meent de zaak van de heer Sison onder uw aandacht te moeten brengen aangezien de organisatie van oordeel is dat de heer Sison vluchteling is in de zin van artikel 1 (A) van het Vluchtelingenverdrag. In de persoonlijke situatie van de heer Sison en in de algemene mensenrechtensituatie in **de** Filippijnen ligt een dermate groot risico voor vervolging beçloten dat de heer Sison volgens Amnesty International in Nederland dient te worden erkend en toegelaten als vluchteling. **Het** navolgende moge dit standpunt verduidelijken.

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1. SITUATIE BETREFFENDE DE MENSENRECHTEN IN DE FILIPPIJNEN

Voor een goed begrip van de actuele situatie betreffende de mensenrechten in de Filippijnen is het noodzakelijk om wat verder terug te zien in de geschiedenis. De coestand in 1990 is onlosmakelijk verbonden met ontwikkelingen in het nabije verleden.

a) periode 1972 - februari 1986

Ferdinand Marcos is ruim twintig jaar aan het bewind geweest in de Filippijnen. In 1965 werd hij voor het eerst tot president gekozen en in 1969 werd hij voor nog eens vier jaar in zijn ambt bevestigd. Hij had 'in 1973 moeten aftreden vanwege de grondwettelijk vastgelegde beperking van de ambtstijd. In 1972 kondigde hij echter de staat van beleg af, waardoor het in de grondwet vastgelegde proces van periodieke politieke vernieuwing voor meer dan acht jaar werd bevroren.
Vanaf 1972 oefende Marcos dictatoriale macht uit in een çysteern dat hij zelf constitutioneel autoritarianisme noemde. Marcos ontleende zijn machtspositie voornamelijk aan de steun van bepaalde groepen in de Filippijnse sarnenleving, zoals een uitgebreide familie- en verwantenclan en een groot aantal leden van de strijdkrachten, politie en paramilitaire organisaties (bekend onder de verzamelnaam "vigilantes"). Ook leden van de middenklasse, politici van de regeringspartij Kilusang Bagong Lupunan (KBL, Beweging voor de Nieuwe Maatschappij) en de grootgrondbezitters schaarden tich achter de politiek var! Marcos. Al deze perçonen beschikten over een zekere politieke macht die samenging met econornische voorrechten. Zo ontstond een staatsbestel dat gebaseerd was op politieke patronage.

Het regime riep in toenemende mate weerstand op van andere groepen in de bevolking, hetgeen tot uiting kwam in zowel vreedzaam als gewapend verzet. Marcos reageerde hierop door op 21 september 1972 de staat van beleg af te kondigen in een poging om deze voor hem bedreigende ontwikkelingen tot stilstand te brengen. Bovendien werd er in 1973 een nieuwe grondwet van kracht, waarin de presidene naast de gebruikelijke presidentiële bevoegdheden ook die van eerste minister verkreeg. Dit betekende dat Marcos zowel over uitvoerende als wetgevende bevoegdheden beschikte. Van die bevoegdheden maakte hij op grote schaal gebruik.
Al direct na het uitroepen van de staat van beleg liet Marcos duizenden van zijn critici arresteren en voor onbepaalde tijd opsluiten. Dit werd mogelijk gemaakt door een reeks van presidentiele orders en decreten. Alle politieke partijen, uitgezonderd de regeringspartij KBL, werden verboden, evenals organisaties van studenten, arbeiders en boeren. Demonstraties en stakingen werden verboden en de media kwamen onder censuur te staan. Marcos vond steun voor dit optreden bij de militairen, de stedelijke ondernemers en bij de kleine en middelgrote landeigenaren,
Omdat de strijdkrachten in aantal toenamen en meer bevoegdheden kregen werd het leger een steeds grotere machtsfactor. De controle van civiele autoriteiten op activiteiten van de strijdkrachten verminderde en bovendien werden burgers door militairen vervangen op strategische posities in het patronage-bestel.

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Het is Amnesty International bekend dat onder het bewind van President Marcos op grote schaal schendingen van de mensenrechten voorkwamen; marteling was een van de meest voorkomende vormen daarvan. Leden van militaire veiligheidsdiensten martelden en mishandelden personen die van staatsvijandige of subversieve activiteiten werden verdacht. Deze mensen werden veelal zonder enig arrestatiebevel opgepakt en vervolgens overgebracht naar verhoorcentra, waar het verhoor gepaard ging met marteling door middel van (onder meer) elektrische schokken, slaan, isolatiefolter en de zogenaamde "waterkuur".
Bovendien werden de burgers die men verdacht van çubverçieve of staatsvijandige activiteiten langdurig gedetineerd in militaire kampen zonder dat zij ooit officieel in staat van beschuldiging waren gesteld en zonder dat zij tot gevangenisstraf waren veroordeeld. Personen die op deze wijze in detentie werden gehouden waren aldus verstoken van iedere zekerheid; zij wisten niet waarom zij vastzaten, noch hoe lang dit zou duren. Van rechtsbijçtand door een advocaat was zelden sprake.

Op 17 januari 1981 werd de staat van beleg opgeheven. De wijze van besturen bleef echter hetzelfde, doordat Marcos een aantal speciale presidentiele bevoegdheden behield.
Op 21 augustus 1983 keerde de oppositie-leider Benigno Aquino terug naar de Filippijnen, na een verblijf in ballingschap van enkele jaren in de Verenigde Staten. Bij aankomst op het vliegveld van Manila werd hij nog op de vliegtuigtrap doodgeschoten. Ondanks een uitgebreid onderzoek zijn de daders nooit gevonden noch gestraft. Er bestaan echter sterke aanwijzingen dat het leger bij de aanslag betrokken is geweest. Deze brute politieke moord, gepleegd onder de ogen van duizenden mençen op de luchthaven en geregistreerd door de televisie-camera's, was de aanleiding voor een nieuwe golf van verzet tegen het Marcos-regime. Uiteindelijk sloten de verschillende oppositie-groeperingen een verbond, genaamd "Laban", waarmee men de door Marcos vervroegd uitgeroepen presidentçverkiezingen van 1986 in ging.

b) periode van februari 1986 tot heden

Ferdinand Marcos riep zichzelf uit tot overwinnaar van deze verkiezingen, wat door de oppositie echter hevig werd betwist. Nadat Fidel Ramos en Juan Ponce Enrile, respectievelijk chef-staf van het leger en minister van Defensie, hun steun aan Marcos hadden ingetrokken werd zijn positie echter onhoudbaar. Enkele dagen later werd de Laban-kandidaat mevrouw Corazon Aquino officieel aangewezen als winnaar van de verkiezingen.
In de verkiezingscampagne van mevrouw Aquino vormde verbetering van de mensenrechten-situatie een centraal thema. Nadat mevrouw Aquino alç preçident was geinstalleerd heeft haar regering in juni 1986 het Verdrag tegen Foltering en andere vormen van wrede, onmenselijke of onterende behandeling of bestraffing van de Verenigde Naties geratificeerd. In oktober van dat jaar ratificeerde men ook het Internationaal Verdrag inzake Burgerrechten en Politieke Rechten. Het Facultatief Protocol bij dit verdrag werd in augustus 1989 geratificeerd.
De regering stelde ook een nieuwe grondwet op. Deze werd in februari 1987 bekrachtigd door middel van een referendum en trad vervolgens in werking op 1 mei 1987. De in deze nieuwe grondwet opgenomen "Bill of Rights" bevat onder andere een verbod op marteling. In mei 1987 werd

ook een commissie voor de mensenrechten ingesteld, de Philippines Commission on Human Rights (PCHR). Dit onafhankelijke grondwettelijke orgaan neemt klachten in behandeling met betrekking tot çchendingen van mensenrechten in 'de Filippijnen.

Bij de aanvang van haar regeringsperiode leek de regering Aquino derhalve serieus van plan te zijn om de mensenrechten te beschermen en te waarborgen. In de praktijk kwam er van deze voornemens echter weinig terecht.

De algemene politieke situatie werd negatief beïnvloed doordat bepaalde facties in het leger verschillende keren hebben geprobeerd een staatsgreep te plegen. Tot en met oktober 1990 zijn er zeven mislukte coup-pogingen geweest. Bovendien raakten de onderhandelingen tussen de regering en de New People's Army (NPA) begin 1987 in een impasse. President Aquino besloot daarna om opnieuw een verbod in te stellen op het lidmaatschap van de Communist Party of the Philippines (CPP) en op "association" met de NPA. Hiertoe vaardigde zij op 5 mei 1987 Executive Order 167 uit, waarin de uit de tijd van Marcos stammende Republic Act 1700 opnieuw van kracht werd. Deze wet verbood het lidmaatschap van de CPP. Bovendien werd een aantal amendementen herroepen waardoor arrestatie en onbeperkte detentie van personen die van çubversie werden verdacht opnieuw mogelijk werd gemaakt. De maximumstraf voor "association" met de NPA werd verhoogd van twaalf jaar tot levenslang. Onderzoek naar schendingen van de mensenrechten en strafrechtelijke vervolging van de verdachten werd en wordt bemoeilijkt doordat de militaire autoriteiten vaak weigeren om hun medewerking te verlenen. In de processen traden langdurige vertragingen op en getuigen durfden dikwijls geen verklaring af te leggen uit angçt voor represailles. Ook werden mensen onder druk gezet en/of omgekocht om valse getuigenissen af te leggen. De regering heeft beweerd dat sommige militairen wegens mensenrechtenschendingen zijn gestraft. Naar later is gebleken was de strengste straf die werd opgelegd ontslag uit militaire dienst, hetgeen tijdens het bewind van president Aquino tot nu toe slechts in drie gevallen is gebeurd.
De autonomie van de door de regering ingestelde Filippijnse Mensenrechtencommissie (PCHR) was beperkt en ook werkte deze commissie niet altijd even effectief, Van de 2694 gevallen van schendingen van mensenrechten die door de PCHR tussen 1986 en augustus 1989 werden geregistreerd werden er slechtç 276 afgedaan, hetgeen overigens niet betekent dat het in die gevallen ook tot opheldering van de zaken is gekomen.

Recente getuigenissen over "verdwijningen", buitengerechtelijke executies, incommunicado-detentie, mishandeling en martelingen, veelal ondersteund door medisch bewijs, geven aan dat schendingen van de mensenrechten nog steeds aan de orde van de dag zijn in de Filippijnen.

Het gebruik van martelingen om informatie los te krijgen van gedetineerden wordt door de autoriteiten toegelaten. Militaire veiligheidsagenten maken hierbij gebruik van methoden als slaan, toedienen van elektrische schokken, het bijna laten stikken van mensen in plastic zakken of water, het toebrengen van steekwonden en sexueel geweld. Ook in politiebureaus komen deze martelingen voor. Patrouillerende soldaten maken zich schuldig aan verkrachting en andere vormen van mishandeling

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in dorpen waar de bevolking ervan wordt verdacht te sympathiseren met opstandelingen tegen de regering Aquino. Niet alleen leden van de verboden communistische partij CPP en haar gewapende vleugel NPA, maar ook burgers die geén banden hebben met deze rebellen worden het slachtoffer van marteling of verdwijning of buitengerechtelijke executies.

In een groot aantal internationale publicaties is inmiddels melding gemaakt van de schendingen van de mensenrechten die plaats vinden onder de regering Aquino.
Zo publiceerde Amnesty International in maart 1988 een uitgebreid rapport waarin zeventig gevallen worden beschreven van burgers die door leden van de officiële strijdkrachten en door leden van gewapende burgergroepen, de zogeheten "vigilantes", zijn vermoord [Philippines: Unlawful killings by military and paramilitary forces]. Na het verschijnen van dit rapport heeft Amnesty International tot op heden nog verschillende andere rapporten openbaar gemaakt over buitengerechtelijke executies door regeringstroepen en door paramilitaire eenheden die onder auspiciën van het leger functioneren. Onder de vermoorde mensen waren religieuzen, vakbondsmensen, mensenrechtenactivisten en tenminste 6 mensenrechtenadvocaten.
Alleen al in 1989 zijn er meer dan tweehonderd gevallen bekend van mensen die het slachtoffer werden van buitengerechtelijke executies. Er is een kennelijke toename te constateren in het aantal politieke moorden op vermeende tegenstanders van de regering. Vaak werden deze moorden voorafgegaan door anonieme dreigementen. Gewoonlijk is de werkwijze hierbij als volgt: legale niet-gouvernementele organisaties worden er publiekelijk (bijvoorbeela in de pers) van beschuldigd dat zij een dekmantel zijn voor de illegale CPP en NPA. Bewijs hiervoor is niet aanwezig. Aangenomen moet worden dat deze beschuldigingen afkomstig zijn uit militaire kringen. De vertegenwoordigers en leden van deze organisaties komen door deze beschuldigingen in direct levensgevaar te verkeren. Gewelddadigheden jegens hun persoon lijken immers gelegitimeerd te zijn binnen de context van de regeringscampagne tegen de opstandelingen. Amnesty International is van oordeel dat deze praktijk de bij dergelijke organisaties werkzame personen ernstig in gevaar brengt en beziet deze gang van zaken met grote bezorgdheid.

Het moge na het voorafgaande duidelijk zijn dat personen die ervan verdacht worden rechtstreeks betrokken te zijn bij CPP of NPA, bijvoorbeeld als lid of hoge functionaris, bij uitstek gevaar lopen om het slachtoffer te worden van buitengerechtelijke executies, verdwijning of marteling.

Amnesty International maakt zich ook zeer bezorgd over het stijgende aantal verdwijningen in de Filippijnen. Een groot aantal leden van linkse politieke groepen, vakbonden en mensenrechtenorganisaties is vermist. Bij de Werkgroep van de Verenigde Naties voor Gedwongen of Onvrijwillige Verdwijningen zijn in 1989 *36* gevallen van verdwijning gerapporteerd, wat het totaal aantal openstaande zaken bij deze Werkgroep tot januari 1990 op 456 brengt.
In de eerçte zes maanden van 1990 heeft Amnesty International opnieuw informatie ontvangen over tientallen verdwijningen. Verschillende van deze personen zijn vermoord teruggevonden, anderen bleken incommunicado te zijn vastgehoudan door de politie of het leger. Ook werden de lijken

van mensen gevonden die dusdanig verminkt waren dat identificatie onmogelijk was. Van de overige personen is tot op heden niets vernomen.

2. PERSOONLIJKE SITUATIE VAN DE HEER SISON

a) tot 1986

De heer Sison heeft na zijn middelbare schoolopleiding Engels gestudeerd aan de University of the Philippines in Manila. Na zijn afstuderen was hij werkzaam als leraar. In 1960 is hij gehuwd met Julieta de Lima, die thans eveneens in Nederland verblijft. Uit dit huwelijk zijn vier kinderen geboren, van wie er drie op de Filippijnen woonachtig zijn. De jongste zoon verblijft bij zijn ouders in Nederland.
De heer Sison was van jongs af aan zeer politiek geïnteresseerd en ontwikkelde zich tot overtuigd marxist. Vanaf 1968 was hij actief als zelfstandig schrijver en publicist, voornamelijk op ideologisch terrein. In 1968 was hij één van de personen die het initiatief hebben genomen tot de heroprichting van de (ook nu nog) verboden communistische partij CPP. In 1969 was hij eveneens betrokken bij de heroprichting van de gewapende vleugel van de CPP, de New People's Army. De NPA was een overblijfsel uit de tijd van de strijd tegen de Japanse bezetting in de Tweede Wereldoorlog. Aan de door de NPA gevoerde gewapende strijd heeft hij nooit actief deelgenomen. Door middel van zijn vele publicaties leverde hij het ideologisch kader voor de politieke activiteiten van de CPP.
De heer Sison maakte ook deel uit van de volgende politieke organisaties:

- Kabataang Makabayan (Patriottische Jeugd). Voorzitter van 1964-1968. Deze organisatie verenigde studenten en jonge boeren en arbeiders met als doel nationale bevrijding en democratie.
- Worker's Party (later Socialist Party genoemd). Vice-voorzitter van 1964-1965 en General Secretary van 1966 tot 1968.
- Movement for the Advancement of Nationalism. General Secretary van 1966-1968. Dit was een verbond van progressieve arbeiders en boeren,
- Communist Party of the Philippines. Voorzitter van het Centraal Comité van 1968-1977.

De communistische partij was voor het uitbreken van de Tweede Wereldoorlog reeds illegaal en werd in 1946 opnieuw verboden; de overige organisaties werden verboden toen President Marcos in 1972 de staat van beleg afkondigde. De heer Sison werd vanwege zijn betrokkenheid bij de CPP in de zestiger jaren gezocht door de Filippijnse autoriteiten en diverse rnalen met de dood bedreigd. In 1968 is hij daarom ondergedoken en vanaf dat moment heeft hij zijn ideologische activiteiten ondergronds voortgezet.

Op 10 november 1977 werd de heer Sison, samen met zijn vrouw en enkele andere personen, opgepakt op beschuldiging van subversieve activiteiten. Zijn betrokkenheid bij de CPP was de belangrijkste grondslag voor die beschuldiging. De arrestatie vond plaats zonder dat er een officieel arrestatiebevel tegen hen was uitgevaardigd. Dit ondanks het feit dat ten tijde van het Marcos-regime een "Bill of Rights" in de Grondwet was opgenomen, waarin een aantal eiementaire grondrechten (vergelijkbaar met die uit het Internationaal Verdrag inzake Burgerrechten en

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Politieke Rechten) werd gewaarborgd.
Pas in augustus 1978 zag de heer Sison voor het eerst een advocaat. Hij werd gevangen gehouden in Fort Bonifacio (het hoofdkwartier van de landmacht) in Manila. Daar bevond hij zich in een zogeheten Military Security Compound, een çtreng afgescheiden gedeelte van het bewuste legerkamp. Ook de later vermoorde oppositie-leider Benigno Aquino was hier van 1977 tot 1980 gedetineerd. De heer Sison is nooit officieel in staat van beschuldiging gesteld, noch veroordeeld door een burgerlijke rechtbank. Een zogeheten Military Commission was belast met de aanklacht. Amnesty International heeft toentertijd herhaaldelijk haar bezorgdheid uitgesproken over het feit dat dergelijke processen voor militaire rechtbanken niet voldoen aan de internationaal aanvaarde normen voor een eerlijk proces.
Tot drie keer toe heeft de heer Sison een Habeas Corpus-procedure aangespannen die tot in hoogste instantie (het Supreme Court) zonder enig resultaat is gebleven. De inhoud van de beschuldigingen op grond waarvan hij in detentie werd gehouden werd hem niet medegedeeld. De heer Sison is terzake van zijn vermeende subversieve activiteiten nooit veroordeeld.

Tijdens zijn detentie is de heer Sison op verschillende manieren gemarteld. Gedurende de eerste periode van zijn detentie was hij meer dan 18 maanden lang onophoudelijk met een hand en een voet vaçtgeketend aan zijn bed. Hij werd regelmatig geslagen en moest de zgn. waterkuur ondergaan. In totaal heeft hij vijf jaar isolatiefolter ondergaan. Slechtç eén uur per week werd hem "zonlicht" gegund.

In 1979, na twee jaar detentie, werd het de heer Sison toegestaan om bezoek van directe familieleden te ontvangen. Hoewel de autoriteiten de indruk wekten dat dit een bijzondere gunst was ging het hier om een in de eerdergenoemde "Bill of Rights" opgenomen grondrecht. Van februari 1980 tot februari 1982 was zijn vrouw Julieta bij hem in de cel gedetineerd. In deze periode werd hun vierde kind geboren. Mevrouw Sison werd vrijgelaten in maart 1982, na meer dan vier jaar gevangenschap.

b) 1986-1988

Op 5 maart 1986 (acht dagen na de ambtsaanvaarding van president Corazon **Aquino)** werd de heer Sison vrijgelaten, tegelijk met een groot aantal andere politieke gevangenen. Enkele dagen tevoren had president Aquino de diverse decreten van Marcos waarop de detentie van deze personen was gebaseerd ongeldig verklaard. Na zijn vrijlating is de heer Sison niet opnieuw actief geworden in de communistische partij of andere politieke organisaties waarvan hij voor zijn arrestatie deel uitmaakte. Hij hield zich bezig met het schrijven van artikelen en boeken en het houden van lezingen waarin hij zijn ideeën over de beoogde toekomst van de Filippijnse samenleving ventileerde.
In mei 1386 werd de heer Sison aangesteld **als** Associate Research Professor in de politieke wetenschappen aan de University of the Philippines (een staatçinstelling) te Manila. De Filippijnse autoriteiten hebben hem op zijn verzoek een paspoort verstrekt. Vervolgens heeft **hij** op uitnodiging van verschillende buitenlandse wetenschappelijke instel-

lingen een aantal rondreizen gemaakt door Azië, Australië, de Verenigde Staten en West-Europa om lezingen te houden.

In het najaar van 1986 was de heer Sison voorzitter van het Oprichtingscomité van de Partido ng Bayan (People's Party). Hij was voor deze functie gevraagd vanwege zijn internationale bekendheid en prestige. Deze partij is nog steeds legaal en behoort tot de meest progressieve partijen in de Filippijnen. Toen de oprichting van de partij eenmaal een feit was heeft de heer Sison verder geen functie bekleed in deze partij. De partij bezet thans twee zetels in het Filippijnse Lagerhuis.
De eerste voorzitter van de People's Party, vakbondsleider Rolando Olalia, werd in november 1986 vermoord op straat gevonden. De daders van deze moord zijn officieel nooit gevonden. Er zijn echter sterke aanwijzingen dat zij banden hadden met het leger.
Het is Amnesty International bekend dat zeven vooraançtaande leden van de People's Party (ondcr wie de nieuwe partijvoorzitter Luis Beltran, kandidaat-senator Bernarbe Buscayno en vijf andere partijfunctionarissen) meer dan eens doodsbeàreigingen hebben ontvangen danwel aan moordaançlagen zijn ontsnapt.

c) Aanleiding tot asielverzoek in Nederland en daaropvolgende gebeurtenissen

In september 1988, terwijl de heer Sison zich in verband met lezingen weer in het buitenland bevond, begon er in de Filippijnse pers een lastercampagne tegen hem op inçtigatie van de militaire autoriteiten. In de Filippijnse kranten verschenen berichten over een brief die door de militairen (Armed Forces of the Philippines) zou zijn onderschept, Uit deze brief zou blijken dat de heer Sison het voorzitterschap van het Centraal Comité van de CPP opnieuw op zich had genomen.

De heer Sison werd beschuldigd van subversieve activiteiten, een beschuldiging die men baseerde op de twee jaar eerder door president Aquino ingetrokken decreten uit de tijd van Marcos. Deze decreten waren, zoals hierboven reeds vermeld, in 1987 opnieuw van kracht geworden. De heer Sison wordt vanaf dat moment wederom verdacht van betrokkenheid bij de communistische partij CPP, terwijl hij in die partij na zijn arrestatie in 1977 niet meer actief is geweest.

Op *14* september 1988 diende kolonel Evaristo Coriño vanwege de vermeende subversieve activiteiten van de heer Sison een zgn. Military Complaint in. Dit is een verzoek aan de officier van Justitie, in casu de 'fiscal' van de provincie Rizal, om een arrestatiebevel uit te vaardigen. Dit verzoek was gebaseerd op de beschuldiging dat de heer Sison opnieuw het voorzitterschap van de verboden cornmunistische partij op zich had genomen.

Op **16** september 1988 werd het paspoort van de heer Sison, die zich **op** dat moment zoals gezegd in het buitenland bevond, in opdracht van President Aquino ongeldig verklaard. Hiertoe bediende zij zich van **eén** van de oude Marcos-decreten.
Overigens is het niet zo dat de heer Sison door deze handeling ook automatisch zijn nationaliteit verloor. Hetgeen hierover in het verslag

van het nader gehoor is vermeld moet worden gezien als een onnauwkeurige weergave van de door de heer Sison gedane uitspraken. Wel werd het hem onmogelijk gemaakt om naar de Filippijnen terug te keren en zijn reizen over de wereld voort te zetten. Het oorspronkelijke, in 1986 aan de heer Sison uitgereikte paspoort, was overigens op zijn verzoek in 1987 reeds eenmaal vervangen door een nieuw paspoort (geldig tot en met 1992) door de Filippijnse ambassade te Bonn (BRD), aangezien het zo vol stond met stempels en visa dat er geen ruimte meer beschikbaar was. Op 26 september 1988 werd er met betrekking tot de genoemde military complaint een voorlopige hoorzitting gehouden, waarbij de heer Sison niet aanwezig kon zijn omdat hij zich zonder geldig paspoort in het buitenland bevond. Hierdoor werd hem de rnogelijkheid ontnomen om zich te verdedigen tegen de tegen hem gerichte beschuldigingen. Op 20 oktober 1988 werd vervolgens een arreçtatiebevel uitgevaardigd tegen de heer Sison.

Op dat moment was de heer Sison op zijn rondreis langs diverse wetenschappelijke instellingen samen met zijn echtgenote en jongste zoon in Nederland aangekomen. Hij waç hiertoe uitgenodigd door de Rijksuniversiteit te Utrecht na bemiddeling van het Philippines People Committee (PPC) in Utrecht. Zodra het de heer Sison bekend was geworden dat er in de Filippijnen een arrestatiebevel tegen hem was uitgevaardigd heeft hij in Nederland asiel aangevraagd, namelijk op 26 oktober 1988. Terugkeer naar de Filippijnen was onder deze omstandigheden levensgevaarlijk voor hem, gelet op de in het voorafgaande geschetçte praktijk van marteling, "verdwijning" en buitengerechtelijke executies op de Filippijnen.

Zulks bleek eens te meer in 1989. In juli van dat jaar werden er posters aangeplakt op de muren in Manila en overige Filippijnse steden. Op deze posters loven de Filippijnse militaire autoriteiten een beloning uit voor informatie welke leidt tot "arrest, capture or surrender" van een groot aantal leden of vermeende leden van de linkse oppositie, onder wie de heer Sison, zijn echtgenote en twee andere in Nederland verblijvende personen. Eén van deze laatsten waç inmiddels tot Nederlander genaturaliseerd.
Op de betreffende posters zijn de gezochte personen met naarn en foto afgebeeld; bovendien staat het bedrag van de voor ieder van hen uitgeloofde beloning vermeld. Voor de heer Sison bedraagt deze beloning 1 miljoen pesos, ongeveer fl. 100,000,- ; voor zijn echtgenote 500.000 pesos. Deze opsporingsbiljetten werden ook in een aantal Filippijnçe dagbladen afgedrukt, met de redactionele toevoeging "dead or alive". Dit leidde tot grote commotie. Foto's van de biljetten verschenen in diverse internationale perspublicaties.
De Filippijnse autoriteiten hebben zich officieel van deze gebeurtenissen gedistantieerd; men erkende wel het feit dat tegen de betrokken personen een arrestatiebevel was uitgevaardigd en dat er een beloning was uitgeloofd rnaar ontkende de toevoeging "dead or alive". In concreto stelde deze distantie echter weinig voor. Het kwaad was al geschied; de gezochte personen waren immers al feitelijk vogelvrij verklaard en tot doelwit geworden.

De heer Sison vreesde na deze gebeurtenis vermoord te zullen worden. Zijn woning in Utrecht werd door de Gemeentepolitie onder verscherpte bewaking geplaatst. Het Nederlandse Ministerie van Buitenlandse Zaken

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heeft over deze zaak opheldering gevraagd aan de Filippijnse regering. Na een verklaring dat het hen slechtç om inlichtingen was te doen werd de zaak echter als afgedaan beschouwd.
Recentelijk, in juni 1990, kwam opnieuw een perscampagne tegen de heer Sison op gang. De Filippijnse kranten beweerden reeds op op 16 juni van dit jaar dat de heer Sison Nederland zou worden uitgezet (vanwege criminele activiteiten) en dat hij inmiddels politiek asiel had aangevraagd in N-Korea, maar dat men hem "ook" daar had geweigerd.

d) negatieve beschikking

Op 13 juli 1990 heeft de staatssecretaris van Justitie een negatieve beslissing genomen op het asielverzoek van de heer Sison.

In de beçchikking wordt gesteld dat "uit onderzoek is gebleken, dat er ernstige verdenkingen bestaan dat betrokkene als auctor intellectualis mede verantwoordelijkheid draagt voor aanslagen door de gewapende arm van de CPP, het New People's Army".
De heer Sison was vanaf 1977 gedetineerd en heeft na zijn vrijlating in 1986 geen activiteiten meer ontplooid voor de Communistische partij CPP, zoals in het voorafgaande uitvoerig is toegelicht.

De beschikking vermeldt verder dat de ornstandigheid dat betrokkene communist is evenmin aanleiding vormt om aan te nemen dat betrokkene vervolging in de zin van het Verdrag heeft te vrezen, gevolgd door de vaststelling dat het niet gebleken zou zijn dat betrokkene om deze reden onevenredig zware beçtraffing te vrezen heeft.
De staatssecretaris gaat hier volkomen voorbij aan de huidige situatie van de rnensenrechten in de Filippijnen. Zoals hierboven uitgebreid werd beschreven leidt alleen reeds het vermoeden van enige betrokkenheid met de CPP tot groot gevaar van buitengerechtelijke executies, 'verdwijning' of marteling. Voorzover deze praktijken niet door de Filippijnse regering worden aangemoedigd kan deze regering haar burgers in elk geval onvoldoende bescherming bieden tegen deze ernstige bedreigingen.

De staatssecretaris van Justitie doet het in zijn beschikking voorkomen alsof de heer Sison bij terugkeer in de Filippijnen "strafvervolging, althans een gerechtelijk vooronderzoek" te wachten staat. In casu gaat het echter niet om gewone vervolging op grond van een commuun delict. De vervolging die de heer Sison te wachten staat bij terugkeer staat zozeer direct in verband met zijn eigen politieke verleden, en met de politieke context waarin zijn leven en zijn zaak zich afspelen, dat deze toch begrepen rnoet worden als vervolging zoals bedoeld in het Vluchtelingenverdrag.

Terzijde zij nog het volgende opgemerkt. De beschikking kwam op dinçdag 17 juli in de publiciteit, terwijl de heer Sison op geen enkele wijze van deze beslissing op de hoogte was gesteld.
Naar verluidt zou hierover wel reedç mededeling zijn gedaan aan de Nederlandse ambassade in Manila, en deze zou de Filippijnse autoriteiten hebben ingelicht. Diverse internationale perspublicaties wijzen in deze richting.
De betreffende beschikking was op 17 juli 1990 ontvangen door de Vreemdelingendienst van de Utrechtse Gemeentepolitie en werd eerst in de

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namiddag van de volgende dag, woensdag 18 juli, in persoon uitgereikt aan de heer Sison. Kranten en andere media in zowel Nederland als de Filippijnen hadden toen al uitgebreid bericht over de afwijzing van het asielverzoek van de heer Sison.
De hier geschetste gang van zaken rondom het uitreiken van de negatieve beschikking aan de heer Sison is in de ogen van Amnesty International uiterst onzorgvuldig. Van de Nederlandse overheid mag toch verwacht worden dat zij asielzaken met de grootst mogelijke voorzichtigheid en vertrouwelijkheid behandelt. Het doen van mededelingen over individuele asielzaken aan autoriteiten van het Land van herkomst van de betrokkene(n) moet onder alle omstandigheden ten zeerste worden afgewezen.

Amnesty International stelt zich gelet op het bovenstaande op het standpunt dat de heer Sison indien hij zou worden gedwongen terug te keren naar de Filippijnen gegronde redenen heeft om te vrezen voor vervolging in de zin van het Vluchtelingenverdrag. Terugzenden van de heer Sison naar de Filippijnen zou volgens Amnesty International dan ook gezien moeten worden als schending van het beginsel van non-refoulement.
Bovendien mag uit het bovenstaande worden geconcludeerd dat Amnesty International van mening is dat de heer Sison bij gedwongen terugkeer naar de Filippijnen onmiskenbaar het risico loopt slachtoffer te worden van marteling, buitengerechtelijke executie of van 'verdwijning'. Het terugzenden van de heer Sison naar de Filippijnen zou dan ook neerkomen op schending van artikel 3 van het Europees Verdrag tot bescherming van de Rechten van de Mens.

Amnesty international vertrouwt erop dat u op korte termijn tot een positieve beslissing op het asielverzoek van de heer Sison zult komen.

Hoogachtend,

Mr J.C.E. Hoftijzer
Afdeling Vluchtelingen

(Unofficial translation from the Dutch original)

ANNEX 1 - E

AMNESTY INTERNATIONAL

On the application for political asylum of Prof. Jose Maria Sison

by Mr. J.C.E. Hoftijzer

Refugees Department

AMNESTY
INTERNATIONAL
Netherlands Department

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1017 ER Amsterdam
Tel. 020 - 26 44 36
Telex 18374 ai nl
Fax 020 - 24 08 89
Postgiro 454 000

TO: Ministry of Justice
Board for Aliens Affairs Region 4
P. O. Box 3115
2280 GC RIJSWIJK

Amsterdam, 17 October 1990

Re: Jose Maria Sison
born: 8 February 1939 in Cabugao (Philippines)
nationality: Filipino
your dossier no.: 8702.16.0027 IV-I
A & F : 26 October 1988
further hearing : 1 February 1989
decision : 13 July 1990

Dear Sir, Madame,

We wish to request your attention for the asylum application of Mr. Jose Maria Sison.

Mr. Sison submitted applications on 26 October 1988 respectively for entry as a refugee and for the granting of a permit to stay. On 1 February 1989 in connection with these applications he was heard by Mr. P. Hogewoning, contact civil servant of your Ministry. On 13 July 1990 a negative ruling was given on these requests by the State Secretary of Justice. Mr. Sison received this ruling only on 18 July 1990 (not as stated in the ruling itself), after the Philippine government and the international press appeared to have already been informed.

The lawyer of Mr. Sison, Mr. T. Boekman from Haarlem, has in the meantime submitted in his name a request for review of this ruling. On this request a suspending effect has been given.

Amnesty International thinks it must bring the case of Mr. Sison to your attention, since the organization has the judgment that Mr. Sison is a refugee in the meaning of Article 1 (A) of the Refugee Convention. In the personal situation of Mr. Sison and in the general human rights situation in the Philippines, there is such a great risk of persecution included that Mr. Sison according to Amnesty International must be recognized and allowed entry as a refugee. The following is for the clarification of this standpoint.

1. SITUATION CONCERNING HUMAN RIGHTS IN THE PHILIPPINES

In order to understand well the actual situation concerning human rights in the Philippines, it is necessary to look back a little into history. The situation in 1990 is linked inextricably with the developments in the recent past.

a) PERIOD FROM 1972 - FEBRUARY 1986

Ferdinand Marcos had been at least twenty years in power in the Philippines. In 1965 he was elected for the first time as President and in 1969 he was reelected for another four years. He would have had to resign in 1973 because of the constitutional limitation on the term of office. However, in 1972 he declared martial law, whereby the constitutionally established process of periodical renewal was frozen for eight years. From 1972 Marcos implemented dictatorial power in a system that he called constitutional authoritarianism. Marcos got his position of power mainly from the support of definite groups in Philippine society, such as expanded family- and relatives' clan and a big number of members of the armed forces, police and paramilitary organizations (known under the collective name "vigilantes"). Also members of the middle class, politicians of the ruling party Kilusang Bagong Lipunan (KBL, Movement for the New Society) and the big landowners ranged themselves behind the policy of Marcos. All these persons had at their disposal certain political power that went with economic privileges. Thus emerged a state system based on political patronage.

The regime provoked in increasing measure resistance from other groups in the population, which was expressed both in peaceful as well as armed resistance. Marcos reacted to this by declaring martial law on 21 September 1972 in an attempt to stop this development, which was threatening for him. Moreover, in 1973 a new constitution came into effect, wherein the president besides the usual presidential powers also secured those of a prime minister. This meant that Marcos had both executive as well as legislative powers. He made extensive use of these powers. Immediately after the declaration of martial law, Marcos had thousands of his critics arrested and imprisoned indefinitely. This was made possible through a series of presidential orders and decrees. All parties, except the ruling party KBL, were banned, as well as organizations of students, workers and peasants. Demonstrations and strikes were forbidden and the media came under censorship. Marcos found support for these actions from the military, the urban entrepreneurs and the small and middle landowners.

Because the armed forces grew in number and received more powers, the army became more and more a bigger power factor. The control of civil authorities over activities of the armed forces diminished and, moreover, civilians were replaced by the military in strategic positions in the patronage system.

It is known to Amnesty International that under the regime of President Marcos violations of human rights occurred on a big scale; torture was one of the most recurring violation among them. Members of the military security services tortured and maltreated persons who were suspected of rebellious or subversive activities. These people were in most cases arrested without any warrant of arrest and subsequently brought to interrogation centers, wherein the interrogation was accompanied by torture through, among others, electric shocks, beating, isolation torture and the so-called "water cure".

Moreover, the civilians who were suspected of subversive or rebellious activities were detained for long periods in military camps without their ever being charged or sentenced to a term of imprisonment. Persons who were kept in detention in this

manner were denied every security: they did not know why they were detained nor how long this would persist. Legal assistance by a lawyer was a rare exception.

On 17 January 1981 martial law was lifted. The manner of administration however remained the same, because Marcos retained a number of special presidential powers.

On 21 August 1983 the opposition leader, Benigno Aquino, returned to the Philippines after staying in exile for a number of years on the United States. Upon arrival at the airport of Manila, he was shot dead while still going down the steps from the airplane. Despite an extensive investigation, the culprits were never found nor punished. However, there are strong indications that the army was involved in the attack. This brutal political murder, committed before the eyes of thousands of people at the airport and shown on television was the occasion for a new wave of resistance against the Marcos regime. Finally, the different opposition groupings joined together in an alliance, named "Laban", whereby they entered the snap presidential elections declared by Marcos in 1986.

b) PERIOD FROM FEBRUARY 1986 UNTIL TODAY

Ferdinand Marcos declared himself the winner of these elections. This was vehemently contested by the opposition. After Fidel Ramos and Juan Ponce Enrile, the Chief of Staff of the Armed Forces and the Minister of Defense, respectively, had withdrawn their support for Marcos, his position became untenable. A few days later, the Laban candidate, Mrs. Corazon Aquino was officially declared winner of the elections.
In the election campaign of Mrs. Aquino, the improvement of the human rights situation constituted a central theme. After Mrs. Aquino was installed as president, her government ratified in June 1986 the Convention against Torture and other forms of cruel, inhuman and degrading treatment or punishment of the United Nations. In October of that year they also ratified the International Covenant on Civil and Political Rights. The Optional Protocol of the Convention was ratified in August 1989. The government also put up a new constitution. This was confirmed in February 1987 through a referendum and came into effect on 1 May 1987. The Bill of Rights in this constitution contains a prohibition of torture, among others. In May 1987 a Commission for Human Rights was also established, the Philippine Commission on Human Rights (PCHR). This constitutionally independent organ receives complaints with regards to violations of human rights in the Philippines.

In the beginning of her administration, the Aquino government appeared to be serious in its plan to protect and guarantee human rights. In practice, however, very little of these resolutions would be carried out.

The general political situation was negatively influenced because definite factions of the army attempted to perpetrate a coup d'etat. Up to October 1990 there have been seven failed coup attempts. Moreover, the negotiations between the government and the New People's Army (NPA) fell into an impasse. President Aquino decided thereafter to again put a ban on membership in the Communist Party of the Philippines (CPP) and on "association" with the NPA. For this purpose, she issued on 5 May 1987 Executive Order 167, wherein Republic Act 1700 from the time of Marcos would again take effect. This law forbids membership in the CPP. Moreover, a number of amendments are restored whereby arrest and indefinite detention of persons who are suspected of subversion are again made possible. The maximum punishment for "association" with the NPA was raised from twelve years to life imprisonment.
Investigation of violations of human rights and criminal prosecution of the suspects became and still is made difficult because the military authorities often refuse to give their cooperation. In the proceedings there were long delays and witnesses often did

not dare to testify out of fear of reprisals. People are also put under pressure or bribed to make false testimonies. The government has claimed that some military personnel have been punished for human rights violations. Later it came out that the strongest punishment given was dismissal from military service, which during the administration of President Aquino up to now has happened in only three cases.
The autonomy of the Philippine Commission on Human Rights (PCHR) set up by the government was limited and this commission did not work effectively. Of the 2694 cases of violations of human rights which were registered by the PCHR between 1986 and August 1989, only 276 were finished, which moreover does not mean that in those cases there was a clearing up of matters attained.

Recent testimonies on "disappearances", extrajudicial executions, incommunicado detention, maltreatment and torture, mostly supported by medical proof, demonstrate that violations of human rights are still occurring very often in the Philippines.

The use of torture to extract information from detainees is allowed by the authorities. Military security agents make use of these methods such as beating, applying electric shocks, almost suffocating of people with the use of plastic bags or water, inflicting stab wounds and sexual violence. These tortures take place also in police stations. Patrolling soldiers make themselves guilty of rape and other forms of maltreatment in villages where the population is suspected of sympathizing with rebels opposing the Aquino government. Not only members of the banned Communist Party (CPP) and its armed wing NPA, but also civilians who have no links with these rebels, become victims of torture or disappearance or extrajudicial executions.

In a big number of international publications there is in the meantime report made of the violations of human rights that occur under the Aquino government.
Thus Amnesty International published in March 1988 an extensive report wherein seventy cases are described of civilians who have been murdered by members of the official armed forces and by members of armed civilian groups, the so-called "vigilantes" [Philippines: Unlawful killings by military and paramilitary forces]. After the publication of this report, Amnesty International made public other different reports on extrajudicial executions by government troops and paramilitary units that function under the auspices of the army. Among the persons murdered were religious, trade unionists, human rights activists and at least 6 human rights lawyers.

Alone in 1989 already there are more than two hundred cases known of people who have been victims of extrajudicial executions. There is an obvious increase that can be confirmed of the number of political murders of supposed oppositionists to the government. Often these murders are preceded by anonymous threats. Usually the method is as follows: legal non-governmental organizations are publicly (for example in the press) accused of being fronts of the illegal CPP and NPA. Proofs for this do not exist. It must be assumed that these accusations come from military circles. The representatives and members of these organizations undergo direct danger to life through these accusations. Violent acts against their person appear to be justified within the context of the government campaign against the rebels. Amnesty International is of the judgment that this practice puts the persons active in these organizations in serious danger and sees this course of things with great concern.

It ought to be clear from the above-stated that persons who are suspected of directly being involved with the CPP and NPA, for example as member or high functionary, pre-eminently run the danger of becoming victims of extrajudicial executions, disappearance or torture.

Amnesty International is also very concerned over the increasing number of disappearances in the Philippines. A big number of members of left political groups, trade unions and human rights organizations are missing. Thirty-six cases of disappearances were reported with the Working Group of the United Nations for Forced or Involuntary Disappearances in 1989, which brings the total number of unresolved cases with this working group up to January 1990 to 456.

In the first six months of 1990, Amnesty International again received information on several tens of disappearances. Some of these people were later found murdered, others turned out to be detained incommunicado by the police or the army. Bodies of people were also found that were mutilated so that identification was impossible. From the rest nothing is known up to now.

2. PERSONAL SITUATION OF MR. SISON

a) UP TO 1986

Mr. Sison studied English at the University of the Philippines after his high school studies. After he graduated he worked as a teacher. In 1960 he got married to Julieta de Lima, who also stays in the Netherlands. From this marriage, four children were born, of which three are residing in the Philippines. The youngest son stays with his parents in the Netherlands.

Mr. Sison was interested in politics since his youth and developed himself into a convinced Marxist. From 1968 he was active as an independent writer and publicist, especially in the ideological field. In 1968 he was one of the persons who took the initiative for the reestablishment of the then (and up to now) forbidden Communist Party CPP. In 1969 he was likewise involved in the reestablishment of the armed wing of the CPP, the New People's Army. The NPA was a remnant from the time of the struggle against the Japanese occupation in the Second World War. In the armed struggle carried out by the NPA, he never actively participated. Through his many publications he provided the ideological framework for the political activities of the CPP.

Mr. Sison also was part of the following political organizations:
- Kabataang Makabayan (Patriotic Youth). Chairman from 1964-1968. This organization united students and young peasants and workers with the aim of national liberation and democracy.
- Worker's Party (later called Socialist Party). Vice-Chairman from 1964-1965 and General Secretary from 1966-1968.
- Movement for the Advancement of Nationalism. General Secretary from 1966-1968. This was an association of progressive workers and peasants.
- Communist Party of the Philippines. Chairman of the Central Committee from 1968-1977.

The Communist Party was already illegal before the outbreak of the Second World War and was again banned in 1946; the other organizations were banned when President Marcos declared martial law in 1972. Because of his involvement with the CPP in the 60s, Mr. Sison was wanted by the Philippine authorities and was several times threatened with death. Therefore in 1968 he went underground and from that time he continued his ideological activities in the underground.

On 10 November 1977 Mr. Sison, together with his wife and some other persons, was arrested on the charge of subversive activities. His involvement with the CPP was the most important basis for that charge. The arrest took place without any official warrant of arrest issued against him. This happened despite the fact that during the Marcos

regime a "Bill of Rights" had been taken up in the Constitution, wherein elementary fundamental rights (similar to those in the International Covenant for Civil and Political Rights) were guaranteed.

Only in 1978 was Mr. Sison able to see a lawyer for the first time. He was detained in Fort Bonifacio (headquarters of the army) in Manila. There he found himself in a so-called Military Security Compound, a strictly separated part of the army camp referred to. Also detained in the same place from 1977 to 1980 was the opposition leader Benigno Aquino who was later murdered. Mr. Sison was never officially charged nor sentenced by a civilian court. A so-called Military Commission was tasked with charge. Amnesty International had then repeatedly expressed its concern over the fact that such processes before the military courts do not satisfy the internationally accepted norms for a fair process.

Up to three times Mr. Sison filed a Habeas Corpus procedure which went up to the highest court (the Supreme Court) but without any result. The content of the accusations on the basis of which he was kept in detention was not provided him. Mr. Sison has never been convicted on his supposed subversive activities.

During his detention, Mr. Sison was tortured in different ways. During the first period of his detention, he was continuously for more than 18 months chained on one hand and one foot to his bed. He was regularly beaten and had to undergo the so-called water cure. In total he had to undergo five years of isolation torture. Only one hour per week was he allowed "sunlight".

In 1979, after two years of detention, it was allowed to Mr. Sison to receive visitors from direct family members. Although the authorities gave the impression that this was a special favor, it concerned one of the fundamental rights in the earlier cited "Bill of Rights". From February 1980 to February 1982 his wife Julieta was detained with him in the same cell. In this period their fourth child was born. Mrs. Sison was released in March 1982 after four years of imprisonment.

b) 1986 -1988

On 5 March 1986 (eight days after the swearing in of President Corazon Aquino) Mr. Sison was released, together with a big number of political prisoners. A few days earlier, President Aquino had declared null and void different decrees of Marcos on which the detention of these people had been based. After his release, Mr. Sison did not again become active in the Communist Party or other political organizations of which he was part before his arrest. He kept himself busy with the writing of articles and books and the giving of lectures wherein he expressed his ideas on the prospective future of Philippine society.
In May 1986, Mr. Sison was appointed Associate Research Professor in political science at the University of the Philippines (a state institution) in Manila. Upon his request, the Philippine authorities issued him a passport. Subsequently, upon invitation of different foreign scientific institutions, he made a number of tours through Asia, Australia, the US and Western Europe, to give lectures.

In the autumn of 1986, Mr. Sison was chairman of the Founding Committee of the People's Party. He was requested for this function because he was known internationally and had international prestige. This party is still legal and is one among the most progressive parties in the Philippines.
Once the establishment of the party was accomplished, Mr. Sison did not have any function any more in this party. The party has at present two seats in the Philippine Lower House.

The first chairman of the People's Party, trade union leader Rolando Olalia, was murdered on the streets in November 1986. The killers of this murder were never officially found. However, there are strong indications that they had links with the army. It is known to Amnesty International that seven leading members of the People's Party (among whom the new party chairman Luis Beltran, senatorial candidate Bernabe Buscayno and five other party functionaries) received death threats more than once or have survived murder attacks.

c) The occasion for asylum application in the Netherlands and subsequent events

In September 1988, while Mr. Sison was again abroad in connection with lectures, there began in the Philippine press a slander campaign against him upon instigation of the military authorities. Reports on a letter which the military (Armed Forces of the Philippines) supposedly intercepted appeared in Philippine newspapers. From this letter it was supposed to come out that Mr. Sison had reassumed the chairmanship of the Central Committee of the CPP.

Mr. Sison was accused of subversive activities, a charge which they based on decrees from the time of Marcos which President Aquino had withdrawn two years earlier. These decrees, as already noted above, were again in effect in 1987. From that moment on, Mr. Sison was again suspected of involvement with the Communist Part CPP, whereas he was no longer active in that party after his arrest in 1977.

On 14 September 1988, Colonel Evaristo Corino filed a so-called Military Complaint because of supposed subversive activities of Mr. Sison. This is a request to the prosecutor, in this case the "fiscal" of the province of Rizal, to issue an order of arrest. This request was based on the accusation that Mr. Sison had reassumed the chairmanship of the banned communist party.

On 16 September 1988, the passport of Mr. Sison, who as earlier stated was abroad, upon orders of President Aquino, was declared invalid. For this, she used one of the old Marcos decrees.

Apart from this, it is not so that through this action Mr. Sison also automatically lost his nationality. That which is stated on this matter in the further hearing must be seen as an inaccurate report on the statements made by Mr. Sison. Indeed it was made impossible for him to return to the Philippines and to continue his travel throughout the world. His original passport, issued to Mr. Sison in 1986, was after all on his request in 1987 was once replaced by a new passport (valid until and including 1992) by the Philippine embassy in Bonn (BRD), considering that it was so full of markings and visas so that there was no more space available. On 26 September 1988, in connection with the aforementioned military complaint, there was a provisional hearing held, wherein Mr. Sison could not be present because he was abroad without a valid passport. In this way, the possibility of defending himself against the charges directed at him was taken away from him. Subsequently, on 20 October 1988, an order of arrest was issued against Mr. Sison.

At that moment, Mr. Sison together with his wife and youngest son had arrived in the Netherlands during his tour of different scientific institutions. He was invited here by the Royal University of Utrecht through the mediation the Philippine People Committee (PPC) in Utrecht. As soon as it was known to Mr. Sison that an arrest order had been issued against him in the Philippines, he applied for asylum in the Netherlands, namely on 26 October 1988. Return to the Philippines was a danger to life for him, considering the above-described practice of torture, "disappearance" and extrajudicial executions in the Philippines.

That came out all the more in 1989. In July of that year, posters were pasted on walls in Manila and other Philippine cities. On these posters, the Philippine military authorities offer a reward for information that leads to "arrest, capture or surrender" of a big number of supposed members of the left opposition, among whom Mr. Sison, his wife and two other persons staying in the Netherlands. On of the latter had been in the meantime naturalized in the Netherlands.

On those aforementioned posters were the wanted persons with name and photo; moreover, the amount of the reward offered is stated. For Mr. Sison the reward amounted to 1 million pesos, about fl. 100.000,--; for his wife, 500,000 pesos. These posters for wanted persons were also published in a number of daily newspapers, with the editorial addition "dead or alive". This led to great commotion. Photos of the posters appeared in different international press publications.

The Philippine authorities have officially distanced themselves from these events; they did admit the fact that an arrest order had been issued against the involved persons and that a reward had been offered but denied the addition "dead or alive". In the concrete, however, this distancing did not mean much. The harm had already been done; the wanted persons had in actual fact been declared outlaws and had been made targets.

After this event, Mr. Sison feared that would be murdered. His residence in Utrecht was put under strict surveillance by the municipal police. The Dutch Ministry of Foreign Affairs asked for clarification on this case from the Philippine government. However, after a declaration that it was only concerning information, the case was considered closed.

Recently in June 1990, a press campaign against Mr. Sison again started. The Philippine newspapers claimed that already on16 June of this year Mr. Sison would be expelled from the Netherlands (because of criminal activities) and that he had in the meantime applied for political asylum in North Korea, but they had "also" refused him.

d) NEGATIVE RULING

On 13 July 1990 the State Secretary of Justice took a negative decision on the asylum request of Mr. Sison.

In the ruling it is stated that "it has come out in the investigation that there are serious suspicions that the concerned is bears co-responsibility as auctor intellectualis for the attacks by the armed wing of the CPP, the New People's Army".
Mr. Sison was detained since 1977 and after his release in 1986 did not anymore undertake activities for the Communist Party CPP, as it has above been clarified in detail.

The ruling further states that the circumstance that the concerned is a communist does not constitute a motive to assume that the concerned fears persecution in the meaning of the Convention, followed by ascertaining that it has not come out that the concerned for this reason would have to fear a proportionally heavy punishment.
The State Secretary completely ignores the present situation of human rights in the Philippines. As described above in detail, even only the suspicion of any involvement with the CPP already leads to grave danger of extrajudicial executions, "disappearance" or torture. Insofar these practices are not encouraged by the Philippine government, this government cannot in any case offer adequate protection to its citizens against these grave threats

The State Secretary of Justice makes it appear in his ruling as if Mr. Sison can expect upon return to the Philippines "prosecution, at any rate, a judicial pre-investigation". In this case, however, it is not a matter of ordinary prosecution on the bases of a common crime. The persecution that awaits Mr. Sison upon return is so much in direct connection with his own political past, and with the political context in which his life and his cause come to pass, that these must be understood as persecution as meant in the Refugee Convention.

Aside from this, the following should be noted. The ruling came on Tuesday, 17 July in the publicity, whereas Mr. Sison was in no way informed of this decision.
According to reports, information had already been given to the Dutch embassy in Manila and the latter is supposed to have informed the Philippine authorities. Different international press publications give indications in this direction.
The aforementioned ruling was received on 17 July 1990 by the Aliens Service of the Utrecht Municipal Police and was only given in person to Mr. Sison in the afternoon of the following day, Wednesday, 18July. Newspapers and other media both in the Netherlands and in the Philippines had by then already detailed report on the rejection of the asylum request of Mr. Sison.

The course of things described here on the delivery of the negative ruling to Mr. Sison is in the eyes of Amnesty International extremely negligent. It should be expected from the Dutch government that it should treat asylum cases with the greatest possible carefulness and confidentiality. Giving of information on individual asylum cases to authorities of the land of origin of the concerned must be vigorously rejected under all circumstances.

Amnesty International takes the standpoint on the above-mentioned that Mr. Sison, if he would be forced to return to the Philippines, has well-grounded reasons to fear persecution in the meaning of the Refugee Convention. Sending Mr. Sison back to the Philippines, according to Amnesty International, must be regarded as a violation of the principle of non-refoulement.

Moreover, it may be concluded from the above that Amnesty International is of the opinion that Mr. Sison if forced to return to the Philippines undeniably runs the risk of becoming a victim of torture, extrajudicial execution or "disappearance". The sending back of Mr. Sison to the Philippines would then also amount to a violation of Article 3 of the European Convention for the Protection of Human Rights.

Amnesty International trusts that you shall come soon to a positive decision on the asylum request of Mr. Sison.

Respectfully,

(Sgd.) Mr. J.C.E. Hoftijzer
Department on Refugees

Annex 8
1/10

ANNEX 78/469 I-F

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES RÉFUGIÉS

2 November *1992*

Mr J.M. Sison

With the compliments of the
Representative in The Netherlands
of the
United Nations High Commissioner
for Refugees

Enclosed please Find a copy of the UNHCR submission to the Council of State *in* your case.
Kind regards,

Zienswijze UNHCR voor de Adviescommissie Vreemdelingenzaken, 25-2-1991
(met toevoeging gedateerd 28 oktober 1992)

1. Deze zienswijze is gebaseerd op de stukken waar UNHCR inzage in heeft. De mogelijkheid dat de zienswijze anders zou uitvallen indien UNHCR ook inzage zou hebbeo in de vertrouwelijke stukken nummers 27 t/m 34, kan uiteraard niet worden uitgesloten.

Vrees voor vervolging

2. De asielzoeker geeft in de paragrafen 1.1-1.8 van zijn "Request for reconsideration and amendment" van 9 augustus 1990 op gedetailleerde eii geloofwaardige wijze aan dat hij vervolging vreest.

Gegrondheid van de vrees

3. De Afdeling Nederland van Amnesty International heeft in een brief van 17 oktober 1990 geadresseerd aan het Ministerie van Justitie een zienswijze gegeven in deze zaak. Op blz. 5 wordt gesteld dat "legale (...) organisaties worden er publiekelijk (...) van beschuldigd dat zij een dekmantal zijn voor de illegale CPP en NPA". "De vertegenwoordigers en leden van deze organisaties komen door deze beschuldigingen in direkt levensgevaar te verkeren". Op blz. 8 wordt gesteld dat in november 1986 de eerste voorzitter van de People's Party is vermoord, en dat 7 vooraanstaande leden van deze partij sindsdien met de dood zijn bedreigd, dan wel aan moordaanslagen zijn ontsnapt.

4. Uit de stukken blijkt dat de asielzoeker oprichter is van de People's Party en dat deze partij een legale partij is. De tegen de asielzoeker in zijn land van herkomst gevoerde campagne, zoals beschreven op blz 8-10 van de brief van Amnesty International, vertoont voldoende overeenstemming met de situatie van andere, hierboven in paragraaf 3 aangeduide, vertegenwoordigers en leden van de People's Party en andere legale organisaties, dat vastgesteld kan worden dat asielzoekers vrees - helaas - gegrond is.

Bescherming van overheidswege

5. De treurige mensenrechtensituatie in asielzoekers land van herkomst is uitgebreid beschreven door Amnesty International. Op zijn best kan men stellen dat de overheid niet in staat is mensen als deze asielzoeker te beschermen. Er zijn echter ook starke aanwijzigingen - eveneens aangegeven door Amnesty International - dat onderdelen van het overheidsapparaat - het leger - betrokken zijn bij campagnes teqeii mensen zoals asielzoeker. Het kan daarom gekonkludeerd worden dat de overheid niet in staat is deze mensen effektief te beschermen tegen vervolging en zelfs dat de overheid hoogstwaarschijnlijk mede verantwoordelijk is voor deze vervolging.

Strafvervolging

6. Nu is vastgesteld dat de asielzoeker een gegronde vrees voor vervolging heeft, is het niet langer relevant dat hem tevens een strafvervolging - althans een gerechtelijk vooronderzoek - te wachten staat in zijn land van herkomst. Ten overvloede kan UNHCR nog wijzen op het recente rapport van het Hoofdbureau in Londen van Amnesty International, getiteld "Unfair Trials" (kopie bijgesloten) waaruit

kan worden gekonkludeerd dat in processen tegen mensen die er van verdacht worden lid te zijn van de CPP en/of de NPA:
- advokaten worden geïntimideerd en in een aantal gevallen zelfs vermoord (blz. 8 paragraaf 3.3);
- getuigen weigeren naar voren te komen uit vrees voor vergelding door de staatsveiligheidsdiensten, terwijl het regeringsprogramma om getuigen te beschermen weinig effektief lijkt te zijn (blz. 8, paragraaf 3.3);
- er aanwijzingen zijn dat het leger zogenaamde 'professionele' getuigen produceert (blz 6, paragraaf 2.2);
- verzonnen of ondergeschoven bewijsmateriaal gebruikt zou kunnen worden (blz 5, paragraaf 2.1);
- rechters worden bedreigd en zelfs vermoord en dat er daarom twijfel bestaat over de onafhankelijkheid van de rechterlijke macht (blz. 7, paragraaf 3.2);
- dat zelfs indien een rechter, ondanks het bovenstaande, onafhankelijk is en hij, bijvoorbeeld, een verdachte vrijspreekt bij gebrek aan geloofwaardig bewijs, dit kan leiden tot de "verdwijning" van zo'n vrijgesprokene (blz. 5, paragraaf 2.1).

Uitsluitingsgrond 1.F (b)

7. Artikel 1.F van het Vluchtelingenverdrag bepaalt dat het Verdrag niet van toepassing is (en dat betrokkene derhalve geen vluchteling is), indien "there are serious reasons for considering that:
(...)
b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
(...)"

8. De asielzoeker is voorzitter geweest van tiet Centraal Comité van de CPP van 1968 tot 1977. Vanuit deze funktie zou hij mogelijk verantwoordelijk geacht kunnen worden voor de aktiviteiten van de NPA. Indien de NFA in deze periode misdaden begaan zou hebben als bedoeld in artikel 1.F (b) van het Vluchtelingenverdrag, zou de uitsluitingsgrond op asielzoeker van toepassing geweest kunnen zijn. De asielzoeker heeft evenwel 9 jaar gevangen gezeten zonder vorm van proces. Hij heeft vervolgens kunnen profiteren van een algemene *amiiestie*. Hij beweert - en er zijn geen sterke aanwijzingen te vinden in de toegankeiijke stukken die het tegendeel aannemelijk maken - dat hij na zijn vrijlating niet meer lid van of verbonden met de CPP en/of *da* NPA *is* geweest.

9. Wanneer iemand een zodanige misdaad heeft begaan (of voor de pleging ervan direkt verantwoordelijk was) dat op hem de uitsluitingsgrond van artikel 1.F (b) van toepassing is, dan is er een presumptie dat deze uitsluiting van de vluchtelingenstatus blijvend is, zelfs indien de vrees voor vervolging pas later oiitstaat. Wanneer er een lange tijd is gepasseerd kan er alleen in uitzonderlijke gevallen reden zijn om aan te nemen dat betrokkene opnieuw voor erkenning als vluchteling in aanmerking komt. In gevallen waarin betrokkene heeît geprofiteerd van een amnestie is er evenwel een presumptie dat de uitsluitingsgrond niet meer van toepassing is, tenzij aangetoond kan worden dat betrokkene nog steeds neigt naar krimineel gedrag. Hierbij kan nog aangetekend worden dat, in bijvoorbeeld het uitleveringsrecht,

misdaden ten aanzien waarvan eeri amnestie is uitgevaardigd, niet voor een uitleveringsprocedure in aanmerking komen.

10. Aannemeiide dat de asielzoeker na zijn vrijlating in 1986 inderdaad niet meer betrokken is geweest bij de CPP en/of de NPA, is UNHCR van mening dat de uitsluitingsgrond van artikel 1.F (b) niet, althans niet meer, van toepassing is. Het is daarom iiiet nodig om na te gaan of de NPA tot 1977 misdaden heeft begaan die de uitsluitingsgrond van nrtikel 1.F (b) van toepassing zouden maken, noch of de asielzoeker vanwege zijn voorzitterschap van het Centraal Comité van de CPP voor zulke misdaden direkt verantwoordelijk geacht kon worden.

11. De hestreden beschikking vermeldt dat er ernstige verdenkingen bestaan dat asielzoeker mede verantwoordelijk is voor aanslagen van de NPA. Aangenomen mag worden dat hij er door de Staatssecretaris van Justitie van verdacht wordt - ondanks zijn ontkenning - na zijn vrijlating in 1986 wèl weer verbonden te zijn geweest (of nog steeds té zijn) met de CPP en/of de NPA.

12. De uitsluitingsgronden dienen restriktief te worden uitgelegd. Uitsluiting kan *niet* verondersteld worden indien betrokkene een plausibele verklaring geeft dat hij niet verbonden is met misdadeii die tut uitsluiting kunnen leiden, tenzij et harde bewijslast voor het tegenovergestelde aanwezig is. In de voor UNHCR toegankelijke stukken in de zaak van deze asielzoeker zijn twee aanwijzingen dot hij eventueel weer verbondeii zou kunnen zijn met de CPP en/of de NPA:

- zijn voorzitterschap van liet Centrale Comité t/m 1977;
- de beschuldiging van het, zelf van mensenrechtenschendingen beschuldigde, leger in zijn land van herkomst.

TIJDENS DE ZITTING VAN DE ACV KWAMEN SOC TWEE ANDERE ELEMENTEN NAAR VOREN DIE GEINTERPRETEERD ZOUDEN KUNNEN WORDEN ALS AANWIJZINGEN DAT BETROKKENE WEER VERBONDEN ZOU ZIJN MET DE CPP EN/OF DE NPA:

- DOCR BETROKKENE ALS GEDEELTELIJK ONJUIST BESTEMPELDE CITATEN IN DE PERS, WAARUIT SYMPATHIE VOOR (DE DOELSTELLINGEN/AKTIVITEITEN VAN) DE CPP EN/OF DE NPA ZOU BLIJKEN;
- ZIJN PUBLIEKELIJK SPREKEN OP DOOR EEN MET DE CPP VERBONDEN NEDERLANDSE VERENIGING GEORGANISEERDE BIJEENKOMSTEN.*)

Deze aanwijzingen zijn noch individueel noch gezamenlijk voldoendé om verbondenheid met de CPP en/of de NPA, met ais mogelijk gevolg toepasbaarheid van de voor de asielzoeker zeer verstrekkende gevolgen hebbende uitsluitingsgrond van artikel 1.F (b), aan te nemen.

13. indien, gebaseerd op de vertrouwelijke stukken, eventueel wèl vast zou komen *te* staan dat asielzoeker zich opnieuw verbonden heeft met de CPP en/of de NPA, dan wijst UNHCR nog op het volgende. Artikel 1.F (b) bapaalt dat alleen iemand die "has committed" een bepaalde misdaad is uitgesloten. Lidmaatschap van een beweging die zulke misdaden

*)De in hoofdletters getypte passages vormen de toevoeging dd 28 oktober 1992

beqaat is daarom op zichzelf niet voldoende om tot uitsluiting over te gaan. Betrokkene kan wel uitgesloten worden indien er ernstige aanwijzigingen zijn om aan te nemen dat hij direkt verantwoordelijk voor of aktief betrokken bij deze misdaden is geweest. Met name ten aanzien van iemand die zich ten tijde van het begaan van deze misdaden buiten het land bevond, kan direkte verantwoordelijkheid voor of aktieve betrokkenheid bij misdaden alleen worden aangenomen op grond van zeer konkrete aanwijzingen. Voor een interpretatie van de in artikel 1.F (b) genoemde "serious non-political crime" verwijs ik gemakshalve naar paragrafen 151 t/m 161 en 175 t/m 180 van het Handbook on Procedures and Criteria for Determining of Refugee Status.

Den Haag, 22 februari 1991 en 28 oktober 1992
Mr Job van der Veen
Head of UNHCR Sub-Office in The Netherlands

UNCHR POSITION ON PROF. SISON'S ASYLUM APPLICATION, 25 Feb. 1991 & 28 Oct. 1992

Note: This submission of the UNHCR to the Adviescommissie Vreemdelingenzaken [Advisory Commission on Aliens' Affairs] on 25 February 1991 was supplemented on 28 October 1992 as a submission to the Raad van State. This opinion ["zienswijze"] of the UNHCR, submitted by Mr. Job van der Veen, Head of UNHCR Sub-Office in The Netherlands, was conveyed with a cover letter to Mr. J.M. Sison on 2 November 1992. This opinion was cited by the Raad van State in its decision on 17 December 1992 that nullified the decision of the State Secretary of Justice which had claimed that Mr. Sison was to be classified under 1F exclusion clause of the Refugee Convention. The Raad van State recognized Mr. Sison as a political refugee with a well-grounded fear of persecution under 1A of the Refugee Convention.

This UNCHR position was confirmed by the UNHCR in a letter to the Raad van State dated 11 January 1995 signed by J.C. Consolato, Head of UNHCR L.O. in The Hague.. Again the Raad van State in its decision of 21 February 1995 cited this position of the UNHCR in nullifying once again the negative ruling of the State Secretary of Justice and once more recognizing and declaring Mr. Sison as a political refugee under 1A of the Refugee Convention, stating that the exclusion clause 1F of the Refugee Convention cannot be invoked against him. He was also declared as one who enjoys the protection of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (EVRM).

Please note also that the UNHCR is the body responsible for the supervision of the applicaton of the Refugee Convention (cf. Article 35 of the 1951 Refugee Convention and Article II of the 1967 Protocol [of New York that amended it].

(Unofficial translation from the Dutch original)

Opinion of the UNHCR for the Advisory Commission on Aliens' Affairs, 25 February 1991
(with additional notes dated 28 October 1992)

1. This opinion is based on the pieces [of information] in which the UNHCR has had access. The possibility that the opinion might be different if the UNHCR also had access to confidential pieces nos. 27 to 34 can of course not be ruled out.

Fear of persecution

2. The asylum seeker states in paragraphs I.1 - 1.8 in his "Request for reconsideration and amendment" of 9 August 1990, in a detailed and credible manner, that he fears for persecution.

Well-grounded reasons for the fear

3. The Dutch department of Amnesty International has given an opinion on the case in a letter dated 17 October 1990 addressed to the Ministry of Justice. On page 5 it is

stated that "legal (…) organizations are publicly (…) accused of being a cover for the illegal CPP and NPA". "The representatives and members of these organizations undergo the direct risk of losing their lives through these accusations". On page 8 it is stated that in November 1986 the first chairman of the People's Party was murdered and that seven leading members of this party since then have been threatened with death or have even survived acts of attempted murder.

4. From the pieces [of information] it comes out that the asylum seeker is the founder of the People's Party and that this party is a legal party. The campaign carried out against the asylum seeker in his country of origin, as described in pages 8 - 10 of the letter of Amnesty International, demonstrates sufficient consonance with the situation of other representatives and members of the People's Party and other legal organizations, described above in paragraph 3, that it can be established that the asylum seeker's fear - regrettably ["helaas"] - is well-grounded.

Protection by the authorities

5. The sad human rights situation in the asylum seeker's country of origin is extensively described by Amnesty International. At best, one can state that the authorities are not able to protect people like this asylum seeker. There are however also strong indications - also presented by Amnesty International - that parts of the government apparatus - the armed forces - are involved in the campaigns against people like the asylum seeker. It can therefore be concluded that the government is not able to effectively protect these people against persecution and even that the government most probably is co-responsible for this persecution.

Prosecution

6. Now that it has been established that the asylum seeker has well-grounded fear for persecution, it is no longer relevant that a case of prosecution - at any rate a judicial preliminary investigation ["gerechtelijk vooronderzoek"] - awaits him in his country of origin. Beyond what is needed, the UNHCR can refer to the recent report of the Main Office in London of Amnesty International, entitled "Unfair Trials" (copy is attached) from which it can be concluded that in cases against people who are suspected of being members of the CPP and/or the NPA:

- lawyers are intimidated and in a number of cases even murdered (p. 8, paragraph 3.3)
- witnesses refuse to come forward out of fear for reprisal by state intelligence services, while government programs to protect witnesses turn out to be of little effect ["weinig effektief"] (page 8, paragraph 3.3);
- there are indications that the armed forces produce so-called "professional" witnesses (page 6, paragraph 2.2);
- fabricated or planted evidence are said to be made use of (page 5, paragraph 2.1);
- judges are threatened and even murdered and therefore there is doubt over the independence of the judicial authority (page 7, paragraph 3.2);
- that even when the judge is independent, despite the above-stated points, for example, he acquits a suspect for lack of credible proof, this can lead to the "disappearance" of such acquitted person (page 5, paragraph 2.1).

Basis for Exclusion 1.F (b)

7. Article 1.F of the Refugee Convention stipulates that the Convention is not applicable (and that the concerned person is therefore not a refugee) if "there are serious reasons for considering that:
(…)
b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (…)"

8. The asylum seeker was the chairman of the Central Committee of the CPP from 1968 to 1977. From this function he could possibly be considered responsible for the activities of the NPA. If the NPA during this period is supposed to have committed crimes in the meaning of Article 1.F (b) of the Refugee Convention, the exclusion clause could have been applicable to the asylum seeker. The asylum seeker indeed was imprisoned for 9 years without any due process. Accordingly, he could have profited from a general amnesty. He asserts ("beweert"] - and there are no strong indications that can be found in the accessible pieces [of information] that make the contrary assumable - that he after his release has no longer been a member or nor has he been linked ("verbonden"] with the CPP and/or the NPA.

9. When someone has committed such a crime (or was directly responsible for the commission of such crime) so that the exclusion clause of Article 1.F (b) is applicable, then there is a presumption that this exclusion from the refugee status is continuing, even if the fear for persecution only emerges later. When a long time has passed, there is only a reason in exceptional cases to assume that the concerned person again is to be considered for recognition as a refugee. In cases in which the concerned person has profited from an amnesty there is indeed a presumption that the exclusion clause is no longer applicable, unless it can be demonstrated that the concerned person still tends towards criminal behavior. Regarding this, it can be noted that, for example in extradition law, crimes for which amnesty has been issued are not to be taken up in extradition procedures.

10. Considering * that the asylum seeker after his release in 1986 indeed has no longer been involved with the CPP and/or the NPA, the UNHCR is of the opinion that the exclusion clause of Article 1.F (b) is not, in any case no longer, applicable. It is therefore not necessary to check ("na te gaan") whether the NPA has committed crimes up to 1977 which would make the exclusion clause of Article 1.F (b) applicable, nor whether the asylum seeker because of chairmanship of the Central Committee of the CPP could be considered directly responsible for such crimes.

11. The contested decision states that there are serious suspicions that the asylum seeker is co-responsible for attacks of the NPA. It may be assumed that he is suspected by the State Secretary of Justice - despite his denial - of having been again linked (or still being so linked) to the CPP and/or the NPA after his release in 1986.

12. The exclusion reasons must be restrictively interpreted ("uitgelegd"]. Exclusion cannot be supposed ("verondersteld") if the concerned person gives a plausible declaration that he is not linked to the crimes that could lead to exclusion, unless there is hard evidence ("harde bewijslast") for the contrary. In the pieces [of information] accessible to the UNHCR in the case of this asylum seeker, there are

two indications ("aanwijzingen") that he might actually be ("dat hij eventueel weer verbonden zou kunnen zijn") linked again to the CPP and/or the NPA:

- his chairmanship of the Central Committee until 1977;
- the accusation of the armed forces in his country of origin, themselves accused of human rights violations.

DURING THE HEARING OF THE ACV [Advisory Commision for Aliens Affairs] TWO OTHER ELEMENTS CAME UP WHICH COULD BE INTERPRETED AS INDICATIONS THAT THE CONCERNED COULD BE CONSIDERED LINKED AGAIN WITH THE CPP AND/OR THE NPA:

- CITATIONS IN THE PRESS WHICH HAVE BEEN DECLARAED AS PARTLY INCORRECT, IN WHICH IT IS SAID TO APPEAR THAT [HE HAS] SYMPATHY FOR (THE AIMS/ACTIVITIES OF) THE CPP AND OR THE NPA. ["DOOR BETROKKENE ALS GEDEELTELIJK ONJUIST BESTEMPELDE CITATEN IN DE PERS, WAARUIT SYMPATHIE VOOR (DE DOELSTELLINGEN/AKTIVITEITEN VAN) DE CPP EN/OF DE NPA ZOU BLIJKEN:
- HIS PUBLIC PRONOUNCEMENTS IN MEETINGS ORGANIZED BY A DUTCH ASSOCIATION LINKED WITH THE CPP .*) ["ZIJN PUBLIEKELIJK SPREKEN OP DOOR EEN MET DE CPP VERBONDEN NEDERLANDSE VERENIGING GEORGANISEERDE BIJEENKOMSTEN."]

These indications are, both individually and collectively, not sufficient for assuming linkage to the CPP and/or the NPA, with as possible consequence the applicability of - for the aslum seeker - very far-reaching consequences of exclusion grounds of Article 1.F (b)

13. If, based on the confidential pieces, indeed it would be established that the asylum seeker has linked himself again with the CPP and/or the NPA, still the UNHCR refers to the following. Article 1.F (b) stipulates that only someone who "has committed" a definite crime is excluded. Membership in a movement that has committed such crimes is accordingly not in itself sufficient to lead to exclusion.

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*) The passages in capital letters constitute the additional comments dated 28 October 1992

The concerned person can indeed be excluded if there are serious indications for assuming that he has been directly responsible for or has actively been involved in these crimes. Especially considering someone who during the period when these crimes were committed was outside the country, direct responsibility for or active involvement in crimes can only be assumed on the basis of very concrete indications. For an interpretation of the "serious non-political crime" mentioned in Article 1.F (b), I refer for convenience's sake to paragraphs 131 to 161 and 175 to 180 of the Handbook on Procedures and Criteria for Determining of Refugee Status.

The Hague, 22 February 1991 and 28 October 1992
Mr. Job van der Veen
Head of UNCHR Sub-Office in The Netherlands

Secretariat Copy

Republic of the Philippines
REGIONAL TRIAL COURT
National Capital Judicial Region
MAKATI CITY, BRANCH 137

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CRIMINAL CASE NO. 06-452
(I.S. No. 2006-226)

1 Lt. LAWRENCE SAN JUAN, PA
508 P. Rodriguez Street, San Rafael,
Rodriguez, Rizal
(DETAINED at Camp Crame, Quezon City)

CRISPIN BELTRAN y BERTIZ
381 Kaunlaran Street, DMMA, Gao,
Quezon City
(DETAINED at Camp Crame, Quezon City)

and several other

For: REBELLION

JOHN DOES AND JANE DOES,
Accused.
x----------/

RESOLUTION

Before this Court is an Information filed on 28 February 2006, the entirety of which reads, to wit:

> The undersigned State Prosecutors of the Department of Justice, hereby accuse 1Lt. LAWRENCE SAN JUAN, PA, CRISPIN BELTRAN y BERTIZ and some other JOHN/JANE DOES, whose true names and whereabouts as of this time are still unknown, of the crime of rebellion under Article 134 in relation to Article 135 of the Revised Penal Code as amended by RA 6968, committed as follows:
>
> "That prior to February 24, 2006 and dates subsequent thereto, in Makati City and within the jurisdiction of this Honorable Court (and other parts of the Philippines) the above-named accused 1Lt. LAWRENCE SAN JUAN, being then a member of the Philippine Army, CRISPIN BELTRAN y BERTIZ, duly elected member of the House of Representatives, together with several other JOHN/JANE DOES whose present identities and whereabouts are presently unknown, conspiring and confederating with each other, did then and there willfully, unlawfully and feloniously, form a tactical alliance between the CPP/NP, renamed as Partidong Komunista ng Pilipinas (PKP) and its armed regular members as Katipunan ng Anak ng Bayan (KAB) with the Makabayang Kawal ng Pilipinas (MKP) and thereby rise publicly and take up arms against the duly constituted government, such as, but not limited to, conducting bombing activities and liquidation of military and police personnel, for the purpose of removing allegiance from the Government or its laws, the territory of the Republic of the

CERTIFIED TRUE/XEROX COPY

ATTY. ELFLEDA GENOVEVA TURINGAN
BR. CLERK OF COURT

1

Philippines or any part thereof, of any body of land, naval or armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers and prerogatives and ultimately to overthrow President Gloria Macapagal Arroyo and the present duly constituted Government.

CONTRARY TO LAW."

While a Motion for Judicial Determination of Probable Cause filed by accused Beltran remained pending for resolution on account of other urgent motions subsequently filed by the defense, the prosecution filed an ***Ex-Parte* Motion to Admit Amended Information,**[1] considering that the above-named accused had not yet been arraigned. The Amended Information reads in its entirety as follows:

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO. 06-452
For: Rebellion

- versus -

REP. CRISPIN BERTIZ BELTRAN,
1ST LT. LAWRENCE SAN JUAN,
(in the custody of the Philippine National Police)

JOSE MARIA SISON @ JOMA/
AMADO GUERRERO / ARMANDO
LIWANAG,
(at large with last known address at Netherlands)

JULIET SISON,
(at large with last known address at Netherlands)

LUIS JALANDONI,
GREGORIO ROSAL @ KA ROGER,
TIRSO ALCANTARA @ BART,
BENJAMIN MENDOZA @ IVAN,
(all at large with unknown address)

BENITO TIAMZON @ CELIO
WILMA TIAMZON @ RIA,
(at large with unknown address)

GREGORIO HONASAN @ DOC,
(at large and with last known address at St. Ignatius Village, Quezon City)

JAKE MALAJACAN,
(at large with last known address at the AFP Housing, Fort Bonifacio, Makati)

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[1] Dated 21 April 2006.

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FELIX TURINGAN,
(at large and with last known address at
Santiago City, Isabela)

1st LT. ANGELBERT GAY,
(at large and with last known address at
B7, L21, Dadiangas Heights
General Santos City

1st LT. PATRICIO BUMINDANG,
(at large and with last known address at
Poblacion West, Lamut, Ifugao)

2ND LT. ALDRIN BALDONADO,
(at large and with last known address at
B5, L3 Agan Homes, P2, General Santos City

ATTY. CHRISTOPHER Y. BELMONTE,
(at large and with last known address at
UP Village, Quezon City)

REP. RAFAEL VITRIOLO MARIANO,
REP. SATURNINO CUNANAN OCAMPO,
REP. TEODORO A. CASINO,
REP. JOEL G. VIRADOR,
REP. LIZA LARGOZA MAZA,
(all presently in the protective custody of
the House of Representatives, Quezon City)

VICENTE P. LADLAD,
NATHANIEL SANTIAGO,
SOTERO LLAMAS @ NOGNOG,
JULIO ATIENZA @ KULAS/DONATO/ADAN,
EDILBERTO ESCUDERO @ EGAY,
ROSEMARIE DOMANAIS @ INSA/UPENG,
ROGELIO VILLANUEVA @ MAKLING,
LEO VELASCO,
RAFAEL BAYLOSIS,
PRUDENCIO CALUBID,
PHILIP LIMJOCO,
JULIUS GIRON,
ALLAN JASMINEZ,
ANTONIO CABANATAN,
FIDEL AGCAOILI,
EDILBERTO SILVA,
MARIA CONCEPCION ARANETA BOCALA,
JORGE MADLOS,
EUGENIA M. TOPACIO,
FRANCISCO FERNANDEZ,
CARLOS BORJAL,
ELIZABETH PRINCIPE,
RANDAL ECHANIZ,

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REY CLARO CASANDRE,
EDWIN ALCID,
TITA LUBI,
(all at large with last known address at
NDFP, Immaculate Concepcion Bldg.,
Lantana St., Cubao, Quezon City.

and

several other **JOHN/JANE DOES,**
(all at large with unknown address),
Accused.
x----------x

AMENDED INFORMATION

The UNDERSIGNED State Prosecutors of the Department of Justice, hereby accuse, LAWRENCE SAN JUAN, CRISPIN BERTIZ BELTRAN, **JOSE MARIA SISON @ JOMA/AMADO GUERRERO/ARMANDO LIWANAG, JULIET SISON, LUIS JALANDONI, GREGORIO ROSA @ KA ROGER, TIRSO ALCANTARA @ BART, BENJAMIN MENDOZA @ IVAN, BENITO TIAMZON @ CELJO, WILMA TIAMZON @ RIA, GREGORIO HONASAN @ DOC @ BITOY @ KUYA, JAKE MALAJACAN, FELIX TURINGAN, 1ST LT. ANGELBERT GAY, 1ST LT. PATRICIO BUMINDANG, 2ND LT. ALDRIN BALDONADO, REP. RAFAEL VITRIOLO MARIANO, REP. SATURNINO CUNANAN OCAMPO, REP. TEODORO A. CASINO, REP. JOEL G. VIRADOR, REP. LIZA LARGOZA MAZA, REP. VICENTE P. LADLAD, NATHANIEL SANTIAGO, SOTETO LLAMAS @ NOGNOG, JULIO ATIENZA @ KULAS/DONATO/ADAN, EDILBERTO ESCUDERO @ EGAY, ROSEMARIE DOMANAIS @ INSA/UPENG, ROGELIO VILLANUEVA @ MAKLING, LEO VELASCO, RAFAEL BAYLOSIS, PRUDENCIO CALUBID, PHILIP LIMJOCO, JULIUS GIRON, ALLAN JASMINEZ, ANTONIO CABANATAN, FIDEL AGCAOILI, EDILBERTO SILVA, MARIA CONCEPCION ARANETA BOCALA, JORGE MADLOS, EUGENIA M. TOPACIO, FRANCISCO FERNANDEZ, CALOS BORJAL, ELIZABETH PRINCIPE, RANDAL ECHANIZ, REY CLARO CASANDRE, EDWIN ALCID, TITA LUBI**, and several other **JOHN/JANE DOES**, whose true names and whereabouts as of this time are still unknown, of the crime of **REBELLION** as defined and penalized under Article 134, in relation to Art. 135, of the Revised Penal Code, committed as follows:

That on or about the year 1990 and for sometime prior and subsequent thereto continuously up to the present time in Makati City, and within the jurisdiction of this Honorable Court, and in other municipalities, cities, provinces and other parts of the country where they have chosen to carry out their rebellion activities, the above-named accused ranking members of the underground **Communist Party of the Philippines (CPP)**, the

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New People's Army (NPA), which is the armed wing of the **CPP**, the **National Democratic Front (NDF)** as the umbrella organization for all the legal fronts of the **CPP**, and the **Makabayang Kawal ng Pilipino/Pilipinas (MKP)** as the underground organization of rebel soldiers within the Armed Forces of the Philippines (among other underground organizations) and above-ground or legal front organization of the CPP such as **BAYAN MUNA, ANAK PAWIS, KILUSANG MAYO UNO (KMU), BAGONG ALYANSANG MAKABAYAN (BAYAN), GABRIELA, PAMALAKAYA, KILUSANG MAGBUBUKID NG PILIPINAS (KMP), KADAMAY, LEAGUE OF FILIPINO STUDENTS (LFS), KAGUMA, COURAGE, ARMAS, CAIRUS, CNL** (among others) conspiring, confederating and mutually helping each other, through their own selves and through the facilities and resources of the aforementioned **underground** and **legal front organizations**, as well as through some personnel, facilities, finances and other resources of the **House of Representatives** and the **Armed Forces of the Philippines (AFP)** (among others), did, then and there, **all as principals**, being the **promoters, maintainers or heads**, willfully, knowingly, unlawfully rise publicly and take arms against the Government of the Republic of the Philippines and, in the process, engage government troops and personnel into several armed encounters, commit wanton acts of murder and destruction of private and public property plus liquidation of government officials, complimented with several mass actions / demonstrations / propaganda campaigns by both the aforementioned undergrounds (*sic*) and legal front organizations under the direct control and supervision of the **CPP/NPA/NDF** through the concerted efforts of the above-named accused working in conspiracy with each other, for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives;

That the said act of rebellion was committed and is still being committed through, but not limited to, the following manner: that sometime in January 1968, JOSE MARIA SISON, in conspiracy with his other co-accused, established the **Communist Party of the Philippines (CPP)** which party is guided by the theories and principles of **Marxist-Leninist-Mao Tse Tung Thoughts** and with the aim of overthrowing the Government and taking over political control of the whole country by means of armed struggle; thereafter, in March 29, 1969, the **NPA** and the **SANDATAHANG YUNIT PAMPROGANDA** *(sic)* **(SYP)** were formed by the **CPP** as its armed wing; thereafter, the **CPP** established the **KABATAANG MAKABAYAN (KM)** which is its underground youth organization; subsequent thereto, the **NDF** was likewise established as a legal front and umbrella organizations *(sic)* of all above ground organizations under the **CPP-NPA**; that **First Plenum** of the CPP was held sometime in the first week of February 1969 in Tarlac, upon instructions of JOSE MARIA SISON, to observe the formal merger of the group of BERNABE

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BUSCAYNO @ KUMANDER DANTE with the **CPP** and to formally establish the **NPA**; that the participants in said **First Plenum** were JOSE MA SISON, RUBEN GUEVARRA, BERNABE BUSCAYNO @ KUMANDER DANTE, BENJAMIN BIE @ KUMANDER MELODY, ROBERT SANTOS @ KUMANDER FELMAN, SEGUNDO MIRANDA @ KUMANDER GOODY, ERNESTO MIRANDA @ KUMANDER PANCHITO, KA ANTONG and KA OSCAR; that during the said **First Plenum**, the creation of the **NATIONAL OPERATION COMMAND (NOC)** of the **NPA** was formalized; furthermore, during said meeting, the draft of the **NPA By-laws** was likewise approved; sometime from January-February 1971 somewhere in Isabela, the **Second Plenum** of the CPP was held wherein the participants were the following: JOSE MARIA SISON, JOSE LUNETA, FERNANDO TAYAG, MONICO ATIENZA, HERMENIGILDO GARCIA IV, MANUEL COLLANTES, RENATO CASIPE, IBARRA TUBIANOSA, RENATO PANGILINAN, RUBEN GUEVARRA, KUMANDER DANTE, KUMANDER JUANING, KUMANDER EDDIE, KUMANDER FELMAN, KUMANDER GOODY, KUMANDER PANCHITO and KA ANTONG; that the matters taken during the **Second Plenum** were the election of additional members of the **CCP***(sic)*, the creation of the **RELIGIOUS COMMITTEE of the CPP**, creation of the **PREPARATORY COMMISSION of the NDF**, the announcement of the status of the assistance to the **CPP** by the **Chinese Communist Party**, discussion on the political situation, and the launching of **Oplan Igpaw**; that in August 1992, upon orders from Jose Maria Sison and implemented by the above-named accused, in conspiracy with each other, another plenum was held in San Narciso, Quezon which was attended by ranking members of the **CPP/NPA/NDF**; said plenum was presided by Armando Teng, **Secretary of Southern Luzon Commission of the CPP**, wherein the following points were delved upon: (a) strengthening the principles of Marxism, Leninism and the teaching of Mao Tse Tung, (b)launching of insurrection in the cities (c) improvement of collection of funds, (d) structuring new programs, (e) removal of disloyal members of the **Central Committee of the CPP** such as Romulo Kintanar, Felimon Lagman, Ricardo Reyes, Joel Recamora, Leopoldo Mabilangan, Arturo Tabara, Nilo dela Cruz and Jimmy Tadeo; that among those who attended the plenum were Gregorio Rosal @ Ka Roger, Tirso Alcantara @ Tirso, @ Ka Selbio, Benjamin Mendoza @ Ivan, Wilma Tiamzon, Benito Tiamzon @ Diego, Rafael Mariano, Saturnino Ocampo, Vicente Ladlad, Crispin Beltran, Nathaniel Santiago, Teodoro Casino, Sotero Llamas @ Nognog, @ Kim, @ Tasio, @ Randy, @ Rosa/Sisa/Isid, Julio Atienza @ Kulas/Donato/Adan, @ Edilberto Escudero @ Egay, @ Novo, @ Elya, Rosemarie Domanais @ Insa/Upeng, @ Rose and Rogelio Villanueva;

That sometime on or before the year 1999 and dates subsequent thereto, accused JOSE MA. SISON, KA ROGER ROSAL, CRISPIN BELTRAN, RAFAEL MARIANO, SATUR OCAMPO, TEODORO CASINO, LIZA MAZA, JOEL VIRADOR (as

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ranking member of the **CPP**) and the rest of the above-named accused, likewise conspiring and confederating with each other and in continuance of the ongoing rebellion by the **CPP-NPA-NDF**, did then and there willfully unlawfully and feloniously, compliment the said ongoing rebellion thru extra-legal means and through different front organizations of the **CPP** under the **NDF** such as (but not limited) to the following organizations and party-list groups: **BAYAN MUNA, ANAK PAWIS, KILUSANG MAYO UNO (KMU), BAGONG ALYANSANG MAKABAYAN (BAYAN), GABRIELA, PAMALAKAYA, KILUSANG MAGBUBUKID NG PILIPINAS (KMP), KADAMAY, LEAGUE OF FILIPINO STUDENTS (LFS), KAGUMA, COURAGE, ARMAS, CAIRUS, CNL**, etc; that the extra-legal means undertaken by the said legal fronts to compliment the ongoing armed rebellion of the **CPP/NPA/NDF** were in the forms *(sic)* of massive street demonstration, strikes, fund raising activities and other similar means;

That among the armed rebellion committed by the above-named accused in conspiracy with each other and in order to topple the duly constituted government or to remove from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogative, were, among others: the **"SAN MARCELINO MASSACRE"** at Zambales on September 19, 1969; the **"PLAZA MIRANDA BOMBING"** at Quiapo, Manila on August 20, 1970 which were carried out by DANNY CORDERO, CECILIO APOSTOL and a certain KA DANIEL upon order of the **CPP** thru JOSE MARIA SISON; the attack at TASK FORCE LAWIN at Echague, Isabela on September 26, 1971; the armed confrontation by **NPA Front Guerilla Unit**, led by KUMANDER GUILLERMO LIDRES, against government troops at Sitio Taluytoy, Malabog District in November 2004/ at Brgy. Fatima, Sitio Kimutod, Paquibato District in February 2005/ at Bgy. Sumimao, Sitio Kagamtan, Paquibato Disctrict in May, 2005; the armed confrontation against government troops by **NPA** guerillas, led by KUMANDER PARAGO and participated by EUGENIO O. BUKAYLA @ ALIBOD (among others), at Bugtong Lubi, Bgy. Panganan, Kitawtaw, Bukidnon on May 14, 2005; another armed confrontation with government troops by **NPA** guerillas, led by KA DUBLIN and EUGENIO O. BUKANA @ ALIBOD (among others), at Sitio Luka, Barangay Tapak, Paquibato District sometime in the middle of 2005; another confrontation against government troops belonging to the 73rd Infantry Battalion by **NPA** guerillas participated by JEAN BUKALYA somewhere at Bukidnon on August 4, 2005 and many other incidents of attacks against the police and the military;

That besides armed rebellion, the above-named accused conspired and confederated with each other in the killing of, among others, the followings persons: **CONRADO BALWEG** (Abra, December 31, 1999); **MAYOR FLORENCIO MUNOZ**

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(Camalig, Albay, March 2001); **P/SR. INSP. MARCELO VELASCO** (Quezon City, April 2001); **MAYOR CESAR PLATON** (Batangas, May 7, 2001); **CONGRESSMAN MARCIAL PUNZALAN** (May 12, 2001); **COL. RODOLFO AGUINALDO** (Cagayan, June 2001); **ROMULO KINTANAR** (Quezon City, January 23, 2003); **ARTURO TABARA** (Quezon City, September 26, 2004); and; **CAPT. RENATO EVASCO** (Rizal, August 7, 2004), as alleged payment for political debts and in furtherance of the objective of the CPP/NPA/NDF to overthrow the government;

That thereafter, sometime in the year 1986 and subsequently thereto, accused VICENTE LADLAD, RANDAL ECHANIZ, SATURNINO OCAMPO, RAFAEL MARIANO, CRISPIN BELTRAN, JOSE MARIA SISON, KA ROGER ROSAL and the rest of the above-named accused, acting in conspiracy with each other, as ranking members of the **CPP/NPA/NDF**, continued their armed rebellion in order to overthrow the government; that in furtherance of said rebellion to overthrow the government, the said accused implemented the different policies and orders of the **CPP** such as, but not limited to, the strengthening of the link between the legal mass struggles in the cities with the armed struggle being committed by the **NPAs** in the countryside; that, in fact, at present accused VICENTE LADLAD (formerly **Secretary of the Southern Tagalog Regional Party Committeee "STRPC"** of the **CPP/NPA/NDF**) is the **Secretary of the United Front Commission "NUFC"** of the **CPP/NPA/NDF** and **Executive Director of the BAYAN MUNA Party List**; that accused RANDAL ECHANIZ, **formerly Secretary of the Military Commission of the CPP/NPA**, is presently a member of the **Komisyong Magsasaka of the CPP/NPA/NDF** and **Executive Adviser of the Anakpawis Partylist** and **External Liaison Officer of the KILUSANG MAGBUBUKID ng PILIPINAS (KMP);**

That sometime in 1997 at Mindoro, the **CPP**, through the concerted actions of the above-named accused, in conspiracy with each other, established one of their legal front organizations – **KATIPUNAN NG MAKABAYANG MINDORINYO** – which is affiliated with the Party List Group **BAYAN MUNA**, another legal front of the **CPP**. Rep. SATURNINO OCAMPO, as ranking member of the **CPP** and head of the **BAYAN MUNA**, was the guest speaker during said occasion; thereafter sometime in April 7, 2001, Rep. SATURNINO OCAMPO, as ranking member of the **CPP** and acting in compliance with the overall objective of the **CPP/NPA/NDF**, coordinated thru **BAYAN MUNA** the release of MAJOR NOEL BUAN (Philippine Army) who was then being held by **NPA** guerillas under the **MELITOR GLOR COMMAND** under KA ROGER ROSAL; that among the **CPP-NPA-NDF** members who likewise directly worked for the said release of MAJOR NOEL BUAN in compliance with the directive of the **CPP/NPA/NDF** were KA ROGER ROSAL, ATTY. ROMEO CAPULONG, RUTH CERVANTES CASINO, and TIRSO ALCANTARA @ KA BART/NISSAN who is the

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spokesman of the **MELITO GLOR COMMAND**; that because of the said release of MAJOR NOEL BUAN, the **CPP** directed its members to conduct an all out campaign for the victory of **BAYAN MUNA** in the May 2001 national election, in furtherance of their over-all objective to achieve political victory as a component of their armed struggle; further, the **CPP**, through the concerted actions of the above-named accused in conspiracy with each other, also issued a directive to the **NPA** and its other underground units (during the May 2001 election campaign period) to help ensure the victory of the **BAYAN MUNA** in the election; the **CPP**, through the concerted actions of the above-named accused in conspiracy with each other, likewise directed the **NPA** during the said May 2001 election campaign period to closely coordinate with **BAYAN MUNA** and other legal fronts *(sic)* organizations for the collection of the **CPP/NPA/NDFs PERMIT TO CAMPAIGN** fees in several areas throughout the country, all in furtherance of the groups' overall objective to overthrow the duly constituted government by armed rebellion;

That sometime in December 2004, the group of GREGORIO "GRINGO" HONASAN, JAKE MALAJACAN, FELIX TURINGAN, ATTY. CHRISTOPHER BELMONTE, and @ FRIDAY, conspiring and confederating with each other and with the group of the above-named accused belonging to the **CPP/NPA/NDF**, started recruiting members for the rebel troops **MAKABAYANG KAWAL NG PILIPINO/PILIPINAS (MKP)** through accused 1Lt. Angelbert Gay, 2Lt. Aldrin Baldonado, 1Lt. Lawrence San Juan and other young active military officers; that in several secret meetings held in Makati City; Greenhills, San Juan; Ortigas Center, and Pasig City, **MKP** members discussed their objective to oust President Arroyo and overthrow the government; thereafter, the **MKP** formalized their tactical alliance with the **CPP/NPA/NDF** through the efforts of the above-named accused acting in conspiracy with each other; that the alliance formulated a joint program of action called **"Kasunduan"** which started on February 24, 2006 and would culminate sometime in May 2006; that among those recruited at the **MKP** were members of the Philippine Military Academy Class 1977, namely: Capt. Allan Jones Salem, PA, 1Lt. Mario Bautista, Jr., 1Lt. Michael Cuarteros, Capt. Rey Gubantes, Capt. Dennis Solomon and Capt Rey Tiongson; that henceforth from said period and up to the present, the above-named accused belonging to the **CPP/NPA/NDF** and the **MKP**, conspiring and confederating with each other, jointly continued to rise up publicly in arms against the Government of the Republic of the Philippines for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives; that in October 2005, the **MKP** had a meeting conducted by accused Honasan wherein he gave instructions to the members of **MKP** to continue their tactical alliance with the **CPP/NPA/NDF** in their common goal to overthrow the government by armed uprising; that those present in said meeting

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were FELIX TURINGAN, JAKE MALAJACAN, ATTY. CHRISTOPHER BELMONTE, @ FRIDAY and fifty (50) other people; that there were several other meetings of the **MKP** which were held in Makati City, Greenhills, San Juan and other parts of Metro Manila; and that among those present in said other meetings were GREGORIO HONASAN, JAKE MALAJACAN, FELIX TURINGAN, RAFAEL GALVEZ, and B/Gen. DANILO LIM;

That sometime in the year 2005, accused VICENTE LADLAD and RANDAL ECHANIZ, acting in conspiracy with the rest of the above-named accused, continued implementing the different policies and directives of the **CPP/NPA/NDF** by conducting meetings with different **NATIONAL DEMOCRATIC UNDERGROUND MASS ORGANIZATIONS** of the **CPP/NPA/NDF** such as, but not limited to, the **NATIONAL TRADE UNION BUREAU** and the **NATIONAL UNITED FRONT COMMISSION** wherein they discussed the **OUST GLORIA MOVEMENT** of the **CPP/NPA/NDF**, among other matters;

That sometime in February 2006 and subsequently thereto, accused VICENTE LADLAD and RANDAL ECHANIZ, acting in conspiracy with the rest of the above-named accused, continued implementing the different policies and directives of the **CPP/NPA/NDF** by conducting meetings with different underground organizations of the **CPP/NPA/NDF**; that said underground meetings were held at the national office of **BAYAN** at No. 1, Mabinhin cor. Matatag St., Quezon City/ national office of the **KILUSANG MAGBUBUKID NG PILIPINAS** at No. 17-D Kasingkasing St., Kamias, Quezon City/ national office of **BAYAN MUNA** at No. 153 Scout Rallos St., Kamuning, Quezon City and, at No. 69, Maayusin St., U.P. Village, Quezon City;

That on several occasions during the years 2005 and 2006, and at different parts of the country, accused VICENTE LADLAD @ VIC, RANDAL ECHANIZ, RAFAEL BAYLOSIS @ KA RAFFY, SATURNINO OCAMPO of **BAYAN MUNA**, TEODORO CASINO of **BAYAN MUNA**, RAFAEL MARIANO @ KA PAENG of ANAKPAWIS, LIZA MAZA @ KA LIZA of **GABRIELA**, CRISPIN BELTRAN @ KA BEL of **ANAKPAWIS**, CAROL PAGADUAN ARAULLO @ CAROL, Chairwoman of **BAYAN**, RENATO REYES @ NATO, Secretary General of **BAYAN**, JOEL MAGLUNGSOD @ KA JOEL, Secretary General of **KMU**, DANILO RAMOS @ KA DANING, Secretary General of **KMP**, EMY DE JESUS @ KA EMY, Secretary General of **GABRIELA**, RITA BUA @ KA RITA, of the International Department of **BAYAN**, and ROSEMARIE LUBI @ KA TITA, member of the Finance Committee of the **CPP/NPA/NDF** and Executive Director of the **KODAO PRODUCTIONS**, in conspiracy with each other and likewise with the rest of the above-named accused, and as ranking members of the **CPP/NPA/NDF**, held several underground meetings among themselves and several other personalities; that among the topics discussed during said meetings were the programs/ directives/

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policies of the **CPP/NPA/NDF** including its ongoing drive to heighten and strengthen the groups ongoing armed struggle to overthrow the **US-ARROYO REGIME**, the launching of an intensified propaganda campaign in furtherance of its overall campaign to overthrow the **US-ARROYO REGIME**, the alliance of the **CPP/NPA/NDF** with different legal and semi legal organizations such as the: **MAKABAYANG KAWAL PILIPINO (MKP), BAYAN, BAYAN MUNA, ANAKPAWIS, KMU, GABRIELA** (among others), **the 160 DAYS CAMPAIGN TO OUST PGMA** which will culminate on **May 1, 2006** as **D-DAY** with the complete overthrow of the government;

That likewise on several occasions during the same years 2005 and 2006, in different parts of the metropolis, accused CRISPIN BELTRAN, RAFAEL MARIANO, SATURNINO OCAMPO, TEODORO CASINO, LIZA MAZA and JOEL VIRADOR discussed matters relating to the giving of portions of their **Countryside Development Funds** or **CDF** to the **CPP/NPA/NDF** in order to finance the organizations' objective to overthrow the government by means of armed rebellion; that likewise on several occasions during the said periods, said accused CRISPIN BELTRAN, RAFAEL MARIANO, SATURNINO OCAMPO, TEODORO CASINO, LIZA MAZA, and JOEL VIRADOR, as well as accused VICENTE LADLAD, RANDAL ECHANIZ, RAFAEL BAYLOSIS, CAROL PAGADUAN, RENATO REYES, JOEL MAGLUNSOD, DANILO RAMOS, EMY DE JESUS, RITA BAUA and ROSEMARIE LUBI gave their respective monetary contributions **(BUTAW)** and other material contributions to the **CPP/NPA/NDF** in order to finance and help the activities of the said organizations and in furtherance of their common goal to overthrow the government by armed rebellion;

Further, sometime in February 2006, accused VICENTE LADLAD, as Secretary of the **UNITED FRONT COMMISSION** of the **CPP/NPA/NDF** held a secret/underground meeting with accused RANDAL ECHANIZ, RAFAEL BAYLOSIS, SATURNINO OCAMPO, TEODORO CASINO, RAFAEL MARIANO, LIZA MAZA, CRISPIN BELTRAN, CAROL ARAULLO, RENATO REYES and RITA BAUA (in their capacities as ranking members of the **CPP/NPA/NDF**) at No. 153 Scout Rallos St., Kamuning, Quezon City; that among the matters discussed during said meeting were the results of the final negotiation between the **CPP/NPA/NDF** and the **MAKABAYANG KAWAL PILIPINO**, the mobilization of the members of the legal organizations of the **CPP/NPA/NDF** for a **People Power Revolution**, and the heightening of the armed struggle in the countryside with the final objective of overthrowing the **US-ARROYO REGIME** by force; that the said uprisings were planned to be staged on February 24, 2006 with accused SATURNINO OCAMPO and TEODORO CASINO, as legal front leaders of the **CPP/NPA/NDF**, leading the members of **BAYAN MUNA**; further, with accused CRISPIN BELTRAN and RAFAEL MARIANO, likewise as legal front leaders of the **CPP/NPA/NDF**, leading the members of **ANAKPAWIS**; further, with accused

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LIZA MAZA, likewise as legal front leader of the **CPP/NPA/NDF**, leading the members of **GABRIELA**; that said mass actions will converge at different points of Metro Manila; that thereafter the armed components of the **CPP/NPA/NDF** and the **MKP** will join them and thereafter they will attack Malacanang Palace and overthrow the government on D-DAY on May 1, 2006.

CONTRARY TO LAW.

At first sight, one is momentarily taken aback by the sheer length of the so-called "Amended Information". From the original Information consisting of one (1) solitary paragraph contained in two (2) pages, it ballooned to thirteen (13) extended paragraphs in fifteen (15) pages. From only two (2) named defendants, the "Amended Information" now names forty-eight (48), a large majority of whom are at large with addresses unknown. On closer perusal, one's attention is drawn to the fact that all the thirteen (13) extended paragraphs are underscored, except for the words: "*hereby accuse, LAWRENCE SAN JUAN, CRISPIN BERTIZ BELTRAN*" in the first paragraph. Apart from these eight (8) words, nothing else was left of the original Information. Upon deeper disquisition, one discovers that the "Amended Information" recounts a protracted chain of events and acts constituting the crime of Rebellion allegedly committed by all forty-eight (48) accused, who conspired as "*promoters, maintainers, or heads,*" from 1968 to 2006, or a period spanning almost four (4) decades; and that these events occurred in many parts of the country involving an untold number of people, either as participants, perpetrators or as victims. Evidently, none of these specific allegations appeared in the original Information. All these palpable observations have led this Court to conclude that this "Amended Information" is not what it purports to be.

In filing this "Amended Information", the prosecution invokes Section 14, Rule 110 of the Revised Rules on Criminal Procedure, which provides that the complaint or information may be amended, without leave of court, at any time before the accused enters his plea. And yet, after a thorough review of the contents of the "Amended Information", this Court finds that the said rule is inapplicable to the instant situation. While it masquerades as an "Amended Information", it is, veritably, a new Information. Amendment, by its very concept, refers to the modification of a complaint or information by making changes either in its form or substance. It cannot be denied that the "Amended Information" does not merely make changes or modifications in both form and substance. It is not a mere amplification of the facts originally stated in the Information. It is not a mere correction of names, dates, places, and other details. Even as it charges all the accused as conspirators in the crime of Rebellion, the long-winded recital of facts allegedly consisting the offense charged is practically all new. In effect, this "Amended Information" is a complete revamp or obliteration of the original Information.

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Thus, the prosecution cannot rely on the rule on amendment of a complaint or information as a means to supplant the original Information with an entirely new one disguised as an "Amended Information." Not even the prosecution's arguments in open court could convince this Court that this "Amended Information" does not partake of the form and substance of a completely new Information. To say that it is a new Information is but stating the obvious. As aptly argued by Atty. Theodore Te, counsel for originally named accused San Juan, the "Amended Information", apart from naming numerous other defendants, introduces new facts, new events, new theories, and even new offenses. He further argued that should the "Amended Information" be admitted, it will particularly and grossly trample upon and violate the due process rights of accused San Juan, who was not even made aware of, much less asked to participate in, the questioned preliminary investigation. It was pointed out that the incident which took place in February 2006, for which accused San Juan was charged before this Court in the original Information, no longer appears in the "Amended Information" and it cannot now be ascertained which act or event accused San Juan is being charged of in the "Amended Information."

This being a new Information, regardless of whether accused Beltran and San Juan have been arraigned or not, the Court has the discretion to grant or deny its admission, the only criterion being that the ruling of the Court must not impair the substantial rights of the accused, neither the right of the People to due process of law.[2] To admit the "Amended Information", which is an entirely new Information, would most certainly prejudice and vitiate the rights of the accused, more particularly in the case of original accused San Luan and Beltran. On the other hand, denying admission does not necessarily undermine the due process rights of the State. In other words, even if the "Amended Information" were denied admission, the prosecution is not without other judicial recourse. As repeatedly mentioned in their pleadings, the defense and the prosecution are currently engaged in arguing for or against the validity of the preliminary investigation that gave rise to the "Amended Information" before the Supreme Court. Who, better than the Supreme Court, can render a ruling thereon with finality and with utmost due regard to the Constitutional and statutory rights of all the parties concerned? Should the Supreme Court, in G.R. Nos. 172070 (*petition filed by accused Ladlad, Santiago, Echanis and Casambre*) and 172074-76 (*petition filed by accused party-list members of the House of Representatives*), rule in favor of the State and find the preliminary investigation proceedings valid and so uphold the assailed Orders issued by the DOJ panel of investigating prosecutors, the prosecution may even, if it chooses to, withdraw the original Information and file the new Information as a separate case before another Court of competent jurisdiction. If it should come to pass that the Supreme Court will strike down the preliminary

[2] Crespo vs. Mogul, 151 SCRA 462,470 (1987)

investigation which gave rise to the "Amended Information", for all the alleged infirmities of the proceedings taken, then that would, in effect, affirm this Court's ruling to deny admission of the "Amended Information," albeit for different reasons.

Besides, even if the prosecution argues that it needs no leave of court to file an amended information on the ground that accused Beltran and San Juan had not yet entered their plea, the prosecution still cannot find refuge under the said rule. While it is true that accused Beltran and San Juan have not yet been arraigned, it is not as if no proceedings have been taken in this case. In fact, since the filing of the original Information, several motions have been heard, some have been resolved, while others are still pending resolution. All throughout, the prosecution has actively participated in arguing its position on the issues raised, insisting on the adequacy of the averments in the original Information and sufficiency of the evidence attached thereto. And then, without any ado, the prosecution reverses itself by filing a completely new Information in the guise of amending the original Information. For all its epic proportions, admitting the "Amended Information", as it is, would amount to a violation of the defendants' due process rights as guaranteed by the Constitution and the Rules of Court.

It is worth emphasizing at this point that, in the filing of the "Amended Information," the prosecution has contradicted itself and belied its own avowals. If its earlier manifestations and arguments before this Court are to be given credence, there was no cause for the prosecution to radically amend the original Information with regard to the recital of the facts consisting the offense to prove the existence of all its elements. The records readily show that the prosecution actively participated in the proceedings taken with regard to accused Beltran's Motion for Judicial Determination of Probable Cause. In its pleadings and by oral argument, the prosecution stood firmly on its stance that the original Information was not only valid, but also sufficient in all its averments; and that taken together with the attached documentary evidence, it establishes the existence of probable cause to hold accused Beltran liable for the crime of Rebellion. Moreover, in its Opposition to the Motion to Quash[3] filed by accused San Juan, the prosecution, in no uncertain terms, affirmed the sufficiency of the original Information, to wit:

> "6. On the first ground *(that the facts stated do not constitute the offense of rebellion),* the **Prosecution maintains that all the elements of the crime of rebellion as defined under Article 134 of the Revised Penal Code, as amended, are all present in the assailed information,"**
>
> x x x

[3] Records, pp. 638-643.

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> 8. There is no doubt that **all the aforementioned elements of the crime of rebellion** as defined under Article 134 of the Revised Penal Code, as amended, **are present in the assailed Information**. It must be stressed that **the test for the correctness of this ground is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, constitute the elements of the offense**, (*People vs. Supnad, L-18747, Mar. 30, 1963*), and matters aliunde will not be considered. (*Regalado, Florence D., Remedial law Compendium (Volume II), p. 482 (2004), Mendoza-Ong vs. Sandiganbayan, 414 SCRA 474)*;"

Contrary to the prosecution's oral manifestation at the hearing held today that the above-quoted averment was with the "footnote" or reservation that it is subject to amendment once the then ongoing preliminary investigation would be terminated, there was no such reservation or "footnote" in the prosecution's Opposition to the Motion to Quash. And since the Motion to Quash has not been heard yet, there was no other occasion during which the prosecution could have made its reservation. As it stands, the prosecution has not swayed this Court to believe that it is not contradicting its own avowals.

To the mind of the Court, the prosecution's earlier adamant claim that the Information, as originally stated and filed, is sufficient in all its averments renders any subsequent attempts to amend the Information not only inconsistent and contradictory, but also suspect in its timing and motivation. The inclusion of numerous other defendants, most of whom are at large with unknown whereabouts, along with the wholesale revamp of the recital of facts, came at a time when the prosecution knew full well that the Court was in the midst of resolving the Motion for Judicial Determination of Probable Cause filed by accused Beltran. The introduction of this "Amended Information" at this penultimate time, and on the very same day that the DOJ Panel rendered its Joint Resolution in the Preliminary Investigation of I.S. Nos. 2006-225, 2006-226 and 2006-234, would seem to be an attempt to preempt or render for naught whatever ruling the Court may hand down in its resolution of the pending Motion for Judicial Determination of Probable Cause.

Besides, even if it were granted that this was indeed an amendment of the original Information, the same would still not be admitted by this Court in view of some fatal defects. As aptly raised by co-accused Vicente P. Ladlad in his Opposition (*ex abundante cautela*) to the *Ex-Parte* Motion to Admit Amended Information, the investigating prosecutors falsely certified therein that "they personally examined the complainant/s and their witnesses and that they informed the accused of the complaint and the evidence submitted against them."[4] This claim is supported by the Joint Resolution itself wherein it is clearly stated that the information was gathered by the

[4] Records, p. 970.

investigating panel from numerous witnesses for the complainant, not through the conduct of personal examination, but by citing the allegations contained in their respective sworn affidavits.[5] Accused Ladlad asserts that for all the affidavits relied upon by the investigating prosecutors, only one (1) witness – Jaime Beltran Fuentes – was personally examined. Moreover, as stressed by co-accused Ladlad, Beltran, Ocampo, Maza, Casino, Mariano, Virador, Casambre and Santiago, in their separate pleadings aggressing the "Amended Information," apart from the Joint Resolution, the prosecution failed to attach any affidavit or evidence to the "Amended Information."

Section 8, Rule 112 of the Revised Rules of Criminal Procedure provides, to wit:

> "An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case."

In violation thereof, when the "Amended Information" was filed on 21 April 2006, no affidavits nor counter-affidavits were attached. Only the Joint Resolution containing a summary of the allegations culled from sworn affidavits was appended. Thus, the accused argued in their Opposition to the Motion to Admit "Amended Information" that the same should be stricken out.

A few minutes before the case was called for hearing this morning, thirteen (13) days after the filing of the "Amended Information," the prosecution submitted to the Court twenty-eight (28) documents, the first eighteen (18) of which were used as basis for the filing of rebellion charges against all the accused in the "Amended Information." Although the Court does not appreciate the belated filing of these attachments, a thorough review of these documents reveal, however, that they are mere affidavits that were executed from as far back as May 2002, and the most recent of which was dated 29 March 2006. Some were executed in Manila, while the others were taken in Masbate and Davao. Common among these documents, which was glaring in its absence, was the certification that the affiant was personally examined by any of the investigating prosecutors at the preliminary investigation. The closest to a certification of this sort appears in the affidavits of Gloria Kintanar, Marivic Macawile, and Joel Baloloy,[6] wherein State Prosecutor II Peter Ong signed a certification stating: "*I have personally examined the affiant/s and that I am fully satisfied that he/she/they understood and voluntarily executed his/her/their own statement.*" The Court cannot consider this certification as material in this case because State Prosecutor II Peter Ong is not a member of the DOJ

[5] Records, p. 984.
[6] Attachments Nos. 4, 11, and 12, respectively.

Panel that conducted the preliminary investigation against the accused herein. Perhaps, as alleged by the defense, these are "recycled" evidence.

Moreover, in the last page of the "Amended Information," there appears a list of prosecution witnesses, namely:

1) CHIEF, Philippine National Police – Camp Crame, Quezon City.
2) CHIEF OF STAFF, Armed Forces of the Philippines – Camp Aguinaldo, Quezon City.
3) SECRETARY OF NATIONAL DEFENSE – Camp Aguinaldo, Quezon City.
4) NATIONAL SECURITY ADVISER and CHIEF – NATIONAL INTELLIGENCE COORDINATING COUNCIL – NICA Headquarters, Quezon City.
5) DIRECTOR – CRIMINAL INVESTIGATION AND DETECTION BUREAU – Camp Crame, Quezon City.
6) RUBEN GUEVARRA – c/o ISAFP, Camp Aguinaldo, Quezon City.
7) JAIME BELTRAN FUENTES – c/o CIDG, Camp Crame, Quezon City.
8) And Others to be presented later.[7]

Despite this impressive array of prosecution witnesses, only the affidavit of Ruben Guevarra executed sometime in January of 2003 was among the belated attachments. While it appears therein that said affidavit was subscribed and sworn to before State Prosecutor Melba A. Waga of the prosecution panel, it was blank as to the date and place. The affidavit of Jaime Beltran Fuentes was filed when the Court directed the prosecution to submit additional evidence relative to the Motion for Judicial Determination of Probable Cause. Even as the prosecution has belatedly filed some of the affidavits paraphrased in the Resolution, in the absence of valid certification that the affiants were personally examined by the prosecution panel, all that it achieves is to solidify the assertion of the defendants that of all the more than sixty (60) "witnesses" whose affidavits were quoted in the Resolution, only Jaime Beltran Fuentes was personally examined by the investigating panel.

It may not be amiss to state that, contrary to the prosecution's claim that it is not a must that the affidavits and evidence presented during the preliminary investigation be attached to the "Amended Information," the forwarding of copies of evidence submitted by the parties, as well as affidavits and counter-affidavits, together with the Information, to the Regional Trial Court is not only required by the Rules. Strict compliance therewith is also directed under Department Circular No. 16, dated 19 April 1991, issued by then Secretary of Justice Franklin M. Drilon, which reads, to wit:

[7] Records, p. 971.

"The Supreme Court, in its decision in Vicente Lim Sr., et al. vs. Hon. Nemesio S. Felix, et al., G.R. Nos. 94054-57 and Jolly T. Hernandez, et al., vs. Hon, Nemesio S. Felix, et al., G.R. Nos. 94266-69, promulgated on February 19, 1991, reiterated its ruling in Soliven vs. Makasiar, 167 SCRA 393, as follows:

> 'What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedures, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.'

In accordance therewith, **an information to be filed in the Regional Trial Court shall be supported by copies of the evidence submitted by the parties, the affidavits of the complainants/s and his/their witnesses and the counter-affidavits of the respondent/s and his/their witnesses and other evidence, and your resolution on the case.**

Strict compliance herewith is enjoined."

The prosecution cannot pose the argument that since affidavits and documentary evidence were already attached to the original Information, other documents need not be appended to the "Amended Information" anymore. While there were numerous enclosures to the original Information, they could hardly cover the width and breadth of the detailed allegations raised for the very first time in the "Amended Information", not to mention implicating all 48 accused conspirators already named plus others still to be identified. Without these attachments, this Court cannot exercise its Constitutional duty and power to "personally evaluate the resolution of the prosecutor and its supporting evidence." In the case of *People vs. Inting*[8] the Supreme Court held that the preliminary inquiry made by the prosecutor does not bind the judge and the latter does not have to follow what is presented by the prosecutor. The prosecutor's preliminary inquiry merely aids the judge in making a determination of probable cause. The prosecutor's certification of probable cause, in that sense, is ineffectual, for it is the report, the affidavits, the transcript of stenographic notes (if any), and all other supporting documents which ultimately assist the judge in making his determination. And then, in *Soliven vs. Makasiar*[9], the High

[8] 187 SCRA 788, 792 (1990).
[9] 167 SCRA 393, 398 (1988).

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Court ruled that while the Judge does not have to personally examine the complainant and his witnesses, **there should be a report and necessary documents supporting the prosecutor's bare certification**. The Supreme Court stressed therein that "**all of these should be before the Judge**." Section 6, Rule 112 provides that if the evidence on record clearly fails to establish probable cause, the court may immediately dismiss the case. With more reason, failure to attach the affidavits of the complainant and its witnesses, along with other copies of the evidence, is a fatal defect that warrants the Court's denying admission of the "Amended Information."

There is one other issue raised by several of the named accused assailing the filing of the "Amended Information," that is, that the "Amended Information" arose from a sham preliminary investigation whose validity has been questioned before the DOJ by way of a Motion for Reconsideration filed by accused Rafael Baylosis, and even elevated to the Supreme Court by way of petitions for certiorari and prohibition. Thus, on the alternative, they pray that the proceedings before this Court be suspended or held in abeyance until either the DOJ or the Supreme Court shall have ruled on their motion/petitions. In denying the admission of the "Amended Information," it is not the intention of this Court to preempt whatever the ruling of the Supreme Court may be in G.R. Nos. 172070, 2006-225, 2006-225, and 2006-234. In fact, this Court has purposely shied away from entertaining the issue of, and making any pronouncements on, the legality of the conduct of the preliminary investigation as well as the veracity of the allegations made in the "Amended Information" based on the results of the assailed preliminary investigation. That matter has been properly raised and is now pending before the Supreme Court. Regardless of whether or not the preliminary investigation was valid, all that this Court has determined herein is that the "Amended Information" cannot be considered as such since it is, by its very form and substance, a new Information, and hence, it should not be admitted. To rule otherwise would amount to allowing a new Information to supercede the original Information, which the prosecution earlier proclaimed as valid and sufficient in all its averments. Furthermore, not to admit it would be to uphold the primordial rights of the accused as guaranteed under the pertinent provisions of the Constitution. Hence, the "Amended Information" must be denied admission and stricken from the records. Consequently, this Court need not rule on the alternative motions seeking the suspension of these proceedings in view of the petitions pending before the Supreme Court.

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WHEREFORE, in view of all the foregoing, the Omnibus Motion to Strike Out Amended Information is hereby GRANTED and the "Amended Information" is ordered expunged from the records of this case.

SO ORDERED.

4 May 2006, Makati City, Philippines.

JENNY LIND R. ALDECOA-DELORINO
Presiding Judge

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REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
MAKATI CITY, BRANCH 00 - 944

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO. _____
For: Rebellion

-versus-

JOSE MARIA SISON @ JOMA/
AMADO GUERRERO/ARMANDO
LIWANAG,
(at large with last known address at Netherlands)

JULIET SISON,
(at large with last known address at Netherlands)

LUIS JALANDONI,
GREGORIO ROSAL @ KA ROGER,
TIRSO ALCANTARA @ BART @ NISSAN,
BENJAMIN MENDOZA @ IVAN,
BENITO TIAMZON @ CELIO
WILMA TIAMZON @ RIA,
(all at large with unknown address)

GREGORIO HONASAN @ DOC
@ BITOY @ KUYA,
(at large and with last known address at
St. Ignatius Village, Quezon City)

JAKE MALAJACAN,
(at large and with last known address
at the AFP Housing, Fort Bonifacio, Makati)

FELIX TURINGAN,
(at large and with last known address at
Santiago City, Isabela)

1st. Lt. ANGELBERT GAY,
(at large and with last known address
at B7, L21, Dadiangas Heights
General Santos City

1st Lt. PATRICIO BUMINDANG,
(at large and with last known address at
Poblacion West, Lamut, Ifugao)

2nd Lt. ALDRIN BALDONADO,
(at large and with last known address at
B5, L3 Agan Homes, P2, General Santos City)

ATTY. CHRISTOPHER Y. BELMONTE @ MARK,
(at large and with last known address at
UP Village, Quezon City)

RAFAEL VITRIOLO MARIANO,
(17-D Kasing-Kasing St., East Kamias
Quezon City)

SATURNINO CUNANAN OCAMPO,
(15 General De Jesus St., Heroes Hills,
Quezon City)

TEODORO A. CASINO,
(2D Don Matias St., Don Antonio Heights,
South Gate, Quezon City)

JOEL G. VIRADOR,
(c/o Bayan Muna, #153 Scout Rallos St.,
Kamuning, Quezon City)

LIZA LARGOZA MAZA,
(35 Scout Delgado, Brgy. Laging Handa,
Quezon City)

VICENTE P. LADLAD,
NATHANIEL SANTIAGO,
SOTERO LLAMAS @ NOGNOG,
JULIO ATIENZA @ KULAS/DONATO/ADAN,
EDILBERTO ESCUDERO @ EGAY,
ROSEMARIE DOMANAIS @ INSA/UPENG,
ROGELIO VILLANUEVA @ MAKLING,
LEO VELASCO,
RAFAEL BAYLOSIS,
PRUDENCIO CALUBID,
PHILIP LIMJOCO,
JULIUS GIRON,

ALLAN JASMINEZ,
ANTONIO CABANATAN,
FIDEL AGCAOILI,
EDILBERTO SILVA,
MARIA CONCEPCION ARANETA BOCALA,
JORGE MADLOS,
EUGENIA M. TOPACIO,
FRANCISCO FERNANDEZ,
CARLOS BORJAL,
ELIZABETH PRINCIPE,
RANDAL ECHANIZ,
REY CLARO CASAMBRE,
TITA LUBI,
(all at large with last known address at NDFP 6th Immaculate Multipurpose Bldg., Lantana St., Cubao, Quezon City)

and

several other **JOHN/JANE DOES,**
(all at large with unknown address),
Accused.

x----------x

INFORMATION

The undersigned **STATE PROSECUTORS** of the **DEPARTMENT OF JUSTICE,** hereby accuse JOSE MARIA SISON @ JOMA/ AMADO GUERRERO/ ARMANDO LIWANAG, JULIET SISON, LUIS JALANDONI, GREGORIO ROSAL @ KA ROGER, TIRSO ALCANTARA @ BART/NISSAN, BENJAMIN MENDOZA @ IVAN, BENITO TIAMZON @ CELIO, WILMA TIAMZON @ RIA, GREGORIO HONASAN @ DOC @ BITOY @ KUYA, JAKE MALAJACAN, FELIX TURINGAN, 1st LT. ANGELBERT GAY, 1st LT. PATRICIO BUMINDANG, 2nd LT. ALDRIN BALDONADO, CHRISTOPHER Y. BELMONTE @ MARK, RAFAEL VITRIOLO MARIANO, SATURNINO CUNANAN OCAMPO, TEODORO A. CASIÑO, JOEL G. VIRADOR, LIZA LARGOZA MAZA, VICENTE P. LADLAD, NATHANIEL SANTIAGO, SOTERO LLAMAS @ NOGNOG, JULIO ATIENZA @ KULAS/DONATO/ADAN, EDILBERTO ESCUDERO @ EGAY, ROSEMARIE DOMANAIS @ INSA/UPENG, ROGELIO VILLANUEVA

@ MAKLING, LEO VELASCO, RAFAEL BAYLOSIS, PRUDENCIO CALUBID, PHILIP LIMJOCO, JULIUS GIRON, ALLAN JASMINEZ, ANTONIO CABANATAN, FIDEL AGCAOILI, EDILBERTO SILVA, MARIA CONCEPCION ARANETA BOCALA, JORGE MADLOS, EUGENIA M. TOPACIO, FRANCISCO FERNANDEZ, CARLOS BORJAL, ELIZABETH PRINCIPE, RANDAL ECHANIZ, REY CLARO CASAMBRE, TITA LUBI, and several other JOHN/JANE DOES, whose true names and whereabouts as of this time are still unknown, of the crime of **REBELLION** as defined and penalized under Article 134, in relation to Art 135, of the Revised Penal Code, committed as follows:

That on or about February 24, 2006 and for sometime before the said date and continuously thereafter, in various parts of the country including Makati City, and within the jurisdiction of this Honorable Court, the above-named accused who are ranking officers/members of either the underground Communist Party of the Philippines (CPP); or the New People's Army (NPA) which is the armed wing of the CPP; or the National Democratic Front (NDF), the umbrella organization for all the legal fronts of the CPP; or the Makabayang Kawal ng Pilipino/Pilipinas (MKP), the underground organization of rebel soldiers within the Armed Forces of the Philippines and the above-ground or legal front organizations of the CPP such as Bayan Muna, Anak Pawis, Kilusang Mayo Uno (KMU), Bagong Alyansang Makabayan (BAYAN), Gabriela, Pamalakaya, Kilusang Magbubukid ng Pilipinas (KMP), Kadamay, League of Filipino Students (LFS), Kaguma, Courage, Armas, Cairus and CNL, among others, conspiring, confederating and mutually helping each other, together with Crispin Beltran and 1st Lt. Lawrence San Juan, who are likewise accused for the crime of rebellion in Criminal Case No. 06-452 pending before the Regional Trial Court of Makati City, and also with others whose identities and whereabouts are still unknown, did then and there willfully, unlawfully, and feloniously as principals, masterminds, heads, promote, or otherwise participate and support in such armed uprising, create, establish the above-mentioned organizations, synchronize and coordinate their activities to effect and ensure the complete and permanent success of the armed rebellion, for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or

prerogatives and overthrowing the President of the Republic of the Philippines and the present duly constituted Government, as in fact, said accused have risen publicly and taken arms against the Government, and continue to do so up to the present date to attain said purpose by, among others, conducting raids, ambushes and attacks against the police and army detachments as well as innocent civilians, and exacting taxation (butaw) from members and forced contributions from innocent civilians, and as a necessary means to commit the crime of rebellion, in connection therewith and, in furtherance thereof, committed and are still committing the acts of murder, arson, robbery, looting, engaging government troops and personnel into several armed confrontation, destroying private property to create and spread chaos, disorder, terror and fear as to facilitate the accomplishment of the said purposes, through specific acts, including, but not limited to the following:

(1) The establishment of the Communist Party of the Philippines (CPP) by Jose Maria Sison and other founding members sometime in 1968 to overthrow the Government and take over the political control of the whole country by means of armed struggle; the creation of its armed wing, the NPA and the Sandatahang Yunit Pamproganda (SYP) in 1969; the establishment of the Kabataang Makabayan (KM) as its underground youth organization in 1969 and the NDF, the legal front and umbrella organization of all above ground organizations under the CPP/NPA; the holding of CPP/NPA's First Plenum in 1969 in Tarlac, upon the instructions of Jose Maria Sison, to create the National Operation Command (NOC) of the NPA and the approval of the NPA By-Laws; its Second Plenum which was participated by Jose Maria Sison and others, held sometime in 1971 in Isabela; its Third Plenum held in 1992 in Southern Tagalog and attended by Gregorio Rosales @ Ka Rosal, Tirso Alcantara @ Tirso/Ka Selbio, Benjamin Mendoza @ Ivan, Wilma Tiamzon @ Ria, Benito Tiamzon @ Celio, Rafael Mariano, Saturnino Ocampo, Vicente Ladlad, Crispin Beltran, Nathaniel Santiago, Sotero Llamas @ Nognog, @ Kim, @ Tasio, @ Randy, @ Rosa/Sisa/Isid, Julio Atienza @ Kulas/Donato/Adan, Edilberto Escudero @ Egay, @ Novo, @ Ela, Rosemarie Domanais @ Insa/Upeng, @ Rose and Rogelio Villanueva, to discuss, among others, the launching of insurrection in the several parts of the country, improvement of collection of funds and removal of disloyal members of the CPP/NPA/NDF.

(2) The atrocities committed to further the objectives of the CPP/NPA/NDF were: (a) the wanton acts of murder of the following: Conrado Balweg (Abra, 1999); Mayor Florencio Munoz (Albay, 2001); P/Sr. Insp. Marcelo Velasco (Metro Manila, 2001); Mayor Cesar Platon (Batangas, 2001); Congressman Marcial Punzalan (Metro Manila, 2001); Col. Rodolfo Aguinaldo (Cagayan, 2001); Romulo Kintanar (Metro Manila, 2003); Arturo Tabara (Metro Manila, 2004), Capt. Renato Evasco (Rizal, 2004) and other persons, as alleged payment for their political debts and/or in furtherance of their objective of the CPP/NPA/NDF to overthrow the government; (b) the "San Marcelino Massacre" in Zambales sometime in 1969; (c) the "Plaza Miranda Bombing" in Quiapo, Manila, on August 20, 1970; (d) the attack of Task Force Lawin at Echague, Isabela sometime in 1971; (e) the armed confrontation by NPA Front Guerilla Unit against government troops at Malabog District sometime in 2004; f) the armed confrontation against government troops by NPA guerillas in Bukidnon sometime in 2005; (g) the armed confrontations with government troops by NPA guerillas at Paquibato District in 2005; (h) the armed confrontation against government troops belonging to the 73rd Infantry Battalion by NPA guerillas somewhere in Bukidnon in 2005; and many other similar incidents of attacks against the police and the military;

(3) The conduct of massive street demonstrations, strikes, fund raising activities and other similar activities in the different parts of the country, including Makati City, from 2001 up to the present, headed by accused party-list representatives, namely, Saturnino Ocampo, Rafael Mariano, Crispin Beltran, Liza Maza and Joel Virador, through the afore-mentioned legal front organizations, as part of their plan to overthrow the duly constituted government, to compliment the ongoing armed rebellion of the CPP/NPA/NDF;

(4) The accused party-list representatives namely: Saturnino Ocampo, Rafael Mariano, Crispin Beltran, Liza Maza and Joel Virador, in conspiracy with Vicente Ladlad, Randal Echaniz, Jose Maria Sison, Ka Roger Rosal and the rest of the above-named accused who are ranking officers/members of the CPP/NPA/NDF, continued at present their armed rebellion in order to overthrow the government; and, in furtherance of said rebellion, the said accused implemented the different policies

and orders of the CPP/NPA/NDF including but not limited to the strengthening of the link between the legal mass struggles with the armed struggle being committed by the NPAs; and, in fact, at present accused Vicente Ladlad, then Secretary of the Southern Tagalog Regional Party Committee [STRPC] of the CPP/NPA/NDF, and now the Secretary of the National United Front Commission (NUFC) of the CPP/NPA/NDF and Executive Director of the Bayan Muna Party List; that accused Randal Echaniz, then Secretary of the Military Commission of the CPP/NPA, and now a member of the Komisyong Magsasaka of the CPP/NPA/NDF and Executive Adviser of the Anakpawis Partylist and External Liaison Officer of the Kilusang Magbubukid ng Pilipinas (KMP);

(5) Sometime in 2001, accused Saturnino Ocampo, in pursuit of the overall objective of the CPP/NPA/NDF, particularly the propaganda campaign to ensure the victory of the Bayan Muna in the May 2001 national elections, directed said Bayan Muna and other legal front organizations to release Major Noel Buan of the Philippine Army, who was then being held by NPA guerillas under the Melitor Glor Command headed by accused Roger Rosal; that among those who directly worked for the release of Major Noel Buan were accused Roger Rosal, Ruth Cervantes Casino, Atty. Romeo Capulong and accused Tirso Alcantara @ Bart @ Nissan, who is the spokesperson of the Melito Glor Command; that because of the release of Major Noel Buan, the CPP/NPA/NDF directed its members to conduct an all-out campaign for the victory of Bayan Muna in the May 2001 national elections, in furtherance of their over-all objective to achieve political victory as a component of their armed struggle; further, the CPP/NPA/NDF, through the concerted and coordinated actions of the above-named accused, who are ranking officers/members of the CPP/NPA/NDF and its legal front organizations, directed the NPA during the May 2001 election to: a) help ensure the victory of the Bayan Muna and other party-list organizations of the CPP/NPA/NDF; and b) closely coordinate with Bayan Muna and other legal front organizations for the collection of the CPP/NPA/NDF's PERMIT TO CAMPAIGN FEES throughout the country, all in furtherance of the groups' overall objective to overthrow the duly constituted government by armed rebellion;

(6) Sometime in 2005 and 2006, the group of Gregorio "Gringo" Honasan, Jake Malajacan, Felix Turingan, Atty. Christopher Belmonte, and @ Friday, through 1st Lt. Angelbert Gay, 2nd Lt. Aldrin Baldonano, 1st Lt. Lawrence San Juan and other Jane/John Does, started recruiting members for the Makabayang Kawal ng Pilipino/Pilipinas (MKP) and conducted several secret meetings in Makati City, Greenhills, San Juan, Ortigas Center, Pasig City, and other parts of the country, where they discussed their objectives to oust President Arroyo and overthrow the government and, in the process, and, in furtherance of said objectives, formed a tactical alliance with the CPP/NPA/NDF resulting to the formulation of a joint program of action called "Kasunduan"; that Honasan, in one of their meetings which was attended by Felix Turingan, Jake Malajacan, Christopher Belmonte, @ Friday and several people, gave instructions to the members of MKP to continue their tactical alliance with the CPP/NPA/NDF in their common goal to overthrow the government by armed uprising;

(7) On several occasions in 2005 and 2006, Crispin Beltran, Rafael Mariano, Saturnino Ocampo, Teodoro Casino, Liza Maza, Joel Virador, together with other Jane/John Does, have been allocating/giving portions of their Countryside Development Funds (CDF) to the CPP/NPA/NDF, through their legal front organizations, to finance their objective to overthrow the government by means of armed rebellion and, likewise, accused Vicente Ladlad, Randal Echaniz, Rafael Baylosis, Rosemarie Lubi, together with Carol Pagaduan, Renato Reyes, Joel Maglunsod, Danilo Ramos, Emy de Jesus, Rita Baua and others have been giving their respective monetary contributions (butaw) and other material assistance to the CPP/NPA/NDF to finance and help the activities of the said organizations and in furtherance of their common goal to overthrow the government by armed rebellion;

(8) On several occasions in 2005 and 2006, accused Vicente Ladlad and Randal Echaniz, together with the accused party-list representatives and ranking officers/members of the CPP/NPA/NDF and other legal front organizations, continued to implement the different policies and directives of the CPP/NPA/NDF by conducting several meetings with different National Democratic Underground Mass Organizations (NDUMO), including but not limited to, the National Trade Union Bureau and the National United Front Commission

wherein they discussed the "Oust Gloria Movement" and the continuation of the armed struggle to overthrow government, among other matters; and said underground meetings were held in various places, among which are the national offices of BAYAN, KMU, Bayan Muna in Metro Manila;

(9) Sometime in February 2006, members of the Philippine Army assigned at the 7 and 8SRC, 3SRB, SOCOM stationed at Brgy. Anislag, Daraga, Albay, were ordered by Company Executive Officer 2nd Lt. Ritchie Mell Caballes to proceed to EDSA Shrine and Bulacan, respectively, and bring their black fatigue uniform and bandoleer with ammunition; and upon reaching Gumaca, Quezon, they were ordered to return to their respective stations for questioning, but they declined;

(10) On February 22, 2006, Fire Officer I Elpidio M. Urbano received a call from a certain Captain Maglaya of the Young Officers Union (Magdiwang New Generation) who informed him that there was a bomb at the fourth floor of the Department of Interior and Local Government (DILG) building hidden behind an airconditioning unit; that both President Gloria Macapagal Arroyo and DILG Secretary Ronaldo V. Puno should step down; and finally said, "Mabuhay ang Rebolusyon!";

(11) On several occasions in 2005 and 2006, in different parts of the country, accused Vicente Ladlad @ Vic, Randal Echaniz, Rafael Baylosis @ Ka Raffy, Saturnino Ocampo and Teodoro Casino, both of Bayan Muna, Rafael Mariano @ Ka Paeng and Crispin Beltran @ Ka Bel, both of Anakpawis, Liza Maza @ Ka Liza of Gabriela, Rosemarie Lubi @ Ka Tita, member of the Finance Committee of the CPP/NPA/NDF and Executive Director of the Kodao Productions, and as ranking officers/members of the CPP/NPA/NDF, together with Carol Pagaduan Araullo @ Carol, Chairwoman of Bayan, Renato Reyes @ Nato, Secretary General of Bayan, Joel Maglungsod @ Ka Joel, Secretary General of KMU, Danilo Ramos @ Ka Daning, Secretary General of KMP, Emy de Jesus @ Ka Emy, Secretary General of Gabriela, and Rita Baua @ Ka Rita, of the International Department of BAYAN, and with several other personalities, discussed, among others, the programs/ directives/ policies of the CPP/NPA/NDF, including its ongoing

drive to heighten and strengthen their ongoing armed struggle to overthrow the Estados Unidos (EU)-Arroyo Regime, the launching of an intensified propaganda campaign in furtherance of its overall objective to overthrow the EU-Arroyo Regime, the alliance of the CPP/NPA/NDF with different organizations such as the Makabayang Kawal Pilipino (MKP), BAYAN, Bayan Muna, Anakpawis, KMU, Gabriela, among others, the "100 Days Campaign to Oust PGMA" which will culminate on May 1, 2006 as D-DAY with the complete overthrow of the government;

(12) Sometime in 2006, accused Vicente Ladlad, as Secretary of the United Front Commission of the CPP/NPA/NDF, held an underground meeting with accused Randal Echaniz, Rafael Baylosis, Saturnino Ocampo, Teodoro Casino, Rafael Mariano, Liza Maza, Crispin Beltran, together with Carol Araullo, Renato Reyes and Rita Baua (in their capacities as ranking officers/members of the CPP/NPA/NDF) and others, wherein they discussed, among others, the results of the final negotiation between the CPP/NPA/NDF and the MKP for their common objective to overthrow the government; the mobilization of the legal front organizations of the CPP/NPA/NDF for a People Power Revolution; and the intensification of the armed struggle to overthrow the EU-Arroyo Regime; that the culmination of the said uprisings were planned to be staged on February 24, 2006 with, among others, the following accused, as legal front leaders of the CPP/NPA/NDF, leading their respective legal front organizations, viz: Saturnino Ocampo and Teodoro Casino for Bayan Muna; Crispin Beltran and Rafael Mariano for Anakpawis; Liza Maza for Gabriela, converging at different points of Metro Manila, together with the armed components of the CPP/NPA/NDF and the MKP, and, thereafter, they will attack Malacanang Palace and overthrow the government on May 1, 2006 as their D-DAY.

CONTRARY TO LAW.

Manila for Makati City, May 11, 2006.

EMMANUEL Y. VELASCO
Senior State Prosecutor
Chairman, Task Force-Rebellion

ROSALINA P. AQUINO
Senior State Prosecutor

AILEEN MARIE S. GUTIERREZ
Senior State Prosecutor

JOSELITA C. MENDOZA
Senior State Prosecutor

DEANA P. PEREZ
Senior State Prosecutor

MERBA A. WAGA
State Prosecutor

IRWIN A. MARAVA
State Prosecutor

APPROVED

FOR THE CHIEF STATE PROSECUTOR:

RICHARD ANTHONY D. FADULLON
Assistant Chief State Prosecutor

CERTIFICATION

THE UNDERSIGNED HEREBY CERTIFIES that a preliminary investigation of this case was conducted in accordance with the law; that based on said investigation, together with the sworn statements and other evidence submitted by complainant/s and their witnesses, there is reasonable ground to believe that the crime of REBELLION under Article 134, in relation to Article 135 of the Revised Penal Code, had been committed and is still being committed; that the accused are probably guilty thereof; that the accused were informed of the complaint and of the evidence submitted against them; that they were given the opportunity to submit controverting evidence; and that the filing of this Information is with the prior authority and approval of the Chief State Prosecutor.

Manila for Makati City, Philippines, May 11, 2006.

EMMANUEL Y. VELASCO
Senior State Prosecutor
Chairman, Task Force-Rebellion

SUBSCRIBED AND SWORN to before me this 119/469 day of May, 2006 in the City of Manila, Philippines.

OAGA G. MAUNA
State Prosecutor

WITNESSES:

1. Ruben Guevarra - c/o ISAFP, Camp Aguinaldo, Quezon City
2. Jaime Beltran Fuentes - c/o CIDG, Camp Crame, Quezon City
3. Veronica Tabara - Block 60, Lot 38, LAgro Subdivision, Novaliches, Quezon City
4. Gloria Kintanar - 146 Roosevelt Avenue, Brgy. Paraiso, SFDM, Quezon City
5. Raul Cachuela - 2nd Infantry Division, Philippine Army, Camp Capinpin, Tanay, Rizal
6. Capt. Allan Jones Salem - Balabag, Boracay, Malay, Aklan
7. And Others to be presented later.

NO BAIL RECOMMENDED

SECOND DIVISION

[G.R. Nos. 172070-72, June 01, 2007]

VICENTE P. LADLAD, NATHANAEL S. SANTIAGO, RANDALL B. ECHANIS, AND REY CLARO C. CASAMBRE, PETITIONERS, VS. SENIOR STATE PROSECUTOR EMMANUEL Y. VELASCO, SENIOR STATE PROSECUTOR JOSELITA C. MENDOZA, SENIOR STATE PROSECUTOR AILEEN MARIE S. GUTIERREZ, STATE PROSECUTOR IRWIN A. MARAYA, AND STATE PROSECUTOR MERBA A. WAGA, IN THEIR CAPACITY AS MEMBERS OF THE DEPARTMENT OF JUSTICE PANEL OF PROSECUTORS INVESTIGATING I.S. NOS. 2006-225, 2006-226 AND 2006-234, JUSTICE SECRETARY RAUL M. GONZALEZ, DIRECTOR GENERAL ARTURO C. LOMIBAO, IN HIS CAPACITY AS CHIEF, PHILIPPINE NATIONAL POLICE, P/CSUPT. RODOLFO B. MENDOZA, JR., AND P/SUPT. YOLANDA G. TANIGUE, RESPONDENTS.

[G.R. NOS. 172074-76]

LIZA L. MAZA, JOEL G. VIRADOR, SATURNINO C. OCAMPO, TEODORO A. CASIÑO, CRISPIN B. BELTRAN, AND RAFAEL V. MARIANO, PETITIONERS, VS. RAUL M. GONZALEZ, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE, JOVENCITO R. ZUÑO, IN HIS CAPACITY AS CHIEF STATE PROSECUTOR, THE PANEL OF INVESTIGATING PROSECUTORS COMPOSED OF EMMANUEL Y. VELASCO, JOSELITA C. MENDOZA, AILEEN MARIE S. GUTIERREZ, IRWIN A. MARAYA AND MERBA A. WAGA (PANEL), RODOLFO B. MENDOZA, IN HIS CAPACITY AS ACTING DEPUTY DIRECTOR, DIRECTORATE FOR INVESTIGATION AND DETECTIVE MANAGEMENT (DIDM), YOLANDA G. TANIGUE, IN HER CAPACITY AS ACTING EXECUTIVE OFFICER OF DIDM, THE DEPARTMENT OF JUSTICE (DOJ), AND THE PHILIPPINE NATIONAL POLICE (PNP), RESPONDENTS.

[G.R. NO. 175013]

CRISPIN B. BELTRAN, PETITIONER, QUISUMBING, J., CHAIRPERSON, VS. PEOPLE OF THE PHILIPPINES, SECRETARY RAUL M. GONZALEZ, IN HIS CAPACITY AS THE SECRETARY OF JUSTICE AND OVERALL SUPERIOR OF THE PUBLIC PROSECUTORS, HONORABLE ENCARNACION JAJA G. MOYA, IN HER CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 146, AND HONORABLE ELMO M. ALAMEDA, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 150, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

These are consolidated petitions for the writs of prohibition and certiorari to enjoin petitioners' prosecution for Rebellion and to set aside the rulings of the Department of Justice (DOJ) and the Regional Trial Court of Makati City (RTC Makati) on the investigation and prosecution of petitioners' cases.

The Facts

Petitioner in G.R. No. 175013, Crispin B. Beltran (Beltran), and petitioners in G.R. Nos. 172074-76, Liza L. Maza (Maza), Joel G. Virador (Virador), Saturnino C. Ocampo (Ocampo), Teodoro A. Casiño (Casiño), and Rafael V. Mariano (Mariano),[1] are members of the House of Representatives representing various party-list groups.[2] Petitioners in G.R. Nos. 172070-72 are private individuals. Petitioners all face charges for Rebellion under Article 134 in relation to Article 135 of the Revised Penal Code in two criminal cases pending with the RTC Makati.

G.R. No. 175013 (The Beltran Petition)

Following the issuance by President Gloria Macapagal-Arroyo of Presidential Proclamation No. 1017 on 24 February 2006 declaring a "State of National Emergency," police officers[3] arrested Beltran on 25 February 2006, while he was en route to Marilao, Bulacan, and detained him in Camp Crame, Quezon City. Beltran was arrested without a warrant and the arresting officers did not inform Beltran of the crime for which he was arrested. On that evening, Beltran was subjected to an inquest at the Quezon City Hall of Justice for Inciting to Sedition under Article 142 of the Revised Penal Code based on a speech Beltran allegedly gave during a rally in Quezon City on 24 February 2006, on the occasion of the 20th anniversary of the EDSA Revolution. The inquest was based on the joint affidavit of Beltran's arresting officers who claimed to have been present at the rally. The inquest prosecutor[4] indicted Beltran and filed the corresponding Information with the Metropolitan Trial Court of Quezon City (MeTC).[5]

The authorities brought back Beltran to Camp Crame where, on 27 February 2006, he was subjected to a second inquest, with 1st Lt. Lawrence San Juan (San Juan), this time for Rebellion. A panel of State prosecutors[6] from the DOJ conducted this second inquest. The inquest was based on two letters, both dated 27 February 2006, of Yolanda Tanigue (Tanigue) and of Rodolfo Mendoza (Mendoza). Tanigue is the Acting Executive Officer of the Criminal Investigation and Detection Group (CIDG), Philippine National Police (PNP), while Mendoza is the Acting Deputy Director of the CIDG. The letters referred to the DOJ for appropriate action the results of the CIDG's investigation implicating Beltran, the petitioners in G.R. Nos. 172074-76, San Juan, and several others as "leaders and promoters" of an alleged foiled plot to overthrow the Arroyo government. The plot was supposed to be carried out jointly by members of the Communist Party of the Philippines (CPP) and the Makabayang Kawal ng Pilipinas (MKP), which have formed a "tactical alliance."

On 27 February 2006, the DOJ panel of prosecutors issued a Resolution finding probable cause to indict Beltran and San Juan as "leaders/promoters" of Rebellion. The panel then filed an Information with the RTC Makati. The Information alleged that Beltran, San Juan, and other individuals "conspiring and confederating with each other, x x x, did then and there willfully, unlawfully, and feloniously form a tactical alliance between the CPP/NPA, renamed as Partidong Komunista ng Pilipinas (PKP) and its armed regular members as Katipunan ng Anak ng Bayan (KAB) with the Makabayang Kawal ng Pilipinas (MKP) and thereby rise publicly and take up arms against the duly constituted government, x x x."[7] The Information, docketed as Criminal Case No. 06-452, was raffled to Branch 137 under Presiding Judge Jenny Lind R. Aldecoa-Delorino (Judge Delorino).

Beltran moved that Branch 137 make a judicial determination of probable cause against him.[8] Before the motion could be resolved, Judge Delorino recused herself from the case which was re-raffled to Branch 146 under Judge Encarnacion Jaja-Moya (Judge Moya).

In its Order dated 31 May 2006, Branch 146 sustained the finding of probable cause against Beltran.[9] Beltran sought reconsideration but Judge Moya also inhibited herself from the case without resolving Beltran's motion. Judge Elmo M. Alameda of Branch 150, to whom the case was re-raffled, issued an Order on 29 August 2006 denying Beltran's motion.

Hence, the petition in G.R. No. 175013 to set aside the Orders dated 31 May 2006 and 29 August 2006 and to enjoin Beltran's prosecution.

In his Comment to the petition, the Solicitor General claims that Beltran's inquest for Rebellion was valid and that the RTC Makati correctly found probable cause to try Beltran for such felony.

G.R. Nos. 172070-72 and 172074-76 (The Maza and Ladlad Petitions)

Based on Tanigue and Mendoza's letters, the DOJ sent subpoenas to petitioners on 6 March 2006 requiring them to appear at the DOJ Office on 13 March 2006 "to get copies of the complaint and its attachment." Prior to their receipt of the subpoenas, petitioners had quartered themselves inside the House of Representatives building for fear of being subjected to warrantless arrest.

During the preliminary investigation on 13 March 2006, the counsel for the CIDG presented a masked man, later identified as Jaime Fuentes (Fuentes), who claimed to be an eyewitness against petitioners. Fuentes subscribed to his affidavit before respondent prosecutor Emmanuel Velasco who then gave copies of the affidavit to media members present during the proceedings. The panel of prosecutors[10] gave petitioners 10 days within which to file their counter-affidavits. Petitioners were furnished the complete copies of documents supporting the CIDG's letters **only** on 17 March 2006.

Petitioners moved for the inhibition of the members of the prosecution panel for lack of impartiality and independence, considering the political milieu under which petitioners were investigated, the statements that the President and the Secretary of Justice made to the media regarding petitioners' case,[11] and the manner in which the prosecution panel conducted the preliminary investigation. The DOJ panel of prosecutors denied petitioners' motion on 22 March 2006. Petitioners sought reconsideration and additionally prayed for the dismissal of the cases. However, the panel of prosecutors denied petitioners' motions on 4 April 2006.

Petitioners now seek the nullification of the DOJ Orders of 22 March 2006 and 4 April 2006.

Acting on petitioners' prayer for the issuance of an injunctive writ, the Court issued a status quo order on 5 June 2006. Prior to this, however, the panel of prosecutors, on 21 April 2006, issued a Resolution finding probable cause to charge petitioners and 46 others with Rebellion. The prosecutors filed the corresponding Information with Branch 57 of the RTC Makati, docketed as Criminal Case No. 06-944 (later consolidated with Criminal Case No. 06-452 in Branch 146), charging petitioners and their co-accused as "principals, masterminds, [or] heads" of a Rebellion.[12] Consequently, the petitioners in G.R. Nos. 172070-72 filed a supplemental petition to enjoin the prosecution of Criminal Case No. 06-944.

In his separate Comment to the Maza petition, the Solicitor General submits that the preliminary investigation of petitioners was not tainted with irregularities. The Solicitor General also claims that the filing of Criminal Case No. 06-944 has mooted the Maza petition.

The Issues

The petitions raise the following issues:

1. In G.R. No. 175013, (a) whether the inquest proceeding against Beltran for Rebellion was valid and (b) whether there is probable cause to indict Beltran for Rebellion; and

2. In G.R. Nos. 172070-72 and 172074-76, whether respondent prosecutors should be enjoined from continuing with the prosecution of Criminal Case No. 06-944.[13]

The Ruling of the Court

We find the petitions meritorious.

On the Beltran Petition

The Inquest Proceeding against Beltran for Rebellion is Void.

Inquest proceedings are proper only when the accused has been lawfully arrested without

warrant.[14] Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides the instances when such warrantless arrest may be effected, thus:
Arrest without warrant; when lawful.— A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

x x x x

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.
The joint affidavit of Beltran's arresting officers[15] states that the officers arrested Beltran, without a warrant,[16] for Inciting to Sedition, and not for Rebellion. Thus, the inquest prosecutor could only have conducted – as he did conduct – an inquest for Inciting to Sedition and no other. Consequently, when another group of prosecutors subjected Beltran to a second inquest proceeding for Rebellion, they overstepped their authority rendering the second inquest void. None of Beltran's arresting officers saw Beltran commit, in their presence, the crime of Rebellion. Nor did they have personal knowledge of facts and circumstances that Beltran had just committed Rebellion, sufficient to form probable cause to believe that he had committed Rebellion. What these arresting officers alleged in their affidavit is that they saw and heard Beltran make an allegedly seditious speech on 24 February 2006.[17]

Indeed, under DOJ Circular No. 61, dated 21 September 1993, the initial duty of the inquest officer is to determine if the arrest of the detained person was made "in accordance with the provisions of paragraphs (a) and (b) of Section 5, Rule 113."[18] If the arrest was not properly effected, the inquest officer should proceed under Section 9 of Circular No. 61 which provides:
Where Arrest Not Properly Effected.— Should the Inquest Officer find that the arrest was not made in accordance with the Rules, he shall:

a) recommend the release of the person arrested or detained;
b) note down the disposition on the referral document;
c) prepare a brief memorandum indicating the reasons for the action taken; and
d) forward the same, together with the record of the case, to the City or Provincial Prosecutor for appropriate action.

Where the recommendation for the release of the detained person is approved by the City or Provincial Prosecutor **but the evidence on hand warrant the conduct of a regular preliminary investigation, the order of release shall be served on the officer having**

custody of said detainee and shall direct the said officer to serve upon the detainee the subpoena or notice of preliminary investigation, together with the copies of the charge sheet or complaint, affidavit or sworn statements of the complainant and his witnesses and other supporting evidence. (Emphasis supplied)
For the failure of Beltran's panel of inquest prosecutors to comply with Section 7, Rule 112 in relation to Section 5, Rule 113 and DOJ Circular No. 61, we declare Beltran's inquest void.[19] Beltran would have been entitled to a preliminary investigation had he not asked the trial court to make a judicial determination of probable cause, which effectively took the place of such proceeding.

There is No Probable Cause to Indict Beltran for Rebellion.

Probable cause is the "existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted."[20] To accord respect to the discretion granted to the prosecutor and for reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations.[21] However, in the few exceptional cases where the prosecutor abused his discretion by ignoring a clear insufficiency of evidence to support a finding of probable cause, thus denying the accused his right to substantive and procedural due process, we have not hesitated to intervene and exercise our review power under Rule 65 to overturn the prosecutor's findings.[22] This exception holds true here.

Rebellion under Article 134 of the Revised Penal Code is committed –
[B]y rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, or any body of land, naval, or other armed forces or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.
The elements of the offense are:

1. That there be a (a) public uprising and (b) taking arms against the Government; and

2. That the purpose of the uprising or movement is either –

   (a) to remove from the allegiance to said Government or its laws:

   (1) the territory of the Philippines or any part thereof; or
   (2) any body of land, naval, or other armed forces; or

   (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[23]

Thus, by its nature, rebellion is a crime of the masses or multitudes involving crowd action done in furtherance of a political end.[24]

The evidence before the panel of prosecutors who conducted the inquest of Beltran for Rebellion consisted of the affidavits and other documents[25] attached to the CIDG letters. We have gone over these documents and find merit in Beltran's contention that the same are insufficient to show probable cause to indict him for Rebellion. The bulk of the documents consists of affidavits, some of which were sworn before a notary public, executed by members of the military and some civilians. Except for two affidavits, executed by a certain Ruel Escala (Escala), dated 20 Febuary 2006,[26] and Raul Cachuela (Cachuela), dated 23 February 2006,[27] none of the affidavits mentions Beltran.[28] In his affidavit, Escala recounted that in the afternoon of 20 February 2006, he saw Beltran, Ocampo, Casiño, Maza, Mariano, Virador, and other individuals on board a vehicle which entered a chicken farm in Bucal, Padre Garcia, Batangas and that after the passengers alighted, they were met by another individual who looked like San Juan. For his part, Cachuela stated that he was a former member of the CPP and that (1) he attended the CPP's "10th Plenum" in 1992 where he saw Beltran; (2) he took part in criminal activities; and (3) the arms he and the other CPP members used were purchased partly from contributions by Congressional members, like Beltran, who represent party-list groups affiliated with the CPP.

The allegations in these affidavits are far from the proof needed to indict Beltran for taking part in an armed public uprising against the government. What these documents prove, at best, is that Beltran was in Bucal, Padre Garcia, Batangas on 20 February 2006 and that 14 years earlier, he was present during the 1992 CPP Plenum. None of the affidavits stated that Beltran committed specific acts of promoting, maintaining, or heading a rebellion as found in the DOJ Resolution of 27 February 2006. None of the affidavits alleged that Beltran is a leader of a rebellion. Beltran's alleged presence during the 1992 CPP Plenum does not automatically make him a leader of a rebellion.

In fact, Cachuela's affidavit stated that Beltran attended the 1992 CPP Plenum as "Chairman, Kilusang Mayo Uno (KMU)." Assuming that Beltran is a member of the CPP, which Beltran does not acknowledge, mere membership in the CPP does not constitute rebellion.[29] As for the alleged funding of the CPP's military equipment from Beltran's congressional funds, Cachuela's affidavit merely contained a general conclusion without any specific act showing such funding. Cachuela merely alleged that *"ang mga ibang mga pondo namin ay galing sa mga party list na naihalal sa Kongreso tulad ng BAYAN MUNA – pimumunuan nila SATUR OCAMPO at CRISPIN BELTRAN, x x x."*[30] Such a general conclusion does not establish probable cause.

In his Comment to Beltran's petition, the Solicitor General points to Fuentes' affidavit, dated 25 February 2006,[31] as basis for the finding of probable cause against Beltran as Fuentes provided details in his statement regarding meetings Beltran and the other petitioners attended in 2005 and 2006 in which plans to overthrow violently the Arroyo government were allegedly discussed, among others.

The claim is untenable. Fuentes' affidavit was not part of the attachments the CIDG referred to the DOJ on 27 February 2006. Thus, the panel of inquest prosecutors did not have Fuentes' affidavit in their possession when they conducted the Rebellion inquest against Beltran on that day. Indeed, although this affidavit is dated 25 February 2006, the CIDG first presented it only during the preliminary investigation of the other petitioners on 13 March 2006 during which Fuentes subscribed to his statement before respondent prosecutor Velasco.

Respondent prosecutors later tried to remedy this fatal defect by *motu proprio* submitting to Branch 137 of the RTC Makati Fuentes' affidavit as part of their Comment to Beltran's motion for judicial determination of probable cause. Such belated submission, a tacit admission of the dearth of evidence against Beltran during the inquest, does not improve the prosecution's case. Assuming them to be true, what the allegations in Fuentes' affidavit make out is a case for Conspiracy to Commit Rebellion, punishable under Article 136 of the Revised Penal Code, not Rebellion under Article 134. Attendance in meetings to discuss, among others, plans to bring down a government is a mere preparatory step to commit the acts constituting Rebellion under Article 134. Even the prosecution acknowledged this, since the felony charged in the Information against Beltran and San Juan in Criminal Case No. 06-452 is Conspiracy to Commit Rebellion and not Rebellion. The Information merely alleged that Beltran, San Juan, and others conspired to form a "tactical alliance" to commit Rebellion. Thus, the RTC Makati erred when it nevertheless found probable cause to try Beltran for Rebellion based on the evidence before it.

The minutes[32] of the 20 February 2006 alleged meeting in Batangas between members of MKP and CPP, including Beltran, also do not detract from our finding. Nowhere in the minutes was Beltran implicated. While the minutes state that a certain "Cris" attended the alleged meeting, there is no other evidence on record indicating that "Cris" is Beltran. San Juan, from whom the "flash drive" containing the so-called minutes was allegedly taken, denies knowing Beltran.

To repeat, none of the affidavits alleges that Beltran is promoting, maintaining, or heading a Rebellion. The Information in Criminal Case No. 06-452 itself does not make such allegation. Thus, even assuming that the Information validly charges Beltran for taking part in a Rebellion, he is entitled to bail as a matter of right since there is no allegation in the Information that he is a leader or promoter of the Rebellion.[33] However, the Information in fact merely charges Beltran for "conspiring and confederating" with others in forming a "tactical alliance" to commit rebellion. As worded, the Information does not charge Beltran with Rebellion but with Conspiracy to Commit Rebellion, a bailable offense.[34]

On the Ladlad and Maza Petitions

The Preliminary Investigation was Tainted With Irregularities.

As in the determination of probable cause, this Court is similarly loath to enjoin the

prosecution of offenses, a practice rooted on public interest as the speedy closure of criminal investigations fosters public safety.[35] However, such relief in equity may be granted if, among others, the same is necessary (a) to prevent the use of the strong arm of the law in an oppressive and vindictive manner[36] or (b) to afford adequate protection to constitutional rights.[37] The case of the petitioners in G.R. Nos. 172070-72 and 172074-76 falls under these exceptions.

The procedure for preliminary investigation of offenses punishable by at least four years, two months and one day is outlined in Section 3, Rule 112 of the Revised Rules of Criminal Procedure, thus:
Procedure.—The preliminary investigation shall be conducted in the following manner:

(a) **The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public,** each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (Emphasis supplied)

Instead of following this procedure **scrupulously**, as what this Court had mandated in an earlier ruling, "so that the constitutional right to liberty of a potential accused can be protected from any material damage,"[38] respondent prosecutors nonchalantly disregarded it. Respondent prosecutors failed to comply with Section 3(a) of Rule 112 which provides that the complaint (which, with its attachment, must be of such number as there are respondents) be accompanied by the affidavits of the complainant and his witnesses, subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public. Respondent prosecutors treated the unsubscribed letters of Tanigue and Mendoza of the CIDG, PNP as complaints[39] and accepted the affidavits attached to the letters even though some of them were notarized by a notary public without any showing that a prosecutor or qualified government official was unavailable as required by Section 3(a) of Rule 112.

Further, Section 3(b) of Rule 112 mandates that the prosecutor, after receiving the complaint, must determine if there are grounds to continue with the investigation. If there is none, he shall dismiss the case, otherwise he shall "issue a subpoena to the respondents." Here, after receiving the CIDG letters, respondent prosecutors peremptorily issued subpoenas to petitioners requiring them to appear at the DOJ office on 13 March 2006 "to secure copies of the complaints and its attachments." During the investigation, respondent prosecutors allowed the CIDG to present a masked Fuentes who subscribed to an affidavit before respondent prosecutor Velasco. Velasco proceeded to distribute copies of Fuentes' affidavit not to petitioners or their counsels but to members of the media who covered the proceedings. Respondent prosecutors then required petitioners to submit their counter-affidavits in 10 days. It was **only** four days later, on 17 March 2006, that petitioners received the complete copy of the attachments to the CIDG letters.

These uncontroverted facts belie respondent prosecutors' statement in the Order of 22 March 2006 that the preliminary investigation "was done in accordance with the Revised Rules o[f] Criminal Procedure."[40] Indeed, by peremptorily issuing the subpoenas to petitioners, tolerating the complainant's antics during the investigation, and distributing copies of a witness' affidavit to members of the media knowing that petitioners have not had the opportunity to examine the charges against them, respondent prosecutors not only trivialized the investigation but also lent credence to petitioners' claim that the entire

proceeding was a sham.

A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other hand. Thus, we have characterized the right to a preliminary investigation as not "a mere formal or technical right" but a "substantive" one, forming part of due process in criminal justice.[41] This especially holds true here where the offense charged is punishable by *reclusion perpetua* and may be non-bailable for those accused as principals.

Contrary to the submission of the Solicitor General, respondent prosecutors' filing of the Information against petitioners on 21 April 2006 with Branch 57 of the RTC Makati does not moot the petitions in G.R. Nos. 172070-72 and 172074-76. Our power to enjoin prosecutions cannot be frustrated by the simple filing of the Information with the trial court.

On Respondent Prosecutors' Lack of Impartiality

We find merit in petitioners' doubt on respondent prosecutors' impartiality. Respondent Secretary of Justice, who exercises supervision and control over the panel of prosecutors, stated in an interview on 13 March 2006, the day of the preliminary investigation, that, **"We [the DOJ] will just declare probable cause, then it's up to the [C]ourt to decide** x x x."[42] Petitioners raised this issue in their petition,[43] but respondents never disputed the veracity of this statement. This clearly shows pre-judgment, a determination to file the Information even in the absence of probable cause.

A Final Word

The obvious involvement of political considerations in the actuations of respondent Secretary of Justice and respondent prosecutors brings to mind an observation we made in another equally politically charged case. We reiterate what we stated then, if only to emphasize the importance of maintaining the integrity of criminal prosecutions in general and preliminary investigations in particular, thus:

[W]e 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 evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may be public's perception of the impartiality of the prosecutor be enhanced.[44]

WHEREFORE, we **GRANT** the petitions. In G.R. No. 175013, we **SET ASIDE** the Order dated 31 May 2006 of the Regional Trial Court, Makati City, Branch 146 and the Order dated 29 August 2006 of the Regional Trial Court, Makati City, Branch 150. In G.R. Nos. 172070-72 and 172074-76, we **SET ASIDE** the Orders dated 22 March 2006 and 4 April 2006 issued by respondent prosecutors. We **ORDER** the Regional Trial Court, Makati City, Branch 150 to **DISMISS** Criminal Case Nos. 06-452 and 06-944.

SO ORDERED.

Quisumbing, (Chairperson), J., concur.
Tinga, J., in the result.
Carpio-Morales, J., on official leave.
Velasco, Jr., J., no part to relationship to resp. Velasco.

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[1] Beltran is also one of the petitioners in G.R. Nos. 172074-76.

[2] Beltran and Mariano represent Anakpawis; Virador, Casiño, and Ocampo represent Bayan Muna; and Maza represents Gabriela.

[3] Police Chief Inspector Rino V. Corpuz, Police Inspector Honesto Gaton, and SPO1 Arnold J. Casumpang.

[4] Atty. Ben V. Dela Cruz.

[5] During the inquest and in a motion filed with the MeTC, Beltran protested his detention, invoking his parliamentary immunity from arrest under Section 11, Article VI of the 1987 Constitution since Inciting to Sedition is punishable with a maximum penalty of less than six years. Finding merit in Beltran's motion, the MeTC ordered Beltran's release in its Order of 13 March 2006. This ruling was never implemented.

[6] Composed of Attys. Emmanuel Y. Velasco, Rosalina P. Aquino, Aileen Marie S. Gutierrez, Irwin A. Maraya, and Maria Cristina P. Rilloraza.

[7] *Rollo* (G.R. No. 175013), pp. 84-85; Annex "I." The Information reads in full:
That prior to February 24, 2006 and dates subsequent thereto, in Makati City and within the jurisdiction of this Honorable Court (and other parts of the Philippines) the above named accused 1Lt. LAWRENCE SAN JUAN, being then a member of the Philippine Army, CRISPIN BELTRAN y BERTIZ, duly elected member of the House of Representatives, together with several other JOHN/JANE DOES whose present identities and whereabouts are presently unknown, conspiring and confederating with each other, did then and there willfully, unlawfully and feloniously, form a tactical alliance between the CPP/NPA, renamed as Partidong Komunista and Pilipinas (PKP) and its armed regular members as Katipunan ng Anak ng Bayan (KAB) with the Makabayang Kawal ng Pilipinas (MKP) and thereby rise publicly and take up arms against the duly constituted government, such as, but not limited to, conducting bombing activities and liquidation of military and police personnel, for the purpose of removing allegiance from the Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers and prerogatives and ultimately to overthrow President Gloria Macapagal Arroyo and the present duly constituted Government.

[8] Pending resolution of Beltran's motion, the DOJ sought leave from Branch 137 to file an Amended Information in Criminal Case No. 06-452, impleading additional 46 defendants, including the petitioners in G.R. Nos. 172074-76 and 172070-72 and encompassing crimes committed since the 1960s. On petitioners' motion, Branch 137 expunged the Amended Information for being an entirely new Information.

[9] *Rollo* (G.R. No. 175013), p. 59; Annex "A." The Order of 31 May 2006 pertinently reads: "After examining the record of this case, the Court finds probable cause to believe that accused 1st Lt. Lawrence San Juan, P.A. and Crispin Beltran y Bertiz committed the crime charged. Let a commitment order be issued."

[10] Composed of Attys. Emmanuel Y. Velasco, Joselita C. Mendoza, Aileen Marie S. Gutierrez, Irwin A. Maraya, and Merba A. Waga.

[11] *Rollo* (G.R. Nos. 172074-76), pp. 99-102; Annexes "K" and "L." The President was quoted by a daily, thus: "They [petitioners in the Maza petition] have committed a crime. They are committing a continuing crime. And we have laws to deal with that. x x x." (The Philippine Star, 12 March 2006, p. 1). Respondent Gonzalez was also reported to have said: "We will just declare probable cause, then it's up to the Court to decide. x x x." (The Philippine Star, 14 March 2006, p. 6)

[12] *Rollo* (G.R. Nos. 172070-72), pp. 540-541; Annex "11."

[13] The Solicitor General claims that the petitioners in the Maza petition (except Beltran) are guilty of forum-shopping for having filed with the Court of Appeals a petition for certiorari and prohibition (docketed as CA G.R. SP No. 93975) "demanding the conduct of preliminary investigation." However, the records show that the petition in CA G.R. SP No. 93975 sought the nullification of a DOJ Order, dated 1 March 2006, apparently relating to the warrantless arrest of Maza, Ocampo, Casiño, Mariano, and Virador. Also, the Court of Appeals considered CA G.R. SP No. 93975 "closed and terminated" in its Resolution of 28 June 2006.

[14] Section 7, Rule 112 provides: "*When accused lawfully arrested without warrant.*— **When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing Rules.** In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule." (Emphasis supplied)

[15] *Rollo* (G.R. No. 175013), pp. 540-541; Annex "PP-1." Beltran's arrest was later declared illegal by the MeTC for violating Beltran's parliamentary immunity from arrest under Section 11, Article VI of the Constitution. It appears the prosecution did not appeal from this ruling.

[16] Beltran also claims that on the night of his arrest, his jailors showed him a warrant of arrest, dated 7 October 1985, issued by the Regional Trial Court of Quezon City, Branch 84, in connection with Criminal Case No. Q-21905 for "inciting to rebellion" which had been archived in October 1985.

[17] Even under the rulings in *Garcia-Padilla v. Enrile* (No. L-61388, 20 April 1983, 121 SCRA 472 also reported as *Parong v. Enrile*, 206 Phil. 392) and *Umil v. Ramos* (G.R. No. 81567, 9 July 1990, 187 SCRA 811) where the Court characterized Rebellion as a "continuing offense" thus allowing the warrantless arrest of its perpetrators, Beltran's inquest for Rebellion remains void as he was not arrested for committing such felony.

[18] "Section 8. *Initial Duty of the Inquest Officer.*— The Inquest Officer must first determine if the arrest of the detained person was made in accordance with the provisions of paragraphs (a) and (b) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure, as amended, x x x."

[19] *Larranaga v. Court of Appeals,* 346 Phil. 241 (1997); *Go v. Court of Appeals*, G.R. No. 101837, 11 February 1992, 206 SCRA 138.

[20] *Cruz, Jr. v. People,* G.R. No. 110436, 27 June 1994, 233 SCRA 439.

[21] *Acuña v. Deputy Ombudsman for Luzon,* G.R. No. 144692, 31 January 2005, 450 SCRA 232.

[22] See *Allado v. Diokno,* G.R. No. 113630, 5 May 1994, 232 SCRA 192; *Salonga v. Cruz-Paño,* No. L-59524, 18 February 1985, 134 SCRA 438.

[23] II L. B. REYES, THE REVISED PENAL CODE 84 (14th ed., 1998).

[24] *People v. Lovedioro,* 320 Phil. 481 (1995).

[25] Including official receipts, publications, articles, inventories, and photocopies of ID pictures.

[26] *Rollo* (G.R. No. 175013), pp. 690-693; Annex "PP-27."

[27] Id., pp. 605-615; Annex "PP-14."

[28] The affidavits mainly concern the organization and recruitment of members of MKP, the aborted participation of MKP members in a rally on 24 February 2006, and the criminal activities of CPP members.

[29] See *Buscayno v. Military Commissions Nos. 1, 2, 6 and 25,* 196 Phil. 41 (1981); *People v. Hernandez,* 120 Phil. 191 (1964).

[30] *Rollo* (G.R. No. 175013), p. 613.

[31] *Rollo* (G.R. Nos. 172070-72), pp. 59-67; Annex "D."

[32] *Rollo* (G.R. No. 175013), pp. 657-674; Annex "PP-18."

[33] Article 135 of the Revised Penal Code pertinently provides:

"Any person who promotes, maintains, or heads a rebellion or insurrection shall suffer the penalty of *reclusion perpetua.*
Any person merely participating or executing the commands of others in rebellion, insurrection or *coup d'etat* shall suffer the penalty of *reclusion temporal.*"

[34] Under Article 136 of the Revised Penal Code, Conspiracy to Commit Rebellion is punishable by *prision correccional* in its maximum period and a fine which shall not exceed five thousand pesos (P5,000).

[35] *Hernandez v. Albano,* 125 Phil. 513 (1967).

[36] *Dimayuga v. Fernandez,* 43 Phil. 304 (1922).

[37] *Hernandez v. Albano,* supra.

[38] *Webb v. De Leon,* 317 Phil. 758 (1995).

[39] Defined under Section 3, Rule 110 of the Revised Rules of Criminal Procedure as "**sworn** written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated." (Emphasis supplied)

[40] *Rollo* (G.R. Nos. 172074-76), pp. 61-62; Annex "A."

[41] *Go v. Court of Appeals,* supra note 19.

[42] *Rollo* (G.R. No. 172074-76), p. 102.

[43] Id., pp. 16-17.

[44] *Tatad v. Sandiganbayan,* No. L-72335-39, 21 March 1988, 159 SCRA 70, 81.

ANNEX 1-c

10 Years Agreements

PEACE

Foreword

Ten years ago today, a one-page document was signed inThe Hague, The Netherlands by two men, Cong. Jose Yap and Mr. Luis Jalandoni, representing two Parties — the Philippine Government and the National Democratic Front of the Philippines— that had been at war for more than two decades.

The Hague Joint Declaration paved the way for the GRP-NDFP peace negotiations. It established the framework for the formal negotiations and set forth the substantive agenda. The talks have undoubtedly moved forward since then, albeit slowly and in fits and starts. Agreements have been reached that no one had ever thought possible ten years ago.

We are publishing here the ten major agreements forged between the GRP and the NDFP over the past ten years, starting with The Hague Joint Declaration and including the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law. These documents are the result of arduous work by the two panels and their staffs. They are a testament to what can be achieved under a reasonable negotiating framework.

We have also included Prof. Jose Ma. Sison's introduction to the pamphlet issued by the NDFP in September 1998, "COMPREHENSIVE AGREEMENT ON RESPECT FOR HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW and Related Documents (1992-98) In the Peace Negotiations Between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP)" This introduction states the NDFP's standpoint on the agreements that have been reached, and on specific issues and problems that have occasionally stalled the talks and how these could be overcome.

Concluding the collection is the "Joint GRP-NDFP Statement on Resumption of Formal Peace Talks" of March 9, 2001, where both Parties uphold the validity of all the agreements they have entered,

forged and resolved to pursue the formal talks to complete the remaining three substantive agenda: socio-economic reforms, political & constitutional reforms, and the end of hostilities and disposition of forces.

Our own commentary, "New Approach to Peace, or Ultimatum for Surrender?" (March 22, 2002) is appended to update the reader on the Macapagal-Arroyo government's recent policy shift from formal talks to "backchanneling", a marked departure from The Hague Joint Declaration framework.

Finally, the "Chronology of Current GRP-NDFP Peace Negotiations" is given to aid the reader in following the sequence of major events from the NDFP's announcement of its openness to a resumption of peace talks in December 1988 to the recent redeployment by the Macapagal-Arroyo government of troops against the New People's Army.

Rey Claro C. Casambre
Executive Director
Philippine Peace Center
September 1, 2002

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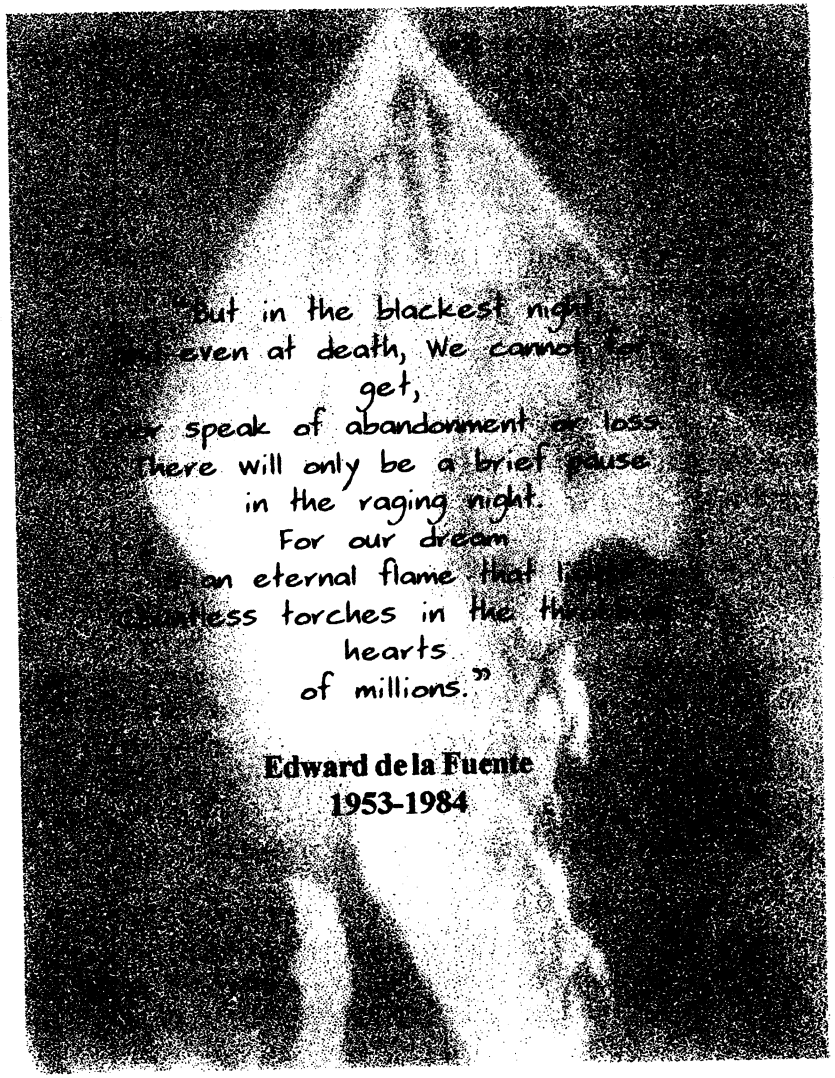

Introduction to "Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law and Related Documents (1992-98) in the Peace Negotiations Between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP),"

by Jose Ma. Sison
NDFP Chief Political Consultant
26 September 1998

It is useful and enlightening for everyone to read this compilation of all major agreements so far reached in the peace negotiations between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP), up to the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRJHL). This comprehensive agreement is the fulfillment of the first of the four headings of the substantive agenda in said negotiations.

Principle of Noncapitulation in Peace Negotiations

The two contending parties in the civil war, the GRP and the NDFP succeeded in forging the CARHRIHL because they are bound and guided by Paragraph 4 of The Hague Joint Declaration of 1992. This states: "The holding of peace negotiations must be in accordance with mutually acceptable principles, including national sovereignty, democracy and social justice, and no precondition shall be made to negate the inherent character and purpose of the peace negotiations"

By this provision, the principle of noncapitulation is established. It is against the inherent character of peace negotiations for any side to impose on the other side such preconditions as that the latter must submit to the former's constitution or end the armed struggle without mutual satisfaction on substantive demands.Iit would also be violative of The Hague Joint Declaration for any side to render ineffective a mutually approved agreement just because the other side refuses to capitulate.

In accordance with the aforesaid declaration, the GRP negotiating panel averred in the Breukelen Joint Statement of 14 June 1994: "...it is clear that GRP's adherence to constitutional processes does not constitute the imposition of the GRP Constitution as framework for the peace talks". The GRP cannot unilaterally impose the GRP constitution on the peace negotiations or on any bilateral agreement resulting therefrom.

The Joint Agreement for Safety and immunity Guarantees (JASIG) and the CARHRIHL as well as the procedural and technical agreements are all formulated in accordance with the framework of "mutually acceptable principles and no capitulation" provided by The Hague Joint Declaration.

As contracting parties in the CARHRIHL, the GRP and the NDFP mutually recognize the existence of opposing constitutional frameworks as well as common frames of reference. They mutually reject the imposition of the constitutional and legal processes of either of them upon the other and stipulate common as well as separate duties and responsibilities in accordance with their respective constitutional frameworks and directives of their respective principals. These underlying fundamental principles of equality, parity, mutuality and reciprocity are clearly expressed in such provisions of the CARHRIHL as the following:

Preamble, paragraph 6: REALIZING the necessity and significance of assuming separate duties and responsibilities for upholding, protecting and promoting the principles of human rights and the principles of international humanitarian law,

Article 2, Part 1: The Parties uphold the principles of mutuality and reciprocity in the conduct of the peace negotiations in accordance with the Hague Joint Declaration. The Parties likewise affirm the need to assume separate duties and responsibilities in accordance with the letter and intent of this Agreement.

Article 3, Part 11: The Parties shall uphold, protect and promote the full scope of human rights, including civil, political, economic, social and cultural rights. In complying with such obligation due consideration shall be accorded the respective political principles and circumstances of the Parties.

Article 1, Part III: In the exercise of their inherent rights, the Parties shall adhere to and be bound by the principles and standards embodied in international instruments on human rights.

Article 1, Part IV: In the exercise of their inherent rights, the Parties to the armed conflict shall adhere to and be bound by the generally accepted principles and standards of international humanitarian law.

Article 1, Part VI: The Parties shall continue to assume separate duties and responsibilities for upholding, protecting and promoting human rights and the principles of international humanitarian law in accordance with their respective political principles, organizations and circumstances until they shall have reached final resolution of the armed conflict and

Article 3, Part VI: Nothing in the provisions of this Agreement nor in its application shall affect the political and legal status of the Parties in accordance with the Hague Joint Declaration. x x x Any reference to the treaties signed by the GRP and to its laws and legal processes in this Agreement shall not in any manner prejudice the political and organizational integrity of the NDFP.

In negotiating with the GRP, the NDFP has always stood up for its revolutionary integrity and the status of belligerency under international law. It has rebuffed any overt or covert attempt of the GRP to put it into a position of capitulation. It is keenly conscious of avoiding the path of capitulation and betrayal of the people's interests. It perseveres on the line of struggle for national liberation and democracy as the line for a just and lasting peace.

The CARHRIHL reflects the principled revolutionary position of the NDFP as the political authority entrusted by the people's democratic government, revolutionary forces and people with the task of negotiating with the GRP. Said agreement respects the political and organizational integrity of the NDFP as a political authority on an equal footing with the GRP. It allows common and separate duties of the GRP and the NDFP as contracting parties with their respective constitutions and areas of political power.

As co-belligerents in the civil war, the GRP and the NDFP override the existence of their conflicting constitutional frameworks by adopting

the International Bill of Rights (Universal Declaration of Human Rights and the UN covenants on human rights) and International Humanitarian Law (the Geneva Conventions and its protocols) as their common frame of reference. While the GRP and the NDFP are bound by these international instruments, they can also perform common and separate duties in accordance with their respective constitutions.

The CARHRIHL upholds multiple guarantees of respect for human rights and international humanitarian law. These guarantees are provided by the CARHRIHL itself, by the International Bill of Rights and International Humanitarian Law and by the separate constitutional frameworks of the cobelligerents GRP and NDFP, which apply in their respective areas of effective political authority. Ahead of the CARHRIHL, the NDFP issued its Declaration of Adherence to International Humanitarian Law on August 15,1991 and the Unilateral Declaration of Undertaking to Apply the Geneva Conventions and Protocol I on July 5, 1996.

Among the most tangible provisions of the CARHRIHL, whose immediate implementation the NDFP is pressing for, are those pertaining to the following:

1. the formation of a Joint Monitoring Committee for ensuring and verifying the implementation of CARHRIHL,
2. the accelerated release of political prisoners falsely and unjustly convicted by the GRP for common crimes,
3. the indemnification of the victims of human rights violations in accordance with the decisions of the US and Swiss supreme courts,
4. the repeal of repressive laws, decrees and other executive issuances which the GRP has used to carry out arbitrary seizures and detention, torture and summary execution, and
5. the termination of laws, policies, programs, projects and campaigns that cause massive violations of human rights, like forced evacuation and eviction and bombardment of entire communities.

The broad masses of the people demand immediate compliance with the foregoing. The GRP is being tested whether its approval of the CARHRIHL is done in good faith or not. Let us see whether the GRP can comply with this bilateral agreement. GRP noncompliance can only serve to fuel the flames of the people's revolutionary resistance.

The entire CARHRIHL is immediately effective and binding upon the full and unconditional approval by the GRP and the NDFP principals. But there are certain elements of the GRP, who are extremely reactionary, who demand the capitulation and pacification of the people's revolutionary movement as precondition to the implementation of the CARHRIHL. In effect, what they demand is the end of the peace negotiations and the intensification of the civil war. The broad masses of the people must therefore remain vigilant and militant.

GRP Disruptions of the Peace Negotiations

By entering into the CARHRIHL, the NDFP demonstrates its willingness and ability to engage in serious negotiations and forge mutually satisfactory agreements with the GRP on crucial issues in order to create a favorable atmosphere for peace negotiations, address the roots of the civil war and lay the ground for a just and lasting peace.

Even before the start of the formal peace negotiations in 1995, the NDFP was ready with a thoroughgoing draft of a comprehensive agreement on respect for human rights and international humanitarian law. Subsequently, it earnestly pursued the negotiations on the subject. This is a matter of great and urgent concern to the people and the revolutionary forces. But the GRP disrupted the formal talks several times over extended periods.

On the very day after the opening of the formal negotiations in Brussels, Belgium in June 1995, the GRP declared an indefinite suspension of formal meetings. It did so after failing to impose on the NDFP an agenda of "reforms" premised on the capitulation of the NDFP to the GRP constitution and an indefinite ceasefire. These were preconditions violative of The Hague Joint Declaration. Also in violation of the Joint Agreement on Safety and Immunity Guarantees, the GRP refused to release NDFP political consultant Sotero Llamas from military detention. The indefinite suspension lasted for more than 12 months.

The formal meetings could resume only after the GRP ceased to make its unreasonable demands and released Comrade Llamas from military detention. But the formal meetings in the latter half of 1996 could not go beyond discussions of the preamble of the draft

CARHRIHL because the GRP refused to acknowledge its record of human rights violations, not even those under the Marcos regime, and resisted any direct reference to the instruments of the international Bill of Rights and International Humanitarian Law.

The GRP objected to the inclusion of General Raymundo Jarque in the list of holders of documents of identification, as an NDFP politico-military consultant enjoying the protection of the JASIG and likewise to the NDFPs Unilateral Declaration of Undertaking to Apply the Geneva Conventions and Protocol 1. But the GRP threats to suspend the formal meetings did not materialize.

In September 1996, after the GRP had secured the capitulation of the Moro National Liberation Front (MNLF) under Nur Misuari, the GRP again disrupted the peace negotiations by attempting to get the NDFP to enter into a similar capitulationist framework. The GRP offered collaboration to the NDFP under the GRP's socioeconomic program with funding for so-called livelihood projects of "rebel returnees". The offer was accompanied by a threat to intensify "total war" against the revolutionary forces and carry out an "alternative peace plan" without the NDFP.

The NDFP called the bluff and dared the GRP to do whatever it pleased. Then, the GRP's arrest, torture and detention of NDFP consultant Danilo Borjal on November 21, 1996, again in gross violation of the JASIG, aggravated matters and delayed the peace negotiations until February 1997. To break the impasse, GRP President Fidel Ramos wrote a letter to the undersigned and sent a direct emissary. The GRP withdrew its unreasonable demands for the capitulation of the NDFP and agreed to release Comrade Borjal from military detention.

Informal meetings were held in the Netherlands from February 1 to 4, 1997 to pave the way for his release under a memorandum of understanding. Formal meetings of the GRP and NDFP negotiating panels from February 5 to 8 resulted in the initialing of the Additional Implementing Rules of the JASIG Pertinent to Security of Consultations and Personnel Involved in the Peace Negotiations and the Supplemental Agreement to the Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees.

Formal meetings from March 18-24 resulted in the signing of the aforesaid supplemental agreement. There was no progress in the negotiation on respect for human rights and international humanitarian law because the GRP adamantly denied the violation of human rights under the Marcos regime.

The GRP negotiating panel came back to the Netherlands on April 18, 1997 only to backtrack on the aforesaid supplemental agreement which requires that negotiations on the third heading of the substantive agenda (political and constitutional reforms) can be negotiated only after the approval of the comprehensive agreements on the first (respect for human rights and international humanitarian law) and second headings (social and economic reforms).

The GRP demanded that a "single peace accord", wrapping up all four headings of the substantive agenda, be drafted within the GRP constitutional framework. After failing to have its way, the GRP declared an indefinite recess and threatened to "suspend" the effectivity of the JASIG in violation of the provision that JASIG can only be terminated by a formal written notice by either side.

Full blast drafting work on the CARHRIHL could proceed only from July 31 to August 5, 1997 after the GRP president sent to the undersigned a letter assuring "step-by-step approach". The GRP relented in making threats and unreasonable demands. Within six days, the drafting work of the Reciprocal working committees on human rights and international humanitarian law (RWC-HR&IHL) was basically completed. The two RWCs initialled a common draft of the CARHRIHL on August 5,1997.

However, on August 22, 1997, the GRP tried to do away with this tentative common draft and replace it with a mutilated version within the exclusive framework of the GRP constitution. It deleted or substantially changed most of the provisions. Provisions on the repeal of repressive GRP decrees and references to human rights violations by the GRP were deleted. Two-thirds of the provisions on international humanitarian law were removed.

Efforts to resolve the new impasse caused by the mutilation of the common draft were disrupted in November 1997 when the GRP again

declared the suspension of the formal talks because of the NDFP's announcement that it would release its military and police captives as prisoners of war in accordance with the Geneva Conventions and its protocols. Eventually, the GRP agreed to the release of the prisoners of war to the International Committee of the Red Cross as intermediary and expressed gratitude for said release.

Finally, the GRP came around to taking up the tentative common draft agreement on respect for human rights and international humanitarian law. It agreed to the final provisions of the CARHRIHL which stipulate common and separate duties of the contracting parties and which recognize the NDFP's right to uphold its own political principles and political and organizational integrity. There were no further debates on earlier mutually agreed provisions that require the application of the principles and standards of human rights and international humanitarian law.

Marathon sessions of the GRP and the NDFP negotiating panels and their respective reciprocal working committees on January 10 and 30, 1998 resulted in the finalization of the CARHRIHL, with the exception of Article 5, Part III (indemnification of victims of human rights violations) which would be finalized through correspondence between the negotiating panels. The GRP and the NDFP negotiating panels signed the CARHRIHL, together with the agreements on the security of consultations and on private development organizations, on March 16, 1998.

NDFP National Council Chairman Mariano Orosa, as the principal of the NDFP negotiating panel, promptly approved the CARHRIHL and the aforesaid two other agreements on April 10, 1998. But the GRP renewed demands for the capitulation of the NDFP and for an "indefinite ceasefire" and delayed its approval of the CARHRIHL. At the same time, the GRP refused to release the political prisoners and flagrantly violated its own "suspension of military offensives" (SOMO).

A special ceremony for the exchange of approvals of the CARHRIHL which had been agreed upon and scheduled for April could not be held. The GRP principal (then President Fidel Ramos) failed to approve the CARHRIHL before the end of his term on June

30, 1998. The new GRP principal (President Joseph Estrada) approved it on August 7, 1998, four months after NDFP principal Mariano Orosa.

Sequence of Headings in the Substantive Agenda

The NDFP has complied faithfully with all the bilateral agreements which stipulate that one comprehensive agreement after another has to be signed by the negotiating panels and approved by their respective principals. With GRP principal President Joseph Estrada approving the CARHRIHL for immediate implementation, the GRP appears to comply with the aforesaid bilateral agreements.

But there are exceedingly reactionary elements on the GRP side who keep on reverting to the groundless argument that no comprehensive agreement, even if already mutually approved and is binding and effective, can be implemented unless the NDFP capitulate to the GRP constitutional framework and accept terms of surrender and pacification under the guise of an indefinite ceasefire.

The NDFP ceaselessly calls the attention of these ultra reactionary elements to The Hague Joint Declaration as the framework of the peace negotiations and to the binding and effective character of such agreements as the JASIG and CARHRIHL which have already been mutually approved for immediate implementation. By demanding the capitulation of the NDFP and in effect declaring that the agreements so far reached amount to nothing, such reactionary elements can only disrupt and obstruct the peace negotiations and alert the revolutionary forces against the malicious intentions of the GRP.

Since March 18, 1997, the Supplemental Agreement to the Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees has stipulated that the negotiations on the third heading on political and constitutional reforms cannot be started unless the comprehensive agreements on the first and second headings are signed by the GRP and the NDFP negotiating panels and approved by their respective principals. Incidentally, the agreement frustrated the attempt of then President Ramos to use negotiations on political and constitutional reforms as a kind of endorsement for his scheme to change the GRP constitution for the purpose of prolonging his presidency.

Indeed, it is necessary to forge a comprehensive agreement on respect for human rights and international humanitarian law and then on social and economic reforms before addressing the question of political and constitutional reforms and the question of ending hostilities and redisposing the armed forces on both sides.

There must first be guarantees for the respect of human rights and international humanitarian law in view of the longrunning record of human rights violations by the GRP. We must also see how far the peace negotiations can address the basic social and economic problems of the people.

Only thereafter will it be possible to address the question of what kind of political power shall carry out the basic reforms agreed upon under the second and third heading. Shall there be a common political authority between the GRP and the NDFP or shall there be separate political powers in a truce or in alliance?

The NDFP cannot be rushed into the third heading on political and constitutional reforms by GRP threats of reneging on the CARHRIHL, by obstructions and delays of the negotiations on social and economic reforms or by any GRP offer for the NDFP to participate in a new GRP constitutional convention. Such a convention is dominated by the agents of foreign monopoly capitalism and the local exploiting classes and is intended to constitutionalize the further de-nationalization, deregulation, privatization and liberalization of the economy and the conversion of the entire archipelago into a US military base.

Neither can the NDFP be rushed to the fourth heading on ending hostilities and disposition of forces. It has always rebuffed the GRP offer of prolonged mutual ceasefire because this leaps over the second and third headings of the substantive agenda and thereby allows the GRP to achieve the reactionary objectives of putting the NDFP in a position of capitulation and pacification. The question of truce and indefinite ceasefire may be raised by the GRP under the fourth heading if and when its time comes.

Annex 10

NDFP Status of Belligerency and Diplomatic Work

The status of belligerency of the totality of the revolutionary forces in the Philippines has been acquired through revolutionary struggle. By revolutionary forces, we mean the revolutionary organs of democratic political power, the Communist Party of the Philippines (CPP) as the ruling party, the New People's Army (NPA) as main component of state power, the organized masses of the people in the territory of the people's democratic government. All these forces are represented by the NDFP in the GRP-NDFP peace negotiations and in diplomatic work.

The present reality in the Philippines is that there are two contending political powers engaged in a civil war. One is a revolutionary government of the broad masses of the people, especially the toiling masses, and the other is a counterrevolutionary government of the exploiting classes of big compradors and landlords, which is propped up by the imperialists, chiefly the US.

Within the constitutional framework of the Guide for Establishing the People's Democratic Government, the National Democratic Front of the Philippines has been authorized to conduct negotiations with the GRP, and beyond these negotiations, to seek the international or diplomatic recognition of the aforesaid status of belligerency, through relations with individual foreign states and multilateral organizations of states, independently of the GRP-NDFP peace negotiations.

The NDFP expects neither status of belligerency nor recognition of such status from the GRP. It enjoys the inherent status of belligerency because of the revolutionary struggle. It carries out diplomatic work for the international recognition of such status.

On August 15, 1991, long before the current peace negotiations, then NDFP national council chairman Manuel Romero issued the NDFP Declaration of Adherence to International Humanitarian Law. Subsequently, independent of the ongoing GRP-NDFP peace negotiations, the NDFP deposited with the Swiss Federal Council the NDFP Unilateral Declaration of Undertaking to Apply the Geneva Conventions and Protocol I on July 5, 1996.

The two aforementioned documents carry the assertion of the status of belligerency by the NDFP in representation of the revolutionary forces and organs of political power. They shed light on the diplomatic efforts of the NDFP to acquire international recognition of said status.

The NDFP has assiduously followed the Unilateral Declaration of Undertaking to Apply the Geneva Conventions and Protocol I in protecting the civilian population and the hors *de combat* and in correctly handling and releasing prisoners of war. It has done so also in conjunction with creating the favorable atmosphere for the GRP-NDFP peace negotiations.

In releasing the prisoners of war under the custody of the New People's Army (NPA) to the intermediary custody of the International Committee of the Red Cross in 1997 and 1998, the NDFP acted in accordance with the aforesaid unilateral declaration in addition to the Guide for Establishing the People's Democratic Government and the NPA Code of Conduct.

The July 18, 1997 resolution of the European Parliament in support of the GRP-NDFP peace negotiations recognizes the NDFP and its acts of good intention under international humanitarian law and extends support and assistance to the GRP and NDFP in carrying out the peace negotiations in a neutral venue abroad and in undertaking development, relief and rehabilitation, and projects to lay the ground for a just and lasting peace.

In accordance with said resolution, it is worthwhile for the NDFP to seek support and assistance from the European Council and Commission and particular governments of member-states of the European Union for pursuing the GRP-NDFP peace negotiations, for implementing the CARHRIHL and for undertaking programs and projects of economic and social benefit to the Filipino people.

The GRP is also allowed by the resolution to seek similar assistance. The GRP is quite absurd whenever it claims to have no funds for conducting the peace negotiations in a neutral venue abroad, for implementation of the CARHRIHL and for undertaking programs and

projects of economic and social reforms. But it has ample funds for the most antipeople and counterproductive bureaucratic and military purposes and for attracting foreign investors and creditors that rob the people of their social wealth.

Forthcoming Negotiations on Social and Economic Reforms

The NDFP is ready for the resumption of formal meetings in the peace negotiations and for the start of negotiations on social and economic reforms. Since 1997, the NDFP has been ready with a draft of the Comprehensive Agreement on Social and Economic Reforms. On March 16, 1998, it exchanged this draft with that of the GRP.

The Estrada regime expressed at one time the wish to accelerate the progress of the peace negotiations and finish these within one year. Whether the expressed wish is a manifestation of optimism or a notice of ultimatum or both, the NDFP must always be vigilant and ready to take initiative and act accordingly in the peace negotiations along the general line of struggle for national liberation and democracy against foreign monopoly capitalism, domestic feudalism and bureaucrat-capitalism.

The negotiations on social and economic reforms will not be an easy process. The positions of the GRP and the NDFP on social and economic issues are so diametrically opposed to each other that it would take a lot of struggle across the table to arrive at mutually satisfactory terms of agreement.

The negotiating position of the NDFP is far stronger now than at any time since the start of the formal peace negotiations in 1995. Circumstances reinforce the just and reasonable position of the NDFP and the broad masses of the people against the semicolonial and semifeudal ruling system and the escalation of oppression and exploitation.

The revolutionary forces have been strengthened by the rectification movement since 1992. In contrast, the current Estrada regime itself admits the bankruptcy of the GRP Imperialist "globalization", using the dogma and jargon of the "free market", has proven to be totally bankrupt.

The chronic socioeconomic crisis of the ruling system has become so grave and acute since 1997, inflicting terrible suffering on the people and inciting them to wage revolutionary resistance.

Claiming to wish the acceleration of the progress of the peace negotiations, the GRP might propose that the three remaining headings in the substantive agenda be negotiated simultaneously or one after the other in quick succession. It is just and reasonable for the NDFP to demand that there be ample proof first of substantial benefit for the people in the results of negotiations on social and economic reforms. Moreover, it would be too costly for the NDFP to be attending to negotiations on two or three headings at the same time.

It is necessary to concentrate first on the negotiations on social and economic reforms. Let us see first how the basic social and economic demands of the people can be answered. Let us see how the social and economic contradictions between the imperialists and the local exploiting classes of big compradors and landlords on the one hand and the toiling masses of workers and peasants and the middle social strata on the other hand can be resolved in favor of the latter through the peace negotiations. The attempt of the GRP to leap over issues that must priorly be resolved can only bring about obstacles to the progress of the peace negotiations.

In the course of the peace negotiations, the NDFP has always raised the just and reasonable demands of the people. It has assumed responsibilities and duties arising from all bilateral agreements. At the same time, it is ever vigilant against the bad faith, breaches of agreement and obstacles from the GRP side, whose oppressive and exploitative character runs counter to the people's demand for a just and lasting peace.

Annex 10
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The Hague Joint Declaration
September 1, 1992

We, the undersigned emissary of the Government of the Republic of the Philippines (GRP) and the undersigned representative of the National Democratic Front (NDF) have held exploratory talks at The Hague, The Netherlands on August 31 - September 1, 1992 and have agreed to recommend to our respective principals the following:

1. Formal peace negotiations between the GRP and the NDF shall be held to resolve the armed conflict.

2. The common goal of the aforesaid negotiations shall be the attainment of a just and lasting peace.

3. Such negotiations shall take place after the parties have reached tentative agreements on substantive issues in the agreed agenda through the reciprocal working committees to be separately organized by the GRP and the NDF.

4. The holding of peace negotiations must be in accordance with mutually acceptable principles, including national sovereignty, democracy and social justice and no precondition shall be made to negate the inherent character and purpose of the peace negotiations.

5. Preparatory to the formal peace negotiations, we have agreed to recommend the following:

   a. Specific measures of goodwill and confidence-building to create a favorable climate for peace negotiations; and

   b. The substantive agenda of the formal peace negotiations shall include human rights and international humanitarian law, socio-economic reforms, political and constitutional reforms, end of hostilities and disposition of forces.

Signed on September 1, 1992 in The Hague, The Netherlands.

For the
Government of the Republic
of the Philippines

Rep. JOSE [illegible]
Emissary

For the
National Democratic Front
of the Philippines

LUIS JALANDONI
Representative

WITNESSES:

Rep. Eric D. Singson

Teresita de Castro
State Counsel

Conf. Lodestino

Byron Bocar

Jose Maria Sison

APPROVED BY:

(Sgd) Fidel V. Ramos
President
Government of the Republic
of the Philippines
October 8, 1992

(Sgd) Manuel Romero
Chairperson
National Democratic Front
of the Philippines
September 9, 1992

Annex 10
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The Breukelen Joint Statement
June 14,1994

The GRP Panel headed by Chairman Howard Q. Dee and the NDF Delegation headed by Vice Chairperson for International Affairs Luis Jalandoni held talks from 10 to 14 June 1994 in Breukelen, The Netherlands. These talks were held to advance the peace negotiations pursuant to the Joint Declaration of the GRP and the NDF signed on September 1, 1992 in The Hague, The Netherlands (henceforth, The Hague Declaration).

Other participants in the GRP delegation were Representative Jose V. Yap and Atty. Silvestre Bello III, Panel Members; Representative Jesus Dureza, Panel Adviser; State Counsel Teresita L. de Castro, GRP Legal Consultant; and Executive Director Maria Lorenza Dalupan of the GRP Panel Secretariat.

Other participants in the NDF Delegation were Asterio Palima, NDF Representative to the Nordic countries; Coni Ledesma, Executive Director, NDF International Office; and Ruth de Leon, Members of the Delegation. Others present during the talks were Prof. Jose Maria Sison and Fidel Agcaoili as NDF Consultants.

Atty. Romeo Capulong of the Philippine Peace Center also participated as Legal Consultant.

The GRP and the NDF reaffirmed their adherence to The Hague Declaration.

The discussions were frank and candid. These allowed for clarification of issues and perspectives on both sides. Areas of agreement and disagreement were also defined, which include among others the following:

I. CONFIDENCE BUILDING AND GOODWILL MEASURES

These are measures voluntarily undertaken by either side, not as preconditions to the holding or conduct of peace negotiations, but as means to improve the climate therefor.

1. The NDF asserts that the rights of political prisoners be respected. The NDF further asserts that political prisoners should not be treated, charged, prosecuted or convicted as common criminals. Finally, the NDF asserts that the GRP should stop its policy and practice of treating and prosecuting political prisoners as common criminals.

In response, the GRP Panel denies that there are political prisoners. Further, the GRP Panel reiterates GRP's policy that offenders who may have committed crimes in pursuit of political ends are to be charged with said "political" crimes as may be warranted by the evidence.

2. The GRP Panel shall transmit to its principal the NDF proposal for the expeditious release of offenders who are found to have committed crimes in pursuit of political objectives, including those charged and/or convicted of common crimes committed in the pursuit of political objectives. The NDF shall furnish a nonbinding list of said prisoners/ detainees, irrespective of their political affiliations.

3. The GRP Panel acknowledges receipt of the NDF letter dated 10 June 1994 containing the findings of the NDF on the 30 missing military and police personnel of the GRP and intends to respond to said letter appropriately.

4. The NDF favorably endorses the claims for indemnification of the victims of human rights violations during the Marcos dictatorship for at least 30 percent of the money to be recovered from the Swiss bank deposits of the Marcoses.

The GRP Panel shall report this to its principal.

5. The NDF asserts its integrity and shall consider it a violation of The Hague Declaration if the GRP Panel enters into talks with any person or entity pretending to represent the NDF or any of its organizations.

The GRP asserts its prerogative to adopt its own policy in this matter and in so doing, does not consider it a violation of The Hague Declaration.

II. ISSUES DISCUSSED

6. The NDF asserts its vigorous objection to the adoption of Proclamation Nos. 347, 348 as amended by Proclamation No. 377, on the ground that these proclamations violate the letter and spirit of The Hague Declaration, more particularly, paragraph 4 and paragraph 5b which mandate that the subject matter covered by the proclamations properly belongs to the substantive agenda of the bilateral negotiations. Furthermore, such amnesty program, adopted while peace negotiations are being conducted impinges upon the organizational integrity of the NDF.

The GRP Panel reasserts its firm position that the issuance of the aforesaid amnesty proclamations, without prejudice to any other amnesty that may result from peace negotiations, does not violate the letter and spirit of The Hague Declaration, including paragraph 4 and 5b thereof. The GRP takes the position that the said proclamations respond to expressed desires of former rebels for amnesty so that they may live normal lives in peace, and the need to strike an equitable balance through amnesty for agents of the state to promote a climate of national reconciliation.

7. The NDF asserts its objections to Executive Order No. 125 on the ground that it seeks to impose upon the peace negotiations the GRP Constitution as the framework for the peace talks and is in violation of The Hague Declaration.

The GRP reaffirms its position that its commitment to constitutional processes and the rule of law as enunciated in Executive Order No. 125 does not violate The Hague Declaration, nor does it mean that it will cite the Constitution as a basis for rejecting what otherwise would be just and valid proposals for reforms in society. If it is shown in fact that certain provisions of the GRP Constitution hinder the attainment of genuine reforms, the GRP Panel is willing to recommend to GRP authorities amendments thereto. In this context, it is clear that GRP's adherence to constitutional processes does not constitute the imposition of the GRP Constitution as framework for the peace talks.

8. Both sides recognize the need for further discussion on the provisions of The Hague Declaration that will lead to agreements in

order to realize the objectives of The Hague Declaration.

III. AGREEMENT REGARDING THE NEXT ROUND OF TALKS

9. The GRP Panel and the NDF Delegation shall hold the next round of talks to discuss and agree upon the sequence and operationalization of reciprocal working committees leading towards the formal talks.

10. The GRP Panel and the NDF Delegation hereby agree to adopt safety and immunity guarantees for personnel who will participate in the peace negotiations as negotiators, staffers, consultants and security personnel, and the ground rules for future talks. Details shall be discussed and agreed upon by both parties in due time.

10.1 The next round of talks shall be held in the Benelux within the third quarter of 1994.

10.2 The agenda of the second round of exploratory talks shall include the following:

a. Opening Statements
b. Review of goodwill or confidence-building measures
c. Review and discussion of issues
d. Safety and immunity guarantees
e. Ground rules for formal peace negotiations
f. Agreement on specifics of the four major points of the substantive agenda
g. Agenda of the first formal peace negotiations
    1) Exchange of credentials
    2) Sequence in the formation of the reciprocal working committees
    3) Formation of the GRP Panel and NDF Panel reciprocal working committees that shall be agreed upon
    4) Sequence of discussions of the items under each major heading.

h. Date and venue of the opening of the formal peace negotiations.

Government of the Republic of the Philippines

National Democratic Front of the Philippines

Howard O. Dee

Howard O. Dee
Chairman, GRP Panel
For Peace Talks with the GRP/NPA/NDF

Luis Jalandoni

Luis Jalandoni
NDFP Vice Chairperson for International Affairs & Head of NDF Delegation

Rodolfo Y. Yap
House of Representatives
Member, GRP Panel

Alberto Pairez
Member, NDF Delegation

Silvestre H. Bello III
Member, GRP Panel

Carl Ledesma
Member, NDF Delegation

Ren. Jesus G. Dureza

Rep. Jesus G. Dureza
House of Representatives
Adviser to the GRP Panel

Ruth de Leon

Ruth de Leon
Member, NDF Delegation

Teresita L. de Castro
State Counsel
GRP Legal Consultant

Fidel Agcaoili
NDF Consultant

Maria Lorenza G. Dalupan
Executive Director
GRP Panel Secretariat

Atty. Romeo T. Capulong
Legal Consultant

Jose Maria Sison
NDF Consultant

Joint Agreement on Safety and Immunity Guarantees

Annex 10
16/50 February 24,1995

This JOINT AGREEMENT on Safety and Immunity Guarantees, hereinafter referred to as the Joint Agreement IS ENTERED INTO BY AND BETWEEN:

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, including its executive departments and agencies, hereinafter referred to as the GRP through its negotiating panel headed by its Chairman, HOWARD Q. DEE;

AND

THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES, including the COMMUNIST PARTY OF THE PHILIPPINES and the NEW PEOPLE'S ARMY, hereinafter referred to as the NDFP, through its negotiating panel headed by its Chairman, LUIS G. JALANDONI;

WITNESSETH:

In firm adherence to the HAGUE JOINT DECLARATION and pursuant to the pertinent provisions of the JOINT STATEMENT signed in Breukelen, the Netherlands on June 14,1994, the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES (GRP) and the NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES (NDFP) hereby adopt safety and immunity guarantees to protect the rights of negotiators, consultants, staffers, security and other personnel who participate in the GRP-NDFP peace negotiations.

The primary purposes of the safety and immunity guarantees hereby adopted are to facilitate the peace negotiations, create a favorable atmosphere conducive to free discussion and free movement during the negotiations, and avert any incident that may jeopardize the peace negotiations.

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I. SAFETY GUARANTEES

1. As used and understood in this Joint Agreement, safety guarantees shall mean that all duly accredited persons as defined herein in possession of documents of identification or safe conduct passes are guaranteed free and unhindered passage in all areas in the Philippines, and in travelling to and from the Philippines in connection with the performance of their duties in the negotiations.

2. Each party has the inherent right to issue documents of identification to its negotiators, consultants, staffers, security and other personnel and such documents shall be duly recognized as safe conduct passes as provided in this Joint Agreement.

The GRP and the NDFP shall agree through their respective panel chairmen on the number of documents of identification each party will issue based on the different categories of functions which the parties will designate from time to time.

The documents of identification shall contain the official seal of the issuing party, the bearer's photograph, name, sex, date and place of birth, height, color of hair and eyes, distinguishing physical features, the assigned number, designation or duty in the peace negotiations, and the period of validity. Each party shall provide the other with the name, designation and assigned number on each document of identification issued in accordance with this Joint Agreement.

In addition to or in lieu of the aforesaid documents of identification, the party concerned may request the other to issue safe conduct passes to the holders of such documents of identification or to other persons involved in the peace negotiations as provided for in this Joint Agreement.

The holder of the document of identification so considered as a safe conduct pass in accordance with this Joint Agreement or of the safe conduct pass referred to in the preceding paragraph is hereinafter referred to as the duly accredited person.

Any person under detention who may be designated to participate in the peace negotiations pursuant to this Joint Agreement shall be the subject of separate agreement between the two parties on a case to case basis.

Upon presentation by the duly accredited person to any entity, authority or agent of the party concerned, the document of identification

or safe conduct pass shall be honored and respected and the duly accredited person shall be accorded due recognition and courtesy and allowed free and unhindered passage as stipulated in this Joint Agreement. The duly accredited person shall have in his or her possession the document of identification or safe conduct pass for the duration of the peace negotiations.

3. The document of identification or safe conduct pass shall not be transferable, provided that safety guarantees granted to the duly accredited person shall extend to any person or persons consulted by the duly accredited person during and in transit to and from such consultations, and provided that these consultations shall be in connection with and in furtherance of the purposes of the peace negotiations. The appropriate information on these consultations shall be given by the party concerned to the other with due consideration to the safety of the persons involved in such consultations.

4. All duly accredited persons who are already publicly known to be involved in the GRP-NDFP peace negotiations shall be free from surveillance and shall be allowed freely to consult with the leaders and entities of the party concerned in the Philippines and abroad.

5. The GRP shall promptly issue upon request regular passports to NDFP personnel who are duly accredited persons, without obligation to take an oath of allegiance to the GRP

6. The GRP hereby recognizes and respects the right of NDFP personnel who are duly accredited persons to hold and use passports or travel documents issued by other countries or other recognized entities. Said NDFP personnel who are duly accredited persons may use such passports or travel documents in entering, staying in and departing from the Philippines, and shall not be subjected to any form of punitive action, harassment, obstruction or similar acts by the GRP in the course of travel, entry, stay or departure.

7. Each party shall upon request provide to the other any appropriate assistance to achieve the primary purposes of this Joint Agreement.

II. IMMUNITY GUARANTEES

1. As used and understood in this Joint Agreement, immunity guarantees shall mean that all duly accredited persons are guaranteed immunity from surveillance, harassment, search, arrest, detention, prosecution and interrogation or any other similar punitive actions due to any involvement or participation in the peace negotiations.

The immunity guarantees shall cover all acts and utterances made in the course of and pursuant to the purposes of the peace negotiations.

All materials, information and data submitted to or produced in the course of and pursuant to the purposes of the peace negotiations shall likewise be covered by the immunities provided for in this joint Agreement and shall not be used in any investigation or judicial proceeding.

Any evidence obtained in violation of this Joint Agreement shall not be used in any investigation or judicial proceeding.

All immunities acquired by virtue of this Joint Agreement shall remain in full force and effect even after the termination of this Joint Agreement, provided said immunities shall not cover acts which are contrary to the purposes of the peace negotiations and outside and beyond involvement or participation in the peace negotiations.

2. In all cases involving duly accredited persons, the prosecutors shall move for the suspension, during the peace negotiations, of criminal proceedings or processes including arrest and search, for acts allegedly committed prior to the effectivity of this Joint Agreement.

3. All persons who shall assist the personnel of either side in the performance of their work in the peace negotiations, including the conduct of public consultations and peaceful assemblies, shall not be held liable for rendering such assistance.

4. In the course of requesting a passport from the GRP in accordance with No. 5 of I above, the duly accredited person shall be immune from surveillance, arrest, prosecution, trial, punitive action, harassment, discrimination or any liabilities due to exposure of identity and role in the peace negotiations.

5. Any NDFP personnel, holding a GRP passport, who is a duly accredited person and who goes abroad to consult with the NDFP negotiating panel or to attend any meeting in peace negotiations or perform work related to the GRP-NDFP peace negotiations shall be exempt from passport cancellation and shall continue to be entitled to the safety and immunity guarantees, including immunity from arrest, search or any punitive action, within a period of 30 days upon his return to the Philippines, or 30 days from the formal termination of this Joint Agreement, whichever comes later.

6. Any NDFP personnel based abroad who is a duly accredited person and who goes to the Philippines for consultations or to perform any other work related to the peace negotiations shall enjoy safety and immunity guarantees as provided for in this Joint Agreement and shall be free to return abroad at any time before and within a period of 30 days after the formal termination of this Joint Agreement.

III. GENERAL PROVISIONS

1. This Joint Agreement on Safety and Immunity Guarantees shall be signed by the GRP and the NDFP negotiating panels and shall be subject to approval in writing by the respective principals of both parties, which approval shall be made and communicated to the other party within 90 days from the signing hereof.

2. Any violation of this Joint Agreement may be presented by the aggrieved party to the other and shall promptly be the subject of consultations between the two panels of the negotiating parties in order to remove impediments to the peace negotiations. Such violation shall be investigated and dealt with accordingly by the party to which the personnel charged with the violation belongs.

3. Any disagreement or ambiguity in the interpretation and application of the provisions of this Joint Agreement shall be subject of consultations between the two panels and resolved in accordance with the letter and spirit of the HAGUE JOINT DECLARATION and the pertinent provisions of the BREUKELEN JOINT STATEMENT.

4. The two parties may mutually amend, modify or supplement this Joint Agreement if the progress of the peace negotiations so demands.

5. After its approval as provided in No. 1 of III above, this Joint Agreement shall be effective and binding upon the parties 30 days prior to the formal opening of the peace negotiations on June 1, 1995 and for the duration of the peace negotiations, unless this Joint Agreement is sooner terminated by written notice given by one party to the other. In the latter event, this Joint Agreement shall be deemed terminated 30 days after receipt of the notice of termination.

6. The venue of the formal talks shall be Brussels, Belgium, unless both parties mutually agree on another neutral venue. For this purpose, both parties shall separately make arrangements with the host country concerned.

DONE IN THE TOWN OF NIEUWEGEIN, THE NETHERLANDS, ON THE 24TH DAY OF FEBRUARY 1995.

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

By:

HOWARD Q. DEE, Chairman
GRP Negotiating Panel

THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES

By:

LUIS G. JALANDONI, Chairman
NDFP Negotiating Panel

MEMBERS, GRP NEGOTIATING PANEL:

MEMBERS, GRP NEGOTIATING PANEL:

JOSE T. YAP

SILVESTRE H. BELLO III

FELICIANO V. CARINO

RENAIDA H. PAWID

MEMBERS, NDFP NEGOTIATING PANEL:

MEMBERS, NDFP NEGOTIATING PANEL:

FIDEL V. AGCAOILI

CONI R. LEDESMA

ASTERIO B. PALIWA

WITNESSES:

JESUS G. DUREZA

JOSE MA. C. SISON

TERESITA L. DE CASTRO

ROMEO T. CAPULONG

APPROVED BY:

(Sgd) **FIDEL V. RAMOS**
President
Government of the Republic
of the Philippines
April 25, 1995

(Sgd) **MARIANO OROSA**
Chairperson
National Democratic Front
of the Philippines
April 10, 1995

Joint Agreement on the Ground Rulesof the Formal Meetingsbetween the GRP and NDFP Panels

February 26, 1995

This Agreement is entered into by and between:

The Negotiating Panel of the Government of the Republic of the Philippines, hereinafter referred to as the GRP Panel, represented herein by its Chairperson, Howard Q. Dee;

and

The Negotiating Panel of the National Democratic Front of the Philippines, hereinafter referred to as the NDFP Panel, represented herein by its Chairperson, Luis G. Jalandoni.

Pursuant to due authority, the two Panels hereby agree:

ARTICLE I
GOVERNING PRINCIPLES

Section 1. In their deliberations during the formal talks and in the interpretation of this Agreement, the GRP and NDFP Negotiating Panels shall at all times conform to the letter and spirit of The Hague Joint Declaration of 1 September 1992, the pertinent provisions of the Breukelen Joint Statement of 14 June 1994, the Joint Agreement between the GRP and the NDFP on Safety and Immunity Guarantees of 24 February 1995.

ARTICLE II
CONDUCT OF PANEL NEGOTIATIONS

Section 1. Venue and Schedule of Meetings. The GRP and the NDFP Panels shall hold their formal peace negotiations in the venue previously agreed upon under Section 6, Article III of the Joint Agreement on Safety and Immunity Guarantees. The two Panels shall mutually agree on the schedule of meetings. There shall be reasonable

time for both Panels to consult their principals before any meeting.

Section 2. Subject Matter of the Meetings. The specific agenda for a meeting shall be agreed upon by the Panels. The Panels shall exchange detailed proposals and/or working papers on the issues for discussion within a reasonable period of time before the meeting in which such issues shall be discussed.

Section 3. Quorum. A majority of the composition of each Panel is required to be present at every meeting in order to constitute a quorum.

Section 4. Presence of Persons Other than Panel Members. The two Panel Chairpersons shall agree on the number of Advisers, Legal Counsels, Consultants, Secretariat staff, and security personnel, who may be present in the meeting room and in the vicinity.

Section 5. Presiding Officers. The two Panel Chairpersons shall act as co-presiding officers for the meetings of the two Panels.

Section 6. Procedures of Formal Meetings.

a. The two Panel Chairpersons shall agree on the allocation of time for each agenda item.
b. Each Panel shall have equal time and opportunity to present its side in meetings.
c. Each Panel shall be given the opportunity to present fully, orally and/or in writing, its position, to propound questions, and to respond to the other Panel regarding any agreed agenda item.
d. When no agreement has been reached on an agenda item within a reasonable period of time, such item may be deferred for further deliberation. Thereafter, the two Panels may proceed to the next agenda item.

Section 7. Format of Meetings.

a. The Chairperson of each Panel shall speak on behalf of the Panel, but may designate Panel members, Advisers, Legal Counsels and Consultants to speak, when appropriate.

b. When it is the turn of one Panel to speak within its allotted time, the other Panel Chairperson or Panel members permitted by him/her may interpellate or respond immediately to any point, with the permission of the Chairperson of that Panel.
c. Each Panel may propose a draft on any agreed upon agenda item, which draft may become the basis for discussion and agreement.

ARTICLE III
DOCUMENTATION

Section 1. Use of Audio Documentation. Audiotaping of sessions shall be allowed, unless otherwise mutually agreed upon.

Section 2. Minutes. Each Panel shall be entitled to two documentors who shall take the minutes for their respective Panels. However, the two Panels may mutually adopt a common recording and documentation system and agree on an official record of the deliberations and minutes of the meetings. Limitations on access to or release of such records and minutes shall be mutually agreed upon by the Chairpersons of the two Panels.

ARTICLE IV
RESOURCE PERSONS

Section 1. Each Panel may avail itself of experts as Consultants, who may or may not belong to its side, to assist the Panel.

ARTICLE V
MEDIA COVERAGE

Section 1. Media coverage or the absence of it at any meeting shall be mutually agreed upon by the two Panel Chairpersons.

Section 2. The holding of joint press conferences or the issuance of joint press statements may, from time to time, be mutually agreed

upon by the two Panel Chairpersons, taking into account the progress of the peace negotiations.

Section 3. It is the inherent right of either Panel to hold separate press conferences or interviews, and issue press statements as it may deem necessary or appropriate, taking into account the basic tenets of truth and fairness and the need to safeguard the on-going negotiations from being jeopardized. The Panel Chairpersons may mutually agree on the confidentiality of sensitive issues under negotiations.

ARTICLE VI
GENERAL PROVISIONS

Section 1. Applicability. The provisions of this Agreement shall apply to the formal meetings of the two negotiating Panels. All other meetings of the Panels related to the peace process shall be considered as part of the consultation process.

Section 2. Amendments. The two Panels may from time to time mutually agree to amend, modify or supplement this Agreement as the circumstances may require.

Section 3. Effectivity. This Agreement shall take effect upon the signing hereof by the Chairpersons of the two negotiating Panels.

IN WITNESS WHEREOF, we have hereunder signed this Agreement this 26th Day of February 1995 at the town of Nieuwegein, The Netherlands.

For the Government
of the Republic of the Philippines
Negotiating Panel

Howard Q. Dee,
Chairperson, GRP Panel

For the National Democratic
Front of the Philippines
Negotiating Panel

Luis G. Jalandoni,
Chairperson, NDFP Panel

Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees (RWCs)

June 26, 1995

This Joint Agreement is being entered into by and between:

The Negotiating Panel of the Government of the Republic of the Philippines, hereinafter referred to as the GRP Panel, represented herein by its
Chairperson, Howard Q. Dee;

and

The Negotiating Panel of the National Democratic Front of the Philippines, hereinafter referred to as the NDFP Panel, represented herein by its
Chairperson, Luis G. Jalandoni.

Pursuant to due authority, the two Negotiating Panels hereby agree:

ARTICLE I
GOVERNING PRINCIPLES

Section 1. In the interpretation and application of this Joint Agreement, the GRP and NDFP Negotiating Panels shall at all times conform to the letter and spirit of the Hague Joint Declaration of 1 September 1992, the pertinent provisions of the Breukelen Joint Statement of 14 June 1994, and the Joint Agreement On Safety And immunity Guarantees of 24 February 1995.

Section 2. The formal peace negotiations shall be guided by the following provisions of the Hague Joint Declaration:

a. Formal peace negotiations between the GRP and the NDFP shall be held to resolve the armed conflict.
b. The common goal of the aforesaid negotiations shall be the attainment of a just and lasting peace.

c. The holding of peace negotiations must be in accordance with mutually acceptable principles, including national sovereignty, democracy and social justice and no precondition shall be made to negate the inherent character and purpose of the peace negotiations.
d. The substantive agenda of the peace negotiations shall include human rights and international humanitarian law, socio-economic reforms, political and constitutional reforms and end of hostilities and disposition of forces.

Section 3. Either party may recommend to the other party goodwill and confidence-building measures to be undertaken voluntarily, not as preconditions to the holding and conduct of peace negotiations but as means to improve the climate for peace negotiations. Best efforts shall be exerted by either or both parties, as the case may be, to address the recommended goodwill and confidence-building measures.

ARTICLE II
COMPOSITION, AUTHORITY AND CONDUCT OF WORK

Section 1. In compliance with the Hague Joint Declaration, the two Negotiating Panels shall form and operationalize their respective Reciprocal Working Committees (RWCs) for each of the four major headings of the substantive agenda of the formal peace negotiations in the manner and sequence mutually agreed upon in the succeeding provisions of this Joint Agreement.

Henceforth, said committees shall be named after the four major headings of the substantive agenda as the following: Human Rights and International Humanitarian Law, Socio-Economic Reforms, Political and Constitutional Reforms, and End of Hostilities and Disposition of Forces.

Section 2. Every RWC on each side shall be composed of a chairperson and two members to be appointed by their respective Negotiating Panels. With the prior approval of its Negotiating Panel, the RWCs shall be assisted by consultants, advisers and staff.

Section 3. The RWCs shall be responsible to their respective Negotiating Panels. The Negotiating Panels shall direct and supervise

the work of their respective RWCs, provide them with guidelines and instructions, authorize their meetings with their counterpart RWCs and receive from them findings, recommendations and drafts of tentative comprehensive agreements under the major heading of the substantive agenda assigned to them.

Section 4. The principal task of the RWCs shall be to draft a tentative comprehensive agreement for each major heading of the substantive agenda assigned to them. The tentative comprehensive agreements shall be finalized and signed by the two Negotiating Panels and shall be submitted by them to their respective principals for final consideration and approval.

The comprehensive agreements on human rights and international humanitarian law, social and economic reforms and political and constitutional reforms shall prepare the ground for the comprehensive agreement on the end of hostilities and disposition of forces. The four comprehensive agreements shall, pursuant to The Hague Joint Declaration, fulfill the substantive requirements for a just and lasting peace.

Section 5. The two Negotiating Panels shall provide their respective RWCs with their specific issues under the major heading of the substantive agenda assigned to them. These issues shall be the basis for a common listing to be agreed upon by the GRP and NDFP RWCs, and to be approved by their respective Negotiating Panels. Upon approval by both Negotiating Panels, this common listing shall constitute the issues for discussion of the RWCs under the major heading of the substantive agenda assigned to them. Any modification or revision of the approved listing shall be subject to the approval of the Negotiating Panels.

Section 6. The RWCs shall recommend to the Negotiating Panels the separate and distinct effectivity dates of each comprehensive agreement as a whole as well as certain parts or provisions thereof. Subsequently, the Negotiating Panels shall discuss and mutually agree on the aforesaid dates of effectivity.

Section 7. The Negotiating Panels may mutually agree to refer any important and urgent issue to the pertinent RWCs.

Section 8. The Negotiating Panels and their respective RWCs shall have ample opportunity to present the history and circumstances pertinent to the major heading of the substantive agenda assigned to them and specific issues thereunder, provided that a written version thereof is submitted to the other party at least fifteen (15) days prior to the presentation and discussion of such heading or issue and provided further that additional oral or written presentation may be done.

Section 9. In connection with their work under the assigned headings and in support of their respective Negotiating Panels, the RWCs shall engage in research on the social, economic, political, legal and cultural conditions in the Philippines. One panel may request the other panel to facilitate the research, and the other panel shall exert the best effort to provide facilitation.

Section 10. Upon the recommendation of the RWCs concerned, the Negotiating Panels may organize reciprocal working sub-committees to discuss specific issues under the major heading of the substantive agenda assigned to them. These sub-committees shall perform their tasks under the direct supervision and control of their respective RWCs and shall submit their reports and recommendations to the latter.

ARTICLE III
FORMATION, SEQUENCE AND OPERATIONALIZATION

Section 1. The GRP and NDFP Negotiating Panels shall announce the formation and date of operationalization of their respective RWCs on Human Rights and International Humanitarian Law during the opening of the peace negotiations on 26 June 1995 at Brussels, Belgium.

Section 2. Three (3) months after the formation and operationalization of the RWCs on Human Rights and International Humanitarian Law, the GRP and NDFP Negotiating Panels shall form and operationalize their respective RWCs on Socio-Economic Reforms.

Section 3. Three (3) months after the formation and operationalization of the RWCs on Socio-Economic Reforms, the GRP and NDFP Negotiating Panels shall form and operationalize their respective RWCs on Political and Constitutional Reforms, provided that the tentative comprehensive agreement on Human Rights and International Humanitarian Law shall have been submitted to the Negotiating Panels.

Section 4. Immediately after the submission by the RWCs of the tentative comprehensive agreements on Socio-Economic Reforms and Political and Constitutional Reforms, the GRP and NDFP Negotiating Panels shall form and operationalize their respective RWCs on the End of Hostilities and Disposition of Forces.

Section 5. The submission of the tentative comprehensive agreement on the End of Hostilities and Disposition of Forces to the two Negotiating Panels by the assigned RWCs shall constitute the final phase of work of the RWCs.

Section 6. All RWCs shall endeavor to submit their tentative comprehensive agreements to the Negotiating Panels within six (6) months after their formation and operationalization.

Section 7. The Negotiating Panels may meet formally or communicate to each other from time to time on matters pertaining to schedules, agenda, progress of work of the RWCs, and on such other matters which either Panel may deem necessary to guide, assist or facilitate the work of the RWCs.

Section 8. The two Negotiating Panels shall finalize and sign each tentative comprehensive agreement submitted by the RWCs concerned within fifty (50) days after its submission to the Negotiating Panels.

ARTICLE IV
VENUE AND FORMAL MEETINGS

Section 1. The GRP and NDFP RWCs shall hold their formal meetings at mutually acceptable sites agreed upon by the Negotiating Panels.

Section 2. The Joint Agreement on Safety and Immunity Guarantees shall apply to the formal meetings of the RWCs, as well as other related meetings and communications in the process of consultations.

Section 3. The provisions of Sections 3, 4, 5, 6 and 7 of Article II on the conduct of negotiations, Article III on documentation and Article IV on resource persons, of the Agreement on the Ground Rules of the Formal Meetings Between the GRP and NDFP Panels dated 26 February 1995 are hereby adopted and made part hereof in a suppletory character.

Section 4. The RWCs shall be subject to the responsibilities, obligations and instructions of their respective Negotiating Panels under Article V on media coverage of the agreement on the Ground Rules of the Formal Meetings Between the GRP and the NDFP Panels. The proceedings of the RWCs shall be confidential but the Chairpersons of the Negotiating Panels may issue press statements on the progress of the work of the RWCs. The Chairpersons of the RWCs concerned may mutually agree to classify specific documents, records and information confidential.

Section 5. The RWCs shall mutually agree on their schedule of formal meetings. There shall be reasonable time for the RWCs to consult their respective Negotiating Panels before any formal meeting.

ARTICLE V
GENERAL PROVISIONS

Section 1. This Joint Agreement shall take effect upon the signing hereof by the Chairpersons of the two Negotiating Panels.

Section 2. The two Negotiating Panels may from time to time mutually agree to amend, modify or supplement this Joint Agreement as the circumstances may require.

IN WITNESS WHEREOF, we have hereunder signed this Joint agreement this 26th day of June 1995 at Brussels, Belgium.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

Howard Q. Dee
Chairperson, GRP Panel

Members, GRP Negotiating Panel:

Jose V. Yap

Silvestre H. Bello III

Feliciano V. Carino

Zenaida H. Pawid

FOR THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES

Luis G. Jalandoni
Chairperson, NDFP Panel

Members, NDFP Negotiating Panel:

Fidel V. Agcaoili

Coni K. Ledesma

Asterio B. Palima

Jojo Magdiwang

WITNESSES:

Jesus G. Dureza

Teresita L. De Castro

Jose Ma. C. Tison

Romeo T. Capulong

Annex 10
25/50 **Additional Implementing Rules**
Pertaining to the Documents of Identification
June 26,1996

Pursuant to the letter and spirit of the Joint Agreement on Safety and Immunity Guarantees (JASIG), the Chairpersons of the Negotiating Panels of the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP) hereby adopt the following additional implementing rules of the JASIG exclusively pertaining to the documents of identification, to wit:

ARTICLE I
DOCUMENTS OF IDENTIFICATION

1. Each party shall be entitled to issue not more than eighty-five (85) documents of identification that shall be duly recognized as safe conduct passes as provided for in Article I, Paragraph 2 of the JASIG. The holders of such documents of identification who are otherwise known as duly accredited persons under Article I, Paragraph 2, sub-paragraph 5 of the JASIG shall be designated on the basis of the following functions: negotiators, consultants, staffers, security and other personnel. The number of said documents of identification may be increased later for reasons mutually agreed upon by the Negotiating Panels.

2. In addition to the documents of identification priorly issued by the Panel Chairperson of one party, the Panel Chairperson of the other party shall issue the following acknowledgement which shall contain the name and designation of the duly accredited person, as well as the serial number and period of validity of his/her document of identification, to wit:

(Letterhead)
(Phone and Fax Numbers)

This is to ACKNOWLEDGE that _____ with Document of Identification Number _____ is a _____ in the GRP-NDFP peace negotiations.

The above named person is entitled to the safety and immunity guarantees as provided under the Joint Agreement on Safety and immunity Guarantees (JASIG) for the duration of the peace negotiations.

You are hereby required to facilitate the safe conduct and free passage of the above named person.

Thank you for your courtesy and assistance.

CHAIRPERSON
(SEAL)

3. For purposes of further verification of identity, the duly accredited person holding a document of identification bearing therein an assumed name shall submit a separate photograph to the Chairperson of the Negotiating Panel to which he or she belongs. Said photograph shall be placed in a sealed envelope and shall be entrusted to the custody of a mutually acceptable third party within a period of seventy-five (75) days from the date of issuance of the document of identification or the signing of this Document. Thereafter, the sealed envelope shall be deposited in a Safety Deposit Box protected by three separate locks and shall be opened only when the need for further verification of identity arises. The deposit of the sealed envelope, and the opening and closing of the safety deposit box shall only be done in the presence of the Panel Chairpersons or their representatives and the third party. Each of them shall separately hold the key to each of the three different locks of the safety deposit box.

4. All documents of identification not exceeding eighty-five (85) in number issued between April 1, 1995 and the date of this Document pursuant to Article I, Paragraph 2 of the JASIG are hereby affirmed as valid. In this regard, compliance with the requirements of the preceding Paragraph 3 as to the timely submission of photographs

and other requirements as provided for in the said Paragraph 3, may be dispensed with by the issuing party by replacing the assumed name in the document of identification that has already been issued with the true name of the holder thereof with due notice to the Chairperson of the other party.

ARTICLE II
GENERAL PROVISIONS

1. This Additional Implementing Rules Pertaining to the Documents of Identification or any provision hereof shall not be interpreted in any manner as to contravene or supersede the JASIG or any provisions thereof and shall be without prejudice to the self-executory provisions of the JASIG.

2. Any issuance, interpretation or application done separately or unilaterally by either party pertaining to this Document which is in conflict with or in violation of the JASIG shall be null and void and of no force and effect.

ADOPTED on this 26th day of June 1996 at The Hague, The Netherlands.

The Government of the Republic of the Philippines	The National Democratic Front of the Philippines
Howard Q. Dee Chairperson, GRP Negotiating Panel	Luis G. Jalandoni Chairperson, NDFP Negotiating Panel

Supplemental Agreement to the Joint Agreement on the Formation,Sequence and Operationalization of the Reciprocal Working Committees (RWC Agreement)

March 18, 1997

This Supplemental Agreement to the Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees (RWC Agreement) is being entered into by and between:

THE NEGOTIATING PANEL OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,
hereinafter referred to as the GRP Panel,
represented by its Chairperson, Howard Q. Dee;

and

THE NEGOTIATING PANEL OF THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES,
hereinafter referred to as the NDFP Panel,
represented by its Chairperson, Luis G. Jalandoni.

ARTICLE I
PREAMBLE

WHEREAS, the GRP and NDFP Panels signed The Hague Joint Declaration of 1 September 1992 which, among others, sets the framework of mutually acceptable principles and the substantive agenda of the peace negotiations, and the Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees (RWC Agreement) of 26 June 1995 which provides for, among others, the conduct of work and reasonable time frame of the RWCs;

WHEREAS, both Panels affirm that the common goal of the aforesaid negotiations and agreements is the attainment of a just and lasting peace;

WHEREAS, the GRP acknowledges that there is a limited time for the peace negotiations to be completed within the Ramos

administration and there is a common desire by both Parties to accelerate the peace negotiations.

ARTICLE II
PROCESS AND TIMETABLE

The two Negotiating Panels agree on the following:

Section 1. Conduct of Work

Pursuant to the RWC Agreement, the four RWCs of both Panels shall strive to complete their work on or before June 30,1997 by arriving at tentative comprehensive agreements for each major heading of the substantive agenda assigned to them on the basis of the following schedule:

a. The RWCs on Human Rights and International Humanitarian Law (HR & IHL) shall strive to complete the tentative comprehensive agreement assigned to them within two weeks of continuous work in March 1997.
b. The RWCs on Social and Economic Reforms (SER) shall meet for the first time and endeavor to complete the tentative comprehensive agreement assigned to them within two weeks of continuous work in April 1997.
c. The Negotiating Panels may separately form their respective RWCs on political and constitutional reforms (PCR) and RWCs on end of hostilities and disposition of forces at any time, with the aim of preparing for and exerting the best effort to complete the tentative comprehensive agreements assigned to them for drafting within two weeks of continuous work in May 1997 and June 1997, respectively, provided the comprehensive agreements mentioned in paragraphs a and b above are signed by the Negotiating Panels and approved by their respective Principals.

Section 2. Effectivity of the Comprehensive Agreements

The agreement/s on each heading of the substantive agenda shall take effect upon its/their signing by the Negotiating Panels and approval by their respective Principals.

The sequence of the headings as set forth in the substantive agenda shall remain firm and the effectivity of an approved

comprehensive agreement shall not be delayed but shall help to accelerate the work on the next comprehensive agreement being worked upon.

ARTICLE III
GENERAL PROVISIONS

Section 1. This Supplemental Agreement shall take effect upon the signing hereof by the Chairpersons of the two Panels.

Section 2. The inability of the Negotiating Panels to complete their work according to the desired schedule in Section 1 above on or before July 1, 1997 shall be no ground for ending the peace negotiations.

IN WITNESS WHEREOF, we have hereunder signed this Supplemental Agreement this 18th of March 1997 at Breukelen, The Netherlands.

The Government of the Republic of the Philippines Negotiating Panel:

Howard Q. Dee
Chairperson,
GRP Negotiating Panel

Rep. Joseph Yap
Member

Mr. Silvestre H. Bello III
Member

The National Democratic Front Philippines Negotiating Panel:

Luis G. Jalandoni
Chairperson,
NDFP Negotiating Panel

Fidel V. Agcaoili
Member

Coni K. Ledesma
Member

Atty. Rene V. Sarmiento
Member

Asterio B. Palima
Member

Ms. Zenaida H. Pawid
Member

Jojo Magdiwang
Member

Witnesses:

Teresita L. de Castro
Asst. Chief State Counsel
GRP

Jose Maria Sison
Chief Political Consultant
NDFP Negotiating Panel

Ma. Carla L. Munsayac
Executive Director
GRP Negotiating Panel
Secretariat

Romeo T. Capulong
General Counsel
NDFP Negotiating Panel

Sotero Llamas
Political Consultant
NDFP Negotiating Panel

Brig. Gen. Raymundo Marque (ret.)
Consultant
NDFP Negotiating Panel

Dante Borjal
Consultant
NDFP Negotiating Panel

Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines

March 16, 1998

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,
including the executive department and its agencies,
hereinafter referred to as the GRP

and

THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES,
including the Communist Party of the Philippines (CPP) and the New People's Army (NPA), hereinafter referred to as the NDFP

Hereinafter referred to as **"the Parties"**,

PREAMBLE

RECOGNIZING that respect for human rights and international humanitarian law is of crucial importance and urgent necessity in laying the ground for a just and lasting peace,

CONSIDERING that a comprehensive agreement on respect for human rights and international humanitarian law should take into account the current human rights situation in the Philippines and the historical experience of the Filipino people,

AFFIRMING that the principles of human rights and the principles of international humanitarian law are universally applicable,

ACKNOWLEDGING that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and the principles of international humanitarian law,

Annex 10
2915

REAFFIRMING their continuing commitment to the aforesaid principles and their application,

REALIZING the necessity and significance of assuming separate duties and responsibilities for upholding, protecting and promoting the principles of human rights and the principles of international humanitarian law,

UPHOLDING and complying with the mutually acceptable principles as well as the common goals and objectives in The Hague Joint Declaration of September 1, 1992, the Breukelen Joint Statement of June 14,1994 and pertinent joint agreements hitherto signed, and

FULLY AWARE of the need for effective mechanisms and measures for upholding, protecting and promoting the principles of human rights and the principles of international humanitarian law in a comprehensive agreement,

SOLEMNLY ENTER without reservation into this Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law.

PART I
DECLARATION OF PRINCIPLES

Article 1. The Parties are governed by the framework of holding peace negotiations under mutually acceptable principles of national sovereignty, democracy and social justice and under no precondition that negates the character and purpose of peace negotiations, as stipulated in The Hague Joint Declaration (Paragraph 4) and reaffirmed in the Breukelen Joint Statement (No. 7 of II) and subsequent agreements.

Article 2. The Parties uphold the principles of mutuality and reciprocity in the conduct of the peace negotiations in accordance with The Hague Joint Declaration. The Parties likewise affirm the need to assume separate duties and responsibilities in accordance with the letter and intent of this Agreement.

Article 3. The Parties realize the need for a comprehensive accord on

human rights and international humanitarian law based on realities involving violations of human rights and the principles of international humanitarian law.

Article 4. The Parties recognize that fundamental individual and collective freedoms and human rights in the political, social, economic and cultural spheres can only be realized and flourish under conditions of national and social freedoms of the people.

Article 5. The Parties affirm the need to promote, expand and guarantee the people's democratic rights and freedoms, especially of the toiling masses of workers and peasants.

Article 6. The Parties are aware that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and the principles of international humanitarian law and the faithful compliance therewith by both Parties.

Article 7. The Parties hereby forge this Agreement in order to affirm their constant and continuing mutual commitment to respect human rights and the principles of international humanitarian law and hereby recognize either Party's acts of good intention to be bound by and to comply with the principles of international humanitarian law.

PART II
BASES, SCOPE AND APPLICABILITY

Article 1. This Agreement is meant to meet the needs arising from the concrete conditions of the Filipino people concerning violations of human rights and the principles of international humanitarian law, and to find principled ways and means of rendering justice to all the victims of such violations.

Article 2. The objectives of this Agreement are: (a) to guarantee the protection of human rights to all Filipinos under all circumstances, especially the workers, peasants and other poor people; (b) to affirm and apply the principles of international humanitarian law in order to protect the civilian population and individual civilians, as well as persons

who do not take direct part or who have ceased to take part in the armed hostilities, including persons deprived of their liberty for reasons related to the armed conflict; (c) to establish effective mechanisms and measures for realizing, monitoring, verifying and ensuring compliance with the provisions of this Agreement; and, (d) to pave the way for comprehensive agreements on economic, social and political reforms that will ensure the attainment of a just and lasting peace.

Article 3. The Parties shall uphold, protect and promote the full scope of human rights, including civil, political, economic, social and cultural rights. In complying with such obligation due consideration shall be accorded to the respective political principles and circumstances of the Parties.

Article 4. It is understood that the universally applicable principles and standards of human rights and of international humanitarian law contemplated in this Agreement include those embodied in the instruments signed by the Philippines and deemed to be mutually applicable to and acceptable by both Parties.

Article 5. This Agreement shall be applicable in all cases involving violations of human rights and the principles of international humanitarian law committed against persons, families and groups affiliated with either Party and all civilians and persons not directly taking part in the hostilities, including persons deprived of their liberty for reasons related to the armed conflict. It shall likewise be applicable to all persons affected by the armed conflict, without distinction of any kind based on sex, race, language, religion or conviction, political or other opinion, national, ethnic or social origin, age, economic position, property, marital status, birth or any other similar condition or status.

PART III
RESPECT FOR HUMAN RIGHTS

Article 1. In the exercise of their inherent rights, the Parties shall adhere to and be bound by the principles and standards embodied in international instruments on human rights.

Article 2. This Agreement seeks to confront, remedy and prevent the most serious human rights violations in terms of civil and political rights,

as well as to uphold, protect and promote the full scope of human rights and fundamental freedoms, including:

1. The right to self-determination of the Filipino nation by virtue of which the people should fully and freely determine their political status, pursue and dispose of their natural wealth and resources for their own welfare and benefit towards genuine national independence, democracy, social justice and development.
2. The inherent and inalienable right of the people to establish a just, democratic and peaceful society, to adopt effective safeguards against, and to oppose oppression and tyranny similar to that of the past dictatorial regime.
3. The right of the victims and their families to seek justice for violations of human rights, including adequate compensation or indemnification, restitution and rehabilitation, and effective sanctions and guarantees against repetition and impunity.
4. The right to life, especially against summary executions (salvagings), involuntary disappearances, massacres and indiscriminate bombardments of communities, and the right not to be subjected to campaigns of incitement to violence against one's person.
5. The right to liberty, particularly against unwarranted and unjustified arrest and detention and to effectively avail of the privilege of the writ of habeas corpus.
6. The individual and collective right of the people and of communities to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and to effective safeguards of these rights against any illegal operations by GRP agencies.
7. The right not to be subjected to physical or mental torture, solitary confinement, rape and sexual abuse, and other inhuman, cruel or degrading treatment, detention and punishment.
8. The right not to be held in involuntary servitude or to perform forced or compulsory labor.
9. The right to substantive and procedural due process, to be presumed innocent until proven guilty, and against self-incrimination.
10. The right to equal protection of the law and against any form of discrimination on the basis of race, ethnicity, gender, belief, age,

physical condition or civil status and against any incitement to discrimination.

11. The right to freedom of thought and expression, freedom of conscience, political and religious beliefs and practices and the right not to be punished or held accountable in the exercise of these rights.
12. The right to free speech, press, association and assembly, and to seek redress of grievances.
13. The right to privacy of communication and correspondence, especially against intercepting, pilfering and opening of mail matters and conducting illegal surveillance and information gathering through electronic and other means.
14. The right to free choice of domicile, movement and travel within the country and abroad, to seek asylum, migration and exile, and against travel restrictions for political reasons or objectives.
15. The right not to be subjected to forced evacuations, food and other forms of economic blockades and indiscriminate bombings, shellings, strafing, gunfire and the use of landmines.
16. The right to information on matters of public concern and access to records, documents and papers pertaining to acts, transactions or decisions of persons in authority.
17. The right to universal suffrage irrespective of sex, race, occupation, social origin, property, status, education, ideological and political conviction, and religious belief.
18. The right to own property and the means of production and consumption that are obtained through land reform, honest labor and entrepreneurship, skill, inventiveness and intellectual merit and to use such means for the common good.
19. The right to gainful employment, humane working and living conditions, livelihood and job security, to work and equal pay, to form unions, to strike and participate in the policy and decision-making processes affecting their rights and interests, and the right not to be denied these rights due to nationality, creed, minority status, gender or sexual preference, or civil status.
20. The right to universal and free elementary and secondary education, and access to basic services and health care.
21. The right to freely engage in scientific research, technological invention, literary and artistic creations and other cultural pursuits.
22. The right to form a marital union and to found a family, and to ensure family communications and reunions.
23. The equal right of women in all fields of endeavor and in all spheres of political, economic, cultural, social and domestic life and to their emancipation.
24. The right of children and the disabled to protection, care, and a home, especially against physical and mental abuse, prostitution, drugs, forced labor, homelessness, and other similar forms of oppression and exploitation.
25. The existing rights of the minority communities in the Philippines to autonomy, to their ancestral lands and the natural resources in these lands, to engage in and benefit from affirmative action, to their participation and representation in the economic, political and social life and institutions, and to cultural and all round development.

Article 3. The Parties decry all violations and abuses of human rights. They commend the complainants or plaintiffs in all successful human rights proceedings. They encourage all victims of violations and abuses of human rights or their surviving families to come forward with their complaints and evidence.

Article 4. The persons liable for violations and abuses of human rights shall be subject to investigation and, if evidence warrants, to prosecution and trial. The victims or their survivors shall be indemnified. All necessary measures shall be undertaken to remove the conditions for violations and abuses of human rights and to render justice to and indemnify the victims.

Article 5. The Parties hereby respect and support the rights of the victims of human rights violations during the Marcos regime, taking into consideration the final judgment of the United States Federal Court System in the Human Rights Litigation Against Marcos; Senate Resolution 1640; Swiss Supreme Court Decision of 10 December 1997; and pertinent provisions of the U.N. Covenant on Civil and Political Rights and the 1984 U.N. Convention Against Torture.

Should there be any settlement, the GRP shall also execute with the duly authorized representatives of the victims a written instrument to implement this Article and guide the satisfaction of the claims of said victims, with regard to the amount and mode of compensation, which shall be the most direct and quickest possible to every victim or heir in accordance with the relevant Swiss Supreme Court decisions.

In case of any settlement outside of U.S. jurisdiction, all or the majority of said victims shall determine their representation by power of attorney.

Article 6. The GRP shall abide by its doctrine laid down in People vs. Hernandez (99 Phil. 515, July 18, 1956), as further elaborated in People vs. Geronimo (100 Phil. 90, October 13,1956), and shall forthwith review the cases of all prisoners or detainees who have been charged, detained, or convicted contrary to this doctrine, and shall immediately release them.

Article 7. The GRP shall work for the immediate repeal of any subsisting repressive laws, decrees, or other executive issuances and for this purpose, shall forthwith review, among others, the following: General Orders 66 and 67 (authorizing checkpoints and warrantless searches); Presidential Decree 1866 as amended (allowing the filing of charges of illegal possession of firearms with respect to political offenses); Presidential Decree 169 as amended (requiring physicians to report cases of patients with gunshot wounds to the police/military); Batas Pambansa 880 (restricting and controlling the right to peaceful assembly); Executive Order 129 (authorizing the demolition of urban poor communities); Executive Order 264 (legalizing the Civilian Armed Forces Geographical Units); Executive Order 272 (lengthening the allowable periods of detention); Memorandum Circular 139 (allowing the imposition of food blockades); and Administrative Order No. 308 (establishing the national identification system).

Upon the effectivity of this Agreement, the GRP shall, as far as practicable, not invoke these repressive laws, decrees and orders to circumvent or contravene the provisions of this Agreement.

Article 8. The GRP shall review its jurisprudence on warrantless arrests (Umil vs. Ramos), checkpoints (Valmonte vs. De Villa), saturation drives

(Guazon vs. De Villa), warrantless searches (Posadas vs. Court of Appeals), criminalization of political offenses (Baylosis vs. Chavez), rendering moot and academic the remedy of *habeas corpus* upon the subsequent filing of charges (Ilagan vs. Ponce-Enrile), and other similar cases, and shall immediately move for the adoption of appropriate remedies consistent with the objectives of this and the immediately preceding Article.

Upon the effectivity of this Agreement, the GRP shall, as far as practicable, not invoke these decisions to circumvent or contravene the provisions of this Agreement.

Article 9. The Parties shall take concrete steps to protect the lives, livelihood and properties of the people against incursions from mining, real estate, logging, tourism or other similar projects or programs.

Article 10. The Parties shall promote the basic collective and individual rights of workers, peasants, fisherfolk, urban poor, migrant workers, ethnic minorities, women, youth, children and the rest of the people and shall take concrete steps to stop and prevent the violations of human rights, ensure that those found guilty of such violations are punished, and provide for the indemnification, rehabilitation and restitution of the victims.

Article 11. The GRP shall respect the basic rights guaranteed by the International Labor Convention on Freedom of Association and Protection of the Right to Organize and the standards set by the International Labor Organization (IL0) pertaining to job tenure, wage and living conditions, trade union rights and medical and social insurance of all workers, right of women workers to maternity benefits and against discrimination vis-a-vis male workers, right against child labor, and the rights of migrant workers abroad in accordance with the International Covenant on the Rights of Migrant Workers and the Members of their Families.

Article 12. The GRP shall respect the rights of peasants to land tenure and to own through land reform the land that they till, the ancestral rights of the indigenous peoples in the areas classified as public domain and their rights against racial and ethnic discrimination, the right of the poor homesteaders or settlers and the indigenous people to the areas of

public domain on which they live and work and the right of poor fisherfolk to fish in the waters of the Philippines.

The GRP shall forthwith review its laws or other issuances pertinent to the rights mentioned in this and the immediately preceding Article and shall move for the immediate repeal of those found violative of such rights.

Article 13. The Parties shall promote and carry out campaigns of human rights education, land reform, higher production, health and sanitation, and others that are of social benefit to the people. They shall give the utmost attention to land reform as the principal measure for attaining democracy and social justice.

PART IV
RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

Article 1. In the exercise of their inherent rights, the Parties to the armed conflict shall adhere to and be bound by the generally accepted principles and standards of international humanitarian law.

Article 2. These principles and standards apply to the following persons:

1. civilians or those taking no active part in the hostilities;
2. members of armed forces who have surrendered or laid down their arms;
3. those placed *hors de combat* by sickness, wounds or any other cause;
4. persons deprived of their liberty for reasons related to the armed conflict; and,
5. relatives and duly authorized representatives of above-named persons.

Article 3. The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the persons enumerated in the preceding Article 2:

1. violence to life and person, particularly killing or causing injury, being subjected to physical or mental torture, mutilation, corporal punishment, cruel or degrading treatment and all acts of violence and reprisals, including hostage-taking, and acts against the physical well-being, dignity, political convictions and other human rights;
2. holding anyone responsible for an act that she/he has not committed and punishing anyone without complying with all the requisites of due process;
3. requiring persons deprived of their liberty for reasons related to the armed conflict to disclose information other than their identity;
4. desecration of the remains of those who have died in the course of the armed conflict or while under detention, and breach of duty to tender immediately such remains to their families or to give them decent burial;
5. failure to report the identity, personal condition and circumstances of a person deprived of his/her liberty for reasons related to the armed conflict to the Parties to enable them to perform their duties and responsibilities under this Agreement and under international humanitarian law;
6. denial of the right of relatives and duly authorized representatives of a person deprived of liberty for reasons related to the armed conflict to inquire whether a person is in custody or under detention, the reasons for the detention, under what circumstances the person in custody is being detained, and to request directly or through mutually acceptable intermediaries for his/her orderly and expeditious release;
7. practices that cause or allow the forcible evacuations or forcible reconcentration of civilians, unless the security of the civilians involved or imperative military reasons so demand; the emergence and increase of internally displaced families and communities, and the destruction of the lives and property of the civilian population;
8. maintaining, supporting and tolerating paramilitary groups such as armed religious fanatical groups, vigilante groups, private armed groups of businessmen, landlords and politicians, and private security agencies which are being used in land and labor disputes and the incursions in Article 9, Part III of this Agreement; and,
9. allowing the participation of civilian or civilian officials in military field operations and campaigns.

Article 4. The principles and standards of international humanitarian law shall likewise apply and protect the rights of persons, entities or objects involved or affected in any of the cases or situations cited hereunder.

1. Persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives, dignity, human rights, political convictions and their moral and physical integrity and shall be protected in all circumstances and treated humanely without any adverse distinction founded on race, color, faith, sex, birth, social standing or any other similar criteria.
2. The wounded and the sick shall be collected and cared for by the party to the armed conflict which has them in its custody or responsibility.
3. Neutral persons or entities and medical personnel, including persons of humanitarian and/or medical organizations like the International Committee of the Red Cross (ICRC), shall be protected and respected. The establishments, facilities, transport and equipments of these persons, entities and organizations; objects bearing the emblem of the red cross and the flag of peaceful intention; and historic monuments, cultural objects and places of worship shall likewise be protected.
4. Civilian population and civilians shall be treated as such and shall be distinguished from combatants and, together with their property, shall not be the object of attack. They shall likewise be protected against indiscriminate aerial bombardment, strafing, artillery fire, mortar fire, arson, bulldozing and other similar forms of destroying lives and property, from the use of explosives as well as the stockpiling near or in their midst, and the use of chemical and biological weapons.
5. Civilians shall have the right to demand appropriate disciplinary actions against abuses arising from the failure of the Parties to the armed conflict to observe the principles and standards of international humanitarian law.
6. All persons deprived of their liberty for reasons related to the armed conflict shall be treated humanely, provided with adequate food and drinking water, and be afforded safeguards as regards to health and hygiene, and be confined in a secure place. Sufficient information shall be made available concerning persons who have been deprived of their liberty. On humanitarian

or other reasonable grounds, such persons deprived of liberty shall be considered for safe release.

7. The ICRC and other humanitarian and/or medical entities shall be granted facilitation and assistance to enable them to care for the sick and the wounded and to undertake their humanitarian missions and activities.
8. Personnel and facilities of schools, the medical profession, religious institutions and places of worship, voluntary evacuation centers, programs and projects of relief and development shall not be the target of any attack. The persons of said entities shall be guaranteed their safety.
9. Every possible measure shall be taken, without delay, to search for and collect the wounded, sick and missing persons and to protect them from any harm and ill treatment, to ensure their adequate care and to search for the dead, prevent despoliation and mutilation and to dispose of them with respect.

Article 5. The Parties decry all violations of the principles of international humanitarian law. They encourage all victims of such violations or their surviving families to come forward with their complaints and evidence.

Article 6. The persons liable for violations of the principles of international humanitarian law shall be subject to investigation and, if evidence warrants, to prosecution and trial. The victims or their survivors shall be indemnified. All necessary measures shall be undertaken to remove the conditions for such violations and to render justice to and indemnify the victims.

Article 7. The GRP shall review and undertake to change policies, laws, programs, projects, campaigns and practices that cause or allow the forcible evacuation and reconcentration of civilians, the emergence and increase of internally displaced families and communities and the destruction of the lives and property of the civilian population.

Article 8. The GRP shall continue to review its policy or practice of creating, maintaining, supporting, or allowing paramilitary forces like the Civilian Armed Forces Geographical Units (CAFGUs) and Civilian Volunteers' Organizations (CV0s) or any other similar groups.

Article 9. Internally displaced families and communities shall have the right to return to their places of abode and livelihood, to demand all possible assistance necessary to restore them to their normal lives and to be indemnified for damages suffered due to injuries and loss of lives.

Article 10. The Parties shall provide special attention to women and children to ensure their physical and moral integrity. Children shall not be allowed to take part in hostilities.

Article 11. Medical, religious and other humanitarian organizations and their personnel shall not carry out other tasks inimical to any of the Parties. Neither shall they be compelled to carry out tasks which are not compatible with their humanitarian tasks. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of whoever is benefiting from such medical activities.

Article 12. Civilian population shall have the right to be protected against the risks and dangers posed by the presence of military camps in urban centers and other populated areas.

Article 13. The Parties recognize the right of the people to demand the reduction of military expenditures and the rechanneling of savings from such reduction towards social, economic and cultural development which shall be given the highest priority.

Article 14. The Parties shall promote and carry out campaigns of education on international humanitarian law, especially among the people involved in the armed conflict and in areas affected by such conflict.

PART V
JOINT MONITORING COMMITTEE

Article 1. The Parties shall form a Joint Monitoring Committee that shall monitor the implementation of this Agreement.

Article 2. The Committee shall be composed of three members to be chosen by the GRP Panel and three members to be chosen by the NDFP Panel. Each Party shall nominate two representatives of human

rights organizations to sit in the committee as observers and to do so at the pleasure of the nominating Party. The Committee shall have co-chairpersons who shall serve as chief representatives of the Parties and shall act as moderators of meetings.

Article 3. The co-chairpersons shall receive complaints of violations of human rights and international humanitarian law and all pertinent information and shall initiate requests or recommendations for the implementation of this Agreement. Upon its approval by consensus, the Committee shall request the investigation of a complaint by the Party concerned and make recommendations. By consensus, it shall make reports and recommendations on its work to the Parties.

Meetings of the Committee shall be every three months and as often as deemed necessary by the co-chairpersons due to an urgent issue or complaint. The meetings shall be held in the Philippines or in any other venue agreed upon by the Parties.

Article 4. Members of the Committee and the observers shall be entitled to the safety and immunity guarantees stipulated by the Joint Agreement on Safety and Immunity Guarantees.

Article 5. The Committee shall create a joint secretariat that shall provide staff support. Each Party shall nominate an equal number of members in the joint secretariat who shall serve at the pleasure of the nominating Party.

Article 6. The Committee shall be organized upon the effectivity of this Agreement and shall continue to exist until dissolved by either Party by sending to the other Party a written notice of dissolution which shall take effect thirty days after official receipt. Dissolution of the Committee shall not mean the abandonment of rights and duties by any Party under this Agreement and under the principles and standards of human rights and international humanitarian law.

PART VI
FINAL PROVISIONS

Article 1. The Parties shall continue to assume separate duties and responsibilities for upholding, protecting and promoting human rights

and the principles of international humanitarian law in accordance with their respective political principles, organizations and circumstances until they shall have reached final resolution of the armed conflict.

Article 2. The Parties recognize the applicability of the principles of human rights and principles of international humanitarian law and the continuing force of obligations arising from these principles.

Article 3. Nothing in the provisions of this Agreement nor in its application shall affect the political and legal status of the Parties in accordance with the Hague Joint Declaration. Subsequently, this Agreement shall be subject to the Comprehensive Agreements on Political and Constitutional Reforms and on End of Hostilities and Disposition of Forces. Any reference to the treaties signed by the GRP and to its laws and legal processes in this Agreement shall not in any manner prejudice the political and organizational integrity of the NDFP.

Article 4. The Parties may from time to time review the provisions of this Agreement to determine the need to adopt a supplemental agreement or to modify the provisions hereof as circumstances require.

Article 5. This Agreement shall be signed by the Negotiating Panels and shall take effect upon approval by their respective Principals.

IN WITNESS, we sign this Agreement this 16th day of March 1998 in The Hague, The Netherlands.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

By:

Amb. HOWARD Q. DEE
Chairperson,
GRP Negotiating Panel

FOR THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES

LUIS G. JALANDONI
Chairperson,
NDFP Negotiating Panel

Rep. JOSE V. YAP
Member

FIDEL V. RAMOS
Member

Sec. SILVESTRE H. BELLO III
Member

CONI K. LEDESMA
Member

Atty. RENE V. SARMIENTO
Member

ASTERIO B. PALIMA
Member

Ma. ZENAIDA H. PAWID
Member

JOJO S. MAGDIWANG
Member

WITNESSES:

Hon. JOSE C. DE VENECIA
Speaker, House of Representative
GRP NDFP Negotiating Panel

JOSE MA. SISON
Chief Political Consultant

Usec. A. WILFREDO CLEMENTE
DECS, GRP

ANTONIO L. ZUMEL
Senior Adviser
NDFP Negotiating Panel

Ms. MA. CARLA L. MUNSAYAC
Executive Director III
GRP Negotiating Panel Secretariat

ROMEO T. CAPULONG
General Counsel
NDFP Negotiating Panel

Additional Implementing Rules of the Joint Agreement on Safety and Immunity Guarantees (Jasig) Pertaining to the Security of Personnel and Consultations in Furtherance of the Peace Negotiations

March 16,1998

These ADDITIONAL IMPLEMENTING RULES OF THE JOINT AGREEMENT ON SAFETY AND IMMUNITY GUARANTEES (JASIG) PERTAINING TO THE SECURITY OF PERSONNEL AND CONSULTATIONS IN FURTHERANCE OF THE PEACE NEGOTIATIONS, hereinafter referred to as the IMPLEMENTING RULES, are being agreed by and between:

The **GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES**
(GRP), through its Negotiating Panel headed by its Chairperson, Howard Q. Dee

and

The **NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES (NDFP)**,
through its Negotiating Panel headed by its Chairperson, Luis G. Jalandoni.

WHEREAS, the Parties have the responsibility to protect their respective personnel involved in the peace negotiations through their respective security forces;

WHEREAS, the duly accredited persons under the Joint Agreement on Safety and Immunity Guarantees (JASIG) dated 24 February 1995, hereinafter referred to as the duly accredited persons, because of their involvement in the peace negotiations, have the inherent right to their personal security;

WHEREAS, security is likewise required for the consultations, public meetings, and free and unhindered passage in all areas in the

Philippines in connection with and in furtherance of the peace negotiations that the aforesaid duly accredited persons conduct; and

WHEREAS, there is a need to agree on the security methods and means in order to enhance the conditions of the peace negotiations and avert incidents adverse thereto.

NOW, THEREFORE, in consideration of the foregoing, the two Parties through their Negotiating Panels hereby agree to the following:

ARTICLE I
SECURITY FOR DULY ACCREDITED PERSONS

Section 1. The duly accredited persons may carry one (1) sidearm each including its ammunitions, accessories and spare parts for their security and self-protection while in the performance of their functions in the peace negotiations. For purposes of these Implementing Rules, "sidearm" shall refer to revolvers and semi-automatic pistols and excludes machine pistols.

Any case of alleged violation of the provisions of this section shall be the subject matter of appropriate consultations between the two Parties.

The appropriate circular needed to ensure the attainment of the abovestated purpose shall be issued within two (2) weeks from the date of effectivity of these Implementing Rules. For purposes of the issuance of the said circular, a list of names of the duly accredited persons of the concerned Party shall be furnished to the Panel Chairman of the other Party.

The contents of this circular shall be consistent with the pertinent provisions of the JASIG and these Implementing Rules.

Section 2. Both Parties shall ensure that these Implementing Rules are transmitted and fully understood by all personnel concerned down to the lowest unit on the ground. The two Negotiating Panels shall discuss and agree on additional implementing rules as they may deem necessary to avert any incident which may jeopardize the peace negotiations and the safety and unhindered passage of their respective duly accredited

persons and the persons consulted by them as well as the peaceful conduct of the assemblies.

ARTICLE II
SECURITY COMMITTEES AND SECURITY FORCES

Section 1. The Parties shall organize their respective Security Committees composed of three members on each side which shall discuss and agree: (1) on the guidelines for these Implementing Rules on matters of detail which are not specifically covered herein; (2) on the implementation of such guidelines; (3) on ensuring proper coordination in such implementation; (4) on prior notice on the holding of consultations and the appropriate information which should be disclosed regarding such consultations; (5) on the necessity of declaring a mutual ceasefire in the areas where consultations are being conducted and the nature, scope, implementing guidelines and parameters of such mutual ceasefire; (6) on the determination of the safety area, radius and distance from both sides and adequate protection for the routes of safe passage for participants in the consultation; and (7) on such other matters as may be assigned to them from time to time by agreement of the two Panels.

Section 2. The Party concerned may form a central security force of not more than thirty (30) members which, in the case of the NDFP, shall include the twelve (12) security personnel who are duly accredited persons. The central security force shall perform close-in security of its duly accredited persons, security of participants in the consultations, and security for the safe passage of personnel and participants in the consultations.

Section 3. For purposes of the consultations, the Party concerned may form a regional security force in each of the fifteen (15) regions of the country, not exceeding thirty (30) members in each region at any one time, inclusive of those who may come from the central security force. Such security force shall perform its tasks during the period of consultations and in the area where such consultations are being held.

The guidelines to implement this section including the carrying of sidearms/firearms shall be discussed and agreed upon by the Security Committees.

Section 4. Members of the aforesaid central and regional security forces shall enjoy the protection provided for by Section 3, Article II of the JASIG.

ARTICLE III
GENERAL PROVISIONS

Section 1. The duly accredited persons and members of the security forces authorized to carry sidearms/firearms, including its ammunitions, accessories and spare parts, pursuant to these Implementing Rules shall act in a manner that will promote the objectives of the peace negotiations.

Section 2. The authority to carry sidearms/firearms issued pursuant to the preceding section shall not be transferable and shall be in the possession of the bearer together with the sidearms/firearms covered by said authority.

Section 3. These Implementing Rules or any provision hereof shall not impair or diminish the safety and immunity guarantees provided for under the JASIG.

Section 4. These Implementing Rules shall take force and effect upon signing by the Chairpersons of the two Negotiating Panels and approval by their respective Principals, and shall remain in force during the effectivity of the JASIG dated 24 February 1995.

DONE on the 16th of March 1998 in The Hague, the Netherlands.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

By:

Amb. HOWARD Q. DEE
Chairperson,
GRP Negotiating Panel

FOR THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES

By:

LUIS G. JALANDONI
Chairperson,
NDFP Negotiating Panel

Annex 1
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Rep. JOSE M. YAP
Member

FIDEL V. RAMOS
Member

Sec. SILVESTRE H. BELLO III
Member

CONI K. LEDESMA
Member

Atty. RENE V. SARMIENTO
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Executive Director
GRP Negotiating Panel Secretariat

ROMEO T. CAPULONG
General Counsel
NDFP Negotiating Panel

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Joint Agreement in Support of Socioeconomic Projects of Private Development Organizations and Institutes

March 16,1998

This **JOINT AGREEMENT IN SUPPORT OF SOCIOECONOMIC PROJECTS OF PRIVATE DEVELOPMENT ORGANIZATIONS AND INSTITUTES** is being entered into by and between:

The **GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,**
hereinafter referred to as the GRP, through its Negotiating Panel headed by its Chairperson, Howard Q. Dee;

and

The **NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES,**
hereinafter referred to as the NDFP, through its Negotiating Panel headed by its Chairperson, Luis G. Jalandoni.

WHEREAS, both Parties are desirous of assisting private development organizations and institutes engaged in programs, projects and activities for the Filipino people's empowerment and for their socioeconomic development; and

WHEREAS, these organizations and institutes are beneficial to the people and are helpful in laying the ground for a just and lasting peace.

NOW, THEREFORE, for and in consideration of the foregoing premises, the Parties hereby agree as follows:

ARTICLE I
RESPECT, ENCOURAGEMENT AND SUPPORT

Section 1. The GRP shall respect, encourage and extend appropriate support to such private development organizations and institutes that carry out programs, projects and activities in pursuit of all or any of the following aims and purposes:

1.1. To promote and lay the ground for a just and lasting peace based on the Filipino people's empowerment and their economic, social and cultural development;

12. To engage in research and planning for the Filipino people's empowerment and their economic, social and cultural development and to make recommendations on the basis of such studies and planning;

13. To undertake programs and projects for the promotion and protection of human rights in general and particularly the rights of workers, peasants, women, youth, children and indigenous peoples as well as the protection of the environment;

1.4. To undertake programs and projects of relief, rehabilitation and development beneficial to communities, families and individuals who have been victimized by human rights violations or whose incomes are below the poverty line;

1.5. To promote rural and urban cooperatives among the poor in order to make them self-reliant and allow them to raise their standard of living;

1.6. To generate the means of livelihood or employment for victims of human rights violations and released political detainees;

1.7. To cooperate with other entities that are genuinely committed to advancing the rights and interests of the people; and

1.8. To carry out such other aims and purposes as are related to the foregoing.

Section 2. The aforesaid organizations and institutes, hereinafter referred to as the "organizations," shall be self-governing and independent, as may be provided for in their respective charters. In order to transact

business and carry on their work, they shall take an appropriate legal status and juridical personality.

Section 3. The organizations and institutes referred to in the preceding section are legitimate organizations entitled to all the rights, privileges, protection and legal remedies enjoyed by other similar organizations.

Accordingly, they and their personnel shall not be subjected to discrimination or any other form of prejudicial action.

ARTICLE II
FUNDING AND RESOURCES

Section 1. The organizations shall raise, manage and use such financial and other resources as necessary to be able to carry out their programs, projects and activities.

Section 2. The organizations shall have access to such sources of funding and resources as are available to similar organizations in the Philippines and abroad.

ARTICLE III
GENERAL PROVISIONS

Section 1. This Joint Agreement is being entered into in accordance with The Hague Joint Declaration.

Section 2. The obligations arising from the provisions of this Joint Agreement shall become effective and binding upon the approval hereof by the respective Principals of the GRP and NDFP Negotiating Panels.

Section 3. The Negotiating Panels or representatives of both Parties may consult each other regarding organizations to be assisted under this Agreement and execute such additional joint agreements or undertakings as may be necessary to implement this Agreement.

The GRP and the organizations concerned shall work out the modalities of implementation.

DONE on the 16th of March 1998 in The Hague, The Netherlands.

FOR THE
GOVERNMENT OF THE REPUBLIC
OF THE PHILIPPINES

By:

Amb. HOWARD Q. DEE
Chairperson,
GRP Negotiating Panel

Rep. JOSE V. YAP
Member

Sec. SILVESTRE H. BELLO III
Member

Atty. RENE V. SARMIENTO
Member

Ms. ZENAIDA N. PAWID
Member

FOR THE
NATIONAL DEMOCRATIC FRONT
OF THE PHILIPPINES

LUIS G. JALANDONI
Chairperson,
NDFP Negotiating Panel

FIDEL V. AGCAOILI
Member

CONI K. LEDESMA
Member

ASTERIO B. PALIMA
Member

JOMA S. MAGDIWANG
Member

WITNESSES:

Hon. JOSE C. DE VENECIA
Speaker, House of Representative
GRP

Usec. A. WILFREDO CLEMENTE
DECS, GRP

Ms. MA. CARLA L. MUNSAYAC
Executive Director
GRP Negotiating Panel Secretariat

JOSE MA. SISON
Chief Political Consultant
NDFP Negotiating Panel

ANTONIO L. ZUMEL
Senior Adviser
NDFP Negotiating Panel

ROMEO T. CAPULONG
General Counsel
NDFP Negotiating Panel

JOINT STATEMENT
by the Negotiating Panels of the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP)

09 March 2001

The Negotiating Panel of the Government of the Republic of the Philippines (GRP) and the Negotiating Panel of the National Democratic Front of the Philippines (NDFP) meeting in Utrecht and The Hague, The Netherlands on 6-9 March 2001 in order to renew the joint commitment of the GRP and the NDFP to a just and lasting peace, hereby announce the resumption of the peace negotiations under the following principles and premises:

1. The two Parties declare their firm adherence to the principle that the GRP-NDFP Peace Negotiations are a continuing process between the parties to address the roots of the armed conflict.

2. The Parties uphold and affirm the validity and binding character of the ten bilateral agreements (Annex A hereof) that were entered into between them from 1 September 1992 to 7 August 1998 as the framework and foundation for the resumption of the peace negotiations.

3. The reinstatement of the Joint Agreement on Safety and Immunity Guarantees (JASIG) shall be accomplished through written notices by the principals of both parties and transmitted to each other before the date of the actual resumption of the peace negotiations.

4. Prior to the resumption of the formal peace negotiations, the Negotiating Panels shall form, authorize and operationalize their respective Reciprocal Working Committees on Social and Economic Reforms (RWC-SER) and give notice thereof to each other.

5. The Parties have agreed to discuss the *effective implementation* of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) as provided for in Part V thereof

Annex 10
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The GRP and NDFP shall resume formal peace negotiations on 27 April 2001 in a mutually acceptable foreign neutral venue in accordance with this Joint Statement, The Hague Joint Declaration dated 1 September 1992, the JASIG, and the Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees (RWCs) dated 26 June 1995.

The agenda of such resumption of formal peace negotiations shall include the exchange of credentials. of the two Panels which should include the approval of this Joint Statement by the Principals, opening statements of the panel chairmen, and the opening of the formal negotiations on Social and Economic Reforms between the respective Reciprocal Working Committees of the two Parties.

6. Both Parties have agreed to continue undertaking goodwill and confidence budding measures to enhance the atmosphere and promote the progress for the resumption of the peace negotiations. In response to the appeals of the families, human rights organizations and religious groups, the GRP shall take steps to accelerate the release of prisoners and detainees contained in a list provided by human rights organizations.

GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES	NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES
Silvestre H. Bello M Chair, GRP Negotiating Panel	**Luis G. Jalandoni** Chair, NDFP Negotiating Panel
Hernani A. Braganza Member	**Fidel V. Agcaoili** Member
Rene V. Sarmiento	**Coni K. Ledesma**

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Appendix I:

New Approach to Peace, or Ultimatum for Surrender?

Rey Claro Casambre
Philippine Peace Center
22 March 2002

After several months of waving the olive branch and paying lip service to the need for resuming peace negotiations, the Macapagal-Arroyo government finally showed its hand last week when it called on the National Democratic Front (NDFP) and the Moro National Liberation Front (MILF) to "lay down their arms under honorable and reasonable terms and join the mainstream of society..."

The catch is that in the same breath, Arroyo suspended formal negotiations with the NDFP and the MILF. This effectively terminated the discussions on basic reforms which are in the substantive agenda (socio-economic, political and constitutional reforms in the case of the GRP-NDFP negotiations) or talking points (ancestral domain and the land problem, human rights, social and cultural discrimination, etc. in the case of the GRP-MILF negotiations). Arroyo premised her call with the claim that "her administration's policies and programs for the country's poorest and for the Muslim brothers are already in place, which parallels (sic) their publicly declared goals of serving our people".

"Backchannel talks" would be held in lieu of the formal negotiations. But with the substantive agenda or talking points excluded, the only thing left to negotiate would be what Malacanang calls "a settlement within the framework of our Constitution." At the same time, Arroyo made it clear that she is prepared to "unleash the full force of the military" against the NDFP or MILF should they resort to "terrorist and criminal actions". In other words, "Surrender now, or else..."

There is nothing new in this position. From the time peace negotiations became a possibility, militarists and hawks in the Manila government have persistently sought to impose the GRP Constitution

as the framework for the talks and the laying down of arms or indefinite ceasefires as precondition to the holding of formal talks.

Both the NDFP and MILF have staunchly rejected these preconditions which they consider as tantamount to capitulation. Thus, negotiations have proceeded in earnest and have become fruitful whenever the GRP would temporarily put aside these preconditions and impositions. On the other hand, the talks would falter, stall and even break down every time the GRP takes the hard line and resurrects these preconditions and impositions. Further study would show that the GRP would seek a resumption of negotiations every time it is caught in a deep crisis situation, such as when it badly needs political stability or a diversion from a scandal or controversial issue. Conversely, whenever it feels a certain degree of confidence in handling the situation militarily, it would throw a monkey wrench at and even terminate the peace negotiations. Thus, Aquino's "unsheathing the sword of war" in 1987 and Estrada's "all-out war" in 1999.

What is significant is that this shift to a mode and framework totally unacceptable to both the NDFP and MILF indicates that the Arroyo government is prepared to terminate the talks and confront them with sheer armed force. Corollarily, it shows a degree of confidence in resolving the armed conflict not so much by addressing its roots but rather by military means.

It is no surprise that the hardline position has decisively gained the upper hand in regard to the peace negotiations at the same time that the Arroyo government is opening the floodgates not only to the presence of US troops and war materiel but also for their participation in combat operations under the guise of "counter-terrorism".

By now, it is common knowledge that the Balikatan 02-1 exercises are merely a cover for the deployment of US troops in offensive operations against the Abu Sayyaf. What is not generally known yet is that Balikatan 02-1 is only the beginning of a long-term and more massive US military presence and intervention in the Philippines, with the Arroyo government as an all-too-willing and compliant host.

In a breakfast meeting with church leaders, Macapagal-Arroyo remarked, "The Balikatan is done yearly. The idea is to hold it where it

is needed. This year, it's Basilan. Next year, somewhere else, wherever the situation warrants." Defense Secretary Reyes, foremost militarist in the Arroyo government, has already stated in several instances that after the Abu Sayyaf, the NPA and MNLF would be the next targets.

At this very moment, Balikatan 02-2 is being set up in Central Luzon, where several of the NDFP's guerrilla zones are located. Undoubtedly, other Balikatan "exercises"s are on the drawing boards, with the NPA and MILF areas as target locations. The media campaign to demonize both the NPA and MILF as terrorists who are as "evil" as the Abu Sayyaf, Taliban and Al Qaeda indicates that they are being set up as "legitimate targets" in the counter-terrorist war, thereby justifying US military intervention.

The Arroyo government displays sheer and shameless puppetry in collaborating with the US in violating Philippine sovereignty and territorial integrity in the latter's pursuit of world domination. In exchange, it hopes to neutralize if not decisively defeat both the NDF and MILF militarily, in addition to getting a paltry amount of military and economic aid from the Bush government.

Unfortunately for the hawks and militarists, aside from high-tech surveillance gadgets, the US can introduce nothing new into the AFP's doctrine, strategy and tactics that could conceivably turn the tide or make the AFP more effective in defeating the Abu-Sayyaf, much less the NDF and MILF. The US has trained, armed, supplied, and even directed the AFP since it was formed as the "Philippine Scouts" during the colonial period. It is the US that taught the AFP its "counter-insurgency" doctrine, from the clear-hold-consolidate-develop formula down to the names of their campaigns and operations. For example, Marcos' "Oplan Katatagan" was a carbon-copy of the Vietnam- and LIC-vintage "Stability Operations".

Even the pending proposal to deploy US troops for "civic action" is nothing but the old "winning-the-hearts-and-minds" ploy that has miserably failed for the AFP in the Philippine countryside as it had failed for US forces in Vietnam. No amount of civil-military operations could cover up the widespread and massive atrocities and violations of human rights and international humanitarian law that invariably

characterized counter-guerrilla operations of the US forces as well as their AFP proteges.

Unfortunately for the people, there is no indication, much less guarantee, that the use of high-tech surveillance and destruction gadgets could mitigate or minimize these violations now institutionalized and euphemistically termed "collateral damage". These violations, coupled with the drain on and damage to the economy, will only create more problems and greater misery on the people than the US and Philippine governments aim or claim to solve. In the meantime, the Arroyo government, emboldened by the false sense of security it derives from US support, is bound to perpetuate the anti-people and anti-national policies it is currently pursuing.

The NDF has charged Macapagal-Arroyo of practically scuttling the peace negotiations and seeking to negotiate the NDF's capitulation. It has shrugged off the GRP's implied threats of unleashing the full force of the US-AFP against the NDFP under the guise of "counter-terrorist war". The NDF has said it will never surrender, and is prepared to intensify the guerrilla war in response to any escalation of the war by the US and GRP.

Appendix II:

Chronology of Current GRP-NDFP Peace Negotiations prepared by the Philippine Peace Center

I. Exploratory and Preliminary Talks (1988-1995)

December 1988 - The National Democratic Front of the Philippines (NDFP), in the editorial of its official publication, **Liberation,** announces its openness to the resumption of peace talks with the Government of the Republic of the Philippines (GRP).

February 1989 - NDFP, through its chief international representative Luis Jalandoni, expresses willingness to start a new round of peace talks with the GRP if the Aquino government makes an executive proclamation against the renewal of the bases agreement with the US on or before Sept. 16, 1991

September 20, 1990 - NDFP chairman Manuel Romero, in a letter to then GRP Pres. Corazon Aquino, reiterates the NDFP's long-standing offer for the reopening of formal talks between the GRP and NDFP, comprehensively lays down the NDFP's strategic view of the peace talks, including the proposed two major agenda for the talks

September 24, 1990 - NDFP representatives Luis Jalandoni and Coni Ledesma meet with GRP delegation led by Gov. Bren Guiao in Singapore to discuss informally the prospects of resumption of peace negotiations.

September 26 - 29, 1990 - GRP emissary Rep. Jose Yap meets separately with NDFP vice-chairman Luis Jalandoni and NDFP consultant Jose Ma. Sison in the Netherlands

October 4, 1990 - separate statements issued by NDFP Vice-Chair Luis Jalandoni, CPP founding chairman Jose Ma. Sison, and GRP Rep. Jose Yap announce that prospects for a new round of peace negotiations between the GRP and NDFP are bright; Mr. Jalandoni declares that peace negotiations can start without preconditions

September 1991 - discreet exploratory talks in Hongkong between NDFP representatives and a GRP mission

August 1992 - official exploratory talks between the NDFP and the GRP resume when Rep. Jose Yap goes to The Netherlands with official written authority as special emissary of newly- elected GRP President Fidel Ramos.

September 1, 1992 - signing of **The Hague Joint Declaration** in The Hague, The Netherlands by NDFP vice chairman Luis Jalandoni and GRP emissary Rep. Jose Yap

- sets as the objective of the peace negotiations the attainment of a just and lasting peace by addressing the roots of the armed conflict and thereby resolving it
- sets the framework of mutually acceptable principles and under no precondition which negates the character and purpose of peace negotiations
- sets the substantive agenda of the formal peace negotiations and the proper sequence of tackling the agenda:
  1. respect for human rights and international humanitarian law
  2. socio-economic reforms
  3. political and constitutional reforms
  4. end of hostilities and disposition of forces

September 14, 1992 - NDFP announces Chairman Mariano Orosa's approval of **The Hague Joint Declaration**

October 28, 1992 - GRP announces Pres. Ramos' approval of **The Hague Joint Declaration** "subject to refinements of the substantive agenda"

June 14, 1994 - signing of **The Breukelen Joint Statement** in Breukelen, The Netherlands

- reaffirms *The Hague Joint Declaration* and carries the commitment of GRP to follow it throughout formal peace negotiations
- points to goodwill and confidence-building measures, crucial issues and the need for safety and immunity guarantees, and
- looks forward to the opening of formal peace negotiations in a foreign neutral venue

October 10-14, 1994 - meeting of GRP and NDFP negotiating panels in De Bilt, The Netherlands

- NDFP protests against escalation of human rights violations by GRP
- The two panels agree to appoint their respective "small committees" to draft the joint agreement on safety and immunity guarantees
- GRP panel rejects the common draft drawn by the "small committees" of the two panels and unilaterally declares a collapse of the talks

The two panels eventually agree to continue the work of drafting the agreement on security and immunity guarantees and reformulating the contentious provisions, overcome the differences and become ready to resume the preliminary talks

February 24, 1995 - signing of the **Joint Agreement on Safety and Immunity Guarantees (JASIG)** by the two panels in Nieuwegein, The Netherlands

- lays down principles and modalities for safety and immunity guarantees for the personnel, consultants and other people involved in the formal peace negotiations
- conclusively stipulates that formal meetings of GRP and NDFP negotiating panels are held in a foreign neutral venue
- sets June 1, 1995 as the date for the opening of formal peace negotiations in Brussels, Belgium (this date was subsequently moved to June 26, 1995 upon request of the GRP panel)

February 26, 1995 - signing of the **Joint Agreement on the Ground Rules of the Formal Meetings Between the GRP and NDFP Negotiating Panels** in Nieuwegein, The Netherlands

- establishes procedural rules in the formal peace negotiations

May 2, 1995 - *JASIG* takes effect

May 17, 1995 - NDFP Panel Consultant Sotero Llamas is wounded and arrested by Armed Forces of the Philippines (AFP) troops in

Juban, Sorsogon, detained and charged with criminal offenses; NDFP demands release of Mr. Llamas, who is under the protection of *JASIG*

II. Formal Peace Negotiations (June 1995 – June 1999)

June 26, 1995 - Opening session of the Formal Peace Negotiations between the GRP and NDFP at the International Press Center in Brussels, Belgium

- signing of the **Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees**
  - follows sequence of headings in substantive agenda set by *The Hague Joint Declaration of 1992* (respect for human rights and international humanitarian law; social and economic reforms; political and constitutional reforms; and end of hostilities and disposition of forces)
  - arranges in detail the sequence of forming the reciprocal working committees which shall produce one after the other the tentative comprehensive agreements on the four major headings of the substantive agenda, the finalization of these by the negotiating panels and the approval of the final comprehensive agreements by the principals of the negotiating panels

- announcement by each party of the formation and operationalization of its Reciprocal Working Committee on Human Rights and International Humanitarian Law (RCW-HR-IHL).

NDFP asks for a recess until the arrival of NDFP Panel Consultant Llamas, whom the GRP had agreed to release so he could participate in the talks.

June 27, 1995 - GRP in turn unilaterally suspends the talks after failing to comply fully with the *JASIG* provision to allow Mr. Llamas to join the NDFP panel

June 21, 1996 - NDFP Panel Consultant Sotero Llamas is released from prison

June 19-26, 1996 - formal talks resumed after the June 1995 formal opening and suspension

- discussions on *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CAR-HR-IHL)* begin; NDFP presents a 15-page complete draft; GRP presents a 3-page draft;

- Preamble of the *CAR-HR-IHL* initialled by both GRP and NDFP panels

- two panels sign **Additional Implementing Rules Pertaining to the Documents of Identification**

- NDFP presents list of holders of Document of Identification (DI) to the GRP; GRP objects to the inclusion of former AFP Gen. Raymundo Jarque

July 5, 1996 - NDFP submits to the Swiss Federal Court as depositary and to the International Committee of the Red Cross (ICRC) as official guardian the **NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977**

July 24, 1996 - NDFP Panel Chairperson Luis Jalandoni warns of "enormously negative effects" on the peace talks if the expulsion order on the Sisons is carried out, citing

1. the crucial role Prof. Sison has played in all the formal and informal meetings between the GRP and NDFP panels,
2. the importance of Prof. Sison's presence in the Netherlands in order to help the NDFP Panel perform its functions, plus
3. the fact that nearly all of the meetings between the GRP and NDFP panels have been held in The Netherlands

August 5, 1996 - NDFP announces its *Declaration of Undertaking to apply the Geneva Conventions and Protocol I* and asserts its status of belligerency on the following basis:

1. the revolutionary people and organizations represented by the NDFP constitute a significant portion of the Philippine population, occupy

a significant portion of Philippine territory, and have their own system of government and political principles

2. the New People's Army (NPA) operates on a nation-wide scale with a central command and under the political leadership of the Communist Party of the Philippines (CPP)
3. the armed conflict, which is a protracted civil war, has been of an intensity and scale as to require the GRP's use of its entire armed forces in the name of national defense from 1969 to the present, and the imposition of martial rule from 1972 to 1986

November 21, 1996 - AFP abducts and detains NDFP Panel Consultant Danilo Borjal, turns him over to Philippine National Police (PNP) which in turn detains him and charges him with criminal offenses; NDFP protests this as violation of the *JASIG* while GRP denies that *JASIG* has been violated, resulting in another impasse in the talks

February 8, 1997 - GRP accedes to NDFP demand for the release of Mr. Borjal in accordance with *JASIG* ; initialling of supplemental agreement to strive to arrive at tentative comprehensive agreements for each major heading of the substantive agenda by June 30, 1997

March 18-23, 1997 - resumption of formal talks

- agreement to accelerate the talks signed by both panels
- small committees composed of members from both panels are formed to tackle separate items:

1. Part I: Declaration of Principles" and "Part II: Bases, Scope and Applicability" of CAR-HR-IHL
2. *Additional Implementing Rules of the Joint Agreement on Safety and Immunity Guarantees (JASIG) Pertaining to the Security of Personnel and Consultations in Furtherance of the Peace Negotiations*
3. *Joint Agreement in Support of Socio-Economic Projects of Private Development Organizations and Institutes*
4. Political Prisoners

GRP Panel Chair Howard Dee hands over to NDFP Panel Chair Luis Jalandoni the GRP Panel's documents of acknowledgement of 73 NDFP Document of Identification holders in accord with an agreement signed by both Panel Chairpersons in March 1996 (this was due to be given soon after the 19-26 June 1996 talks in The Hague)

April 1997 - NDFP Reciprocal Working Committee on Socio-Economic Reforms operationalized , drafts a 50-page draft agreement in preparation for discussions with its GRP counterpart

April 22, 1997 - GRP panel presents "two options" purportedly based on new instructions and guidelines given by GRP President Ramos:

option 1: each agreement on a major item of the substantive agenda may be forged by the Parties and approved by their respective principals separately and may have separate and distinct effectivity date on the precondition that its implementation shall be "according to the constitutional and legal processes of the GRP"

option 2: all four agreements on the major items of the substantive agenda shall first be completed by the negotiating panels before they are initialld and submitted to their respective principals for approval , also subject to the precondition that their implementation shall be "according to the constitutional and legal processes of the GRP"

- NDFP rejects these options as "gross and serious violations" of *The Hague Joint Declaration* and the *Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees*

July 31 - August 5, 1997 - common tentative draft of the *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CAR-HR-IHL)* initialed by the RWCs

on HR-IHL of both GRP and NDFP panels

- the following agreements were also initialled
  1. ***Additional Implementing Rules of the Joint Agreement on Safety and Immunity Guarantees (JASIG) Pertaining to the Security of Personnel and Consultations in Furtherance of the Peace Negotiations***
  2. ***Joint Agreement in Support of Socio-economic Projects of Private Development Organizations and Institutes***

- GRP panel submits August 5 common tentative draft to GRP cabinet cluster, which rejects it and instructs the GRP panel to reformulate the draft

August 22, 1997 - GRP panel submits to the NDFP its *Reformulated Draft of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law;* NDFP rejects this as a mutilation and cannibalization of the August 5 common tentative draft

August 26 - October 7 - consultations conducted by NDFP Panel Member Fidel Agcaoili with NDFP forces and various individuals and groups, including sectoral and people's organizations in the Philippines

October 1, 1997 - GRP submits a second *Reformulated Draft* purportedly taking into consideration the NDFP's objections to the first *Reformulated Draft*

October 30, 1997 - NPA unit captures Rodriguez, Rizal Police Chief Maj. Rene Francisco and M/Sgt. Joaquin Melad in a raid on the Rodriguez, Rizal municipal hall

November 11, 1997 - GRP Panel Chairman Dee announces the suspension of the peace talks between the GRP and NDFP

December 5, 1997 - Melito Glor Command of the New People's Army, Southern Tagalog, releases P/Maj. Francisco and M/Sgt. Melad to the International Committee of the Red Cross (ICRC) in the mountains of Tanay, Rizal as goodwill measure for the resumption of talks

January 2, 1998 - Lucio de Guzman Command, NPA-Mindoro island releases policeman SPO3 Martellano Magtagad to the ICRC

Jan 6 -10, 1998 - resumption of peace talks in The Hague, The Netherlands

- two Panels initial the draft of Parts I, II and III of the *CAR-HRIHL* except for Article 5, Part III and exchange drafts on the provisions on respect for International Humanitarian Law

Jan 13 - 27, 1998 - Luis Jalandoni and Coni Ledesma, NDFP panel chairperson and member respectively, conduct consultations with NDFP forces and other organizations, groups and individuals interested in the progress of the peace negotiations. Their visit was highlighted by a meeting with political prisoners and with GRP President Fidel V. Ramos

Jan 28 - 31, 1998 - Parts IV, V and VI which constitute the second half of *CAR-HRIHL* are intialed by both panels; only Article 5, Part III remains unresolved with panels agreeing to immediately work on a mutually acceptable formulation

March 16, 1998 - GRP and NDFP negotiating panels sign the ***Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law***

- two short agreements are signed: the ***Additional Implementing Rules of the Joint Agreement on Safety and Immunity Guarantees (JASIG) Pertaining to the Security of Personnel and Consultations in Furtherance of the Peace Negotiations*** and the ***Joint Agreement in Support of Socio-economic Projects of Private Development Organizations and Institutes***

- drafts of Socio-economic Reforms are exchanged

April 10, 1998 – NDFP Chair Mariano Orosa signs the *CAR-HRIHL*

August 7, 1998 – GRP President Joseph Estrada signs the *CAR-HRIHL*

October 27-29, 1998 - GRP panel headed by Sen. Franklin Drilon

held informal talks with NDFP panel headed by Luis Jalandoni. GRP panel

1. raised GRP objections to and proposed to delete Art.4 Part III and Art. 6 Part IV of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (*CAR-HRIHL*)

2. proposed that the Joint Monitoring Committee be placed under the Office of the President of the GRP

Both proposals were rejected by the NDFP as tantamount to capitulation and violative of the 1972 The Hague Joint Declaration

February 1999 – New People's Army (NPA) captures 4 AFP/PNP officers in succession in Mindanao and Bicol: General Obillo, AFP and Maj. Montealto, PA in Davao del Norte, P/Maj Bernal in Bicol, and Sgt. Lozada, PA in Surigao Sur.

February 24, 1999 – GRP President Estrada declares unilateral suspension of peace talks and the Joint Agreement on Safety and Immunity Guarantees

April 9-27, 1999 - Successive releases by the NDF of the four AFP/PNP officers and Sgt. Wivino Demol of the PA-ISG to the ICRC and the Humanitarian Mission led by Sen. Loren Legarda.

May 29, 1999 - NDFP announces its *Recognition of De-facto Termination of the Peace Negotiations by the GRP*

May 31,1999 - GRP issues formal notice of termination of peace negotiations

June 11, 1999 - NDFP formally issues acknowledgement of the GRP's termination of peace negotiations

III. Formal Negotiations, 2001-2002

March 9, 2001 - GRP-NDFP negotiating panels issue the ***Joint GRP-NDFP Statement on Resumption of Formal Peace Talks,*** wherein they agree to

1. Resume formal talks on April 26-29, 2001
2. Uphold the validity of prior agreements
3. Undertake goodwill and confidence-building measures including the release by the GRP of political prisoners and the release by the NDF of Phil Army Maj. Noel Buan

Ref: *"Joint GRP-NDFP Statement on Resumption of Formal Peace Talks"*

April 6, 2001 - NPA Melito Glor Command releases SOLCOM-PA Intelligence officer, Maj. Noel Buan in Oriental Mindoro to the ICRC, the Humanitarian Mission led by Sen. Loren Legarda, and the GRP Negotiating Panel as goodwill and confidence-building measure for the resumption of formal peace negotiations

April 18, 2001 - Solidarity Conference in support of GRP-NDFP Peace Talks, held in Westin Plaza Hotel, Manila

April 26-29, 2001 - Formal peace talks resume in Oslo, Norway

Agenda:

1. confidence-building and goodwill measures
2. implementation of CARHRIHL
3. activation of RWCs on Socio-Economic Reforms and formation of subcommittees under the R000WCs

June 1, 2001 – Informal meeting of RWC-SER subcommittees held in Antipolo, Rizal

June 10-13, 2001 - Second round of formal peace talks held in Oslo, Norway, and recessed by the GRP purportedly in protest of the June 11 NPA ambush on former Congressman and retired PA Col. R Aguinaldo, notorious martial law torturer and human rights violator

September ?, 2001 - Decision of the GRP Cabinet Oversight Committee on Internal Security (which oversees the GRP negotiating panel) to resume formal peace talks with the NDFP on Sept 21-25

September 21, 2001 - Resumption of formal talks is aborted after Gen Angelo Reyes requested and obtained a special cabinet oversight committee meeting reversing the decision to resume formal talks and instead instructing GRP Panel Chair Silvestre Bello III and panel member Sec. Hernani Braganza to hold informal or "backchannel" talks with the NDFP panel

November 11-14, 2001 - Backchannel talks in The Netherlands between the GRP and NDFP negotiating panels
Agenda:

1. Confidence-building measures
2. Proposed operational guidelines for the Joint Monitoring Committee
3. Joint Statement on resumption of formal peace talks
4. Release of Sgt. Jeremias Rosete, Jr & 3 others captured by the NPA for espionage in Far South Mindanao

Ref: Final draft, *"Operational Guidelines for the Joint Monitoring Committee"*
Draft *Joint Statement* (14 November 2001)

November 30-Dec 1, 2001 - Backchannel talks are held in The Netherlands between GRP group composed of Speaker Jose De Venecia, Presidental Adviser on the Peace Process Gen. Eduardo Ermita, GRP Panel Chair Bello and Presidential Management Staff Head Silvestre Afable and the NDFP Negotiating Panel

Agenda:

1. GRP proposal - *Final Agreement....*
2. NDFP counterproposal: *Document of Understanding to Accelerate the Peace Negotiations Between the GRP and the NDFP*
3. Confidence-building measures

Ref: GRP draft, *"Final Agreement Between the GRP and the NDF"*
NDFP draft & final draft, *"Document of Understanding to Accelerate the Peace Negotiations Between the GRP and the NDFP"*

Dec 1, 2001 – GRP and NDFP panels meet newly elected Prime Minister Kyell Magne Bondevik of the Royal Norwegian Government. PM Bondevik promised that the Norwegian government will continue to act as facilitator and supporter of the peace negotiations.

Jan 9-10, 2002 Backchannel talks held in The Netherlands between Atty. Silvestre Bello III and Sec. Hernani Braganza for the GRP, and Luis Jalandoni, Fidel Agcaoili and Coni Ledesma for the NDFP. The GRP proposal for a "single final agreement" to be achieved after a series of backchannel or informal talks was presented by the GRP Panel. No written proposal was submitted to the NDFP. The NDFP Panel replied that since the proposal was a major departure from the 1992 The Hague Joint Declaration, this would have to be referred to the NDFP National Executive Council for its consideration. The NDFP panel estimated that it would take up to March to obtain a reply from the NDFP Executive Council.

The White House
President George W. Bush

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For Immediate Release
Office of the Press Secretary
September 24, 2001

Executive Order on Terrorist Financing

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein, and UNSCR 1363 of July 30, 2001, establishing a mechanism to monitor the implementation of UNSCR 1333,

I, GEORGE W. BUSH, President of the United States of America, find that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, acts recognized and condemned in UNSCR 1368 of September 12, 2001, and UNSCR 1269 of October 19, 1999, and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and in furtherance of my proclamation of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, hereby declare a national emergency to deal with that threat. I also find that because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate for those foreign persons that support or otherwise associate with these foreign terrorists. I also find that a need exists for further consultation and cooperation with, and sharing of information by, United States and foreign financial institutions as an additional tool to enable the United States

to combat the financing of terrorism.

I hereby order:

Section 1. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States or that hereafter come within the United States, or that hereafter come within the possession or control of United States persons are blocked:

(a) foreign persons listed in the Annex to this order;

(b) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(c) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order;

(d) except as provided in section 5 of this order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General;

(i) to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order or determined to be subject to this order; or

(ii) to be otherwise associated with those persons listed in the Annex to this order or those persons determined to be subject to

Subsection 1(b), 1(c), or 1(d)(i) of this order.

Sec. 2. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the Annex to this order or determined to be subject to this order;

(b) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited; and

(c) any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, corporation, or other organization, group, or subgroup;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) the term "terrorism" means an activity that --

(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(ii) appears to be intended --

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by

intimidation or coercion; or

(C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

Sec. 4. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by United States persons to persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106-387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on any person determined to be subject to this order because imminent involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.

Sec. 5. With respect to those persons designated pursuant to subsection 1(d) of this order, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under IEEPA and UNPA if the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

Sec. 6. The Secretary of State, the Secretary of the Treasury, and other appropriate agencies shall make all relevant efforts to cooperate and coordinate with other countries, including through technical assistance, as well as bilateral and multilateral agreements and arrangements, to achieve the objectives of this order, including the prevention and suppression of acts of terrorism, the denial of financing and financial services to terrorists and terrorist organizations, and the sharing of intelligence about funding activities in support of terrorism.

Sec. 7. The Secretary of the Treasury, in consultation with the

Secretary of State and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 9. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees or any other person.

Sec. 10. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 11. (a) This order is effective at 12:01 a.m. eastern daylight time on September 24, 2001.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH

THE WHITE HOUSE,

September 23, 2001.

ANNEX

Al Qaida/Islamic Army

Abu Sayyaf Group

Armed Islamic Group (GIA)

Harakat ul-Mujahidin (HUM)

Al-Jihad (Egyptian Islamic Jihad)

Islamic Movement of Uzbekistan (IMU)

Asbat al-Ansar

Salafist Group for Call and Combat (GSPC)

Libyan Islamic Fighting Group

Al-Itihaad al-Islamiya (AIAI)

Islamic Army of Aden

Usama bin Laden

Muhammad Atif (aka, Subhi Abu Sitta,
Abu Hafs Al Masri)

Sayf al-Adl

Shaykh Sai'id (aka, Mustafa Muhammad Ahmad)

Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Khalid Al-
Shanqiti)

Ibn Al-Shaykh al-Libi

Abu Zubaydah (aka, Zayn al-Abidin Muhammad Husayn, Tariq)

Abd al-Hadi al-Iraqi (aka, Abu Abdallah)

Ayman al-Zawahiri

Thirwat Salah Shihata

Tariq Anwar al-Sayyid Ahmad (aka, Fathi, Amr al-Fatih)

Muhammad Salah (aka, Nasr Fahmi Nasr Hasanayn)

Makhtab Al-Khidamat/Al Kifah

Wafa Humanitarian Organization

Al Rashid Trust

Mamoun Darkazanli Import-Export Company

# # #

Return to this article at:
http://www.whitehouse.gov/news/releases/2001/09/20010924-1.html

U.S. DEPARTMENT of STATE

Fact Sheet
Office of the Coordinator for Counterterrorism
Washington, DC
October 23, 2002

Comprehensive List of Terrorists and Groups Identified Under Executive Order 13224

Executive Order 13224, signed by President Bush on September 23, 2001, blocks the assets of organizations and individuals linked to terrorism. There are now 220 such groups, entities, and individuals covered by the Executive Order. Following is a complete listing.

Original Annex: August 23, 2001

1. Al-Qaida/Islamic Army*
2. Abu Sayyaf Group*
3. Armed Islamic Group (GIA)*
4. Harakat ul-mujahidin (HUM)*
5. Al-Jihad (Egyptian Islamic Jihad)*
6. Islamic Movement of Uzbekistan (IMU)*
7. Asbat al-Ansar
8. Salafist Group for Call and Combat (GSPC)
9. Libyan Islamic Fighting Group
10. Al-Itihaad al-Islamiya (AIAI)
11. Islamic Army of Aden
12. Usama bin Ladin ("Most Wanted" Terrorist)
13. Muhammad Atif/Subhi Abu Sitta/Abu Hafs al-Masri ("Most Wanted" Terrorist - killed in Afghanistan)
14. Sayf al-Adl ("Most Wanted" Terrorist)
15. Shaykh Sa'id/Mustafa Muhammad Ahmad
16. Abu Hafs the Mauritanian/Mahfouz Ould al-Walid/Khalid al-Shanqiti
17. Ibn al-Shaykh al-Libi
18. Abu Zubaydah/Zayn al-Abidin Muhammad Husayn Tariq
19. Abd al-Hadi al-Iraqi/Abu Abdullah
20. Ayman al-Zawahiri ("Most Wanted" Terrorist)
21. Thirwat Salah Shihata/Muhammad Ali
22. Tariq Anwar al-Sayyid Ahmad/Fathi/Amr al-Fatih
23. Muhammad Salah/Nasr Fahmi Nasr Hasanayn
24. Makhtab al-Khidamat/Al-Khifaf
25. Wafa Humanitarian Organization
26. Al-Rashid Trust
27. Mamoun Darkazanli Import-Export Company

(Note: Groups with asterisks are also designated as Foreign Terrorist Organizations under the Anti-terrorism and Effective Death Penalty Act)

Designated on October 12, 2001

"Most Wanted" Terrorists

1. Abdullah Ahmed Abdullah
2. Muhsin Musa Matwalli Atwah
3. Ahmed Khalfan Ghailani

4. Ahmed Mohammed Hamed Ali
5. Fazul Abdullah Mohammed
6. Mustafa Mohamed Fadhil
7. Sheikh Ahmed Salim Swedan
8. Fahid Mohammed Ally Msalam
9. Anas al-Liby
10. Abdul Rahman Yasin
11. Khalid Shaikh Mohammed
12. Abdelkarim Hussein Mohamed al-Nasser
13. Ahmad Ibrahim al-Mughassil
14. Ali Saed bin Ali el-Hoorie
15. Ibrahim Salih Mohammed al-Yacoub
16. Ali Atwa
17. Hasan Izz-al-Din
18. Imad Fayez Mugniyah

Others

1. Rabita Trust
2. Jaish-e-Muhammad
3. Al-Hamati Sweets Bakeries
4. Al-Nur Honey Press Shops (aka: Al-Nur Honey Center)
5. Chafiq bin Muhammad al-Ayadi
6. Dr. Amin al-Haq (Dr. Amin ul-Haq)
7. Jamyah Taawun al-Islamia (aka: Society of Islamic Cooperation)
8. Mohammad Zia
9. Mufti Rashid Ahmad Ladeyaznoy (Karachi, Pakistan)
10. Muhammad al-Hamati (aka: Muhammad Hamdi Sadiq al-Ahdel)
11. Omar Mahmoud Uthman (aka: Abu Qatada al-Filistini)
12. Tohir Yuldashev
13. Mamoun Darkazanli
14. Saqar al-Jadawi
15. Ahmad Said al-Kadr
16. Sad al-Sharif
17. Bilal bin Marwan
18. Al-Shifa Honey Press for Industry and Commerce
19. Haji Abdul Manan Agha
20. Yasin al-Qadi (aka: Shaykh Yassin Abdullah Kadi)
21. Riad Hijazi

Designated on November 2, 2001

1. Abu Nidal Organization (ANO)
2. Aum Shinrikyo
3. Basque Fatherland and Liberty (ETA)
4. Gama'a al-Islamiyya (Islamic Group)
5. HAMAS (Islamic Resistance Movement)
6. Hizballah (Party of God)
7. Kahane Chai (Kach)
8. Kurdistan Workers' Party (PKK)
9. Liberation Tigers of Tamil Eelam (LTTE)
10. Mujahedin-e Khalq Organization (MEK
11. National Liberation Army (ELN)
12. Palestinian Islamic Jihad (PIJ)
13. Palestine Liberation Front (PLF)
14. Popular Front for the Liberation of Palestine (PFLP)
15. PFLP-General Command (PFLP-GC)
16. Real IRA
17. Revolutionary Armed Forces of Colombia (FARC)
18. Revolutionary Nuclei (formerly ELA)
19. Revolutionary Organization 17 November
20. Revolutionary People's Liberation Army/Front (DHKP/C)
21. Shining Path (Sendero Luminoso, SL)
22. United Self-Defense Forces of Colombia (AUC)

Designated on November 7, 2001

1. Aaran Money Wire Service, Inc
2. Al Baraka Exchange LLC
3. Al-Barakaat

4. Al-Barakaat Bank
5. Al-Barakat Bank of Somalia (BSS)
6. Al-Barakat Finance Group
7. Al-Barakat Financial Holding Co
8. Al-Barakat Global Telecommunications
9. Al-Barakat Group of Companies Somalia Limited
10. Al-Barakat International (AKA Baraco Co)
11. Al-Barakat Investments
12. Al-Barakat Wiring Service
13. Al Taqwa Trade, Property and Industry Company Limited,
14. ASAT Trust
15. Bank al Taqwa Limited
16. Baraka Trading Company
17. Barakaat Boston
18. Barakaat Construction Company
19. Barakaat Enterprise
20. Barakaat Group of Companies
21. Barakaat International
22. Barakaat International Foundation
23. Barakaat International, Inc
24. Barakaat North America, Inc
25. Barakaat Red Sea Telecommunications
26. Barakaat Telecommunications Co Somalia
27. Barakat Bank and Remittances
28. Barakat Computer Consulting (BCC)
29. Barakat Consulting Group (BCG)
30. Barakat Global Telephone Company
31. Barakat International Companies (BICO)
32. Barakat Post Express (BPE)
33. Barakat Refreshment Company
34. Barakat Wire Transfer Company
35. Barakat Telecommunications Company Limited (BTELCO)
36. Barako Trading Company, LLC
37. Global Services International
38. Heyatul Ulya
39. Nada Management Organization
40. Parka Trading Company
41. Red Sea Barakat Company Limited
42. Somalia International Relief Organization
43. Somali Internet Company
44. Somali Network AB
45. Youssef M. Nada & Co. Gesellschaft MBH
46. Youssef M. Nada
47. Hussein Mahmud Abdullkadir
48. Abdirasik Aden
49. Abbas Abdi Ali
50. Abdi Adulaziz Ali
51. Yusaf Ahmed Ali
52. Dahir Ubeidullahi Aweys
53. Hassan Dahir Aweys
54. Garad Jama
55. Ali Ghaleb Himmat
56. Albert Friedrich Armand Huber
57. Liban Hussein
58. Ahmed Nur Ali Jim'ale
59. Abdullahi Hussein Kahie
60. Mohamed Mansour
61. Zeinab Mansour-Fattouh
62. Youssef Nada

Designated on December 4, 2001

1. Holy Land Foundation
2. Beit El-Mal Holdings
3. Al-Aqsa Islamic Bank

Designated on December 20, 2001

1. Lashkar e-Tayyiba (LET)
2. Ummah Tameer e-Nau (UTN)
3. Sultan Bashir-ud-Din Mahmood

4. Abdul Majeed
5. Mahammed Tufail

Designated on December 31, 2001

1. Continuity Irish Republican Army (CIRA)
2. Loyalist Volunteer Force (LVF)
3. Orange Volunteers (OV)
4. Red Hand Defenders (RHD)
5. Ulster Defence Association/Ulster Freedom Fighters (UDA/UFF)
6. First of October Antifascist Resistance Group (GRAPO)

Designated on January 9, 2002

1. Afghan Support Committee (ASC)
2. Revival of Islamic Heritage Society (RIHS) (**NOTE:** Only Pakistan and Afghanistan offices were designated)
3. Abd al-Muhsin al Libi
4. Abu Bakr al-Jaziri

Designated on February 26, 2002

1. Javier Abaunza Martinez
2. Itziar Alberdi Uranga
3. Angel Alcalde Linares
4. Miguel Albisu Iriarte
5. Eusebio Arzallus Tapia
6. Paulo Elcoro Ayastuy
7. Antonio Agustín Figal Arranz
8. Eneko Gogeascoechea Arronategui
9. Cristina Goiricelaya Gonzalez
10. Maria Soledad Iparraguirre Guenechea
11. Gracia Morcillo Torres
12. Ainhoa Múgica Goñi
13. Aloña Muñoa Ordozgoiti
14. Juan Jesús Narvaez Goñi
15. Juan Antonio Olarra Guridi
16. Zigor Orbe Sevillano
17. Mikel Otegui Unanue
18. Jon Iñaki Perez Aramburu
19. Carlos Saez de Eguilaz Murguiondo
20. Kemen Uranga Artola
21. Fermín Vila Michelena

Designated on March 11, 2002

1. Al-Haramain Islamic Foundation-Bosnia Herzegovina
2. Al-Haramain Islamic Foundation-Somalia

Designated on March 27, 2002

1. Al Aqsa Martyrs Brigade

Designated on April 19, 2002

1. Mohamed Ben Belgacem Aoudi
2. Mokhtar Bouchoucha
3. Tarek Charaabi
4. Sami Ben Khemais Essid
5. Khalid Al-Fawaz
6. Lased Ben Heni
7. Abu Hamza Al-Masri
8. Ahmed Idris Nasreddin
9. Abdelkader Mahmoud Es Sayed
10. The Aid Organization of the Ulema

Designated on May 3, 2002

1. Gorka Palacious Alday
2. Manex Zubiaga Bravo
3. Ismael Berasategui Escudero
4. Juam Luis Rubenach Roig
5. Ivan Apaolaza Sancho
6. Lexuri Gallestequi Sodupe
7. Asier Quintana Zorrozua
8. Askatasuna

Designated on June 27, 2002

1. Babbar Khalsa International (BKI)
2. International Sikh Youth Foundation (ISYF)

Designated on July 2, 2002

1. Gafur Adili
2. Nevzat Halili
3. Kastriot Haxhirexha

Designated on August 12, 2002

1. The Communist Party of the Philippines/New People's Army (CPP/NPA)
2. Jose Maria Sison

Designated on September 3, 2002

1. Eastern Turkistan Islamic Movement (ETIM)

Designated on October 10, 2002

1. Tunisian Combat Group

Designated on October 23, 2002

1. Jemaah Islamiya organization (JI)

[End]

Sanction Regulation Against Terrorism 2002 III

Regulation of 13 August 2002, no. DJZ/BR/749-02 containing restrictive measures against specific persons and entities in view of the fight against terrorism (Sanction Regulation Against Terrorism 2002 III)

The Minister of Foreign Affairs,
in agreement with the Minister of Finance;
Paid attention to Resolution 1373 of the Security Council of 29 September 2001;
Paid attention to sectio 2, 2nd paragraph, and sectio 3 of the Sanction Law 1977;
Decision:

Article 1

For the application of what is stipulated in this regulation, is defined:
a. *Means:* assets of any nature, judicial documents or instruments in which ever form, as well as electronic or digital, from which ownership of or an interest in similar assets appears, including, yet not restricted to, bank credits, travel cheques, bank cheques, postal orders, shares, bonds, bills of exchange, credit papers and other stocks;
b. *Freezing of means:* the prevention of mutation, transfer, correction, use or handling with means in any form, resulting in the change of their size, amount, location, owner, possession, distinguishing characteristics, destination, or other changes whereby the use of intended means, including the management of an investment portfolio, possibly would be made.
c. *Financial services:* all services of financial nature, under which all insurance services and insurance-related services, and all bank services and other financial services (with the exception of insurances).

Article 2

1. All means which belong to persons or entities, mentioned in the appendix to this regulation, will be frozen.
2. It is forbidden to provide financial services for or on behalf of the persons or entities, mentioned in de appendix to this regulation.
3. It is forbidden to place direct and indirect means at disposal of persons or entities, mentioned in de appendix to this regulation.

Article 3

In agreement with the Minister of Foreign Affairs, The Minister of Finance can on request grant exemption of the bans mentioned in Article 2.

Article 4

This regulation is to be cited as:
Sanction Regulation Against Terrorism 2002 III.
This regulation takes effect as of the second day after the date of the *Staatscourant* in which it is published.

Article 5

This regulation shall be published in the *Staatscourant* with the accompanying appendix and the explanation.
The Minister of Foreign Affairs,
J.G. de Hoop Scheffer.

Appendix meant in article 2 of the Sanction Regulation Against Terrorism 2002 III

– New Peoples Army (NPA)/ Communist Party of the Philippines)
– Jose Maria Sison (date of birth: 2 August 1938: Ilocos sur, Northern Luzon; the Philippines)

Explanation

This regulation estends to the implementation indicated in Resolution 1373 of the Security Council of 29 September 2001. It is based on article 2, Second paragraph, of the Sanction Law 1977.
In Resolution 1373, it is among other things established that all countries must proceed to the freezing of assets and other financial or economic means of persons who commit terrorist acts, or attempt to commit or participate or facilitate the realization of it.
Besides, the member states must take measures to forbid to make the financial or economic means available to persons or provide them financial or other related services.
In various common stand points of the Council of the European Union, it is stated that according to the Council, the fight against terrorism is a priority objective. In the Common Stand Points of the Council of European Union of 27 December 2001 nr. 2001/930/GBVB and no. 2001/931/GBVB concerning the fight against terrorism (Pb EG L 344), the Council states that the EU is determined – under the auspices the United Nations – to contribute to the world wide coalition against terrorism. Furthermore the Council states that it is determined to deal with the financing sources of terrorism in close consultation with the United States.
In order to be able to give comprehensive implementation to international sanction regulation aimed at fighting terrorism, the Sanction Law 1977 is amended; at the same time with the amendment of the Sanction Law 1977 – in implementation of By-laws (EG) no. 2580/2001 of 27 December 2001, concerning specific restriction measures against certain persons and entities in view of the fight against terrorism – the Sanction Regulation Against Terrorism 2002 I became effective. Some time later the next Sanction Regulation Against Terrorism 2002 II with regard to measures in fighting terrorism towards EU subjects/entities followed.
While awaiting the decisions which will follow on European level, in the light of the desirability to implement Resolution 1373 and the reconfirmation thereof in aforesaid common standpoints and EG-by-laws, also considering the need to take quick measures, the present regulation has been accomplished.

from: Staatscourant 13 August 2002, no. 153 / pag. 6 1 BUZ

The present sanction regulation extends to (freezing) measures towards the person and the entity which are mentioned in the appendix to this regulation.
The present regulation shall be withdrawn as soon as the community decision with regard to the same matter has taken effect.
The appendix to this regulation contains names which also appear on an 'executive order' which is issued by president Bush of the United States on 12 August 2002.
Article 1
In article 1, under c, 'all insurance services and insurance-related services' as well as 'bank services and other financial services' is mentioned. Hereafter is listed what is understood by that.
Insurance services and insurance-related services
i) Direct insurances (under which co-insurance)
A) life insurance;
B) damage insurance;
ii) reinsurance and retroversion;
iii) insurance mediation, such as services of brokers and agents;
iv) related services of the insurance company, such as giving advice, profession of actuary, risk evaluation and regulation of damage claims.
Bank services and other financial services (not including insurances)
v) acceptance of deposits and other refundable assets;
vi) all sort of loans, under which consumers credits and mortgages, factoring and financing of commercial transactions;
vii) financial leasing;
viii) all payments and monetary transfer services, including credit- and girocheques, travel cheques and money orders;
ix) guarantees and payment obligations;
x) transactions for own account or for accounts of clients, in the exchange or in the market of not listed funds or otherwise in that connection:
A) monetary market instruments (including cheques, stocks, deposit certificates);
B) currencies;
C) derivatives, including forward instruments and options;
D) currency and interest instruments, under which products such as swaps, forward rate agreements;
E) marketable stocks;
F) other marketable instruments and financial assets, including precious metals;
xi) taking part in emissions of various sorts of stocks, including the guarantying and placing of stocks as agent (public or private) and the providing of related services;
xii) financial mediation;
xiii) management of assets, for example cash means or investment portfolios, all forms of *management of collective* investments, management of retirement funds as well as safety deposit, deposit and trust services;
xiv) settlement and clearing services for financial assets, including stocks, derivative products and other marketable instruments;
xv) supplying and offering of financial information and processing of financial data and related software by offers of other financial services;
xvi) advice, mediation and other financial related services, belonging to all activities mentioned under v) to and including xv), including credit research and analysis, research and advice concerning investing and investments, advice about take-overs, company reorganization and strategy.
Article 2
The freezing of means, or the direct or indirect providing of means, with reference to the person and the entity that are mentioned in the appendix (first and third paragraph).
The second paragraph forbids the performing of financial services for or in behalf of the person and entity mentioned in the appendix, of whose names came from the 'executive order' which has been issued on 12 August 2002 by President Bush of the United States.
Article 3
This article leaves the option open to provide exemption for exceptional cases (for example for humanitarian reasons).
The Minister of Foreign Affairs,
J.G. de Hoop Scheffer.
1 Stcrt. 104
2 Stcrt. 138
from: Staatscourant 13 August 2002, no. 153 / pag. 6 2

23 August 2002/nr. DJZ/BR/781-02
The Minister of Foreign Affairs,
in agreement with the Minister of Finance;
Paid attention to Resolution 1373 of the Security Council of 29 September 2001;
Paid attention to sectio 2, second paragraph, and sectio 3 of the Sanction Law 1977;
Decision:
Sectio I
In the appendix, meant in sectio 2 of the Sanction Regulation Against Terrorism 2002 III1, 'Jose Maria Sison (date of birth: 2 August 1938: Ilocos sur, Northern Luzon; the Philippines)' is replaced by: Jose Maria Sison, date of birth: 2 August 1938 in Ilocos sur, Northern Luzon; the Philippines), alias Sison, José Maria C. (nickname: Joma), date of birth 8 February 1939 in Cabugao, the Philippines.
Sectio II
This regulation takes effect as of the second day after the date of the *Staatscourant* in which it is published.
This regulation shall be published in the *Staatscourant* with the accompanying appendix and the explanation.
The Minister of Foreign Affairs,
J.G. de Hoop Scheffer.
1 Stcrt. 153
Explanation
This regulation changes the appendix of the Sanction Regulation Against Terrorism 2002 III. Meanwhile it

is shown that the data of the person, mentioned in the aforesaid appendix, needs a supplementary. Sectio I of the present regulation stretches to that end.
The Minister of Foreign Affairs,
J.G. de Hoop Scheffer.
from: Staatscourant 23 August 2002, nr. 161 /
pag. 7 1
BUZ

Alteration on Sanction Regulation Against Terrorism 2002 III

Annex 14
1/3

Dienst Maatschappelijke Ontwikkeling
Sociale Zaken & Werkgelegenheid

Gemeente Utrecht

Postadres: Postbus 8029, 3503 SB Utrecht
Bezoekadres: Oudenoord 275, Utrecht
Telefoon: 030 - 286 52 11
Fax: 030 - 286 56 61
Internet: www.utrecht.nl

de heer J.M.C. Sison
Rooseveltlaan 778
3526 BK UTRECHT

Behandeld door: R.J. van der Plaat
Doorkiesnummer: 286 52 67

Bijlage(n):
Uw kenmerk:
Uw brief van:

Datum: 10 september 2002
Ons kenmerk: 84616
Onderwerp: beëindiging ROA-verstrekkingen / Sanctieregeling terrorisme 2002 III
Verzonden: 10 SEP. 2002
Bij antwoord datum, kenmerk en onderwerp vermelden

Geachte heer Sison,

Aan u worden verstrekkingen gedaan op grond van de Regeling Opvang Asielzoekers (ROA). De verstrekkingen bestaan uit:
- betaling van een toelage voor persoonlijke uitgaven;
- verschaffing van woonruimte;
- verzekeringen tegen ziektekosten en de financiële gevolgen van wettelijke aansprakelijkheid.

Op 15 augustus 2002 is de Sanctieregeling terrorisme 2002 III in werking getreden (Staatscourant 13 augustus 2002, nr. 153). Op grond van die regeling moeten alle verstrekkingen die wij aan u doen worden gestaakt.

Wij hebben daarom besloten alle verstrekkingen die wij aan u doen met ingang van 15 augustus 2002 te beëindigen. Dat betekent dat u geen toelage meer zult ontvangen voor persoonlijke uitgaven en niet langer verzekerd bent tegen ziektekosten en de financiële gevolgen van wettelijke aansprakelijkheid. Ook betekent dat dat wij de gebruikersovereenkomst met u voor de woning op de Rooseveltlaan 778 te Utrecht zoals aangegaan op 30 januari 1989 beëindigen. U mag daardoor niet langer gebruik maken van de woning op Rooseveltlaan 778 te Utrecht.

Wij wijzen u nog op het volgende: op grond van artikel 3 van de Sanctieregeling terrorisme 2002 III is het mogelijk om aan de minister van Financiën toestemming te vragen voor ontheffing van de verboden uit de sanctieregeling op humanitaire gronden. Wij hebben toestemming gevraagd om:
- u huisvesting te bieden;
- u te verzekeren tegen ziektekosten en de gevolgen van wettelijke aansprakelijkheid;
- u een toelage te verstrekken voor persoonlijke uitgaven.

Het is niet helemaal zeker of de toestemming door de gemeente kan worden gevraagd. Ook beschikken wij niet over alle informatie om de humanitaire gronden van het verzoek te onderbouwen. Daarom raden wij u aan ook zelf zo'n verzoek aan de minister van Financiën te doen.

Zolang de minister van Financiën geen toestemming heeft gegeven om de verstrekkingen op grond van de ROA te hervatten, zullen wij dat niet mogen doen.

Wij hebben nog geen oplossing voor de huisvesting van uw gezinsleden. In afwachting van een beslissing van de minister van Financiën op ons verzoek staan wij hen voorlopig toe in het huis dat wij aan u ter beschikking hadden gesteld te blijven.

Gemeente Utrecht

Als u het niet eens bent met deze beschikking kunt u een bezwaarschrift indienen bij het college van Burgemeester en Wethouders, Postbus 16200, 3500 CE Utrecht.
Dat moet u doen binnen 6 weken na de dag van verzending van deze beschikking. Het is prettig als u een kopie ervan meestuurt.
In het bezwaarschrift vermeldt u: uw naam en adres, de datum, een korte omschrijving van de beschikking waartegen u bezwaar maakt, en de reden waarom u het er niet mee eens bent. Ten slotte ondertekent u het bezwaarschrift.

Hoogachtend,
burgemeester en wethouders van Utrecht,

mr. drs. C.E. van der Linden
hoofd Sociale Zaken & Werkgelegenheid

(Unofficial translation from Dutch original)

Utrecht Municipality

Social Development Service
Social Matters and Work Oppurtinty

Mailing address: P.O.Box 8029, 3503 SB Utrecht
Our reference: 84616
Subject: ending of ROA-benefits/
Sanction Regulation Terrorism 2002 III

Processed by: R.J. van der Plaat
Tel. No. : 286 52 67

Sent: 10 Sept. 2002
On answering give date, reference no. and subject

Dear Mr. Sison,

You have been receiving benefits on the basis of Regulation on Reception of Asylumseekers (ROA). These benefits consist of:
- payment of an allowance for personal expenses;
- providing of accommodation (place to stay)
- insurances for sickness and third party liability

On 15 August 2002, the Sanction Regulation Against Terrorism 2002 III became effective (Staatscourant 13 August 2002, nr. 153). On the basis of that regulation all benefits that we extend to you are terminated.

We have therefore decided to terminate all benefits that we provide to you beginning 15 August 2002. That means that you shall no longer receive an allowance for personal expenses and you are no longer insured against illness and the financial consequences of legal liability. It also means that we terminate the user's agreement we had signed with you on 30 January 1989 for the apartment on Rooseveltlaan 778 in Utrecht You may therefore no longer make use of the apartment on Rooseveltlaan 778 in Utrecht.

We also call your attention to the following: on the basis of Article 3 of the Sanction Regulation Against Terrorism 2002 III, it is possible to request the Minister of Finance for a lifting of the prohibitions of the Sanction Regulation for humanitarian reasons. We have asked for approval of:

- offering you a place to stay
- give you insurance against illness and the consequences of legal liability;
- to provide you with an allowance for personal expenses.

It is not completely certain whether the approval can be asked through the municipality. We also do not have access to all information in order to substantiate the humanitarian grounds for the request. Therefore we advise you to make your own request to the Minister of Finance.

As long as the Minister of Finance has not given approval to restore the benefits based on ROA, we shall not be allowed to do that.

We still have no solution for the accommodation of the members of your family. While awaiting a decision of the Minister of Finance on our request, we allow them to stay in the house that we had made available to you.

If you do not agree with this ruling, you may submit an appeal with the board of the Mayor and Councilors, P.O.Box 16200, 3500 CE Utrecht. You have to do that within 6 weeks after the date this ruling was sent. It would be nice if you send us a copy of it.
In the appeal you state: your name and address, the date, a short description of the ruling against which you are making an appeal, and the reasons why you do not agree with the ruling. Finally, you sign the appeal.

Respectfully,
Mayor and councilors of Utrecht,

(sgd.) mr. Drs. C.E. van der Linden
head, Social Matters and Work Opportunity

COA *Centraal Orgaan opvang asielzoekers*

Centraal Bureau

Aan de heer J.M.C. Sison
Rooseveltlaan 778
3526 BK Utrecht

datum 23 mei 2003
ons kenmerk AZ/JZ/IvV/03uj03281
onderwerp Beëindigingsbeschikking ROA
inlichtingen bij I.A. van der Valk
doorkiesnummer 7238
fax 7272
bijlage(n) 2
uw brief

Sir Winston Churchilllaan 366
2285 SJ Rijswijk
postbus 3002
2280 AE Rijswijk
telefoon 070 372 76 00

Geachte heer Sison,

Ingevolge de Regeling Opvang Asielzoekers (hierna: ROA) heeft de gemeente Utrecht u opvang verleend. Deze opvang omvatte de in art. 15 lid 2 van de ROA genoemde verstrekkingen. Concreet werd aan u een woning te beschikking gesteld aan de Rooseveltlaan nr. 778 te Utrecht en kreeg u financiële verstrekkingen, waaronder kleedgeld, zakgeld en een verzekering tegen ziektekosten.

In het bestuurlijk overleg van 5 april 2001 tussen het Kabinet, het Interprovinciaal Overleg, de Vereniging van Nederlandse Gemeenten en het Centraal Orgaan opvang asielzoekers (hierna: COA) is afgesproken dat het COA de verantwoordelijkheid voor de opvang en zorg voor ROA-asielzoekers van gemeenten kan overnemen. De gemeente Utrecht heeft besloten van deze mogelijkheid gebruik te maken. Bij overeenkomst tot overdracht van 29 november 2002, nader aangevuld op 9 januari 2003, heeft de gemeente Utrecht de gemeentelijke zorg en opvang op grond van de ROA aan het COA overgedragen. Bij diezelfde overeenkomst(en) werden ook de bestuursrechtelijke bevoegdheden van de gemeente uit hoofde van de ROA overgedragen aan het COA. Dit betekent concreet dat het COA de bevoegdheid heeft om, in mandaat van de gemeente, beslissingen te nemen ten aanzien van de beëindiging van de opvang van ROA-asielzoekers, die niet langer recht hebben op verstrekkingen in het kader van de ROA.

Correspondentie uitsluitend aan het postadres met vermelding van de datum en het kenmerk van deze brief

De Immigratie- en Naturalisatiedienst (hierna: IND) heeft het COA bericht dat u in het kader van de asielprocedure, op grond waarvan u recht heeft op ROA-verstrekkingen, rechtmatig verwijderbaar bent geworden. Hierdoor is art. III van het Besluit van de Staatssecretaris van Justitie van 27 maart 2001 tot wijziging van de ROA (Stcrt. 29 maart 2001 nr. 63, p. 16) op u van toepassing. Ingevolge art. III eindigt de opvang indien vóór de datum van inwerkingtreding van deze regeling op diens asielaanvraag in eerste aanleg of in bezwaar in negatieve zin is beslist een last tot uitzetting is gegeven, en door de korpschef van de politieregio waar de vreemdeling zijn woon- of verblijfplaats heeft, is meegedeeld dat hij Nederland moet verlaten. Volgens de IND is aan deze vereisten voldaan.

Bij brief van 9 april 2003 is u bericht dat het COA het voornemen heeft uw opvangvoorzieningen te beëindigen. Dit was u overigens ook reeds aangekondigd bij brief van het Ministerie van Financiën van 7 maart 2003. U bent op 24 april 2003 in de gelegenheid gesteld uw zienswijze naar voren te brengen over het voornemen van het COA tot beëindiging van uw verstrekkingen. Van dit gesprek is een verslag opgesteld dat als bijlage aan deze beschikking is gehecht (***bijlage 1***).

Geen toetsing aan het meewerkcriterium

In het gesprek van 24 april 2003 heeft het COA uitgelegd dat het begunstigende uitzonderingsbeleid ten aanzien van beleidsmatig verwijderbare, documentloze vreemdelingen, niet op u van toepassing is. Ten aanzien van voornoemde groep vreemdelingen kan het COA de opvangvoorzieningen pas beëindigen, indien de IND heeft vastgesteld dat de vreemdeling niet heeft aangetoond alles te hebben gedaan wat redelijkerwijs van hem kan worden verlangd om terug te keren naar het land van herkomst, het zogenaamde meewerkcriterium.

Het meewerkcriterium is geschreven voor de groep van beleidsmatig verwijderbare vreemdelingen, waarvan in de asielprocedure is komen vast te staan dat zij in uitgangspunt uitgezet kunnen worden naar het land van herkomst. Indien de terugreis vanwege het ontbreken van het noodzakelijke reisdocument nog niet kan worden gerealiseerd, dan wordt de opvang niet beëindigd, indien en zolang de vreemdeling alles in het werk stelt om in het bezit te komen van reisdocumenten. Zodra de inspanningen van de vreemdeling hebben geresulteerd in de afgifte van een reisdocument, dan wordt de vreemdeling – indien hij niet vrijwillig vertrekt – uitgezet naar het land van herkomst. Indien de IND vaststelt dat de vreemdeling onvoldoende heeft aangetoond alles in het werk te hebben gesteld om in het bezit te geraken van reisdocumenten, dan worden de opvangvoorzieningen door het COA beëindigd.

Het begunstigende uitzonderingsbeleid is uitsluitend geschreven voor documentloze vreemdelingen, die in uitgangspunt kunnen worden verwijderd naar het land van herkomst, maar waarvan de terugreis (nog) niet kan worden geëffectueerd louter vanwege het ontbreken van reisdocumenten. U behoort niet tot deze groep vreemdelingen.

In uw (asiel)procedure naar aanleiding van de asielaanvraag van 26 oktober 1988 heeft de IND bij beschikking op bezwaar van 4 juni 1996 bepaald dat u niet zal worden verwijderd naar uw land van herkomst, zolang u gegronde redenen heeft te vrezen voor vervolging in de zin van het Vluchtelingenverdrag van 28 juli 1951, zoals gewijzigd bij Protocol van New York van 31 januari 1967 (hierna: Vluchtelingengedrag) of voor een behandeling die een schending oplevert van artikel 3 van het Europees Verdrag van de Rechten van de Mens en de Fundamentele Vrijheden (hierna: EVRM). U bent echter niet toegelaten als vluchteling, omdat gewichtige redenen van algemeen belang als bedoeld in art. 15 lid 2 Vw (oud) zich daartegen verzetten. Evenmin werd u in het bezit gesteld van een vergunning tot verblijf. Het beroep tegen deze beschikking is door de Rechtseenheidskamer verworpen bij uitspraak van 11 september 1997 (JV 1997, 8).

In uw geval is dus geen sprake van een (tijdelijke) onmogelijkheid om te worden uitgezet naar het land van herkomst louter vanwege het ontbreken van reisdocumenten. Daarmee valt u buiten de reikwijdte van het begunstigende uitzonderingsbeleid, dat naar zijn aard en strekking restrictief moet worden uitgelegd.

Aanzegging tot vertrek op grond van een last tot uitzetting
In het (zienswijze)gesprek van 24 april 2003 heeft u gesteld dat de gegeven last tot uitzetting is ingetrokken en dat u overigens ook niet door de vreemdelingenpolitie bent aangezegd Nederland te verlaten. Dit is echter onjuist.

Uw asielaanvraag van 26 oktober 1988 is afgewezen bij beschikking van de IND van 13 juli 1990. Vervolgens bent u op 13 juli 1990 op grond van een last tot uitzetting aangezegd Nederland te verlaten. U heeft herziening gevraagd van de beschikking van 13 juli 1990. Nu daarop niet werd beslist, heeft u beroep ingesteld bij de Afdeling Rechtspraak van de Raad van State (ARRvS) tegen de fictieve weigering om te besluiten op uw verzoek tot herziening. Bij uitspraak van 17 december 1992 heeft de ARRvS de fictieve beslissing vernietigd (RV 1992, 12), zodat de IND opnieuw op het herzieningsverzoek diende te beslissen.

Bij beschikking van 26 maart 1993 heeft de IND het verzoek om herziening van de beschikking van 13 juli 1990 wederom afgewezen. Op grond van een last tot uitzetting bent u op 30 maart 1993 aangezegd Nederland te verlaten.

Hiertegen heeft u opnieuw beroep ingesteld bij de ARRvS bij brief van 23 april 1993. De ARRvS heeft de beschikking van 26 maart 1993 vernietigd bij uitspraak van 21 februari 1995 (RV 1995, 2), zodat de IND opnieuw op het herzieningsverzoek diende te beslissen.

Bij beschikking van 4 juni 1996 heeft de IND wederom het verzoek om herziening afgewezen. Daarbij is bepaald dat u niet zal worden verwijderd naar de Filippijnen, zolang u gegronde reden heeft om te vrezen voor vervolging in de zin van het Vluchtelingenverdrag of voor een behandeling die een schending oplevert van artikel 3 EVRM. Bij deze beschikking bent u tevens gelast Nederland te verlaten. Het besluit van 4 juni 1996 is uitgereikt op 18 juli 1996. Daarbij werd u op grond van een last tot uitzetting aangezegd om Nederland te verlaten. Tegen deze beschikking heeft u beroep ingesteld. De Rechtseenheidkamer heeft dit beroep ongegrond verklaard bij uitspraak van 11 september 1997 (JV 1997, 8). U bent dus – anders dan u naar voren heeft gebracht tijdens het zienswijzegesprek – wel degelijk op grond van een last tot uitzetting aangezegd Nederland te verlaten.

Op 26 februari 1998 heeft u een vergunning tot verblijf gevraagd met als doel: het verrichten van arbeid in loondienst van het Nationaal Democratisch Front (NDF). Bij beschikking van 22 oktober 1998 heeft de IND deze aanvraag afgewezen. Daarbij is u op grond van een last tot uitzetting op 26 oktober 1998 aangezegd Nederland te verlaten. Deze aanzegging tot vertrek is ingetrokken bij brief van 5 november 1998. Het bezwaarschrift tegen de afwijzende beschikking van 22 oktober is ongegrond verklaard door de IND bij beschikking van 1 augustus 2000. Daarbij bent u op grond van een last tot uitzetting aangezegd Nederland te verlaten. Daarbij is u medegedeeld dat u Nederland binnen 2 weken diende te verlaten. Tegen de beschikking van 1 augustus 2000 heeft u beroep ingesteld. Dit beroep is ongegrond verklaard bij uitspraak van 28 november 2002 van de Vreemdelingenkamer van de Rechtbank te 's-Gravenhage.

U bent dus in het kader van de eerste asielaanvraag aangezegd Nederland te verlaten naar aanleiding van de beschikking van 4 juni 1996. Daarmee is voldaan aan de vereisten van art. III van het Besluit van de Staatssecretaris van Justitie van 27 maart 2001 tot wijziging van de ROA. In de reguliere procedure naar aanleiding van uw aanvraag van 26 februari 1998 bent u op 26 oktober 1998 aangezegd Nederland te verlaten. Deze aanzegging in het kader van de reguliere procedure is (ten onrechte) ingetrokken bij brief van 5 november 1998. Deze intrekking staat echter geheel los van de aanzegging tot vertrek in het kader van de eerste asielaanvraag en berust ook overigens op een ambtelijke misslag. Zie in dit verband de brief van de IND van 15 mei 2003 die als ***bijlage 2*** is aangehecht. Bovendien heeft de IND deze misslag in bezwaar hersteld door u bij de beschikking van 1 augustus 2000 mede te delen dat u Nederland dient te verlaten.

Recht op opvang en art. 8 EVRM
Tijdens het zienswijzegesprek heeft u gesteld dat het bepaalde in art. 8 EVRM zich zou verzetten tegen het beëindigen van uw opvangvoorzieningen. Dit is echter onjuist. Er is geen sprake van ongeoorloofde inmenging in de uitoefening van het recht op respect voor het gezinsleven als bedoeld in art. 8 EVRM. De (feitelijke) beëindiging van de opvangvoorzieningen staat er niet aan in de weg dat u het gezinsleven op een andere wijze invult.

Anders dan u stelt, wordt uw gezin niet door de beëindiging van de opvang uit elkaar gehaald. Tegen deze achtergrond is het vaste jurisprudentie dat art. 8 EVRM niet met zich brengt dat, indien aan enig gezinslid opvang wordt geboden of een verblijf in Nederland is toegestaan, ook de overige gezinsleden in de opvang in Nederland mogen verblijven.

> Zie in dit verband de uitspraak van de Afdeling Bestuursrechtspraak van de Raad van State van 8 november 2002, met het zaaknummer 200205425/1 (COA / Zenuni), het arrest van het Gerechtshof te Arnhem van 20 november 2001 met de rolnummers 01/532 KGN01/533 KG (COA / Heydari) alsmede het arrest van het Gerechtshof te Arnhem van 10 december 2002 met het rolnummer 2002/1098 KG (COA / Aleksandrova).

Bijzondere omstandigheden
Het COA is niet gebleken dat er sprake is van omstandigheden op grond waarvan voortzetting van de verstrekkingen geboden is. Dat u vooralsnog niet gedwongen kan worden verwijderd naar uw land van herkomst gelet op het Vluchtelingenverdrag en art. 3 EVRM is geen bijzondere omstandigheid die tot het voortzetten van de voorzieningen noopt. In dit verband wijst het COA nogmaals op de beschikking van de IND van 1 augustus 2000 en de uitspraak van de Vreemdelingenkamer van de Rechtbank te 's-Gravenhage van 28 november 2002, waar deze materie uitgebreid aan de orde is geweest. Gelet op al het vorenstaande worden de opvangvoorzieningen met onmiddellijke ingang beëindigd. U dient de ROA-woning waarin u verblijft binnen drie dagen na bekendmaking van deze beschikking te verlaten. Indien u hieraan geen gevolg geeft, zal het COA namens de gemeente een ontruimingsprocedure opstarten. De kosten van deze ontruimingsprocedure zullen op u worden verhaald.

Ik wijs u erop dat op grond van artikel 7:1 van de Algemene Wet Bestuursrecht tegen deze beslissing tot beëindiging van de ROA-verstrekkingen een bezwaarschrift kan indienen bij het Centraal Orgaan opvang Asielzoekers die deze beslissing heeft genomen. U dient uw bezwaarschrift binnen 6 weken na de dag van verzending/uitreiking, te hebben ingediend. U wordt verzocht het bezwaarschrift te richten aan:

[redacted]

Het Centraal Orgaan opvang Asielzoekers
Postbus 3002
2280 ME RIJSWIJK

Het indienen van een bezwaarschrift schorst niet de werking van de beslissing tot het beëindigen van de verstrekkingen (artikel 6:16 Awb). Hetzelfde geldt voor een eventueel verzoek om een voorlopige voorziening. Evenmin staat het indienen van het bezwaarschrift of het indienen van een verzoek om een voorlopige voorziening in de weg aan het entameren van een ontruimingsprocedure.

Namens Burgemeester en Wethouders van de gemeente Utrecht,
Het Bestuur van het Centraal Orgaan opvang Asielzoekers,
namens deze,

Verlaan.

Mevrouw mr. C.L.M. Verlaan
Hoofd Afdeling Juridische Zaken

Raad van State

200500239/1.
Datum uitspraak: 28 september 2005

AFDELING
BESTUURSRECHTSPRAAK

Uitspraak op het hoger beroep van:

J.M. Sison, wonend te Utrecht,
appellant,

tegen de uitspraak in zaak no. SBR 04/1305 van de rechtbank Utrecht van 26 november 2004 in het geding tussen:

appellant

en

het college van burgemeester en wethouders van Utrecht.

1. Procesverloop

Bij besluit van 23 mei 2003 heeft het college van burgemeester en wethouders van Utrecht (hierna: het college) de aan appellant krachtens de Regeling opvang asielzoekers (hierna: de ROA) toegekende verstrekkingen, bestaande uit een toelage van € 201,93 voor persoonlijke uitgaven, een verzekering tegen ziektekosten en wettelijke aansprakelijkheid en het ter beschikking stellen van woonruimte, beëindigd.

Bij besluit van 14 april 2004 heeft het college het daartegen door appellant gemaakte bezwaar ongegrond verklaard. Dit besluit is aangehecht.

Bij uitspraak van 26 november 2004, verzonden op 30 november 2004, heeft de rechtbank Utrecht (hierna: de rechtbank) het daartegen door appellant ingestelde beroep ongegrond verklaard. Deze uitspraak is aangehecht.

Tegen deze uitspraak heeft appellant bij brief, bij de Raad van State ingekomen op 10 januari 2005, hoger beroep ingesteld. Deze brief is aangehecht.

Bij brief van 8 februari 2005 heeft het college van antwoord gediend.

De Afdeling heeft de zaak ter zitting behandeld op 23 augustus 2005, waar appellant in persoon, bijgestaan door mr. D. Gürses, advocaat te Utrecht en het college, vertegenwoordigd door mr. R. van Duffelen, werkzaam bij de afdeling juridische zaken van het Centraal Orgaan opvang asielzoekers, zijn verschenen.

2. Overwegingen

2.1. Ingevolge artikel III van het besluit van 27 maart 2001 van de Staatssecretaris van Justitie strekkende tot wijziging van de ROA (Stcrt. 2001, nr. 63, p. 16, hierna: het wijzigingsbesluit ROA), eindigen de verstrekkingen van de asielzoeker op wiens asielaanvraag voor de datum van inwerkingtreding van deze regeling in eerste aanleg of in bezwaar in negatieve zin is beslist, ten aanzien van wie een last tot uitzetting is gegeven en door de korpschef is medegedeeld dat hij de verstrekkingen moet verlaten, in afwijking van artikel 15, derde lid, aanhef en onder c, van de ROA, op de dag waarop hij Nederland ingevolge de mededeling van de korpschef dient te verlaten.

2.2. Het college heeft aan het besluit op bezwaar ten grondslag gelegd dat aan de vereisten van artikel III van het wijzigingsbesluit ROA is voldaan. Voorts heeft het college overwogen dat zijn bij de toepassing van die bepaling gevoerde beleid om verstrekkingen aan documentloze asielzoekers die Nederland dienen te verlaten niet te beëindigen indien en zolang zij meewerken aan het verkrijgen van een vervangend reisdocument om terugkeer naar het land van herkomst te bewerkstelligen, niet van toepassing is op appellant, omdat in zijn geval geen sprake is van (tijdelijke)

onmogelijkheid te worden uitgezet naar het land van herkomst enkel vanwege het ontbreken van een zodanig document.

2.3. Appellant betoogt allereerst dat de rechtbank ten onrechte heeft overwogen dat is voldaan aan de vereisten om de aan hem krachtens de ROA toegekende verstrekkingen te beëindigen en dat geen sprake is van het gedogen van zijn verblijf in Nederland.

2.3.1. Bij besluiten van 13 juli 1990 heeft de Staatssecretaris van Justitie (hierna: de staatssecretaris) aanvragen van appellant om toelating als vluchteling en verlening van een vergunning tot verblijf wegens klemmende redenen van humanitaire aard afgewezen. Eveneens op 13 juli 1990 heeft de staatssecretaris de korpschef van de gemeentepolitie Utrecht (hierna: de korpschef) een last tot uitzetting verstrekt. Op 18 juli 1990 heeft de korpschef appellant op grond daarvan medegedeeld dat hij Nederland uiterlijk op 18 augustus 1990 dient te hebben verlaten. Op 6 augustus 1990 heeft appellant verzoeken om herziening van voormelde besluiten ingediend. Bij uitspraak van 17 december 1992 heeft de Afdeling rechtspraak van de Raad van State de beroepen van appellant tegen het uitblijven van een beslissing op die verzoeken gegrond verklaard en de bestreden beslissingen vernietigd. Bij besluiten van 26 maart 1993 heeft de staatssecretaris de verzoeken om herziening opnieuw afgewezen. Op 26 maart 1993 heeft de staatssecretaris de korpschef wederom een last tot uitzetting verstrekt. Op 31 maart 1993 heeft de korpschef appellant op grond daarvan medegedeeld dat hij Nederland uiterlijk op 1 mei 1993 dient te hebben verlaten. Bij uitspraak van 21 februari 1995 heeft de Afdeling bestuursrechtspraak van de Raad van State de tegen de besluiten van 26 maart 1993 door appellant ingestelde beroepen gegrond verklaard en die besluiten vernietigd. Bij besluit van 4 juni 1996 heeft de staatssecretaris de verzoeken om herziening wederom afgewezen, doch bepaald dat appellant niet zal worden verwijderd naar zijn land herkomst, de Filipijnen, zolang hij daar gegronde reden heeft te vrezen voor vervolging in de zin van het Vluchtelingenverdrag, dan wel voor een behandeling in strijd met artikel 3 van het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden (hierna: het EVRM). Op 18 juli 1996 heeft de korpschef appellant aangezegd Nederland uiterlijk op 15 augustus 1996 te verlaten. Bij uitspraak van 11 mei 1997 heeft de rechtbank 's-Gravenhage het door appellant tegen het besluit van 4 juni 1996 ingestelde beroep ongegrond verklaard.

2.3.2. Zoals de Afdeling eerder heeft overwogen (uitspraak van 15 februari 2005 in zaak no. 200405097/1 (ter voorlichting van partijen aangehecht) impliceert de mededeling van de korpschef waarin de vreemdeling is medegedeeld dat hij Nederland dient te verlaten, dat hij ook de verstrekkingen moet verlaten. Daarmee is voldaan aan het in artikel III, onder c, van het wijzigingsbesluit ROA neergelegde vereiste.

De rechtbank heeft dan ook met juistheid overwogen dat het college zich terecht op het standpunt heeft gesteld dat aan de vereisten van artikel III van het wijzigingsbesluit ROA is voldaan. Aan de omstandigheid dat appellant niet kan worden uitgezet naar de Filipijnen heeft zij terecht niet de gevolgen verbonden die hij daaraan gehecht wil zien, reeds omdat op hem

onverminderd de rechtsplicht rust Nederland zelfstandig te verlaten en appellant meermalen is aangezegd aan die rechtsplicht te voldoen, zodat geen grond bestaat voor het oordeel dat het hem niet bekend was, dan wel kon zijn dat hij Nederland dient te verlaten. Dat hem enige jaren, hangende de door appellant geëntameerde procedures inzake verblijfsrecht, waarvan de laatste eindigde op 28 november 2002, op humantaire gronden opvang is geboden, doet aan die rechtsplicht, noch aan de bekendheid daarmede bij appellant af.

2.4. Appellant klaagt voorts dat de rechtbank heeft miskend dat de beëindiging van de aan hem krachtens de ROA toegekende verstrekkingen leidt tot een met artikel 3 van het EVRM strijdige behandeling.

2.4.1. Niet kan worden uitgesloten dat beëindiging van de verstrekkingen onder uitzonderlijke omstandigheden kan leiden tot een met artikel 3 van het EVRM strijdige behandeling. De door appellant gestelde omstandigheden behoefden door het college evenwel niet als zodanig uitzonderlijk te worden aangemerkt. Appellant kan de problemen waarin hij, naar hij stelt, ten gevolge van de beëindiging van de verstrekkingen komt te verkeren het hoofd bieden door te voldoen aan de op hem rustende rechtsplicht Nederland te verlaten. Ter zitting van de Afdeling is gebleken dat appellant, die volgens de verklaringen van zijn gemachtigde over reisdocumenten beschikt, daartoe nooit enige als serieus aan te merken poging heeft ondernomen. Gesteld noch gebleken is van klemmende individuele omstandigheden op grond waarvan hij niet in staat is buiten Nederland een bestaan op te bouwen. In dit verband is van belang dat artikel 3 van het EVRM, volgens onder meer de uitspraak van het Europees Hof voor de rechten van de mens van 28 oktober 1999 in de zaak Pančenko tegen Letland, no. 40772/98, geen sociaal-economische rechten waarborgt en derhalve niet kan worden ingeroepen om jegens een Lidstaat aanspraak te maken op een bepaalde levenstandaard. Het betoog faalt dan ook.

2.5. Voorzover appellant klaagt dat de rechtbank heeft miskend dat de beëindiging van de aan hem krachtens de ROA toegekende verstrekkingen in strijd is met artikel 6 van het EVRM, faalt dit evenzeer, reeds omdat ter zitting van de Afdeling is gebleken dat hij zich enkel met betrekking tot de gang van zaken bij de plaatsing op de lijst, vastgesteld bij het Besluit van de Raad van de Europese Unie van 28 oktober 2002, dat strekt ter uitvoering van artikel 2, derde lid, van de Verordening (EG) 2580/2001 van 27 december 2001, op artikel 6 van het EVRM beroept, welke plaatsing in deze zaak geen onderwerp van geschil is.

2.6. Appellant klaagt verder dat de rechtbank heeft miskend dat de beëindiging van de aan hem krachtens de ROA toegekende verstrekkingen een ongeoorloofde inmenging in de uitoefening van het recht op respect voor het gezinsleven, als bedoeld in artikel 8 van het EVRM, inhoudt.

2.6.1. De in geding zijnde verstrekkingen zijn appellant gelet op diens verblijfsrechtelijke status toegekend op humanitaire gronden in afwachting van zijn vertrek. Ze dienden er niet toe hem in staat te stellen zijn

gezinsleven in de huidige vorm voort te zetten. Door de beëindiging daarvan wordt het gezin van appellant ook niet gescheiden. Evenmin zijn de verstrekkingen noodzakelijk voor de uitoefening in enigerlei vorm van het recht van appellant op gezinsleven.

Artikel 8 van het EVRM strekt niet zover dat de Nederlandse autoriteiten in het algemeen gehouden zijn financiële toekenningen te doen aan vreemdelingen op wie de plicht rust Nederland te verlaten, teneinde hen in staat te stellen in weerwil van die plicht in Nederland te verblijven bij gezinsleden aan wie wel verblijf hier te lande is toegestaan en die wel aanspraak hebben op financiële toekenningen van welke aard ook. Het ligt op de weg van appellant om aan zijn gezinsleven met zijn echtgenote en zijn volwassen kinderen gestalte te geven op een wijze die strookt met hun uiteenlopende verblijfsrechtelijke status. Appellant heeft geen omstandigheden aangevoerd die het oordeel zouden kunnen rechtvaardigen dat dit niet van hem zou kunnen worden gevergd. Het beroep van appellant op artikel 8 van het EVRM treft derhalve geen doel.

2.7. Evenzeer faalt het betoog van appellant dat de rechtbank ten onrechte heeft overwogen dat in dit geval geen sprake is van door tijdsverloop ontstane, rechtens te honoreren verwachtingen en dat de verstrekkingen derhalve mochten worden beëindigd. Nu appellant zonder titel in Nederland verblijft, op hem de rechtsplicht rust Nederland te verlaten en hij daarmee bekend was, kon hij weten dat de aan hem onverplicht toegekende verstrekkingen op enig moment zouden worden beëindigd. Aan het feit dat hem gedurende een aantal jaren verstrekkingen zijn toegekend heeft appellant derhalve niet de rechtens te honoreren verwachting mogen ontlenen dat zulks voor onbepaalde tijd zou worden gecontinueerd.

2.8. Het hoger beroep is ongegrond. De aangevallen uitspraak dient te worden bevestigd.

2.9. Voor een proceskostenveroordeling bestaat geen aanleiding.

3. Beslissing

De Afdeling bestuursrechtspraak van de Raad van State

Recht doende in naam der Koningin:

bevestigt de aangevallen uitspraak.

Aldus vastgesteld door mr. M. Vlasblom, Voorzitter, en
mr. M.G.J. Parkins-de Vin en mr. D. Roemers, Leden,
in tegenwoordigheid van mr. H.W. Groeneweg, ambtenaar van Staat.

w.g. Vlasblom
Voorzitter

w.g. Groeneweg
ambtenaar van Staat

Uitgesproken in het openbaar op 28 september 2005

32-438.
Verzonden: 28 SEP. 2005

Voor eensluidend afschrift,
de Secretaris van de Raad van State,
voor deze,

Betreft : J.M. SISON

AANTEKENEN

MR. D. GURSES

Postbus 13319
3507 LH UTRECHT

Datum	Ons nummer	Uw kenmerk
28 september 2005	200500267/1/V6 200500239/1/V6	

Onderwerp	Behandelend ambtenaar
Sison, J.M../ de Minister van Financien ROA	E.M. Pronk 070-4264402

In de bovenvermelde zaak is uitspraak gedaan. Een afschrift van deze uitspraak treft u hierbij aan.

Hoogachtend,

de Secretaris van de Raad van State,
voor deze,

1064405(CA0)

Raad van State

200500267/1.
Datum uitspraak: 28 september 2005

AFDELING
BESTUURSRECHTSPRAAK

Uitspraak op het hoger beroep van:

J.M. Sison, wonend te Utrecht,
appellant,

tegen de uitspraak in zaak no. SBR 03/1359 van de rechtbank Utrecht van 26 november 2004 in het geding tussen:

appellant

en

de Minister van Financiën.

1. Procesverloop

Bij besluit van 7 maart 2003 heeft de Minister van Financiën (hierna: de minister) het ten behoeve van appellant door de gemeente Utrecht ingediende verzoek om een machtiging, als bedoeld in artikel 6, eerste lid, van de Verordening (EG) 2580/2001 van 27 december 2001 (hierna: de Verordening) van de Raad van de Europese Unie (hierna: de Raad), teneinde appellant voorzieningen te verstrekken op grond van de Regeling opvang asielzoekers, afgewezen.

Bij besluit van 16 mei 2003 heeft de minister het daartegen door appellant gemaakte bezwaar ongegrond verklaard. Dit besluit is aangehecht.

Bij uitspraak van 26 november 2004, verzonden op 30 november 2004, heeft de rechtbank Utrecht (hierna: de rechtbank) het daartegen door appellant ingestelde beroep ongegrond verklaard. Deze uitspraak is aangehecht.

Tegen deze uitspraak heeft appellant bij brief, bij de Raad van State ingekomen op 10 januari 2005, hoger beroep ingesteld. Deze brief is aangehecht.

Bij brief van 25 februari 2005 heeft de minister van antwoord gediend.

Bij brief van 23 maart 2005 heeft appellant een nadere memorie ingediend.

De Afdeling heeft de zaak ter zitting behandeld op 23 augustus 2005, waar appellant in persoon, bijgestaan door mr. D. Gürses, advocaat te Utrecht, en de minister, vertegenwoordigd door mr. A.B. van Rijn, advocaat te 's-Gravenhage, zijn verschenen.

2. Overwegingen

2.1. Ingevolge artikel 2, eerste lid, aanhef en onder b, van de Verordening, worden, tenzij toegestaan uit hoofde van de artikelen 5 en 6, aan of ten behoeve van een in de lijst vastgesteld ingevolge het derde lid, bedoelde natuurlijke of rechtspersoon, groep of entiteit, noch direct noch indirect tegoeden, andere financiële activa en economische middelen ter beschikking gesteld.

Ingevolge het derde lid, voorzover thans van belang, stelt de Raad de lijst vast van personen, groepen en entiteiten waarop de Verordening van toepassing is. Deze lijst behelst, voorzover thans van belang, natuurlijke en rechtspersonen, groepen of entiteiten, die een terroristische daad plegen, pogen te plegen, daaraan deelnemen of het plegen van deze daden vergemakkelijken, dan wel natuurlijke personen die optreden namens of in opdracht van voornoemde natuurlijke of rechtpersonen, groepen of entiteiten.

Ingevolge artikel 1, aanhef en onder 1, sub 9, en onder 2, sub 13, van het Besluit van de Raad van 28 oktober 2002 (2002/848/EG), dat strekt ter uitvoering van artikel 2, derde lid, van de Verordening (hierna: het Besluit), ziet de in die bepaling bedoelde lijst er als volgt uit:

"1. PERSONEN
(..)
9. SISON, José Maria (alias Armando Liwanag, alias Joma, hoofd van de NPA), geboren op 8.2.1939 in Cabugao, Filipijnen.

2. GROEPEN EN ENTITEITEN
(..)
13. New People's Army (NPA), Filipijnen, onderhoudt banden met Sison José Maria C. (alias Armando Liwanag, alias Joma, hoofd van de NPA)
(..)".

Ingevolge artikel 6, eerste lid, van de Verordening kunnen de bevoegde instanties van een lidstaat, niettegenstaande de bepalingen van artikel 2 en met het oog op de bescherming van de belangen van de Gemeenschap, waartoe ook de belangen van haar burgers en ingezetenen behoren, na overleg met de overige lidstaten, de Raad en de Commissie overeenkomstig het tweede lid, specifieke machtigingen verlenen om:
- bevroren tegoeden, andere financiële activa of andere economische middelen vrij te geven;
- tegoeden, andere financiële activa of andere economische middelen ter beschikking te stellen van een in de lijst van artikel 2, derde lid, vermelde persoon, entiteit of lichaam;
- deze persoon, deze entiteit of dit lichaam financiële diensten te verstrekken.

2.2. Appellant klaagt dat de rechtbank ten onrechte heeft overwogen dat de minister de gevraagde machtiging in redelijkheid heeft kunnen weigeren. Daartoe betoogt appellant dat de rechtbank heeft miskend dat hij door het bij haar bestreden besluit in een onmogelijke positie wordt gemanoeuvreerd.

2.2.1. De rechtbank heeft terecht overwogen dat de minister bij het nemen van het besluit op bezwaar in aanmerking heeft mogen nemen dat de Raad unaniem heeft besloten om appellant op voornoemde lijst te plaatsen, dat het beleid, gelet op het belang dat aan een effectieve strijd tegen het terrorisme en de financiering daarvan wordt gehecht, erop is gericht personen die op die lijst staan niet te voorzien van enige financiële middelen en dat verlening van een machtiging, als bedoeld in artikel 6, eerste lid, van de Verordening, een doorkruising van dit beleid zou betekenen. Dat de minister eerder op grond van artikel 3 van de Sanctieregeling terrorisme 2002 III van 13 augustus 2002 (Stcrt. 2002, nr. 153) ontheffing heeft verleend van het in die regeling vervatte verbod om aan appellant, vermeld in de bijlage als bedoeld in artikel 2 van die regeling, middelen ter beschikking te stellen, maakt dit niet anders. De minister heeft zich op het standpunt mogen stellen dat, nu appellant naar objectieve internationale maatstaven onder de werking is gebracht van een bevriezingsregime in het kader van de bestrijding van terrorisme, een beleidswijziging jegens hem gerechtvaardigd is.

Bij de aanwending van de discretionaire bevoegdheid, neergelegd in

artikel 6, eerste lid, van de Verordening, laat de minister zich leiden door het grote belang dat het kabinet hecht aan de effectieve bestrijding van terrorisme en de financiering daarvan. Derhalve is zijn beleid er blijkens het bij het besluit op bezwaar gehandhaafde besluit van 7 maart 2003 op gericht personen en organisaties vermeld op de ingevolge de Verordening vastgestelde lijst niet te voorzien van financiële middelen. De rechtbank heeft terecht geen grond gevonden voor het oordeel dat de minister niet in redelijkheid tot het voeren van dit beleid heeft kunnen besluiten. Uit hetgeen door appellant is aangevoerd is niet gebleken van zodanig klemmende individuele omstandigheden dat in zijn geval van dit beleid had moeten worden afgeweken. De omstandigheid dat appellant in een moeilijke positie is geraakt, is inherent aan de plaatsing op de lijst en behoefde derhalve op zichzelf voor de minister geen reden te zijn om de gevolgen van die plaatsing te ondervangen. Het betoogt faalt in zoverre.

2.3. De klacht van appellant dat de rechtbank ten onrechte voorbij is gegaan aan zijn beroep op de artikelen 3, 6 en 8 van het Verdrag inzake de rechten van de mens en de fundamentele vrijheden (hierna: het EVRM), is terecht voorgedragen, maar kan niet tot het daarmee beoogde doel leiden.

2.3.1. Niet kan worden uitgesloten dat de weigering van de minister om een machtiging, als bedoeld in artikel 6, eerste lid, van de Verordening, te verlenen, onder uitzonderlijke omstandigheden kan leiden tot een met artikel 3 van het EVRM strijdige behandeling. De door appellant gestelde omstandigheden behoefden door de minister evenwel niet als zodanig uitzonderlijk te worden aangemerkt. Appellant kan de problemen waarin hij, naar hij stelt, ten gevolge van de weigering van de minister om machtiging te verlenen komt te verkeren het hoofd bieden door te voldoen aan de op hem rustende rechtsplicht Nederland te verlaten. Ter zitting van de Afdeling is gebleken dat appellant, die volgens de verklaringen van zijn gemachtigde over reisdocumenten beschikt, daartoe nooit enige als serieus aan te merken poging heeft ondernomen. Gesteld noch gebleken is van klemmende individuele omstandigheden op grond waarvan hij niet in staat is buiten Nederland een bestaan op te bouwen. In dit verband is van belang dat artikel 3 van het EVRM, volgens onder meer de uitspraak van het Europees Hof voor de rechten van de mens van 28 oktober 1999 in de zaak Pančenko tegen Letland, no. 40772/98, geen sociaal-economische rechten waarborgt en derhalve niet kan worden ingeroepen om jegens een Lidstaat aanspraak te maken op een bepaalde levenstandaard. Van schending van artikel 3 van het EVRM is dan ook geen sprake.

2.3.2. Het betoog dat de weigering van de minister om een machtiging, als bedoeld in artikel 6, eerste lid, van de Verordening te verlenen, in strijd is met artikel 6 van het EVRM, faalt voorts evenzeer, reeds omdat ter zitting van de Afdeling is gebleken dat hij zich enkel met betrekking tot de gang van zaken bij de plaatsing op de lijst vastgesteld bij het Besluit op artikel 6 van het EVRM beroept, welke plaatsing in deze zaak geen onderwerp van geschil is.

2.3.3. Ook het betoog dat de weigering van de minister om een

machtiging, als bedoeld in artikel 6, eerste lid, van de Verordening te verlenen, een ongeoorloofde inmenging in de uitoefening van het recht op respect voor het gezinsleven, als bedoeld in artikel 8 van het EVRM, inhoudt, faalt.

Gelet op de verblijfsrechtelijke status van appellant dienen de verstrekkingen waaraan de weigering van de machtiging in de weg staat er niet toe hem in staat te stellen zijn gezinsleven in de huidige vorm voort te zetten. Door het onthouden daarvan wordt het gezin van appellant niet gescheiden. Evenmin is de door appellant gewenste machtiging noodzakelijk voor de uitoefening in enigerlei vorm van het recht van appellant op gezinsleven.

Artikel 8 van het EVRM strekt niet zover dat de minister op grond van die bepaling gehouden is in afwijking van zijn beleid bij de aanwending van de in artikel 6, eerste lid, van de Verordening neergelegde bevoegdheid machtiging te verlenen ten einde appellant in staat te stellen zijn gezinsleven in de huidige vorm voort te zetten. Appellant heeft geen omstandigheden aangevoerd die het oordeel zouden kunnen rechtvaardigen dat niet van hem zou kunnen worden gevergd dat hij de wijze waarop hij aan zijn gezinsleven met zijn echtgenote en zijn volwassen kinderen gestalte geeft zelf aanpast aan de gevolgen van de beslissing van de Raad om hem op de lijst als bedoeld in artikel 2, derde lid, van de Verordening te plaatsen.

2.4. Voorts klaagt appellant tevergeefs dat de rechtbank ten onrechte heeft overwogen dat de minister op goede gronden geen toepassing heeft gegeven aan Verordening (EG) 881/2002 van de Raad van 27 mei 2002, zoals gewijzigd bij Verordening (EG) 561/2003 van 27 maart 2003. De rechtbank heeft met juistheid aldus overwogen, reeds omdat appellant niet op de bij deze Verordening behorende lijst is geplaatst en artikel 2 bis ook voorziet in de mogelijkheid om ontheffing te verlenen, welke niet wezenlijk verschilt van de in de Verordening geboden mogelijkheden. Met de rechtbank is de Afdeling van oordeel dat appellant in rechte geen rechtstreeks beroep kan doen op Resolutie 1452 (2002) van 20 december 2002 van de Veiligheidsraad van de Verenigde Naties, aan welke resolutie uitvoering is gegeven bij voormelde wijziging van Verordening (EG) 881/2002 door middel van Verordening (EG) 561/2003.

2.5. Het hoger beroep is ongegrond. De aangevallen uitspraak dient, zij het met verbetering van de gronden waarop die rust, te worden bevestigd.

2.6. Voor een proceskostenveroordeling bestaat geen aanleiding.

3. Beslissing

De Afdeling bestuursrechtspraak van de Raad van State

Recht doende in naam der Koningin:

bevestigt de aangevallen uitspraak.

Aldus vastgesteld door mr. M. Vlasblom, Voorzitter, en
mr. M.G.J. Parkins-de Vin en mr. D. Roemers, Leden,
in tegenwoordigheid van mr. H.W. Groeneweg, ambtenaar van Staat.

w.g. Vlasblom
Voorzitter

w.g. Groeneweg
ambtenaar van Staat

Uitgesproken in het openbaar op 28 september 2005

32-438.
Verzonden: 28 SEP. 2005

Voor eensluidend afschrift,
de Secretaris van de Raad van State,
voor deze,

S V B Sociale Verzekeringsbank

Graadt van Roggenweg 400
Postbus 18002
3501 CA Utrecht
Telefoon (030) 264 90 00
Fax (030) 264 90 09
Internet: www.svb.nl

De heer J.M.C. Sisson
Rooseveltlaan 778
3526 BK UTRECHT

Datum	Ons kenmerk	telefoonnummer
19 juni 2006	UR 56565-0	(030) – 264 90 00

Betreft: AOW-pensioen

Geachte heer Sisson,

Aan u is met ingang van 1 februari 2004 een pensioen toegekend op grond van de Algemene Ouderdomswet. Met de beschikking van 24 oktober 2005 heeft de Sociale verzekeringsbank (SVB) de uitbetaling van dit pensioen met ingang van de maand oktober 2005 beëindigd om de volgende reden.

Op grond van artikel 2, eerste lid, aanhef en onder b, van de Verordening (EG) 2580/2001 is het de Sociale verzekeringsbank niet toegestaan om aan u direct of indirect tegoeden, andere financiële activa of economische middelen ter beschikking te stellen omdat uw naam is vermeld op de lijst van personen, groepen en entiteiten waarop Verordening (EG) 2580/2001 van toepassing is. Deze lijst wordt op grond van artikel 2, lid 3 van Verordening (EG) 258012001 vastgesteld door de Raad (van de Europese Unie).

Om deze reden wordt thans ook de uitbetaling beeindigd met ingang van de maand waarin u het ouderdomspensioen is toegekend.

BESLISSING
Gelet op bovenstaande bepalingen beeindigt de SVB met ingang van de maand februari 2004 de uitbetaling van het ouderdomspensioen krachtens de Algemene Ouderdomswet (AOW).

Deze beslissing is gebaseerd op artikel 2, eerste lid, aanhef en onder b, van de Verordening (EG) 2580/2001.

S V B Sociale Verzekeringsbank

Graadt van Roggenweg 400
Postbus 18002
3501 CA **Utrecht**
Telefoon (030) 264 90 00
Fax (030) 264 90 09
Internet: www.svb.nl

Bent u het niet eens met deze beschikking, dan kunt u binnen 6 weken na datum van deze beschikking schriftelijk uw bezwaren laten weten aan uw SVB-kantoor. Hoe u dit kunt doen, leest u in ons informatieblad over bezwaar en beroep. Dit kunt u verkrijgen bij uw SVB-kantoor of via www.svb.nl.

Hebt u nog vragen over deze beslissing, neem dan contact met ons op.

Hoogachtend,
Sociale verzekeringsbank
Vestiging Utrecht

Afdeling AA

Sociale Verzekeringsbank

Vestiging Utrecht
Graadt van Roggenweg 400
Postbus 18002
3501 CA Utrecht
Telefoon (030) 264 90 00
Fax (030) 264 90 09
Internet: www.svb.nl

De heer J.M.C. Sisson
Rooseveltlaan 778
3526 BK UTRECHT

Datum	Ons kenmerk	telefoonnummer
19 juni 2006	UR 56565-0	(030) – 264 90 00

Betreft: AOW-pensioen

Geachte heer Sisson,

Zoals u in bijgaande beslissing kunt lezen, heeft de SVB met terugwerkende kracht de uitbetaling van uw AOW-pensioen beeindigd. Als gevolg hiervan is een bedrag van € 4.017,53 te veel uitbetaald. De SVB is voomemens dit bedrag van u terug te vorderen.

Wij verzoeken u om aan te geven hoe u dit bedrag aan de SVB wilt terug betalen. Als u van mening bent dat u, gezien uw financiele positie, niet in staat bent om dit bedrag aan de SVB terug te betalen, verzoeken wij u bijgaand formulier in te vullen, te ondertekenen en aan de SVB te retoumeren.

Wij wijzen u erop dat deze brief geen beslissing bevat in de zin der Algemene wet bestuursrecht en dat tegen deze brief geen bezwaar kan worden gemaakt.

Hoogachtend,
Sociale verzekeringsbank
Vestiging Utrecht

Afdeling AA

Bijlage: formulier aflossingscapaciteit

RAAD VAN DE EUROPESE UNIE

23 april 2007

SGS7/ 5983

GENERAAL SECRETARIAAT

Raad van de Europese Unie
(t.a.v. UNSCR 1373 designations)
RUE DE LA LOI, 175
B - 1048 BRUSSELS

Schoolplein Advocaten
T.a.v. Mr R. Vleugels
Postbus 13319
3507 LH Utrecht
THE NETHERLANDS

Betreft: Jose Maria Sison

Mijnheer,

De Raad van de Europese Unie heeft vastgesteld dat de redenen waarom uw cliënt geplaatst is op de lijst van personen, groepen en entiteiten waarvoor de beperkende maatregelen gelden als bepaald bij Verordening (EG) nr. 2580/2001 van de Raad van 27 december 2001 inzake specifieke beperkende maatregelen tegen bepaalde personen en entiteiten met het oog op de strijd tegen het terrorisme, nog altijd geldig zijn. Bijgevolg is de Raad voornemens uw cliënt op die lijst te handhaven.

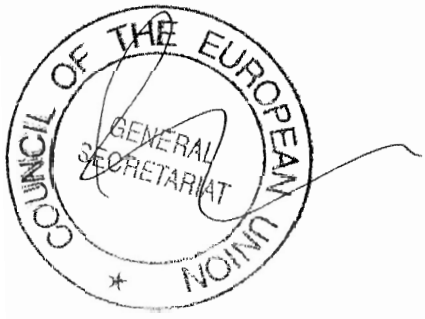
In Verordening (EG) nr. 2580/2001 van de Raad van 27 december 2001 is bepaald dat alle tegoeden, andere financiële activa en economische middelen die in het bezit zijn van uw cliënt, worden bevroren, en dat aan of ten behoeve van uw cliënt noch direct, noch indirect tegoeden, andere financiële activa en economische middelen ter beschikking mogen worden gesteld. Een afschrift van de bovengenoemde verordening van de Raad is als bijlage bij deze brief gevoegd.

Als bijlage bij deze brief gaat tevens een motivering waarom uw cliënt geplaatst is op de bovengenoemde lijst. Uw opmerkingen aan de Raad in verband met diens voornemen om uw cliënt op de bovengenoemde lijst te handhaven en diens motivering daarvoor, kunt u onder overlegging van bewijsstukken **binnen één maand na ontvangst van deze brief** als volgt adresseren "Raad van de Europese Unie (Attn: UNSCR 1373 designations), Wetstraat 175, B-1048 Brussel", of faxen naar het nummer 0032 2 281 53 87.

Voor het geval de Raad een verzoek om toegang van het publiek tot de motivering mocht ontvangen, wordt u voorts verzocht aan te geven of uw cliënt ermee instemt dit document volledig of gedeeltelijk vrij te geven. In het laatste geval dient u te preciseren welke delen van het document openbaar kunnen worden gemaakt met het oog op de behandeling van dergelijke verzoeken, overeenkomstig artikel 4, lid 4, van Verordening (EG) nr. 1049/2001 en artikel 9, lid 6, sub a), van Verordening (EG) nr. 45/2001.

Tot slot wordt u erop geattendeerd dat uw cliënt een verzoek tot de in de bijlage bij de verordening opgenomen bevoegde instanties van de lidstaat of lidstaten kan richten om een machtiging te verkrijgen om bevroren tegoeden te gebruiken voor basisbehoeften of specifieke betalingen (zie artikel 5 van de verordening). Een bijgewerkte lijst van de bevoegde instanties staat op de volgende website:
http://ec.europa.eu/comm/external_relations/cfsp/sanctions/measures.htm

Hoogachtend.



- **SISON, Jose Maria (alias Armando Liwanag, alias Joma, hoofd van de Filipijnse Communistische Partij, inbegrepen de NPA) geboren op 8.2.1939 in Cabugao, Filipijnen**

Jose Maria Sison is de stichter en leider van de Filipijnse Communistische Partij, inbegrepen de New Peoples Army (NPA) (Filipijnen), die is opgenomen op de lijst van groepen betrokken bij terroristische daden in de zin van artikel 1, lid 2, van Gemeenschappelijk Standpunt 2001/931/GBVB. Hij heeft herhaaldelijk gepleit voor het gebruik van geweld voor het verwezenlijken van politieke doelstellingen en heeft leiding gegeven aan de NPA, die verantwoordelijk is voor tal van terroristische aanslagen op de Filipijnen. Deze daden vallen onder artikel 1, lid 3, punt iii), letters i) en j), van Gemeenschappelijk Standpunt 2001/931/GBVB (hierna "het Gemeenschappelijk Standpunt" genoemd) en zijn gepleegd met het oogmerk bedoeld in artikel 1, lid 3, punt iii), van dat gemeenschappelijk standpunt.

De Rechtseenheidskamer van de arrondissementsrechtbank in Den Haag (Nederland) heeft op 11 september 1997 (reg. nr. AWB 97/4707 VRWET) beschikking nr. R02.93.2274 (RV 1995, 2) van de Afdeling bestuursrechtspraak van de Raad van State van 21 februari 1995 bevestigd. De Afdeling bestuursrechtspraak van de Raad van State was tot het besluit gekomen dat aan Jose Maria Sison rechtmatig de status van asielzoeker in Nederland was geweigerd, omdat het bewijs was geleverd dat hij leiding heeft gegeven - of getracht heeft te geven - aan de gewapende vleugel van de CPP, de NPA, die verantwoordelijk is voor tal van terroristische aanslagen op de Filipijnen, en omdat tevens is gebleken dat hij contacten onderhoudt met terroristische organisaties over de gehele wereld.

De minister van Buitenlandse Zaken en de minister van Financiën hebben bij ministeriële regeling nr. DJZ/BR/749-02 van 13 augustus 2002 (Sanctieregeling terrorisme 2002 III), die op 13 augustus 2002 in de Nederlandse Staatscourant is bekendgemaakt, besloten dat alle middelen die toebehoren aan Jose Maria Sison en de Filipijnse Communist Party, inbegrepen de Filipijnse New Peoples Army (NPA), worden bevroren.

De Amerikaanse regering heeft Jose Maria Sison aangewezen als "Specially Designated Global Terrorist" (specifiek als mondiale terrorist aangewezen persoon) ingevolge US Executive Order 13224. Dit besluit kan volgens het Amerikaanse recht worden herzien.

Aldus zijn ten aanzien van Jose Maria Sison beslissingen genomen door bevoegde instanties in de zin van artikel 1, lid 4, van het Gemeenschappelijk Standpunt.

De Raad is ervan overtuigd dat de redenen om Jose Maria Sison op te nemen op de lijst van personen en entiteiten waarop de in artikel 2, leden 1 en 2, van Verordening (EG) nr. 2580/2001 vermelde maatregelen van toepassing zijn, geldig blijven.

Op grond van de bovenstaande elementen heeft de Raad besloten dat de in artikel 2, leden 1 en 2, van Verordening (EG) nr. 2580/2001 bedoelde maatregelen van toepassing moeten blijven op Jose Maria Sison.

Letter of the Council of the European Union, 23 April 2007, to Schoolplein Advocaten, attention: Mr. R. Vleugels (sic)

[GENERAL SECRETARIAT, Council of the EU] SGS 7 / 5983

Sir,

The Council of the European Union has established that the reasons why your client is placed on the list of persons, groups and entities for which restrictive measures are valid as determined by Regulation (EC) no. 2580/2001 of the Council dated 27 December 2001 regarding specific restrictive measures against specific persons and entities with the view of the fight against terrorism, are still all the time valid. Consequently, the Council has the intention to maintain your client on the list.

In Regulation (EC) no. 2580/2001 of the Council of 27 December 2001, it is stipulated that all assets, other financial and economic means which are in the possession of your client, are frozen and that for or on behalf of your client neither directly or indirectly may assets, other financial and economic means be made available. A copy of the above-mentioned regulation of the Council is attached to this letter.

Also attached to this brief is a substantiation ("motivering"= reasons for, explanation, justification) why your client is placed on the above-mentioned list. You can address your remarks to the Council in connection with its intention to maintain your client on the above-mentioned list and its (the Council's) substantiation for it, with presentation of documents (evidence, proof), within one month from receipt of this letter, to"Council of the European Union (Attn. UNSCR 1373 designations), Wetstraat 175, B-1048 Brussel" or you can fax it to: 00-32-2-281 53 87.

In case the Council should receive a request for access of the public to the substantiation, you shall be requested to state whether your client consents that this document is fully or partly made available. Should this last be the case (partial), you must precisely state which parts of the document can be made public with the view of handling such requests, pursuant to Article 4, paragraph 4 of the Regulation (EC) no. 1049/2001 and Article 9, paragraph 6, sub a) of Regulation (EC) no. 45/2001.

Finally your attention is called that your client can address a request to the authorized bodies mentioned in the attachment of the member state or states to secure an authorization ("machiging") to use frozen assets for basic needs or specific paymenets (see Article 5 of the regulation). An updated list of the authorized bodies is on the following website:

http://cc.europa.eu/comm/external_relations/cfsp/sancions/measures.htm

Respectfully,

(Sgd.) General Secretariat, Council of the European Union.

SISON, Jose Maria (alias Armando Liwanag, alias Joma, head of the Communist Party of the Philippines, including the NPA) born on 8.2.1939 in Cabugao, Philippines

Jose Maria Sison is the founder and leader of the Philippine Communist Party, including the New People's Army (NPA) (Philippines), which is put on the list of groups involved in terrorist acts in the meaning of Article 1, paragraph 2, of the Common Standpoint 2001/931/GBVB. He has repeatedly advocated the use of violence for the realization of political aims and has given leadership to the NPA, which is responsible for a number of terrorist attacks in the Philippines. These acts fall under Article 1, paragraph 3, point iii, letters i) and j) of Common Standpoint 2001/931/GBVB (hereafter "the Common Standpoint") and have been perpetrated with the intention as meant in Article 1, paragraph 3, point iii) of the Common Standpoint.

The Legal Uniformity Chamber [REK, Rechtseenheidskamer] of the Court in The Hague (Netherlands) confirmed on 11 September 1997 (reg. no. AWB 97/4707 VRWET) the decision no. R02.93.2274 (RV 1995,2) of the Administrative Law Division of the Raad van State on 21 February 1995. The Administrative Law Division of the Raad van 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 number of terrorist attacks in the Philippines, and because it also turned out that he maintains contacts with terrorist organizations throughout the whole world.

The Minister of Foreign Affairs and the Minister of Finance decided, through ministerial ruling ("regeling") no. DJZ/BR/749-02 of 13 August 2002 (Sanction regulation terrorism 2002 III), which was published in the Netherlands Gazette on 13 August 2002, that all means which belong to Jose Maria Sison and the Philippine Communist Party, including the Philippine New People's Army (NPA) be frozen.

The American government named Jose Maria Sison as "Specially Designated Global Terrorist" (specifically named as a world ["mondial"] terrorist person pursuant to US Executive Order 13224. This decision can be reviewed according to American law.

Thus with regards to Jose Maria Sison, decisions have been taken by authorized bodies in the meaning of Article 1, paragraph 4, of the Common Standpoint.

The Council is convinced that the reasons to put Jose Maria Sison on the list of persons and entities to which the stated measures in Article 2, paragraphs 1 and 2 of Regulations (EC) no. 2580/2001 are applicable, remain valid.

On the basis of the above-mentioned points ("elementen"), the Council has decided that the measures meant in Article 2, paragraphs 1 and 2 of the Regulation (EC) no. 2580/2001 must remain applicable to Jose Maria Sison.

Attachments which follow: Regulation (EC) No. 2580/2001 of the Council, 27 Dec. 2001

And a two-page list of authorized bodies meant in Articles 1, 4 and 5. In the Netherlands, it is the Ministry of Finance.

Observations to the Council following its letter of 23 April 2007

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

Represented by:

Jan Fermon, Chaussée de Haecht 55, 1210 Brussels, Belgium (fax: 32.2.215.80.20), where Jose Maria Sison has domicile for the present procedure.

1. Absence of any new element as those already presented in the pending case T-47/03 which is still pending at this moment before the Court of First instance of the EC

Jose Maria Sison observes that all the elements presented in the letter of the Council of 23 April 2007 (hereafter referred to as the letter) were already discussed – and already contradicted in general and in detail– in the case T-47/03 before the Court of First Instance of the EC, which is still pending at the moment (hereafter referred as to "the case T-47/03").

The present document summarises the arguments developed in the case T-47/03. Insofar as it may be necessary due to the letter of the Council of 23 April 2007, 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.

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 as public and totally agree with a disclosure according to article 4.4 of the regulation 1049/2001. He likewise considers that no part of the present document is covered by any exceptions covered by article 4 of the aforementioned regulation. He requests the Council to 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.

3. Incompetence of the Council

Jose Maria Sison considers the Council as incompetent to take any decision in the matter of inclusion of individual in the list based on the Regulation 2580/2001. The EC Treaty does not offer any valid legal base to allow the Council to adopt such a decision. On October 24, 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, Jose Maria Sison considers that his inclusion in the list is similar to a criminal penalty. It follows that only a judicial body should be entitled to take such a decision, as conclusion of a proceeding that respects 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 that matter.

4. Refutation of the "motivation" of the Council

The letter of the Council of 23 April 2007 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. Then it will be explained how the Council misinterprets the two Dutch judicial decisions. After that, it will be demonstrated that the Council does not fulfil at all the legal requirements to be able to include Jose Maria Sison in 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 element of its "motivation". Neither do any elements presented in the case T47/03 allow the Council to come to such 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 29 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 1986. 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 and that Rodolfo Salas assumed said position that he had vacated as a result of his arrest and detention.

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. He was preoccupied with a series of ten written lectures on the Philippine crisis and responses of the social movement. He chaired the many meetings of the preparatory committee that established the People's Party. He had daily public speaking engagements and press interviews.

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 29 years already, including more than eight years of imprisonment (1977 to 1986) under conditions of maximum security and more than 20 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.

These various situations and activities in which he was 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 others 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 29 years removed from the CPP and the NPA and, as political consultant, he deals with 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 19 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 role in the peace process

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. He is as witness a signatory in all the major bilateral agreements since the Joint Declaration of The Hague 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 hereabove, 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 action taken in the framework of an internal armed conflict as defined by the 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 the Dutch judicial decisions concerning Jose Maria Sison

The Council made 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 **in total contradiction with the content of these decisions.**

4.2.1 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 negatively 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"*.

4.2.2. 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 The Hague Court was in no way any involvement of Jose Maria Sison in terrorism or in any other type of criminal actions.

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 o 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 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 "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 as regards the public security but referred only to *"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 The Hague District Court (REK).

[1] the Geneva Convention relating to the Status of Refugee of 28 July 1951 (note of the applicant).

The Raad van State in its 1995 decisions 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 2 aforecited decisions was about the involvement of Mr. Sison in any act of terrorism. The two decisions decided on whether the Dutch Minister of Justice could

- Exclude M. 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 interest

To the first question the two courts identically and categorically said 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.

To the second question, the Rechtbank however said that the Minister could take the decision to refuse residence status *"on considerations of overriding public interests"* as long as he 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).

4.2.3. 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 refers 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 an 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 and 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 his alleged personal contacts and neither was he given any opportunity to controvert them. The REK of the District Court of The Hague stated this consideration 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 which is the only element brought in by the Council in its defence, 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.

4.3. 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 hereabove, the factual allegations presented by the Council are mere erroneous and baseless allegations and thus do not comply with the requirements of "precise information or material".

4.4.2. The Dutch decisions 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. 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 "*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 a consent to this decision.

As a conclusion of this point it is 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 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 Sison couple's bank account and termination of Prof. Sison's social benefits are totally irrelevant to the struggle against terrorism.

The Council did 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 show indeed 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 Prof. Sison it seems very clear to us that his name is included in the list for reasons that have strictly nothing to do with the fight against terrorism.

Several statements by officials of the GRP show clearly that Prof. Sison was initially listed in the US as well as in 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 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 tries actually to force the NDFP to sign a capitulation agreement. This is the most clear 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. Its 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 Neherlands, 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 to 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 didn't 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 contestation 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 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, 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, as the ECHR (See, EctHR, Bosphurus Airways c. Ireland, 30 June 2005).

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 have to participate in the decision process of his inclusion or retention in 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 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.

Indeed, the Council has submitted its letter of April 23, 2007 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).

The wording however of this letter of the Council very clearly shows that the aim of the Council is not at all to submit the elements contained in the letter to an even

(elementary) form of contradiction but merely to inform Jose Maria Sison in a purely formal way about the decision that has already been taken. The letter says indeed that

"The Council has established that the reasons why (Jose Maria Sison) is placed on the list ... are still valid." and that *"The Council is convinced that the reasons for putting Jose Maria Sison on the list (...) remain valid. On the basis of the above-mentioned fundamental points, the Council has decided that the measures meant in Article 2, paragraphs 1 and 2 of the Regulation (EC) no. 2580/2001 must remain applicable to Jose Maria Sison."*

Conclusion

Jose Maria Sison requests the Council :

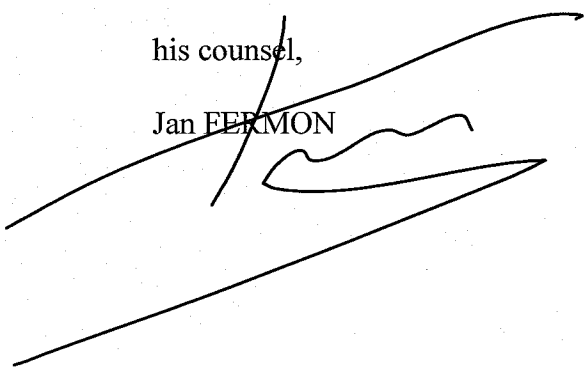
- to make the present document directly accessible to the public in electronic form and through the public register of the Council in accordance with articles 11 and 12 of the same regulation 1049/2001, maximum 8 days after its reception;
- to send a copy of the present document and of all the document of the proceedings of the case T-47/03 to all the delegates of the Coreper and all the ministers of the member States of the EU who have to decide on his inclusion or retention in the list adopted on basis of article 2.3 of the Regulation 2580/2001;
- to declare itself incompetent for any decision to include Jose Maria Sison in a list related to terrorist activities, as a consequence of the lack of legal base;
- to not include or retain Jose Maria Sison in a list adopted that will be adopted on the basis of Regulation 2580/2001.

Brussels, 22 May 2007

For Jose Maria Sison,

his counsel,

Jan FERMON



**RAAD VAN
DE EUROPESE UNIE**

GENERAAL SECRETARIAAT

Raad van de Europese Unie
(t.a.v. CP 931 Designations)
RUE DE LA LOI, 175
B – 1048 BRUSSELS

29 juni 2007 SGS7/ 9597

Mr Jan Fermon
Avocat
Chaussée de Haecht, 55
1210 Brussel

Betreft: Jose Maria Sison

Mijnheer,

Hierbij deel ik u mede dat de Raad, na zich te hebben beraden over de opmerkingen die u namens de heer Sison heeft gemaakt in uw brief d.d. 22 mei 2007, heeft besloten, om de redenen die u eerder per brief van 23 april 2007 zijn meegedeeld, de heer Sison te handhaven op de lijst van personen en entiteiten waarvoor beperkende maatregelen gelden als bedoeld in Verordening (EG) nr. 2580/2001 van de Raad.

De Raad neemt er nota van dat zaak T-47/03 nog steeds aanhangig is en dat de mondelinge behandeling is heropend bij beschikking van het Gerecht van eerste aanleg d.d. 24 mei 2007.

Hierbij gaat een afschrift van het nieuwe besluit van de Raad om uw cliënt te handhaven op de lijst van personen en entiteiten waarvoor beperkende maatregelen gelden, alsook de motivering voor de opneming en de handhaving van uw cliënt op de bovengenoemde lijst.

Uw aandacht wordt gevestigd op het feit dat de Raad de bovengenoemde lijst op gezette tijden zal evalueren overeenkomstig artikel 2, lid 3, van Verordening (EG) nr. 2580/2001 van de Raad en artikel 1, lid 6, van Gemeenschappelijk Standpunt 2001/931/GBVB. In dat verband kunt u, samen met eventuele documenten ter staving, een verzoek tot herziening van het besluit om uw cliënt op de lijst op te nemen en te handhaven, bij de Raad indienen. Dit verzoek kan te allen tijde worden ingediend op dit adres: Raad van de Europese Unie (t.a.v.: CP 931 designations), Wetstraat 175, B-1048 Brussel, of per fax op het nummer 0032 2 2815387, en zal bij ontvangst in overweging worden genomen. In ieder geval dient u dit verzoek, opdat het tijdens de komende herziening kan worden behandeld, **binnen twee maanden na de datum van deze brief** in te dienen.

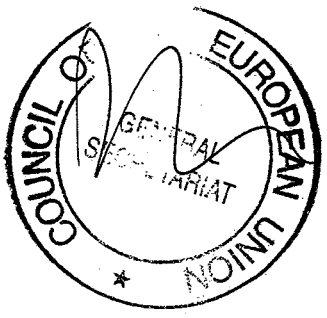
U wordt tevens geattendeerd op de mogelijkheid om tegen het besluit van de Raad beroep in te stellen voor het Gerecht van eerste aanleg van de Europese Gemeenschappen, conform de voorwaarden van artikel 230, vierde en vijfde alinea, van het Verdrag tot oprichting van de Europese Gemeenschap.

De Raad bevestigt dat een afschrift van uw opmerkingen en van de processtukken in zaak T-47/03 aan alle delegaties zijn toegezonden. De Raad acht zich niet verplicht de opmerkingen openbaar te maken; het staat uw cliënt vrij de opmerkingen zelf openbaar te maken indien hij dat aangewezen acht.

Tenslotte wordt uw aandacht gevestigd op de mogelijkheid om bij de in de bijlage bij Verordening (EG) nr. 2580/2001 van de Raad vermelde bevoegde instanties van de desbetreffende lidstaat (lidstaten) van de EU een aanvraag in te dienen om machtiging, overeenkomstig artikel 5, lid 2, van die verordening, tot het gebruik van bevroren tegoeden voor essentiële behoeften of specifieke betalingen. Een bijgewerkte lijst van bevoegde instanties staat op het volgende internetadres:

http://ec.europa.eu/comm/external_relations/cfsp/sanctions/measures.htm.

Hoogachtend.



- **SISON, Jose Maria (alias Armando Liwanag, alias Joma, hoofd van de Filipijnse Communistische Partij, inbegrepen de NPA)**

Jose Maria Sison (alias Armando Liwanag, alias Joma), geboren op 8.2.1939 in Cabugao, Filipijnen, is de stichter en leider van de Filipijnse Communistische Partij, inbegrepen de New Peoples Army (NPA) (Filipijnen), die is opgenomen op de lijst van groepen betrokken bij terroristische daden in de zin van artikel 1, lid 2, van Gemeenschappelijk Standpunt 2001/931/GBVB. Hij heeft herhaaldelijk gepleit voor het gebruik van geweld voor het verwezenlijken van politieke doelstellingen en heeft leiding gegeven aan de NPA, die verantwoordelijk is voor tal van terroristische aanslagen op de Filipijnen. Deze daden vallen onder artikel 1, lid 3, punt iii), letters i) en j), van Gemeenschappelijk Standpunt 2001/931/GBVB (hierna "het Gemeenschappelijk Standpunt" genoemd) en zijn gepleegd met het oogmerk bedoeld in artikel 1, lid 3, punt iii), van dat gemeenschappelijk standpunt.

De Rechtseenheidskamer van de arrondissementsrechtbank in Den Haag (Nederland) heeft op 11 september 1997 (reg. nr. AWB 97/4707 VRWET) beschikking nr. R02.93.2274 (RV 1995, 2) van de Afdeling bestuursrechtspraak van de Raad van State van 21 februari 1995 bevestigd. De Afdeling bestuursrechtspraak van de Raad van State was tot het besluit gekomen dat aan Jose Maria Sison rechtmatig de status van asielzoeker in Nederland was geweigerd, omdat het bewijs was geleverd dat hij leiding heeft gegeven - of getracht heeft te geven - aan de gewapende vleugel van de CPP, de NPA, die verantwoordelijk is voor tal van terroristische aanslagen op de Filipijnen, en omdat tevens is gebleken dat hij contacten onderhoudt met terroristische organisaties over de gehele wereld.

De minister van Buitenlandse Zaken en de minister van Financiën hebben bij ministeriële regeling nr. DJZ/BR/749-02 van 13 augustus 2002 (Sanctieregeling terrorisme 2002 III), die op 13 augustus 2002 in de Nederlandse Staatscourant is bekendgemaakt, besloten dat alle middelen die toebehoren aan Jose Maria Sison en de Filipijnse Communist Party, inbegrepen de Filipijnse New Peoples Army (NPA), worden bevroren.

De Amerikaanse regering heeft Jose Maria Sison aangewezen als "Specially Designated Global Terrorist" (specifiek als mondiale terrorist aangewezen persoon) ingevolge US Executive Order 13224. Dit besluit is onderworpen aan bestuursrechtelijke en rechterlijke toetsing overeenkomstig het Amerikaanse recht.

Aldus zijn ten aanzien van Jose Maria Sison beslissingen genomen door bevoegde instanties in de zin van artikel 1, lid 4, van het Gemeenschappelijk Standpunt.

De Raad is ervan overtuigd dat de redenen om Jose Maria Sison (alias Armando Liwanag, alias Joma) op te nemen op de lijst van personen en entiteiten waarop de in artikel 2, leden 1 en 2, van Verordening (EG) nr. 2580/2001 vermelde maatregelen van toepassing zijn, geldig blijven.

Op grond van de bovenstaande elementen heeft de Raad besloten dat de in artikel 2, leden 1 en 2, van Verordening (EG) nr. 2580/2001 bedoelde maatregelen van toepassing moeten blijven op Jose Maria Sison (alias Armando Liwanag, alias Joma).

ANNEX 46 - K

National Democratic Front of the Philippines
National Council

MEMORANDUM

For : J.M. LANGENBERG
Subject: False claims in the "Background Paper"
From : Luis Jalandoni, Chairperson, Negotiating Panel,
National Democratic Front of the Philippines
Date : 27 October 2002

The undersigned writes to you this memorandum in his capacity as member of the National Executive Committee of the National Democratic Front of the Philippines (NDFP) and chairperson of the NDFP Panel negotiating with the Government of the Republic of the Philippines (GRP).

In such a capacity, I am in a position to know the principles, policies, documents, activities and circumstances of the two main organizations of the NDFP, which are the Communist Party of the Philippines (CPP) and the New People's Army (NPA). I am also in a position to know the background, current qualifications and circumstances of the chief political consultant of the NDFP, Prof. Jose Maria Sison.

This memorandum refutes two false claims in the so-called background paper to the Sanctieregeling terrorisme 2002 III, which was provided to you by the pertinent Dutch authorities.

False claim #1: "Sison is also the head of the CPP"

The **Truth:**

Prof. Jose Maria Sison is not Armando Liwanag, Chairman of the Central Committee of the Communist Party of the Philippines for the following reasons:

1. The Constitution of the Communist Party of the Philippines (CPP) requires the Chairman of the Central Committee to preside over meetings of the Central Committee every six months (Section 6, Article V) and lead the work of the Political Bureau and Executive Committee on a daily basis (Section 4, Article V). Clearly, whoever holds the position of Chairman of the Central Committee is required to reside in the Philippines to be able to perform his functions.

2. Prof. Sison has been away from the Philippines for 16 years (since 31 August 2002) from the time he left the Philippines for a world University lecture tour. He has had neither the time nor the opportunity to assume the position of Chairman of the Central Cornmittee of the CPP.

3 Upon his arrest by the Marcos regime on 10 November 1977, Prof. Sison lost his position as Chairman of the Central Committee of the CPP. He was detained under conditions of isolation and maximum security until his release on 5 March 1986. In April 1986, he was appointed senior fellow with the rank of associate professor at the Asian Studies Center of the University of the Philippines. From that time to his 31 Auguçt 1986 departure from the Philippines, he had no opportunity whatsoever to assume the position of Chairman of the CC of the CPP because of his lecture series in the University, frequent speaking engagements and press interviews.

4. On 20 April 1998, the Government of the Republic of the Philippines (GRP) through Justice Secretary Silvestre Bello III issued a certification (attached hereto) that there is no pending criminal charge against Prof. Jose Maria Sison. Since then, the GRP has not filed any new criminal charge against him. The US is completely wrong and arrogant in claiming that Prof. Sison is liable for criminal acts against US nationals in the Philippines, without citing any verifiable record of investigation and findings done by the Philippine authorities.

False claim #2:

Jose Maria Sison has personally directly targeted US persons. In April 2002, he ordered the NPA to "inflict severe casualties" on US soldiers participating in joint military exercises. This order was issued in the ang bayan (the Nation), the house organ of the CPP, signed in his nom de guerre "armando liwanag". He has recently threatened attacks on US civilian personnel, including diplomats.

The Truth:

1. The false claim that Prof. Jose Maria Sison is Armando Liwanag, Chairman of the CPP Central Committee, is already refuted above. He has not "personally directly targeted US persons". He is not responsible for any alleged order to kill US civilian personnel, including diplomats, supposedly issued in the April 2002 issue of *Ang Bayan*. No evidence whatsoever is provided that there is such an order and that he is the author of such an order.

2. The author of the false claim misrepresents as an order to kill US civilians and diplomats the following political statement of warning to the US, which appeared in the April 2002 issue of Ang Bayan, pp 10 & 11.

"As in Vietnam and the whole of Indochina where the US war of aggression was defeated, we must be ready to use the social and physical terrain of the Philippines to **inflict severe casualties** on the **invading *US* forces** and to take punitive actions against US economic and related interests."

3. Year in and year out, every anniversary statement of the CPP and the NPA carry statements denouncing the US role in the oppression and exploitation of the Filipino people and warning against US military intervention or a US war of aggression. Such statements of warning do not signify or amount to any act of terrorism. In fact, they warn more than anything else against human rights violations arising from state terrorism by the US and the Manila governments in the course of US military intervention or war of aggression.

4. So far, no US military troop nor any other kind of American national has been arrested, detained, killed or wounded by the NPA since the since April 2002. It is entirely the responsibility of the US to ignore the repeated warnings of the CPP, NPA, CPP information officer Gregorio Rosal and noncommunist opinion makers in both print and broadcast media against the rising level of US military intervention in the Philippines and the growing possibility of US casualties in NPA-controlled areas. A wide array of Filipinos have protested against US military intervention and warned against its dire consequences. Prof. Sison is not the only one who has used his freedom of expression to speak on the issue.

5. The specific false claim that Prof. Sison has ordered the targeting of US civilians and diplomats is utterly mendacious and malicious. The April 2002 issue of Ang Bayan does not carry such an order. The lie is blatantly calculated to demonize the CPP, NPA and Prof. Sison as "terrorists". The Dutch authorities and public must be informed that the CPP, NPA and other revolutionary forces represented by the NDFP strictly

follow the principles, conventions and standards for respecting human rights and humanitarian conduct in war.

Said revolutionary forces are bound by the following: the bill of fundamental rights in the Guide for Establishing the People's Government, the rules of discipline of the people's army, the International Bill of Rights, the NDFP Declaration of Undertaking to Apply the Geneva Conventions and Protocol 1 and the GRP-NDFP Compre4hensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL).

It is the NDFP, not the GRP, which has been pressing for the resumption of the GRP-NDFP negotiations in accordance with The Hague Joint Declaration not only to continue the much-delayed negotiations on social and economic reforms but also to form and operationalize the Joint Monitoring Committee for implementing CARHRIHL and acting on complaints of violations of human rights and international humanitarin law.

Luis Jalandoni
Member, National Executive Committee
National Democratic Front of the Philippines
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ANNEX I to COUNCIL'S DEFENCE

SN 1808/03 EXT 1

ARRONDISSEMENTSRECHTBANK TE 'S-GRAVENHAGE
Sector Bestuursrecht
Rechtseenheidskamer Vreemdelingenzaken

UITSPRAAK

Ingevolge artikel 8:77 Algemene wet bestuursrecht
juncto artikel 33a Vreemdelingenwet

Reg.nr.: AWB 97/4707 VRWET

Inzake : [redacted], wonende te Utrecht, eiser, gemachtigde R.D. van As, werkzaam bij Boe-Veterman, Van As & De Vries advocaten te Nieuwegein.

tegen : de Staatssecretaris van Justitie, verweerder, gemachtigde mr G.M.H. Hoogvliet, advocaat te Den Haag.

I. ONTSTAAN EN LOOP VAN HET GEDING

1. Eiser, geboren op [redacted] 1939, bezit de Filipijnse nationaliteit. Hij verblijft sedert [redacted] 1987 als vreemdeling in de zin van de Vreemdelingenwet in Nederland. Op [redacted] 1988 heeft eiser verzocht om toelating als vluchteling en om verlening van een vergunning tot verblijf wegens klemmende redenen van humanitaire aard. Bij beschikking van 13 juli 1990 is op deze aanvragen afwijzend beslist.

Bij schrijven van 6 augustus 1990 heeft eiser bij verweerder een verzoek om herziening ingediend. Op dit verzoek is niet binnen de in artikel 34, tweede lid, Vw (oud) genoemde termijn van drie maanden een beslissing genomen, zodat dit verzoek ingevolge dat artikellid geacht moet worden te zijn afgewezen. Tegen deze fictieve beslissing heeft eiser bij schrijven van 6 december 1990 beroep ingesteld bij de Afdeling rechtspraak van de Raad van State.

Verweerder heeft, alvorens een verweerschrift uit te brengen, de Adviescommissie voor vreemdelingenzaken (ACV) ingeschakeld. De ACV heeft eiser op 25 februari 1991 gehoord en op dezelfde dag aan verweerder geadviseerd het ingenomen standpunt te handhaven.

Bij uitspraak van 17 december 1992, no R02.90.4994, (RV 1992, 12), heeft de Afdeling rechtspraak van de Raad van State de beslissing van verweerder vernietigd.

Bij beslissing van 26 maart 1993 heeft verweerder, opnieuw beslissend op het verzoek om herziening van eiser, dit verzoek wederom afgewezen. Tegen deze beslissing heeft eiser bij schrijven van 23 april 1993 beroep ingesteld bij de Afdeling rechtspraak van de Raad van State.

Bij uitspraak van 21 februari 1995, no R02.93.2274 (RV 1995, 2) heeft de Afdeling bestuursrechtspraak van de Raad van State de beslissing van 26 maart 1993 vernietigd.

Bij schrijven van 26 juni 1995 heeft eiser beroep ingesteld bij de rechtbank tegen het niet tijdig nemen van een (nieuw) besluit op het verzoek om herziening van 6 augustus 1990.

Bij uitspraak van 29 april 1996 heeft de rechtbank het beroep gegrond verklaard en bepaald dat verweerder binnen zes weken na de datum van verzending van de uitspraak een beslissing dient te nemen op het verzoek om herziening van 6 augustus 1990.

Bij besluit van 4 juni 1996 heeft verweerder opnieuw besloten om de verzoeken om toelating als vluchteling en verlening van een vergunning tot verblijf af te wijzen. Bij het besluit van 4 juni 1996 heeft verweerder voorts bepaald dat eiser niet zal worden verwijderd naar de Filipijnen zolang hij gegronde redenen heeft te vrezen voor vervolging in de zin van het Vluchtelingenverdrag van 28 juli 1951, zoals gewijzigd bij het Protocol van New York van 31 januari 1967, of voor een behandeling die een schending oplevert van artikel 3 van het Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden.

Tenslotte heeft verweerder bij het besluit eiser gelast Nederland te verlaten. Het besluit is op 18 juli 1996 aan eiser uitgereikt.

2. Eiser heeft bij beroepschrift van 12 augustus 1996 tegen dit besluit beroep ingesteld bij de arrondissementsrechtbank 's-Gravenhage, nevenzittingsplaats Amsterdam. Bij schrijven van 26 november 1996 heeft eiser zijn beroep gemotiveerd. Op 5 november 1996 zijn de op de zaak betrekking hebbende stukken van verweerder ontvangen. In het verweerschrift van 22 november 1996 heeft verweerder geconcludeerd tot ongegrondverklaring van het beroep.

3. De rechtbank heeft het beroepschrift samen met de beroepschriften onder nr. AWB 97/4706 VRWET en AWB 97/4752 VRWET ter behandeling naar de Rechtseenheidskamer verwezen. Verweerder heeft desgevraagd een aanvullend verweerschrift ingezonden op 16 mei 1997. Eiser heeft bij brief van 9 juni 1997 gerepliceerd. Ten slotte heeft verweerder op 16 juni 1997 gedupliceerd.

4. De rechtbank heeft het onderhavige beroep ter behandeling gevoegd met de beroepen onder de nrs. AWB 97/4706 VRWET en AWB 97/4752 VRWET. De openbare behandeling van de beroepen heeft op 19 juni 1997 plaatsgevonden. Eiser is aldaar in persoon verschenen, bijgestaan door zijn gemachtigde. Verweerder heeft zich doen vertegenwoordigen door zijn gemachtigde

II. OVERWEGINGEN

5. Met betrekking tot de ontvankelijkheid van het beroep overweegt de rechtbank als volgt.
Het bestreden besluit van 4 juni 1996 is op dezelfde datum aan de gemachtigde van eiser verzonden. In het bestuursrecht is algemeen aanvaard dat toezending van een besluit aan de gemachtigde van een belanghebbende geldt als bekendmaking van het besluit. Dit betekent dat de termijn voor het instellen van beroep is aangevangen op 5 juni 1996, welke termijn ingevolge artikel 33c Vw eindigt op 9 juli 1996. Het beroepschrift is van 12 augustus 1996. De termijn waarbinnen beroep kon worden ingesteld, is dan ook overschreden.
Verweerder heeft evenwel in de clausule bij het bestreden besluit van 4 juni 1996, waarin wordt aangegeven welk rechtsmiddel kan worden aangewend tegen dat besluit, uitdrukkelijk vermeld dat beroep moet worden ingesteld binnen vier weken na de dag waarop het besluit aan de vreemdeling of diens wettelijk vertegenwoordiger is uitgereikt dan wel, indien dat niet mogelijk is gebleken, over de post is toegezonden naar het laatstbekende adres. Overeenkomstig de uitspraak van de Rechtseenheidskamer van 24 oktober 1996 met nummer AWB 96/7556 VRWET (MR 1996, nr 179), leidt deze door verweerder gecreëerde onduidelijkheid over de aanvang van de beroepstermijn tot verschoonbaarheid van de termijnoverschrijding.
Gelet op het voorgaande is het beroep ontvankelijk.

6. In het dossier dat door verweerder ingevolge artikel 8:42 Awb aan de rechtbank is toegezonden en waarvan eiser een kopie heeft ontvangen ontbreken de departementale producties 27 tot en met 34. Verweerder heeft zich ten aanzien van die stukken beroepen op artikel 8:29 Awb. Eveneens ontbreekt het operationeel materiaal dat ten grondslag heeft gelegen aan de brief van het Hoofd van de Binnenlandse Veiligheidsdienst aan verweerder van 3 maart 1993. Ten aanzien van deze laatste stukken heeft de Minister van Binnenlandse Zaken zich beroepen op artikel 8:29 Awb en de artikelen 23 en 24 van de Wet op de inlichtingen- en veiligheidsdiensten.
Op verzoek van de rechtbank zijn al deze stukken, die betrekking hebben op het onderzoek van de Binnenlandse Veiligheidsdienst naar de activiteiten van eiser gedurende zijn verblijf in Nederland, aan de rechtbank ter inzage gegeven. De rechtbank heeft de voorzitter van de kamer verzocht van deze stukken kennis te nemen. Op grond van het door deze uitgebrachte verslag heeft de rechtbank besloten dat de beperking van de kennisneming van deze stukken gerechtvaardigd is. Aangezien eiser de daartoe in het vijfde lid van artikel 8:29 vereiste toestemming heeft verleend, heeft de rechtbank de inhoud van deze stukken, voorzover daar via de voorzitter van de kamer kennis van is genomen, wel in haar beoordeling van het geschil betrokken.

7. In dit geding dient te worden beoordeeld of het bestreden besluit, voorzover inhoudende dat aan eiser toelating als vluchteling en verlening van een vergunning tot verblijf wordt geweigerd, in rechte stand kan houden.

8. Voor de feiten die de rechtbank aan zijn oordeel ten grondslag heeft gelegd wordt verwezen naar de uitspraak van de Afdeling Bestuursrechtspraak van de Raad van State van 21 februari 1995 (no. R02.93.2274).

9. Op grond van deze uitspraak moet als in rechte vaststaand worden aangenomen, dat aan eiser de bepaling van artikel 1F van het Vluchtelingenverdrag niet kan worden tegengeworpen, dat eiser gegronde

vrees voor vervolging heeft in de zin van artikel 1A van het Vluchtelingenverdrag en artikel 15 van de Vreemdelingenwet en dat artikel 3 van het Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden (EVRM) er aan in de weg staat dat eiser - direct of indirect - naar zijn land van herkomst wordt verwijderd.

10. De eerste vraag die partijen verdeeld houdt is, of de uitspraak van de Afdeling verweerder de ruimte biedt om met toepassing van artikel 15, tweede lid Vw. aan eiser toelating als vluchteling te weigeren nu verweerder er niet in is geslaagd om toelating van eiser in een ander land dan de Filipijnen te verzekeren. Het tweede lid van artikel 15 Vw. luidt:
"De toelating kan niet worden geweigerd dan om gewichtige redenen aan het algemeen belang ontleend, indien de vreemdeling door de weigering genoopt zou worden zich onmiddellijk te begeven naar een land als bedoeld in het eerste lid."

11. In genoemde uitspraak heeft de Afdeling onder andere overwogen:
"Gezien het vorenstaande zal de Afdeling vervolgens nagaan of de door verweerder (subsidiair) gegeven motivering om appellant op grond van artikel 15, tweede lid, van de Vreemdelingenwet, de toelating tot Nederland te weigeren, merelkend is.
Hoewel de Afdeling het door verweerder gestelde belang erkent, mede gelet op de door haar geconstateerde aanwijzingen voor persoonlijke contacten tussen appellant en vertegenwoordigers van terroristische organisaties, kan dit - indien niet gegarandeerd is dat appellant in een ander land dan de Filipijnen zal worden toegelaten - niet leiden tot het gerechtvaardigd inroepen van artikel 15, tweede lid, van de Vreemdelingenwet. Hieraan staat in de weg dat een dergelijke weigering om appellant toe te laten als strijdig met artikel 3 van het Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, hierna te noemen: het EVRM, moet worden geoordeeld."

12. Eiser leidt uit deze formulering af dat de Afdeling aan verweerder bedoelde ruimte niet heeft gelaten en dat de weigering hem als vluchteling toe te laten in strijd is met deze uitspraak.

13. Verweerder heeft betoogd dat de uitspraak van de Afdeling niet tot toelating van eiser als vluchteling dwingt, omdat artikel 3 EVRM, dat naar het oordeel van de Afdeling aan de toepassing van het tweede lid van artikel 15 Vw. in de weg staat, naar vaste jurisprudentie van de Afdeling, evenmin als de bepalingen van het Vluchtelingenverdrag, tot verblijfsaanvaarding dwingt, maar slechts aan de uitzetting naar het land van herkomst in de weg staat. Van uitzetting van eiser naar zijn land van herkomst zal verweerder, zo is in het bestreden besluit overwogen, afzien. Verweerder heeft er daarbij op gewezen, dat bij de behandeling van het beroep bij de Afdeling door verweerder uitdrukkelijk de grolling is bestreden dat eiser uit Nederland uitgezet dient te worden, ook als dit zou betekenen dat eiser naar zijn land van herkomst zou moeten terugkeren, en dat het nu door verweerder ingenomen standpunt - dat eiser ondanks de weigering van de toelating toch niet uitgezet zal worden - toen in het geheel niet ter sprake is geweest.

14. De Afdeling heeft de hierboven in rechtsoverweging 11. weergegeven overweging doen volgen door de overweging:
"Met appellant is de Afdeling, mede op grond van het hiervoor overwogene, met name met betrekking tot het vluchtelingschap van appellant, van oordeel dat deze bij terugkeer naar de Filipijnen het reële gevaar loopt te worden onderworpen aan een behandeling in strijd met artikel 3 van het EVRM."
Op grond van deze en de hiervoor geciteerde overweging stelt de rechtbank vast, dat verweerder terecht heeft opgemerkt dat de Afdeling bij haar oordeel uitgegaan is van het voornemen van verweerder eiser naar zijn land van herkomst uit te zetten.
De rechtbank heeft vastgesteld dat het vaste jurisprudentie is van zowel het Europese Hof voor de Rechten van de Mens als de Afdeling (bestuurs)rechtspraak van de Raad van State, dat aan een mogelijke schending van artikel 3 EVRM geen aanspraak op een verblijfstitel ontleend kan worden. Slechts de uitzetting naar een land waar het reële risico van een behandeling in strijd met artikel 3 EVRM bestaat levert schending van artikel 3 EVRM op.
Aangezien verweerder niet langer voornemens is eiser uit te zetten en er derhalve van schending van artikel 3 EVRM geen sprake meer kan zijn, is aan de laatste zin van de onder rechtsoverweging 11. weergegeven overweging van de Afdeling rechtspraak de betekenis komen te ontvallen. Niet langer kan gesteld worden dat artikel 3 EVRM er aan in de weg staat, dat verweerder gebruik maakt van de hem in artikel 15, tweede lid Vw. verleende bevoegdheid om aan eiser toelating als vluchteling te weigeren.

15. Het is vaste jurisprudentie dat aan het Vluchtelingenverdrag geen aanspraak op toelating als vluchteling kan worden ontleend. Ook de artikelen 15 e.v. van de Vreemdelingenwet verlenen niet zonder meer die aanspraak. Het is echter beleid van verweerder om, indien zich een situatie voordoet dat er sprake is van gegronde vrees voor vervolging in de zin van artikel 1A van het Vluchtelingenverdrag en er geen ander land is dat de asielzoeker wil toelaten, de vreemdeling toe te laten als vluchteling. Verweerder heeft in beginsel de bevoegdheid om hierop een uitzondering te maken. Naar het oordeel van de rechtbank kan niet gesteld worden dat verweerder ten aanzien van eiser niet op redelijke wijze van deze bevoegdheid gebruik heeft

gemaakt, gezien het ook door de Afdeling erkende "gewichtig belang van de Nederlandse Staat, te weten de integriteit en geloofwaardigheid van Nederland als soevereine staat, met name in relatie tot zijn verantwoordelijkheden tegenover andere staten." De door de Afdeling aan dit oordeel ten grondslag gelegde feiten zijn ook voor de rechtbank van doorslaggevende betekenis. Niet is gebleken dat aan deze feiten ten tijde van de nu bestreden beslissing door verweerder een andere betekenis toegekend had moeten worden. Hetgeen eiser heeft opgemerkt over de veranderde politieke situatie in de Filipijnen en over zijn rol in de onderhandelingen tussen de Filipijnse autoriteiten en de communistische partij maakt dit niet anders, aangezien de gewichtige redenen - zoals blijkt uit de uitspraak van de Afdeling - op andere feiten zijn gebaseerd.

16. Het beroep van eiser tegen de weigering hem als vluchteling tot Nederland toe te laten dient derhalve ongegrond verklaard te worden.

17. Vervolgens dient de vraag beantwoord te worden of verweerder aan eiser terecht de verlening van een vergunning tot verblijf heeft geweigerd. De rechtbank overweegt daaromtrent als volgt.

18. Het is beleid van verweerder om indien zich een situatie voordoet, waarin een vreemdeling bij terugkeer naar het land van herkomst het reële gevaar loopt onderworpen te worden aan een behandeling in strijd met artikel 3 van het EVRM, een vergunning tot verblijf zonder beperkingen te verlenen. Dat een dergelijke situatie zich ten aanzien van eiser voordoet wordt niet langer bestreden.
Verweerder heeft echter aangevoerd, dat ook in een dergelijke situatie het vijfde lid van artikel 11 Vw. van toepassing is: "Het verlenen van een vergunning tot verblijf ... kan worden geweigerd op gronden aan het algemeen belang ontleend."

19. De rechtbank kan eiser niet volgen in zijn stelling, dat een vergunning tot verblijf niet geweigerd kan worden omdat de bescherming die artikel 3 van het EVRM biedt absoluut is en geen ruimte laat voor een nadere afweging tussen het belang van appellant van een behandeling in strijd met artikel 3 van het EVRM gevrijwaard te blijven en het algemeen belang bij weigering van een vergunning tot verblijf. Gevaar voor schending van artikel 3 van het EVRM doet zich immers niet voor, zoals hierboven onder rechtsoverweging 14. reeds is overwogen, omdat verweerder heeft besloten van gedwongen verwijdering van eiser af te zien.
Het is vaste jurisprudentie van de Afdeling Bestuursrechtspraak dat, zoals ook in de uitspraak van de Afdeling van 20 december 1996 (no. R02.92.2322/182-256) is overwogen, "het absolute karakter van artikel 3 EVRM een weigering van een vergunning tot verblijf niet in de weg staat, nu, zoals uit de stukken is gebleken, uitzetting naar Somalië ten tijde van de fictieve bestreden beslissing niet aan de orde was". Deze jurisprudentie is in overeenstemming met die van het Europese Hof voor de Rechten van de Mens.

20. De rechtbank onderschrijft niet de stelling van eiser dat de situatie, waarin een vreemdeling enerzijds niet met uitzetting wordt bedreigd, doordat verweerder afziet van het gebruik van de hem in artikel 22 verleende bevoegdheid, maar aan hem anderzijds ook geen titel tot verblijf wordt verleend, voor onrechtmatig moet worden gehouden. Blijkens de parlementaire geschiedenis is de mogelijkheid daartoe door de wetgever bij de herziening van de Vreemdelingenwet wel uitdrukkelijk opengehouden. De rechtbank verwijst hiervoor in het bijzonder naar de passages uit de Handelingen van de Tweede Kamer over de betekenis van het Soering-arrest van het Europese Hof voor de Rechten van de Mens voor het Nederlandse vreemdelingenrecht (TK 1991 - 1992, 22735, nr 3, blz 22-23).
De rechtbank is wel van oordeel dat een dergelijke situatie in zijn algemeenheid onwenselijk is en tot uitzonderingen beperkt dient te blijven. De vraag of verweerder in dit geval op grond van een redelijke afweging van belangen tot het besluit is kunnen komen een dergelijke situatie in het leven te roepen beantwoordt de rechtbank bevestigend. Voor wat betreft het algemeen belang dat hierbij in het geding is verwijst de rechtbank naar hetgeen onder rechtsoverweging 15. is overwogen; aan de door eiser in dit verband naar voren gebrachte belangen heeft verweerder in redelijkheid minder gewicht kunnen toekennen. Van doorslaggevende betekenis acht de rechtbank hierbij dat de rechtspositionele gevolgen van het in geding zijnde besluit, waarbij moet worden gedacht aan aanspraken op voorzieningen, nog niet zijn vastgesteld, en in dit geding niet aan de orde zijn. Zij kunnen aan de beoordeling door de rechter worden onderworpen op het moment dat door het bestuur terzake daarvan besluiten zijn genomen.

21. Op grond van het vorenstaande is de rechtbank van oordeel dat ook het beroep tegen de weigering om eiser een vergunning tot verblijf te verlenen ongegrond verklaard moet worden.

22. De rechtbank ziet in dit geval geen aanleiding tot kostenveroordeling en evenmin tot vergoeding van het betaalde griffierecht.

III. BESLISSING

De Arrondissementsrechtbank te 's-Gravenhage,

RECHT DOENDE:

1. verklaart het beroep ongegrond.

Aldus gedaan door mrs T.M.A. Claessens, A.H. Kist en E. Steendijk en in het openbaar uitgesproken op 11 september 1997 door mr T.M.A. Claessens, in tegenwoordigheid van de griffier mr M.J.F. Stuldreher.

griffier voorzitter

afschrift verzonden op: 11 SEP. 1997

ANNEX 2 to COUNCIL'S DEFENCE

(02.05)

SN 1808/03
EXT 1
(OR. nl)

DISTRICT COURT OF THE HAGUE
Administrative Law Division
Coordinating Aliens Chamber

JUDGMENT
pursuant to Article 8:77 of the General Administrative Law Act
in conjunction with Article 33a of the Aliens Act

Reg. no.: AWB 97/4707 VRWET

In the case of: J.M.S., residing in Utrecht, plaintiff, represented by R.D. van As of Bos-Veterman, Van As & De Vries, lawyers, of Nieuwegein

versus: The State Secretary for Justice, defendant, represented by Mr G.M.H. Hoogvliet, lawyer, of The Hague.

I. ORIGIN AND HISTORY OF THE PROCEEDINGS

1. The plaintiff, born on 1939, has Filipino nationality. He has been residing in the Netherlands as an alien within the meaning of the Aliens Act since 1987. On 1988 the plaintiff requested admission as a refugee and permission to reside on compelling humanitarian grounds. His requests were refused by a decision of 13 July 1990.

In a letter dated 6 August 1990, the plaintiff requested the defendant to review his case. As no decision was taken on that request within the three-month deadline laid down in Article 34(2) of the (former) Aliens Act, the request must be considered to have been refused pursuant to that paragraph. In a letter dated 6 December 1990, the plaintiff appealed against that notional decision to the Judicial Division of the Council of State.

Before issuing a statement of defence, the defendant called on the Advisory Committee for Aliens' Affairs (ACV). The ACV heard the plaintiff on 25 February 1991 and that same day advised the defendant to maintain his position.

In a judgment issued on 17 December 1992 (No. R02.90.4934 (RV 1992, 12)), the Judicial Division of the Council of State set aside the defendant's decision.

In a decision of 26 March 1993, the defendant, ruling for the second time on the plaintiff's request for a review of his case, once again refused that request. In a letter dated 23 April 1993, the plaintiff appealed against that decision to the Judicial Division of the Council of State.

In a judgment issued on 21 February 1995 (No. R02.93.2274 (RV 1995, 2)), the Administrative Judicial Division of the Council of State set aside the decision of 26 March 1993.

In a letter dated 26 June 1995, the plaintiff appealed to the court against the defendant's failure to take a (new) decision on the request for a review of 6 August 1990 within the prescribed time limit.

In a judgment issued on 29 April 1996, the court declared the appeal admissible and ruled that the defendant should take a decision on the request for a review of 6 August 1990 within six weeks of the date of that judgment.

In a decision of 4 June 1996, the defendant again rejected the plaintiff's requests for admission as a refugee and permission to reside. In that decision, the defendant also stipulated that the plaintiff should not be deported to the Philippines if he had a justified fear of persecution within the meaning of the Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, or of treatment contrary to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Finally, the defendant, in his decision, ordered the plaintiff to leave the Netherlands. The decision was delivered to the plaintiff on 18 July 1996.

2. In a notice of appeal dated 12 August 1996, the plaintiff appealed against that decision to the District Court of The Hague, sitting in Amsterdam. In a letter dated 26 November 1996, the plaintiff stated the reasons for his appeal. On 5 November 1996, the documents relating to the case were received by the defendant. In his statement of defence of 22 November 1996, the defendant concluded that the appeal should be dismissed as unfounded.

3. The court referred that notice of appeal, together with the notices of appeal registered under nos. AWB 97/4706 VRWET and AWB 97/4752 VRWET, to the Coordinating Chamber for consideration. As requested, the defendant submitted a supplementary statement of defence on 16 May 1997. The plaintiff replied in a letter dated 9 June 1997. Finally, the defendant issued a rejoinder on 16 June 1997.

4. The court added that appeal to the appeals registered under nos. AWB 97/4706 VRWET and AWB 97/4752 VRWET for consideration. The appeals were heard in open court on 19 June 1997. The plaintiff attended in person, assisted by his representative. The defendant was represented by its proxy.

II. GROUNDS

5. The court is of the following opinion with regard to the admissibility of the appeal.
The disputed decision of 4 June 1996 was forwarded to the plaintiff's representative that same day. Under administrative law, it is generally accepted that the forwarding of a decision to the representative of the party concerned is equivalent to notification of the decision. Consequently, the time limit for lodging an appeal commenced on 5 June 1996 and ended (pursuant to Article 33c of the Aliens Act) on 3 July 1996. The notice of appeal was submitted on 12 August 1996. The time limit for lodging the appeal was therefore exceeded.
However, in a clause contained in the disputed decision of 4 June 1996 specifying the legal remedies which might be invoked against that decision, the defendant expressly stated that any appeal must be lodged within four weeks of the day on which the decision was delivered to the alien or his legal representative or, if such delivery was not possible, the day on which the decision was sent by post to the alien's last known address. According to the judgment of the Coordinating Chamber of 24 October 1996 (no. AWB 96/7355 VRWET (MR 1996, no. 179)), the confusion created by the defendant with regard to the commencement of the deadline for appeal makes the overstepping of that deadline excusable.
On the basis of the above, the appeal is admissible.

6. In the file forwarded to the court by the defendant pursuant to Article 8:42 of the General Administrative Law Act, a copy of which was received by the plaintiff, departmental exhibits 27 to 34 are missing. The defendant invoked Article 8:29 of the General Administrative Law Act with regard to those documents. Also missing is the operational material which formed the basis of the letter sent to the defendant by the Head of the National Security Service on 3 March 1993. With regard to the latter documents, the Minister for the Interior invoked Article 8:29 of the General Administrative Law Act and Articles 23 and 24 of the Law on the intelligence and security services.
At the court's request, all those documents (which relate to the National Security Service's investigation into the plaintiff's activities during his period of residence in the Netherlands) were forwarded to the court for inspection. The court asked the president of the Chamber to examine those documents. On the basis of the president's report, the court decided that the restriction on the inspection of those documents was justified. However, since the plaintiff consented to such inspection pursuant to the fifth subparagraph of Article 8:29, the court took account of the content of those documents in its assessment of the dispute insofar as they had been examined by the president of the Chamber.

7. The purpose of this action is to determine whether the disputed decision, insofar as it refuses the plaintiff admission as a refugee and the granting of a residence permit, can be upheld.

8. With regard to the facts on which the court based its judgment, reference is made to the decision of the Judicial Division of the Council of State of 21 February 1995 (no. R02.93.2274).

9. On the basis of that decision, it must be regarded as legally certain that the provision in Article 1F of the Convention relating to the Status of Refugees cannot be invoked in relation to the plaintiff, namely that the plaintiff has

a well-founded fear of persecution within the meaning of Article 1A of that Convention and Article 15 of the Aliens Act and that Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) prevents the plaintiff from being removed, directly or indirectly, to his country of origin.

10. The first question over which the parties remain divided is whether the judgment of the Division affords the defendant the scope to refuse the plaintiff admission as a refugee pursuant to Article 15(2) of the Aliens Act, given that the defendant has failed to guarantee the plaintiff admission to a country other than the Philippines.
The second paragraph of Article 15 reads as follows:
"Admission cannot be refused other than for important reasons arising from the general interest if refusal would compel the alien to move immediately to a country as referred to in the first paragraph."

11. In the judgment referred to, the Division's findings were, inter alia, as follows:
"In view of the above, the Division will subsequently examine whether the reasons given by the defendant (subsidiarily) for refusing the appellant admission to the Netherlands pursuant to Article 15(2) of the Aliens Act suffice.
While the Division acknowledges the defendant's stated interest, partly in view of the latter's recorded indications of personal contacts between the appellant and representatives of terrorist organisations, this cannot justify invoking Article 15(2) of the Aliens Act if there is no guarantee that the appellant will be allowed to enter a country other than the Philippines. This is precluded by the fact that such a refusal to admit the appellant must be deemed to be in contravention of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, hereafter referred to as the ECHR".

12. From the above formulation the plaintiff deduces that the Division has not afforded the defendant the abovementioned scope and that the refusal to admit him as a refugee contravenes this judgment.

13. The defendant has argued that the judgment of the Division does not compel the plaintiff to be admitted as a refugee, since according to the Division's established case-law, neither Article 3 of the ECHR, which the Division regards as precluding the application of Article 15(2) of the Aliens Act, nor the provisions of the Convention on the Status of Refugees oblige residence to be granted, but merely preclude removal to the country of origin. The defendant will refrain from removing the plaintiff to his country of origin, as was stated in the contested decision. In this regard the defendant pointed out that when the appeal was heard by the Division, his unequivocal standpoint was that the plaintiff ought to be removed, even if this meant that the latter would have to return to his country of origin, and that the defendant's present position – that the plaintiff will not be expelled despite being refused admission – was at that time not mentioned at all.

14. The Division followed up the grounds in paragraph 11 above with the following:
"Partly in view of the above findings, notably with reference to his refugee status, the Division shares the opinion of the appellant that he runs a real risk of being subjected to treatment that contravenes Article 3 of the ECHR."
On the basis of this and the previously cited paragraph, the court finds that the defendant has rightly observed that the Division based its judgment on the defendant's intention to remove the plaintiff to his country of origin.
The court found that it is the established case-law of both the European Court of Human Rights and the Administrative Law Division of the Council of State that entitlement to a residence permit does not ensue from a possible violation of Article 3 of the ECHR. Violation of Article 3 of the ECHR arises only in the event of removal to a country where there is a real risk of treatment that contravenes Article 3 of the ECHR.
Since the defendant no longer proposes to remove the plaintiff and violation of Article 3 of the ECHR is therefore no longer an issue, the last sentence of the finding in paragraph 11 of the Judicial Division is no longer significant. It can no longer be alleged that Article 3 of the ECHR precludes the defendant from using the power conferred on him in Article 15(2) of the Aliens Act to refuse the plaintiff admission.

15. It is established case-law that the Convention relating to the Status of Refugees confers no right of admission as a refugee. Nor does Article 15 et seq. of the Aliens Act confer such entitlement automatically. However, it is the policy of the defendant to admit an alien as a refugee if a situation arises where there is a well-founded fear of persecution within the meaning of Article 1A of the Convention relating to the Status of Refugees and no other country will admit the alien. The defendant has the power in principle to make an exception to this rule. In the opinion of the court, it cannot be argued that the defendant has not used this power reasonably in respect of the plaintiff, given the fact

that the Division also acknowledges the "important interest of the State of the Netherlands, namely the integrity and credibility of the Netherlands as a sovereign state, notably with regard to its responsibilities towards other states". The facts on which the Division has based this judgment are also of overriding importance for the court. It has not been shown that a different significance should have been attributed to these facts by the defendant at the time the now disputed decision was taken. The plaintiff's observations on the changed political situation in the Philippines and on his role in the negotiations between the Philippines authorities and the communist party change nothing, since the important reasons –as was clear from the judgment of the Division – are based on other facts.

16. The plaintiff's appeal against the refusal to admit him to the Netherlands as a refugee should therefore be declared unfounded.

17. Next, the question of whether the defendant was right to refuse to grant the plaintiff a residence permit should be answered. The court finds as follows.

18. It is the policy of the defendant to grant a residence permit without restrictions if a situation arises in which an alien runs a real risk of being subjected to treatment that contravenes Article 3 of the ECHR if he returns to his country of origin. That such a situation arises in respect of the plaintiff is no longer disputed.
However, the defendant has argued that in such a situation, paragraph 5 of Article 11 of the Aliens Act also applies: "A residence permit may be refused on grounds arising from the general interest."

19. The court cannot accept the plaintiff's contention that a residence permit cannot be refused because the protection afforded by Article 3 of the ECHR is absolute and leaves no room for the plaintiff's interest in remaining free from treatment that contravenes Article 3 of the ECHR to be weighed further against the general interest in refusing a residence permit. This is because the risk of a breach of Article 3 of the ECHR does not arise, as was already stated in paragraph 14 above, since the defendant has decided to forgo the forced removal of the plaintiff. It is the established case-law of the Administrative Law Division that, as was also stated in the Division's judgment of 20 December 1996 (No. R02.92.2322/182-256), "the absolute nature of Article 3 of the ECHR does not preclude the refusal of a residence permit since, as was clear from the documents, removal to Somalia was not an issue at the time the notional disputed decision was taken". This case-law is in accordance with that of the European Court of Human Rights.

20. The court does not concur with the plaintiff's contention that the situation in which, on the one hand, the plaintiff is not threatened with removal since the defendant refrains from using the power conferred on him in Article 22, while on the other hand he is not granted a residence permit, must be regarded as unlawful. Parliamentary history shows that the legislator has always expressly left open the possibility of refusal when revising the Aliens Act. The court would refer in particular to the passages from the Proceedings of the Lower House (Tweede Kamer) on the significance for Dutch aliens legislation of the Soering judgment of the European Court of Human Rights (TK 1991-1992, 22735, no. 3, pp. 22-23).
However, the court takes the view that, on the whole, such a situation is undesirable and should remain limited to exceptions. The court answers affirmatively the question of whether in this case the defendant was able, on the basis of a reasonable weighing of interests, to reach the decision to create such a situation. As regards the general interest that is at issue in this case, the court would refer to the finding in paragraph 15; the defendant acted reasonably in attaching less weight to the interests raised by the plaintiff in this regard. The court considers it a crucial factor that the legal consequences of the decision in question, i.e. the question of entitlements to services, have not yet been determined and are not an issue in this case. They may be submitted to the court for its opinion once they have been decided upon by the administration.

21. In view of the above, the court is of the opinion that the appeal against the refusal to grant the plaintiff a residence permit must also be declared unfounded.

22. In this case the court sees no reason to award costs or reimburse court fees.

III. DECISION

The District Court at The Hague,

GIVING JUDGMENT:

1. Declares the appeal unfounded.

Done by Messrs T.M.A. Claessens, A.H. Kist and E. Steendijk and delivered in open court on 11 September 1997 by Mr T.M.A. Claessens, in the presence of the court registrar, Mr M.J.F. Stuldreher.

Registrar: President:

(signed) (signed)

Copy sent on: 11 September 1997

International Network for Philippine Studies
Stichting INPS

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Press Statement
18 September 2001

**SYMPATHY FOR THE VICTIMS
AND CONDEMNATION OF TERRORISM**

By Jose Maria Sison
Founding Chairman & General Consultant,
International League of Peoples' Struggle (ILPS)
& Chairman, International Network for Philippine Studies (INPS)

I wish to express the deepest sympathy for the thousands of civilian victims, including a considerable number of Filipinos and Filipino-Americans, in the deadly terrorist attacks in the United States on 11 September 2001. Said victims were in the twin towers of the World Trade Center and in four hijacked planes.

I extend sincerest condolences to the families and friends of those who died in the tragic event. I am sad that ordinary civilians take the main brunt of terrorist acts done in obvious retaliation against the long history and current acts of terrorism of US imperialism.

Customary laws and international conventions set the standard for the conduct of war in a civilized world in contrast with a barbaric one. Such a standard prohibits acts of terrorism against the civilian population, condemns crimes against humanity and requires respect for human rights and humanitarian conduct towards the civilian population and hors de combat.

Terrorism may be defined as the willful and malicious infliction and threat of death and other physical harm on innocent civilians. The US no less has been a notorious perpetrator of terrorism on a scale far larger than what is now being alleged against the private group of Osama bin Laden. But the people in the US should not be targeted for mass slaughter for the terrorist crimes of the US imperialists.

In recent times, the US officialdom and mass media have dished up as acts of humanitarianism and as audio-visual entertainment the mass destruction of human lives in Iraq and Yugoslavia through the use of US high-tech air power and cruise missiles on the civilian population and their social infrastructure.

The US and Israel have practically converted Palestine into a slaughterhouse for the Palestinian people. With overweening arrogance, US President Bush has encouraged the Sharon regime to destroy Palestinian lives and property at will.

The US has a long record of terrorism. It is responsible for the massacre of hundreds of thousands or nearly 10 percent of the Filipino people in the course of the Filipino-American war. It is also responsible for the massacre of more than a hundred thousand Japanese civilians in a matter of seconds in the atom bombing of Hiroshima and Nagasaki. It is further responsible for the massacre of millions of civilians in Korea, Indonesia, Indochina and elsewhere in the course of the Cold War.

The US has practiced the evil of terrorism for so long and this is now recoiling upon the US itself. The imperialist hyperpower is now reaping the whirlwind of terrorism that it has sown all over the world. Some of the adversaries of the US now consider as fair game the killing of American and other civilians in the same malignant spirit that the US does not wince at wreaking direct or collateral damage at the expense of civilian populations abroad.

In one more sense, the US is responsible for generating terrorism as its own Frankenstein. Even Osama bin Laden, the main suspect of the US in the 11 September terrorist attacks, is a former protege of the US in fighting the Soviet armed forces in Afghanistan in the course of the Cold War.

At any rate, no amount of terrorism perpetrated by the US imperialists can justify any avowed anti-US force in perpetrating terrorism against the American people. Justice must be rendered to the victims in the 11 September terrorist attacks just as it must be rendered to the millions of victims of US imperialist terrorism.

It is now clear that the US is vulnerable to acts of terrorism arising from the contradictions within the American Right, between the US and its puppets-turned-enemies and among the imperialist powers. Such contradictions are intensifying under conditions of the worsening crisis of the world capitalist system.

The US monopoly bourgeoisie and policy-makers are increasingly self-conscious about the vulnerability of the US but they are callously using this to rationalize the suppression of the democratic rights of the people in the US and abroad. They are becoming even more hell-bent on oppressing and exploiting the people of the world.

Since the 1950s, it has become clear that the Atlantic and the Pacific Oceans can no longer protect the US from nuclear-tipped intercontinental ballistic missiles. Now, it is also becoming clear that a national missile defense system cannot protect the US from biological weapons, "luggage bombs" (miniaturized nuclear weapons in suitcases) and from hijacked jumbo jets or explosive-laden trucks.

As a consequence of the terrorist attacks in its homeground, the entire US officialdom (the Bush regime with bipartisan support) is trying to push its own colossal kind of terrorism under the pretext of fighting terrorism. Bush has received from the US Congress war-making powers similar to those given to Lyndon B. Johnson after the US-fabricated Tonkin Gulf incident and has received an initial funding of 40 billion USD.

The US has already identified the band of Osama bin Laden as the main suspect in the 11 September terrorist attacks. And yet, US State Secretary Colin Powell has declared that the US will make a "global assault" on "terrorism in general" throughout the world. US vice president Cheney and other high officials have called for the most

unbridled kind of dirty tricks, such as the unlimited hiring of human rights violator and other unsavory characters and the lifting of the ban on assassination of leaders opposed to US imperialism.

The US is now using the incident as a pretext for expanding extraterritorial powers for the benefit of its military forces abroad and for launching all sorts of terrorism against the peoples that wage revolution, nations that fight for liberation and states that assert their independence. We can therefore expect more US acts of aggression, intervention and other acts of terrorism from the US and from its most servile allies and puppets.

In abject servility to the US, the Macapagal-Arroyo regime in the Philippines has volunteered the use of the Philippines again as a base for US aggression and intervention as in the past in connection with the Korean War, the Vietnam War, the Gulf War and other armed conflicts. The Filipino people must resist such scheme of the US and the puppet regime.

The people of the world, including progressive American forces, should forewarn the American people not to be carried away by jingoism, war hysteria and the anti-Arab and anti-Muslim drumbeat. The US imperialists should not be allowed to run berserk with their own brand of terrorism and to obscure their responsibility for the worsening socioeconomic crisis, the reemergence of fascism and the growing danger of war.

By unleashing acts of terrorism in the world, the US can only generate hatred for US imperialism and rouse the just revolutionary resistance of the people of the world. At the same time, it will continue to provoke such terrorists as those responsible for the 11 September terrorist attacks to give the US a dose of its own medicine.

Terrorism from any quarter is reprehensible and must be combated and eradicated. The people will ultimately defeat US imperialism as it increasingly uses terrorism. The few avowedly anti-US elements that use terrorism will only destroy themselves on the road of nihilism.

Only the revolutionary mass movement can defeat US imperialism and the local reactionaries and sweep away terrorism from any direction. As the crisis of the world capitalist system worsens and deepens, the revolutionary mass movement of the proletariat and the people in general is rising and carrying forward the anti-imperialist and socialist cause. #

Message to the KARAPATAN Congress

STRENGTHEN THE ALLIANCE FOR HUMAN RIGHTS IN THE NATIONAL-DEMOCRATIC MOVEMENT

By JOSE MARIA SISON

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STRENGTHEN THE ALLIANCE FOR HUMAN RIGHTS IN THE NATIONAL-DEMOCRATIC MOVEMENT

Message to the KARAPATAN Congress

By Jose Maria Sison
Chairperson, International Network for Philippine Studies
August 17, 1995

Let me express my solidarity with all the human rights organizations and advocates that have agreed to form KARAPATAN. I am happy that you are holding the first national congress with the theme, "Develop our strength, consolidate our ranks, struggle for human rights towards the liberation of the entire people".

The establishment of KARAPATAN is a highly significant event. It comes to further firm up the resolve of the human rights organizations and advocates to persevere in the struggle for national liberation and democracy and therefore to uphold, defend and promote human rights in opposition to foreign monopoly capitalism, feudalism and bureaucrat capitalism as well as their special agents who use the slogan of human rights to attack the national democratic movement.

So long as the semicolonial and semifeudal ruling system persists, the toiling masses of workers and peasants and the middle social strata are exploited and oppressed. Their human rights — civil and political as well as economic, social and cultural — are unceasingly violated by the imperialists and the exploiting classes of big compradors and landlords.

There can be an effective advocacy and militant defense of human rights only by knowing who are the violators of human rights and who are the victims and recognizing that the people themselves can fight for their human rights through the national democratic movement.

It is necessary to repudiate the handful of elements who pretend to be for human rights but who pose as neutral between violators and victims and are in fact hostile to the national democratic movement. They render a special service to the human rights violators and are therefore shunned by the victims.

A Comprehensive View of Human Rights

Let me try to present the comprehensive position of the national-democratic movement on the issue of human rights in terms of substantive scope and the levels of social reality. In the process, let me contrast this position with that of the imperialists and the local reactionaries.

The substantive scope of human rights covers not only civil and political rights but also the economic, social and cultural rights of the Filipino people. The

people assert and fight for the full scope of human rights in their struggle for national and social liberation.

The national-democratic revolution is waged to overthrow the big comprador-landlord state, to liberate the people from oppression and exploitation and to establish the people's democratic state. The constitution of this state carries provisions against imperialism and the local exploiting classes in order to lay the ground for the full realization of the people's human rights in every sphere of social life.

To counter the revolution, the imperialists and the exploiting classes openly and viciously use the coercive apparatuses of the state to suppress the revolutionary forces and the people. The outcry rises against state terrorism. The main or sole tendency is to invoke the civil and political rights of the victims, as if these were the only human rights under attack.

There is oppression because it is a prerequisite and concomittant to exploitation. The imperialists and the local reactionaries violate the civil and political rights in order to preserve the system of exploitation. They want the daily violence of exploitation to persist under their state power. This exploitation extends to the violation of economic, social and cultural rights.

While playing a revolutionary role in the past, the bourgeoisie asserted the sovereignty of the people against the so-called divine right of the absolute monarchy and defined the relationship of the state and the citizenry. In the best of bourgeois democratic constitu-

tions, the bill of rights lists the fundamental rights and freedoms of the citizenry.

But after seizing political power and making capitalism the dominant socioeconomic system in a number of countries, the big bourgeoisie has systematically misrepresented the bourgeois state as supraclass in order to conceal its oppressive class character and used the abstraction of individual rights in bourgeois constitutions in order to rationalize the privilege of certain individuals to exploit many other individuals.

The exploiters are a class that in fact controls the bourgeois state. It is simply untrue that all individuals in an exploitative society have equal rights, equal opportunities and equal protection of the law and that their only concern is either to harmonize their relations with the supraclass state or overthrow it when it becomes tyrannical and oppressive.

The provisions on human rights of the United Nations Charter (1945) and the U.N. Universal Declaration of Human Rights (1948) are in line with the traditional bourgeois concept of human rights as mainly and essentially civil and political rights. What is new about these U.N. instruments is the attempt to set an international standard on human rights and to suggest that the international law on human rights override domestic law.

However, there are enough provisions in these U.N. instruments to allow the contracting states under the principle of state sovereignty to handle all human rights cases within their national borders individually and exclusively and to restrict or even violate human

rights by invoking national security, public order and the like. Although they accuse revolutionary states of ignoring the U.N. instruments on human rights, the imperialist states and their client-states have used the principle of state sovereignty to assert exclusive jurisdiction over human rights cases within their national borders.

With utter callousness, the United States and other capitalist powers have described the most brutal pro-imperialist regimes as democratic and belonging to the free world and have used the slogan of human rights to pursue anticommunist propaganda against anti-imperialist states or dignify pressures on other states to submit to the policies of foreign monopoly capitalism.

The United States has been the worst of human rights violators on an international scale since 1945. It is the only imperialist power that has used nuclear weapons to wipe out civilian populations in a few seconds. It has launched wars of aggression to kill millions of people as in Korea and Indochina and nearly 200,000 people in Iraq within one month. It has instigated and supported reactionary regimes to engage in the most barbaric acts, including massacres, torture, bombardments on civilian communities, and forced mass evacuation.

We should not forget the massacre of more than a million Indonesians in 1965 and so many other massacres perpetrated in Asia, Africa and Latin America by the imperialists and their reactionary agents. The Marcos regime dared to impose a fascist dictatorship on the Filipino people in 1972 only because the United

States approved and supported it. The repression was done in the name of anticommunism and was intended to thwart the growing national democratic movement.

In Philippine history, the worst human rights violations have been committed by foreign oppressors. Spanish colonialism oppressed and exploited the Filipino people for more than three centuries. In frustrating and defeating the Philippine Republic from 1899 onward, the United States unleashed such barbarities as massacres, torture, food blockade, forced relocation, arson and artillery fire on millions of people and killed off ten percent of the population. During World War II, Japan and the United States in their interimperialist contest took turns in inflicting atrocities on the Filipino people.

As a result of the demand of the underdeveloped countries, the U.N. General Assembly passed not only the U.N. Covenant on Civil and Political Rights but also the U.N. Covenant on Economic, Social and Cultural Rights in 1966. The self-determination of the people is affirmed and so is the sovereign power of the contracting states, of whatever character, to be separately and solely responsible for the observance of human rights within their national jurisdiction.

In waging the national democratic revolution, the people uphold the principle of their sovereignty and their human rights as individuals, in association, in patriotic and progressive classes and strata, and as a national community. They struggle to liberate themselves from foreign and domestic oppressors and exploiters in order to assert, defend and advance their

human rights and establish the people's democratic state under which they can truly enjoy the constitutional guarantees for their human rights.

To harmonize the relations of the state and the citizenry in the observance of human rights is necessary, if that state is truly an instrument of the citizenry (who are liberated from imperialism and the exploiting classes) and really provides the guarantees that neither itself nor any other entity in society can violate the human rights of any citizen with impunity.

The current reactionary state in the Philippines is an instrument of oppression and exploitation, violating the guarantees of civil and political rights in the bill of rights of its own constitution as well as those in the U.N. instruments on human rights. In the Philippines today, there are four levels of social reality to take into account in dealing with the issue of human rights. The best way to grasp these levels is to grasp them as levels of social contradictions.

These are the contradiction between foreign monopoly capitalism and the Filipino people; that between the reactionary classes of big compradors and landlords on the one hand and the people, especially the workers and peasants, on the other hand; that between the state in the service of imperialism and the local exploiting classes on the one hand and the broad masses of the people on the other hand and that between the few individuals who belong to the exploitating classes and the many individuals who belong to the exploited classes.

The aforesaid levels of social reality must be taken into account in the people's struggle for liberation from the forces that negate and violate their human rights. It is imperative to struggle against imperialism, the exploiting classes, the counterrevolutionary state and those individuals who carry out the functions of these anti-people forces. Through the revolutionary struggle, the human and rational regard for human beings as persons with dignity and basic human rights is made to prevail over the inhuman regard for them as mere objects of exploitation.

To fight and defeat the forces of inhumanity it is necessary to uphold the principle that human beings — as differentiated from the beasts — have the inalienable right to life, liberty, the security of person and pursuit of happiness and have such fundamental freedoms as those of thought, belief, expression and assembly, as well as from want and fear.

Such acts as torture, rape, murder, cannibalism and the like are patently inhumane. Anyone committing any of these acts violates the human dignity and rights of the victim as well as his own standing as a human being. Those who render justice to the victim should take care not to degrade themselves in the course of seeking the punishment of the culprit.

In the administration of justice, even one accused of having committed the most heinous crime is entitled to due process, deemed innocent until proven guilty in court, treated humanely and punished according to the gravity of the crime and in a manner that does not demean the system of justice. The punishment is meant

to give justice to the victim and serve notice to all that no one can violate the human rights of another person or the people with impunity.

In the people's democratic state, an entire exploiting class is deprived of its means to oppress and exploit the people and certain rights of all members of the entire class are restricted or dissolved in order to prevent them from regaining political power. But not all former exploiters are regarded and treated as criminals nor are they viewed as beasts. They are given the opportunity to remould themselves and to contribute to society what they can under basically human conditions.

There is a difference between membership in an exploiting class and criminal accountability subject to criminal prosecution. Relatively only a few of the exploiters are subjected to prosecution for criminal offenses before the people's court, as the political measures become effective to deprive the entire exploiting class of its means to oppress and exploit the people.

The constitution of the people's democratic state upholds the power of the proletariat and other working people and contains the crucial provisions against the imperialists and the local exploiting classes of big compradors and landlords for the purpose of the all-round social revolution. Such provisions make the constitution radically different from the constitution of the current reactionary state. Consequently, the guarantees for the civil and political rights of the citizenry in the bill of rights come into a context of genuine national

independence, democracy, social justice and development.

In the Philippines today, there is a bitter contention, in fact a civil war, between the big comprador-landlord state and the people who are waging the national democratic revolution and building the organs of political power. The constitution of the big comprador-landlord state is fundamentally different from the Guide for Establishing the People's Government. The latter upholds the people's sovereignty, requires the liberation of the people from imperialism and the exploiting classes and guarantees the human rights of the people in every aspect of social life.

Experience in the Advocacy for Human Rights

In the advocacy for human rights, it is necessary to muster the forces engaged in the struggle for national liberation and democracy. These are the working class as the leading force, the basic alliance of the working class and peasantry as the main force, the aforementioned classes and the urban petty bourgeoisie as the basic progressive forces and all positive forces which include the national bourgeoisie.

The alliance of the patriotic and progressive forces should also take advantage of the contradictions among the reactionaries and avail of the less reactionary sections of the exploiting classes as temporary and unreliable allies directly or indirectly against the enemy (the most reactionary faction, which is most subservient to

the imperialists). The point is to develop the broadest possible array of forces in order to isolate and destroy the power of the enemy that is unleashing the worst human rights violations on the people.

In the alliance for human rights along the national democratic line, the patriotic and progressive forces and elements involved may be motivated by various lines of thought and belief. The proletarian revolutionaries, the progressive liberals, religious believers and other people can find common ground in the national democratic movement and agree to defend and fight for human rights against the imperialist and the local exploiting classes. In this regard, progressive and patriotic forces have gained a rich experience since the early '70s when upon the instigation of the United States the Marcos regime set out to impose the open rule of terror on the people.

There are the proletarian revolutionaries who have a clear class analysis of Philippine society, take the vantage point of the working class, and consider the national democratic and socialist stages of the Philippine revolution as stages in the advance of the the struggle for human rights. There are the bourgeois liberals who retain the revolutionary or progressive aspect of their political philosophy, share with the proletarian revolutionaries adherence to the people's sovereignty and strive to put the bourgeois-democratic bill of rights and the current bourgeois international canon of human rights in the service of the national democratic movement. There are the religious believers who find their faith as being in consonance with the struggle for na-

tional and social liberation because this upholds the dignity and rights of human beings.

A broad alliance called the Movement of Concerned Citizens for Civil Liberties was formed in 1971 when the U.S.-Marcos regime proclaimed the suspension of the writ of habeas corpus and started to suppress the legal forces of the national democratic movement and all other opposition. The National Democratic Front was established in 1973 in order to preserve, consolidate and expand the forces of the national democratic movement underground after the U.S.-Marcos regime proclaimed martial rule in 1972 and attempted to destroy completely all types of opposition.

Within the NDF, the Christians for National Liberation (CNL) took upon itself the task of creating a formation to defend human rights, seek the support of the church people and counter the reactionary support of the institutional church for the fascist dictatorship. The Task Force Detainees came into being in 1974, under the auspices of the Association of Major Religious Superiors in the Philippines.

Through all the years of the fascist dictatorial regime of the U.S.-Marcos ruling clique, the forces of the national democratic movement struggled to uphold and defend human rights and suffered the main brunt of human rights violations. They ceaselessly offered alliance and cooperated directly and indirectly with all other antifascist forces, including the anti-Marcos sections of the exploiting classes. They excelled in waging armed revolution as well as in developing a broad

united front and utilizing legal tactics against the fascist dictatorship.

From the late '70s onward, funds in substantial amounts came from bourgeois and religious funding agencies based in Western Europe to support legal work in human rights. This work was helpful in the reemergence of the legal democratic movement against the regime. But with the foreign funds also came subtle anticommunist ideas and the floating notion that human rights work was merely a matter of civil and political rights and that democracy was merely a matter of restoring the pre-1972 bourgeois democratic institutions and processes.

Towards the middle of the '80s, bureaucratism became conspicuous among the salaried and office-bound personnel in the human rights organizations and other foreign-funded "nongovernmental organization" ("NGOs"). There developed a tendency to neglect painstaking mass work and to depend on funds from outside the mass movement in order to undertake sweeping propaganda and mass protest actions but without the commensurate solid organizing. The wave of mass discontent, arising from the acute economic and political crisis of the regime and from the Aquino assassination, was so strong in the 1983-86 period that mass protest actions could be undertaken even with limited work in political education and mass organizing.

From 1980 onward, the subjectivist notion had gained ground within the central leadership of the Communist Party of the Philippines that the U.S.-Marcos regime had so industrialized and urbanized the

Philippines to the extent that it was no longer semifeudal. This erroneous notion became the common launching base for both "Left" and Right opportunism, both of which overrated the importance of urban work and depreciated the strategic line of encircling the cities from the countryside in protracted people's war.

Both the "Left" opportunist lines of "strategic counteroffensive" (centrally generated) and the "Red Area-White Area" (whipped up in Mindanao) undermined and inflicted severe damage to the revolutionary movement in the entire '80s. By pushing urban insurrectionism and premature regularization of the people's army and drawing cadres away from mass work, these adventurist lines undermined the revolutionary advances achieved by the revolutionary cadres and fighters who carried out extensive and intensive guerrilla warfare on the basis of widening and deepening mass base.

While the "Left" opportunists were riding high in the revolutionary movement, the Right opportunists lurked behind, proposing the "New Katipunan" as a device for liquidating the working class leadership in the revolution under the pretext of thereby attracting more mass support. They used foreign funds to favor the creation of "NGO" offices, the proliferation of alliances and campaign centers addressing the spontaneous masses. Like the "Left" opportunists, they had disdain for painstaking mass work and solid organizing.

The "Left" opportunists passed off modern revisionism as Marxism-Leninism and Soviet monopoly bureaucrat capitalism as socialism for the avowed purpose of courting the Soviet and pro-Soviet parties

and governments for military and financial assistance. A revisionist concept of armed struggle, dependent on foreign assistance and impugning the principle of self-reliance, took hold among the putschists. The obfuscation of the longrunning antirevisionist position of the CPP, the silence on Dengist revisionism and the endorsement of Brezhnevite revisionism would ultimately lead to the acceptance of Gorbachovism and anticommunism among the opportunists in the latter part of the '80s.

From the United States, some Filipino assets of U.S. imperialism pushed the seemingly Leftist line of supporting the Philippine armed struggle but dropping the strategic line of protracted people's war and seeking the support of the Soviet Union. Subsequently, they whipped up the blatantly Rightist line that the downfall of the Marcos dictatorship would spell democratization and that elite democracy could be transformed through reforms within the system by popular democracy. The exponents of "popular democracy" (bourgeois populism) emerged as an ideological parasite within the CPP as early as 1984 and subsequently tried to use the foreign-funded "NGOs and POs" against the national democratic movement.

After the complete frustration of their line of urban insurrectionism and militarism as early as 1984, the "Left" opportunists in Mindanao obscured their responsibility for their disastrous line, blamed "deep penetration agents" for their failure and launched the bloody witchhunt *Kampanyang Ahos* from 1985 to 1986. Then they swung towards the Right opportunist

line by claiming that the strategic line of protracted people's war was to blame for the 1986 boycott error, exaggerating this major tactical error as the biggest strategic error in the entire history of the revolutionary movement and unabashedly calling for bourgeois reformism as the necessary prerequisite to their failed insurrectionism.

They conjoined with the long-standing Right opportunists and with the "Left" opportunists in other regions as well as with the pseudo-Left anticommunist groups in assailing the CPP as having isolated itself not only because of the boycott error but mainly because of the line of the national democratic revolution through protracted people's war. As early as 1985, it was evident that the agents of U.S. imperialism were instigating and manipulating the opportunists and pseudo-Left groups to discredit, undermine and derail the national-democratic movement.

Despite the disaster caused by the wrong line in Mindanao from 1984-1986, various forms of "Left" opportunism continued to run, cause damage and result sometimes in hysterical anti-informer campaigns in areas other than Mindanao. The Right opportunists used to their advantage the serious damage done by "Left" opportunism. They misrepresented the errors and damage made by the "Left" opportunists as those of Marxism-Leninism.

In 1989, the Right opportunists started to become arrogant and even the worst of the "Left" opportunists started to swing to the position of the Right opportunists. They began to flaunt the books of Gorbachov and

Roy Medvedev as their guide and to spread these. They used the anticommunist line in the cold war that the proletarian revolutionary party and the national democratic revolution were outdated and hopeless because of "Stalinism" which they adopted as their favorite cussword.

They collaborated with the pseudo-Left anticommunist groups and the thinly disguised agents of imperialism and local reaction in trying to spread revisionism and liquidationism within the CPP. The urban-basing of the central organs of the CPP and even those of the NPA was also taking a toll in terms of ideological confusion and effective enemy operations. Cynicism, gangsterism and "NGO" corruption became visible problems.

The Rightist current ran strong in urban-based progressive organizations and offices. Political degeneration set in among certain elements and sections of the human rights organizations. They succumbed to the pressures of Western funding agencies that the revolutionary forces be depicted as equally responsible for human rights violations as the reactionary armed forces. However, they covered up the *Kampanyang Ahos* and other bloody witchhunts instigated by the failed putschists in their hysteria and attempt to blame deep penetration agents for the disastrous results of their wrong line.

They harped on the line that democratization and the decline of human rights violations were occurring under the reactionary regime, despite the escalation of the total war policy, which involved the killing of prominent progressive political leaders like Rolando Olalia and

Lean Alejandro, labor leaders, human rights lawyers, youth activists, personnel of Partido ng Bayan and others in urban areas from 1986 to 1988 and the wider scale of gross human rights violations under Lambat Bitag I, II and III and other military campaigns of suppression in the countryside from 1986 to the present. Bureaucratism and corruption of a few through multiple compensation in several foreign-funded human rights organizations became more scandalous from year to year.

In 1991, the incorrigible opportunists were already outspokenly anti-Marxist, anticommunist and counterrevolutionary, were spreading pessimism and defeatism among people they came in contact with and were maneuvering to decapitate and disintegrate the CPP and the entire revolutionary movement of the people. They pointed to the fall of the anti-Stalin revisionist regimes as the fall of socialism and Stalinism and as the proof of the marginalization and futility of the anti-imperialist and class struggle for socialism.

Since 1988, the genuine proletarian revolutionaries have been cognizant of the need for a rectification campaign. The most tactful efforts were undertaken in this regard but proved to be ineffective in stemming the tide. It would only be in 1991 that the proletarian revolutionaries decided to launch the Second Great Rectification Movement with resolve and vigor, unprecedented since the First Great Rectification Movement that had led to the reestablishment of the CPP in 1968.

The counterrevolutionary opportunists who are now specialists of the reactionary regime in using the

phraseology of the pseudo-Left and of neocolonialism to attack the national democratic movement have a handful of cohorts who pretend to be still in the legal work for the protection of human rights. These are the shameless elements in PAHRA who are headed by Ramon Casiple and who are characterized by the following:

1. They vociferously take an anticommunist line and a hostile position towards the forces of the national democratic movement.

2. They adopt the "universality" (in fact the narrow mentality and interests of the big bourgeoisie) to attack the comprehensive position of the national democratic movement on human rights.

3. They misrepresent themselves as "neutral" between the violators of human rights and the victims.

4. They condone the *Kampanyang Ahos* and other barbaric acts and pass off as advocates of human rights the torturers and murderers who were responsible for these.

5. They harp on the democratization of the Philippine ruling system and on the decline of human rights violations.

6. They are office-bound, engage in bureaucratism and put themselves against the human rights workers in the field.

7. They are corrupted by the funds which they get from foreign funding agencies through multiple compensation, top-heavy administrative spending and padding of accounts.

They are programmed to self-destruct because they cannot long pretend to be advocates of human rights while they attack the national democratic movement and use foreign funds to run their bureaucratic operations and pursue the anticommunist line of foreign funding agencies. They have tried in vain to sow intrigues among some victims of human rights violations. They shall further fail with their malice because they are thoroughly exposed and have cut themselves off from the new waves of victims of the counterrevolutionary state.

Further Strengthening Advocacy for Human Rights

The formation of KARAPATAN is the brilliant result of the rectification in the various human rights organizations and basic mass organizations. KARAPATAN repudiates and replaces PAHRA because the latter has fallen into the hands of a small clique of conspirators who have betrayed the advocacy of human rights and who are opposed to the line and forces of the national democratic movement.

Being the genuine alliance for the advocacy of human rights, KARAPATAN is certain to further strengthen itself by fighting for the full range of human rights (civil, political, economic, social and cultural rights) along the national democratic line and by engaging the participation and support of the broad masses of the people. KARAPATAN can only be as strong as it relies on its component organizations and the mass movement. Its

representations and issuances can only be as forceful as it can arouse, organize and mobilize the people on human rights issues.

KARAPATAN is carrying a great amount of work in seeking justice for the victims of human rights violations. The U.S.-Ramos regime knows no other way to deal with the crisis but to unleash gross human rights violations on a wide scale. There is more work ahead as the number of victims increase. The socioeconomic and political crisis is ever worsening and oppression and exploitation is ever intensifying.

The economic bankruptcy of the reactionary state is clearly manifested by the rapid sale of state assets, the mounting foreign and local public debt, the huge trade deficit, overdependence on speculative foreign capital, the rising level of taxation, the runaway inflation in basic commodities and so on. The imperialists are rapidly grabbing the superprofits and debt service and so are the big compradors their own profits, the landlords their rent and the high bureaucrats their payoffs.

The agrarian and semifeudal character of the Philippine economy continues to aggravate and deepen. There is massive unemployment in both urban and rural areas. The exploitation of the working people is intolerable and social unrest is widespread and acute. The promise of NIC-hood for the Philippines by the year 2000 is a flagrant lie. The U.S.-Ramos regime is not at all engaged in any program of industrialization and is opposed to genuine and thoroughgoing land reform.

It is of crucial importance to recognize that the big comprador-landlord state remains oppressive, that the

official terrorism made conspicuous by the U.S.-Marcos regime has extended to the succeeding Aquino and Ramos regimes and that reactionary military politicians and politicians backed up by blocs of military officers and private armed groups are increasingly in control of the reactionary government and compete for political power and the accumulation of private wealth. These are manifestations of the further deepening of the crisis of the ruling system. The periodic elections are merely moments of defining the reactionary factions which are at odds with each other. The internal contradictions among the reactionaries are likely to become more violent as the economic and political crisis worsens and the people raise the level of their armed resistance to a new and higher one.

There are strong indications that Ramos wants to prolong himself in power beyond 1998, by amending the GRP constitution in favor of a parliamentary form of government. He has gained control over both houses of Congress and he is seeking extraordinary powers to reorganize the executive and judicial branches of the reactionary government. He is pushing the Anti-Terrorism Bill for the purpose of terrorizing the people as he tightens his autocratic hold on the reactionary government. His autocratic ambitions are exacerbating the political crisis of the system.

Exactly at the point that the negotiating panels of the GRP and NDFP entered the stage of formal peace negotiations last June 26 in Brussels, the Ramos regime suspended these negotiations. It did so after maliciously violating the Joint Agreement on Safety and

Immunity Guarantees in the outstanding case of Sotero Llamas. The regime has also recently "suspended" the effectivity of the JASIG.

Even as the Ramos regime appears to be set on terminating the peace negotiations, the Reciprocal Working Committee on Human Rights of the NDFP Negotiating Panel is working on the Draft of the Comprehensive Agreement on Human Rights and International Humanitarian Law. In the making of this draft, the basic rights and interests of the entire Filipino people, especially the toiling masses and the middle social strata, are taken into account along the national democratic line and in accordance with the Guide for Establishing the People's Democratic Government. The available international instruments and standards on human rights and international humanitarian law are also used for critical study, reference and guidance.

The NDFP is asking all human rights and basic mass organizations to help in drafting the said agreement. Whether there will be further peace negotiations or not, the NDFP draft on human rights and international humanitarian law will set an important standard for the advocacy, active defense and observance of human rights.

The draft should uphold, defend and promote the basic human rights and freedoms of individuals and the patriotic and progressive forces of the people in the context of the people's sovereignty and liberating the people from imperialism and the exploiting classes of big compradors and landlords in all fields of social life and endeavor. The NDFP is bound by the Guide for Es-

tablishing the People's Democratic Government and its Part III on the Fundamental Rights and Duties of Citizens.

Your human rights work is of crucial importance and is urgently needed. The imperialists and the local reactionaries are frenziedly engaged in human rights violations. The civil war is proceeding because the imperialists and reactionaries have no wish but to destroy the armed revolution one way or another and the people have no choice but to intensify their struggle and win the national democratic revolution in order to achieve a just and lasting peace.

I wish KARAPATAN the utmost success in performing its role of human rights advocacy in these trying times. I am confident that your achievements will be great as you are determined to stand up courageously and militantly for the victims of human rights and as you adhere resolutely to the national democratic line. ❑

National Council
National Democratic Front of the Philippines

NDFP DECLARATION OF UNDERTAKING
TO APPLY THE GENEVA CONVENTIONS OF 1949
AND PROTOCOL I OF 1977

In accordance with Article 96, paragraph 3 of Protocol I, we, the National Democratic Front of the Philippines, hereby address ourselves to the Federal Council of the Swiss Govemment as official depositary of the Geneva Conventions of **1949** and the 1977 Protocol I additional thereto.

We are the political authority representing the Filipino people and organized political forces that are waging an armed revolutionary struggle for national liberation and democracy, in the exercise of the nght of self-detemination within the purview of Article 1, paragraph **4,** of Protocol I against the persistent factors and elements of colonial domination and against national oppression, including chauvinism and racism, victimizing the entire Filipino nation and particular minorities in the Philippines.

Our revolutionary armed struggle is the continuation of the Philippine Revolution of **1896** against Spanish colonialism and subsequently against US imperialism. We are waging a people's war for national liberation and democracy against the semicolonial and semifeudal ruling system. The Govemment of the Republic of the Philippines (GRP), our current adversary in the armed conflict, continues to suppress the sovereign will of the Filipino people in order to perpetuate the interests of the foreign and domestic oppressors and exploiters, despite the US grant of nominal independence to the Philippines on July **4, 1946.**

The persistent foreign domination and national oppression are camed out through the GRP as a puppet govemment in the service of the United States govemment, which controls and uses it by means of US strategic planning, command, personnel (including military advisors, trainors, intelligence and psychological warfare personnel and basic personnel for rapid deployment forces), supplies, extraterritorial access to the entire Philippines and other forms of US military intervention and extraterritorial privileges and by means of

unequal treaties and agreements perpetuating in essence the factors of US colonial domination over the Philippine economy, politics, security and culture.

Since the beginning of the civil war, the GRP has in one essential respect maintained the character of the armed conflict as an intemationalized internal conflict through subservience to US domination and GRP dependence on US military and other forms of intervention and assistance in the armed conflict. The civil war between the GRP and the NDFP involves the struggle for self-determination and the people's war for national liberation and comes within the purview of Article I, paragraph 4 of Protocol I and within the international customary law pertaining to armed conflicts.

The abovementioned revolutionary forces of the Filipino people are the following:

a. All the fourteen allied revolutionary organizations in the NDFP, which include those of workers, peasants, youth, women, national minorities, teachers, health workers, church people, scientists and technologists and artists and wnters and which are the consolidation of the revolutionary mass base running into millions of people in rural and urban areas.
b. The organs of political power constituted under the Guide for Establishing the People's Democratic Govemment as the basic law and established in a significant portion of temtory in the Philippines, including scores of guerrilla fronts.
c. The Communist Party of the Philippines (CPP) as the ruling party in said organs of political power and the leading party in the National Democratic Front of the Philippines (NDFP) as the united front of democratic forces, and
d. The New People's Amy (NPA), which consists of thousands of full-time troops and is augmented by tens of thousands of men and women in the people's militia and self-defense units, is under an effective and responsible command as main armed force of the aforesaid organs of political power, the CPP and the NDFP and exercises such control over a significant portion of territory in the Philippines as to be able to carry out sustained and concerted military operations and to implement the Geneva Conventions of 1949 and the Protocols of 1977 additional thereto.

For your further information on the abovementioned forces, we attach hereto the following:

- *Annex A-7 - Program of the National Democratic Front of the Philippines*
- *Annex A-2 - Constitution of the National Democratic Front of the* Philippines
- *Annex A-3 - List of Revolutionary Allied Organizations of the NDFP*
- *Annex B - Guide for Establishing the People's Democratic Govemment*
- *Annex C - Basic Rules of the New* People's *Army*

All the abovementioned revolutionary forces have been engaged in a civil war for a protracted period of time since March **29,** 1969 against the Govemment of the Republic of the Philippines (GRP), a High Contracting Party to the Geneva Conventions and Protocol II. The great intensity of the civil war has been made manifest by the GRP's brutal use of the regular forces of the Armed Forces of the Philippines (AFP), the imposition of martial rule on the people from **1972** to **1986,** the great magnitude of US military involvement in the form of military funds, materiel and personnel, and the continuing brutal campaigns of suppression under a policy of total war against the aforesaid revolutionary people and forces.

The Intemational Committee of the Red Cross, the Amnesty International, the Intemational Commission of Jurists and other respected international human rights organizations have extençively documented since the **1970s** the gross human rights violations perpetrated by the military, police and paramilitary forces of the GRP and involving the forced displacement of millions of people, ethnocide against minorities, indiscriminate bombardments and strafing, massacres, assassinations, summary executions, torture, illegal detention of tens of thousands of people and wanton destruction of property and the people's livelihood. In the human rights class suit against the Marcos estate in the US Federal District Court in Hawaii, there is the documentation of at least 10,000 victims of torture, murder and involuntary disappearance.

The consistent pattern of gross and systematic violation of the Filipino people's civil, political, economic, social and cultural human rights is tantamount to a denial of their sovereign right to freely

determine and realize their just aspirations. On behalf of the United States as neocolonial power and the local exploiting classes of big compradors and landlords, the GRP has used all forms of deception and violence in order to suppress the people and the forces that aspire for national liberation and democracy.

In the course of the civil war, the enemy has inflicted tens of thousands of casualties, both killed and wounded, on the civilian population and a few thousands on the troops of the NPA. In revolutionary resistance, the revolutionary people and forces herein represented by the NDFP have inflicted tens of thousands of casualties on the enemy side since 1969. The dimensions of the war are great enough to include currently more than sixty (60) battle fronts in the length and breadth of the Philippines.

The people and forces represented by the NDFP have withstood the brutal military campaigns of suppression camed out by the enemy and have gained strength in the process. They have gained the status of belligerency by virtue of their just revolutionary armed struggle and hard work in building the organs of political power.

The aforesaid people and forces have established and developed a political organization that has sufficient govemmental character. This political organization has sufficient control over a substantial area, population and resources in the Philippine archipelago. If said political organization were left to itself, it has the capability of reasonably and effectively discharging the duties of a state. In fact, it has established organs of political power which comprise the people's democratic govemment and which administers the people's civil, political, social, economic and cultural life in significant portions of fourteen (14) regions, more than 500 municipalities and more than 60 provinces of the Philippines.

It has deployed the New People's Army in accordance with the civilized rules of warfare and has informed and trained it accordingly. Even before this declaration, it has complied with the rules of war under international law. It has consciously followed intemational humanitanan law, like Common Article 3 of the Geneva Conventions and Protocol II. It has declared accession to Protocol II since 15 August 1991 (*cf.:* Annex *D)* and is now resolved to assume in good faith rights and responsibilities under the Geneva Conventions and Protocol I. The instruments of international humanitanan law must apply on the armed conflict between the GRP and the NDFP for the protection of the civilian population and combatants hors de combat because the NDFP has proven itself as a belligerent force and does not accept as applicable to itself the GRP constitution and laws

inasmuch as the GRP does not accept as applicable to itself the constitution and laws of the revolutionary movement.

In their ongoing peace negotiations, the GRP and NDFP have acknowledged by mutual agreement since 25 June 1996 that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and the principles of intemational humanitarian law. Said negotiations formally started on 26 June 1995 in Brussels, Belgium with the Royal Govemment of Belgium as official host and resumed on 19 June 1996 in The Hague, Netherlands, with the Royal Govemment of the Netherlands as official host. (*Cf.: **Annex E, consisting of the five joint agreements of the GRP and NDFP that have led to their ongoing formal peace negotiations.)***

Being a party to the armed conflict, civil war or war of national liberation and authorized by the revolutionary people and forces to represent them in diplomatic and other intemational relations and in the ongoing peace negotiations with the GRP, we the National Democratic Front of the Philippines hereby soiemnly declare in good faith to undertake to appiy the Geneva Conventions and Protocol I to the armed conflict in accordance with Article 96, paragraph 3 in relation to Article 1, paragraph 4 of Protocoi 1

The NDFP is rightfully and dutifuliy cognizant that this declaration, upon receipt by the Federai Council of the Swiss Govemment, shall have in relation to the armed conflict with the GRP the following effects:

a. the Geneva Conventions and Protocol I are brought into force for the NDFP as a Party to the conflict with immediate effect;
b. the NDFP assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Geneva Conventions and Protocoll; and
c. the Geneva Conventions and this Protocol are equally binding upon all Parties to the conflict.

By virtue of this unilateral declaration of the NDFP, duly deposited with the Swiss Federal Council, the GRP is bound as before by the Geneva Conventions and henceforth by Protocol i in accordance with Article 96, paragraph 3(c) of Protocol 1

With the NDFP invoking and exercising the people's right of self-determination, both the GRP and the NDFP are likewise bound by intemational customary law pertaining to humanitarian principles, norms and rules in armed conflicts.

The NDFP undertakes to respect the provisions of the four Geneva Conventions of 1949 and Protocol I of 1977, regarding the conduct of hostilities and the protection of the civilian population and the combatants *hors de combat* in the armed conflict with the GRP and to regard its obligations under the aforesaid instruments of intemational humanitarian law as having the force of law among its forces and in the areas under its control.

The NDFP and the forces it herein represents accept the principle of command responsibility for the system of discipline to ensure respect for the rules of intemational humanitarian law and punish those who break them.

The NDFP regards as legitimate targets of military attacks the units, personnel and facilities belonging to the following:

a. The Armed Forces of the Philippines
b. The Philippine National Police
c. The paramilitary forces; and
d. The intelligence personnel of the foregoing.

Civil servants of the GRP are not subject to military attack, unless in specific cases they belong to any of the four abovestated categories.

The NDFP will treat any captured personnel of the military, police and paramilitary forces of the GRP as prisoners of war and demands that the GRP likewise treat as prisoners of war any captured personnel of the NPA and other forces represented herein by the NDFP.

The NDFP forthwith disseminates this declaration and the rules of the Geneva Conventions and Protocol I to its forces and asks for the assistance of the ICRC with regards to suitable materials. The NDFP will welcome any offer of services from the ICRC.

The NDFP calls upon all High Contracting Parties to the Geneva Conventions and Protocol I to ensure that the GRP and NDFP respect their obligations.

The NDFP hereby requests the Federal Council of the Swiss Govemment to circulate copies of this declaration to all parties to the Geneva Conventions and the Protocols additional thereto and to all

organizations interested in the respect of human rights and international humanitarian law.

Any entity interested in taking up any matter pertinent to the aforesaid effects may communicate with the NDFP Intemational Office at Amsterdamsestraatweg 50, 3513 AG Utrecht, or Postbus 19195, 3501 DD Utrecht, The Netheriands and other offices as may be designated by the NDFP in the Philippines and abroad.

This declaration is forthwith transmitted to the Federal Council of the Swiss Govemment as official depositary of the Geneva Conventions and the Protocols additional thereto and likewise to the International Committee of the Red Cross as official guardian thereof.

Done on 05 July in the year 1996.

For the National Democratic Front of the Philippines:

Mariano Orosa
Chairman
NDFP National Council

Elias Dipasupil
General Secretary
NDFP National Council

Luis G. Jalandoni
NDFP Chief International Representative

Fidel V. Agcaoili
Committee on Human Rights
and International Humanitarian Law

For the Communist Party of the Philippines,
New People's Army and Organs of Political Power:

Armando Liwanag
Chairman, CPP Central Committee
Chairman, CPP Military Commission

ANNEX 27 of the application of Jose Maria Sison v. Council

CD-rom : Film "Terreur of willekeur ?" by Kor Al, 15 October 2002.

ebf ECUMENICAL BISHOPS FORUM

An Open Letter to the European Churches

November 14, 2002

Dear Brothers and Sisters in Christ:

Shalom!

I write to you in behalf of the Filipino people who wish for the resumption of formal peace talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP).

As church people, we firmly believe that the way to peace is justice, when the human rights of everybody regardless of race, color, creed and ideology are recognized and upheld. We subscribe to the peace negotiations, and that there must be mutual agreement between the two conflicting parties in order to have a stable, just and lasting peace. The peace negotiations that have been going on between the GRP and NDFP were strongly endorsed by the European Parliament within the context of The Hague Joint Declaration, which was the positive result of the peace negotiations. This is why we are soliciting support from the European churches to join the Filipino people in urging the European Union to uphold the 1997 European Parliament Resolution endorsing the GRP-NDFP peace negotiations.

More importantly, we appeal for support from the European churches in urging the Council of the European Union to immediately remove the New People's Army (NPA) and Prof. Jose Maria Sison in its October 28 list of "terrorists."

Prof. Sison is the chief consultant of the NDFP and plays a key role in the peace negotiations. We are therefore concerned that this designation on the NDFP Chief Political Consultant as a 'terrorist" undermines the call for the resumption of peace talks. Why am I so zealous about defending him? I don't know him personally. But I stand on the principles of human rights, peace and due process. Prof. Sison is now a victim of the unjust listing of "terrorists.' Then it could also be anybody.

I do not agree with the Professor on his ideology of atheism and Marxism. But we are companions in the hope of attaining just and lasting peace for the common good of Filipinos and all peoples of the world. Prof. Sison is a recognized political refugee in accordance with international law and the European Convention for the Protection of Human Rights and Fundamental Freedoms. From a human perspective, it is the need of a person to live decently as a human being. But he has been deprived of basic necessities. Even his bank account containing social subsidy from the Dutch state was frozen, so how can a man live without these supports? If we talk about human rights, there is definitely a violation of Prof. Sison's rights.

Clearing the way for the resumption of peace talks means that the NPA and Prof. Sison should be taken off the EU list of "terrorists." Once the way is clear, we call on the GRP and NDFP to pursue the socio-economic and political reforms that will address the roots of impoverishment and unrest in the country.

For a Just and Lasting Peace,

Bishop Julio X. Labayen, OCD
Bishop-Prelate of Infanta
Member, Ecumenical Bishops Forum

877 Epifanio delos Santos Ave., Quezon City, Philippines • P.O. Box 718 Manila
Telephone Numbers: 412-31-74 ; 924-02-15

SWORN STATEMENT OF SELDA
IN SUPPORT OF JOSE MARIA SISON'S CASE
IN THE COURT OF FIRST INSTANCE

We, DANILO VIZMANOS and AMARYLLIS HILAO-ENRIQUEZ, of legal age, Filipino, with residence at 9391 Calantas St., San Antonio Village, Makati City and 714 Magnolia St., BLISS Compound, Hulo, Mandaluyong City 1550, respectively, under oath, state that:

1. DANILO P. VIZMANOS is a retired Navy Captain of the Philippine Navy and is the Chairman of the *Samahan ng mga Ex-Detainees Laban sa Detensyon at para sa Amnestiya* (Society of Ex-Political Detainees for Liberation from Detention and for Amnesty) or SELDA while MARIE HILAO-ENRIQUEZ is the Secretary General of the same organization.

2. As such officers of SELDA, we have been authorized by the Board of Directors of SELDA to issue the following statement of SELDA in support of the case of Jose Maria Sison before the Court of First Instance of the European Court of Justice in Luxembourg for the removal of his name in the list of terrorists drawn up by the Council of the European Union.

Profile of SELDA

3. The *Samahan ng mga Ex-Detainees Laban sa Detensyon at para sa Amnestiya* (Society of Ex-Political Detainees for Liberation from Detention and for Amnesty) or SELDA was founded on 4 December 1984 during the dictatorship of former Philippine President Ferdinand Marcos. An assembly of ex-political prisoners/detainees agreed to form an organization that would focus on the immediate release from incarceration of tens of thousands of victims of the Marcos dictatorship and assist in their subsequent rehabilitation and welfare.

4. SELDA started as a small group of ex-political detainees/prisoners that expanded to more than 5,000 members when Marcos was overthrown by people's power on 25 February 1986.

5. Among its members are Professor Jose Ma. Sison, Vice President Teofisto Guingona, the late Senator Jose Diokno, Senator Aquilino Pimentel, former Senator Orlando Mercado, Congressman Satur Ocampo, Congressman Crispin Beltran, Polytechnic University of the Philippines president Nemesio Prudente, University of the Philippines president Francisco Nemenzo, UP Dean Armando Malay, Professor Roland Simbulan, Professor Luis Teodoro, Professor Leoncio Co, Professor Monico Atienza, Professor Dolores Feria, Professor Edberto Villegas, Professor Guillermo Ponce de Leon, Professor Ricardo Ferrer, Fr. Ben Alforque, Fr. Joe Dizon, *Manila Times* publisher Joaquin Roces, *Malaya* publisher Jose Burgos, columnist Amando Doronila, Atty. Jose Mari Velez, Atty. Rolando Olalia, former Congressman Romeo Candazo, Army Col. Dante Simbulan, Navy Capt. Danilo Vizmanos, SELDA Secretary-General Marie Hilao-Enriquez, leaders of human rights and

people's organizations, and thousands of workers, peasants, teachers and students, women, church people and others from various sectors of Philippine society.

6. SELDA's founding chairperson was *Manila Times* publisher Joaquin Roces. He was succeeded, in turn, by Atty. Jose Mari Velez, Dean Armando Malay and incumbent chairperson Navy Capt. Danilo Vizmanos. Founding legal counsel was Atty. Jose Mari Velez, later succeeded by Atty. Romeo Capulong as SELDA general counsel.

7. SELDA performs three major functions:

- As a *human rights organization,* it enjoins strict observance of the human rights of political prisoners and works for their immediate release from incarceration and granting of amnesty. It also seeks justice and indemnification, including restitution and reparation, for all those (released as well as current political prisoners) who suffered illegal detention, torture, and other forms of abuses committed by state authorities.

- As a *service institution,* it mobilizes every possible material and moral support for released political prisoners and their families, especially those in dire need. It also facilitates their reintegration in society and involvement in productive and constructive activities.

- As a *mass organization,* it unites all released political prisoners for the people's struggle for national sovereignty and a free, democratic and just society. It also helps enlighten the people on the root causes of human rights violations in the country.

Jose Maria Sison and SELDA

8. Jose Maria Sison is himself a victim of human rights violation by the Marcos regime. In fact, according to historian Teodoro Agoncillo, he is "the most persecuted Filipino during the Marcos martial law years" being the professed founding chairperson of the Communist Party of the Philippines (CPP), then the only viable opposition to martial law. Sison was detained from November 1977 to February 1986. From November 1977 to November 1979, and from March 1982 to May 1985, he was placed in solitary confinement. His torture in the hands of the Armed Forces of the Philippines is well-documented.

9. Even before the founding of SELDA, human rights advocates led by journalists Luis Teodoro and Pete Daroy campaigned vigorously for Sison's release from detention under the banner of the "Free Jose Maria Sison Committee".

10. Jose Maria Sison's writings while in prison inspired fellow activists who were similarly persecuted to carry on the struggle against the Marcos dictatorship and for human rights advocates to courageously seek the immediate release of all political prisoners. Sison is considered one of the prime-movers of SELDA's creation, together with SELDA's first secretary-general Fidel Agcaoili, and board members Juliet de Lima

Sison, Danilo Vizmanos, Romeo Candazo, Aquilino Pimentel, Teofisto Guingona, Fr. Ben Alforque, and Armando Malay.

11. Immediately upon his release from prison by President Corazon Aquino, and despite the lack of support from the newly-installed government, Sison pushed for SELDA to seek justice from the Marcos dictatorship by filing a law suit in the United States where Marcos fled after his overthrow. SELDA was the only human rights organization in the Philippines that actually sought, through the filing of a class action by its members, judicial recognition that Marcos committed systematic and gross human rights violations and is liable for damages. Sison, himself, filed a direct action against Marcos in the United States. These law suits resulted in the landmark decision in *Human Rights Litigation Against Marcos*, Multi-District Litigation No. 840 in the United States Federal Court System.

12. Sison is a dynamic and creative activist who exhausted all legal means and remedies available to achieve social transformative goals and encourages others to directly engage the state to make good its rhetoric of the rule of law.

Harm Posed upon Filipinos by Tagging Sison as Terrorist

13. SELDA opposes the tagging of Jose Maria Sison as a terrorist by the Council of the European Union because of the grave consequences thereof for the human rights not only of Sison himself but all Filipinos, including members of SELDA, who share his ideological convictions or who undertake political activities which he inspired. The act of the Council is arbitrary and unjust because Sison was not afforded an opportunity to contest the basis for his inclusion in the list of terrorists. SELDA believes that the action of the Council of the European Union in including Jose Maria Sison in the list of terrorists is a continuation and intensification of the persecution of Sison as the most prominent leader of the Philippine mainstream Left.

14. There are masses of people in the Philippines who aspire and work for the same goals of social transformation which Jose Maria Sison systematically developed in his life's work as a revolutionary, poet, writer, political analyst and patriot. They have opposed the Marcos dictatorship and continue to resist the same anti-people policies of the government that breed poverty and powerlessness in the Philippines. Like Sison, they are subject to persecution by the state for their political beliefs.

15. The tagging of Sison as a terrorist by the Council of the European Union constitutes a new push towards persecution of social activists in the Philippines reminiscent of the state terrorism practiced during the Marcos martial law years. The inclusion of Sison in Europe's list of terrorists and his consequent vilification by being publicly identified with "international terrorists" fuel the state-sanctioned attacks against trade unions, progressive political parties, peasant organizations, and even human rights workers and community volunteers who are being branded as terrorists or are in cahoots with terrorists because of their political activities.

16. Already, ten (10) human rights workers of KARAPATAN (Alliance for the Advancement of People's Rights), an umbrella

organization of which SELDA is a member, have been summarily executed under the administration of Pres. Gloria Macapagal-Arroyo. Ten (10) more community organizers and volunteers of the progressive political party engaged in electoral politics, *Bayan Muna* (People First), have also been summarily executed during the short period of Arroyo's term.

17. The removal of Jose Maria Sison from the list of terrorists will correct the distortion created in the public mind whereby social activists and patriots are lumped together with terrorists. In the same breath that SELDA tried and succeeded to obtain judicial recognition from the United States Federal Court system that Filipinos who were illegally detained and imprisoned on false charges by the Marcos regime were actually victims of human rights violations and not criminals, SELDA supports Sison's case to obtain correction from the Court of First Instance in Luxembourg of his false accusation and virtual conviction that he is a terrorist. The vindication of the honor and reputation of social activists and patriots is a duty we owe to our children who deserve to know the truth.

DANILO P. VIZMANOS
Affiant

AMARYLLIS HILAO-ENRIQUEZ
Affiant

SUBSCRIBED AND SWORN TO before me this 10 day of July 2003 in Makati City, Metro Manila, Philippines.

Doc. No. 53;
Page No. 12;
Book No. 02;
Series of 2003.

RDM-VOLTAIRE G. QUIZON
NOTARY PUBLIC
UNTIL DEC. 31, 2004
ROLL NO. 41087
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PTR NO. 7684967/02-04-03/MAKATI

REPUBLIC OF THE PHILIPPINES
S E N A T E
PASAY CITY

Hon. Soren Segarda
SENATOR

July 08, 2003

THE HONORABLE PRESIDENT and
MEMBERS
Court of First Instance of the European Communities
European Court of Justice, Luxembourg

Your Honors:

Allow me to write in a personal capacity as a personal friend of Mr. JOSE MARIA SISON. I have always regarded him with deep respect as would any Filipino dedicated to promote our country's best interests. I am deeply concerned that he is being tagged as a terrorist by some sectors.

I have read and heard about Mr. Sison when I was a student of Mass Communications at the Diliman campus of the University of the Philippines. I met him for the first time when I did an interview of him for the Philippine Star in 1997. Since then, I have had many chances to exchange views with Mr. Sison over the past six (6) years and these conversations revealed to me that we share certain ideals for our country despite the depth of our differences on certain issues. I also had the privilege of closely working with Mr. Sison when I joined a Humanitarian Peace Mission to help pave the way for the safe release of Sgt. Wivino Demol, Sgt. Alipio Lozada, P/Maj. Bernal, B/Gen. Victor Obillo, Capt. Eduardo Montealto and Major Noel Buan, all government agents who were held captives by the New People's Army.

Jose Maria Sison has pursued an extraordinary course that has shaped post-war Philippine politics and society in a fundamental way. One may not necessarily agree with his alternative vision for Philippine society but no one can doubt the integrity of his patriotism or the depth of his commitment to help bring about a more just and humane society. Mr. Sison poses a crucial test to our capacity for tolerance and understanding. What he represents forces us to reflect on deeper and more fundamental questions.

LUNTIANG PILIPINAS

6th Floor Senate of the Philippines, GSIS Building, Roxas Boulevard, Pasay City
Tel. No. 552-6601 to 80 Loc. 5540 • Fax No. 551-7763
website: http://www.lorenlegarda.com • e-mail: llegarda@info.com.ph

It is my hope that your honors treat Mr. Sison's tag with circumspect and adopt a holistic consideration of the matter because such matter involves serious consequences on the on-going peace and reconciliation efforts between the Government of the Republic of the Philippines and the National Democratic Front. Let us examine his character as one who supported my Humanitarian Peace Mission. It was largely a strong sense of humanity as well as a spirit of grace and magnanimity of Mr. Sison that brought freedom to the military officers.

Further dialogue, respect and understanding can only make us aware that no matter how serious the differences are among us, we can still unite and work as a people for our country's future.

Very truly yours,

LOREN LEGARDA

The Honorable LOREN LEGARDA
Majority Leader
Twelfth Congress of the Philippines

Sen. Loren Legarda was elected to the Philippine Senate in 1998, where she topped the senatorial race with an overwhelming mandate of more than 15 million votes, becoming the youngest woman ever to be elected to the Senate. She also earned the distinction of being the first woman ever elected as Senate Majority Leader in the history of the Philippine Congress at the start of the 12th Congress.

Senator Legarda brings to the Senate a long and distinguished career as a multi-awarded broadcast journalist for which she received over 30 awards and citations. Among the awards were the prestigious Ten Outstanding Young Men award in 1992 and the Benigno Aquino Fellowship in 1995. The following year, she received the Ten Outstanding Women in the Nation's Service Award, and was named Broadcaster of the Year, an award bestowed on her by her own peers in the Kapisanan ng mga Broadkaster sa Pilipinas.

As a legislator, Senator Legarda has devoted herself to some of the most critical issues and concerns facing Philippine society. She has encapsulated these concerns in the acronym LOREN -- Law and Order; Rights of Women, youth and children; Education, environment and employment; and Nationalism.

The Eleventh Congress was marked by her active participation in the enactment of significant pieces of legislation such as the Philippine Clean Air Act (RA 8479), and Integrated Solid Waste Management Act (RA 9003), of which she was principal sponsor and author.

An environmentalist, her tree growing program, *Luntiang Pilipinas,* is being implemented by local government units, partner corporations and NGOs in various areas throughout the country. Over two million trees have been planted so far.

In recognition of her many contributions and achievements for the protection and preservation of the environment, the United Nations Environmental Program (UNEP) elected her into its prestigious Global 500 Roll of Honour for the year 2001.

To help upgrade education in rural areas, she organized the Libro ni Loren Foundation, which seeks to provide schools in far-flung regions with books. It also provides a scholarship program primarily for victims of child labor in the gold mining communities of Camarines Norte.

A gauge of her performance in the Senate is reflected in periodic surveys. She has consistently topped the public opinion surveys of the performance ratings of Senators conducted by the Social Weather Station (SWS) and Pulse Asia.

Because of her deep concern for human rights, Senator Legarda played a crucial role in the expeditious release of five military and police officers and personnel held captive by the CPP-NPA-NDF in April 1999. In April 2001, Senator Legarda again

championed human rights when she led the Humanitarian and Peace Mission for the safe and successful return of Army Major Noel Buan to his family after almost two years of captivity. Just recently, the Senator was instrumental in the release of fellow broadcast journalist Arlyn de la Cruz who was held captive by a rebel group in Jolo, Sulu.

On June 9, 1999, she launched a livelihood program called L.O.R.E.N. or Livelihood Opportunities to Raise Employment Nationwide. This program aims to provide skills and entrepreneurial training, job placement and small-scale financial assistance to unemployed and disadvantaged citizens and has initially benefited 400 out of school youths.

In 2000, the World Economic Forum that holds annual meetings in Davos, Switzerland, elected Senator Legarda as one of the Global Leaders for Tomorrow (GLTs) for the year 2000. Every year since its inception in 1992, the WEF chooses 100 outstanding young leaders in various fields including business, politics, public interest groups, media, arts and the sciences, which includes Microsoft founder Bill Gates.

Senator Legarda was born on January 28, 1960 in Manila. She is the daughter of Antonio Cabrera Legarda of San Pablo, Laguna and Manila, and the late Bessie Gella Bautista of Antique and Malabon. She is the granddaughter of one of the pillars of Philippine journalism, editor in chief of the pre-martial law Manila Times, Jose P. Bautista.

She was a valedictorian in grade school at Assumption Herran and graduated from high school at the Assumption Convent in Makati City. She studied at the College of Mass Communication, University of the Philippines, where she graduated cum laude. She topped her National Security Administration masteral degree from the National Defense College of the Philippines. She is a Lieutenant Colonel in the Air Force Reserve Corps.

As of May 28, 2003

SWORN STATEMENT

I, BISHOP DEOGRACIAS S. INIGUEZ, JR. DD, of legal age, Filipino, with address at c/o Ecumenical Bishops Forum, 877 Epifanio delos Santos Avenue, Quezon City, Philippines, after having been duly sworn to in accordance with law hereby depose and state :

1. I am presently the Bishop of the Diocese of Iba, Zambales, Philippines. I am also a member of the Executive Committee of the Ecumenical Bishops Forum ("EBF"), a fellowship of bishops from the Roman Catholic Church, Episcopal Church, United Methodist Church, United Church of Christ in the Philippines and the Iglesia Filipina Independiente.

2. The EBF was initiated and formed by bishops of various denominations as a church response to the political repression of the Marcos dictatorship during the martial law years. It has been consistent through the years in its prophetic mission in upholding human rights, justice and peace. Currently, it has been concerned with pushing for the resumption of the peace talks between the Government of the Republic of the Philippines ("GRP") and the National Democratic Front of the Philippines ("NDFP") and the GRP and the Moro Islamic Liberation Front ("MILF").

3. In this situation of social upheaval and turbulence, we affirm the EBF's mission as a peacemaker. We continue to be inspired by the words of the prophet Micah : "He has shown you, O mortal, what is good; and what does the Lord require of you but to do justice, to love kindness, and to walk humbly with your God?" (Micah 6:8 NRSV). We rejoice at the continuing commitment of the bishops to the pursuit of peace. We have noted with constructive pride how many church leaders persist in paving the way for peace either in their individual capacities or in tandem with the others in their jurisdictions and in the nation.

4. We affirm EBF's commitment to the cessation of hostilities wherever it abounds. We engage ourselves, so far as in us lies, to be with the people in the journey towards a "new heaven and a new earth" (Rev. 21.1). We continue to "seek peace and pursue it" (Psalm 34.14).

5. We are soliciting support from the European churches to join the Filipino people in urging the European Union ("EU") to uphold the 1997 European Parliament Resolutions endorsing the GRP-NDFP peace negotiations.

Jose Ma. Sison is a key participant in the peace negotiations between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines. We sincerely believe that the labeling of Prof. Sison as a terrorist grievously undermine and jeopardize the peace negotiations.

IN WITNESS WHEREOF, I have hereunto set my hand this 11TH day of July 2003 at MAKATI CITY .

Most Rev. DEOGRACIAS S. INIGUEZ, JR.
Affiant

SUBSCRIBED AND SWORN before me this 11TH day of July 2003 at MAKATI CITY.

RUM-VOLTAIRE C. QUIZON
NOTARY PUBLIC
UNTIL DEC. 31, 2004
ROLL NO. 41087
IBP NO. 579950/02-04-03/BATANGAS
PTR NO 7684967/02-04-03/MAKA

DOC. NO. 61 ;
PAGE NO. 14 ;
BOOK NO. II
SERIES OF 2003

SWORN STATEMENT

I, BISHOP JULIO X. LABAYEN, OCD, of legal age, Filipino, with address c/o Ecumenical Bishops Forum, 877 Epifanio delos Santos Avenue, Quezon City, Philippines, after having been duly sworn to in accordance with the law hereby depose and state :

1. I am presently the Bishop-Prelate of Infanta, Quezon, Philippines. I am also a member of the Executive Committee of the Ecumenical Bishops Forum ("EBF"), a fellowship of bishops from the Roman Catholic Church, Episcopal Church, United Methodist Church, United Church of Christ in the Philippines and the Iglesia Filipina Independiente.

2. The EBF was initiated and formed by bishops of various denominations as a church response to the political repression of the Marcos dictatorship during the martial law years. It had been consistent through the years in its prophetic mission in upholding human rights, justice and peace. Currently, it had been concerned with pushing for the resumption of the peace talks between the Government of the Republic of the Philippines ("GRP") and the National Democratic Front of the Philippines ("NDFP") and the GRP and the Moro Islamic Liberation Front ("MILF").

3. We firmly believe that the way to peace is justice, when the human rights of everybody regardless of race, color, creed and ideology are recognized and upheld. We subscribe to the peace negotiations, and that there must be mutual agreement between the two (2) conflicting parties in order to have a stable, just and lasting peace. The peace negotiations that have been going on between the GRP and NDFP were strongly endorsed by the European Parliament within the context of the Hague Joint Declaration. This is why we are soliciting support from the European churches to join the Filipino people in urging the European Union ("EU") to uphold the 1997 European Parliament Resolution endorsing the GRP-NDFP peace negotiations.

4. As the chief political consultant of the NDFP, Prof. Jose Ma. Sison plays a key role in the peace negotiations. Labeling Prof. Sison as a terrorist has placed an obstacle to his crucial participation in as well as the resumption of the peace process.

5. Prof. Sison and I are companions in the hope of attaining just and lasting peace for the common good of Filipinos and all peoples of the world. Prof. Sison is a recognized political refugee in accordance with international law and the European Convention for the Protection of Human Rights and Fundamental Freedoms. He has been wrongly tagged as a criminal for his political beliefs. From a human perspective, it is the need of a person to live decently as a human being. Prof. Sison has been deprived of basic necessities. Even his bank account containing social subsidy from the Dutch state was frozen, so how can a man live without these supports? If we talk about human and democratic rights, there is definitely a violation of Prof. Sison's rights.

6. Clearing the way for the resumption of peace talks means that Prof. Sison and the New People's Army should be taken off the EU list of "terrorists". Once the way is clear, we call on the GRP and NDFP to pursue the socio-economic and political reforms that will address the roots of impoverishment and unrest in the Philippines.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of July 2003 at Malcati.

BISHOP JULIO X. LABAYEN, OCD
Affiant

SUBSCRIBED AND SWORN before me this 14th day of July 2003 at Malcati.

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PTR NO.7684967/02-04-03/MAKATI

Annex 33
13

SANGGUNIANG PAMBANSA NG MGA SIMBAHAN SA PILIPINAS

303/469

National Council of Churches in the Philippines

879 Epifanio delos Santos Avenue, Quezon City, Philippines;
PO Box 2639 Quezon City; PO Box 1767 Manila 1099
(632) 9288636 / 9293745 / 9251797: FAX: (632) 9267076
E-Mail: nccp-ga@philonline.com Cable Address: OIKOUMENE MANILA

MEMBER CHURCHES

- Convention of Philippine Baptist Churches
- Episcopal Church in the Philippines
- Iglesia Evangelica Metodista en Las Islas Filipinas
- Iglesia Filipina Independiente
- Iglesia Unida Ekyumenikal
- United Church of Christ in the Philippines
- The United Methodist Church
- Lutheran Church in the Philippines
- The Salvation Army
- Christ Centered Church
- Apostolic Catholic Church

ASSOCIATE MEMBERS

- Association of Christian Schools, Colleges and Universities
- Philippine Bible Society
- Union Church of Manila
- Consortium of Christian Organizations in Rurban Development
- Kaisahang Buhay Foundation
- Manila Community Services, Inc.
- Student Christian Movement of the Philippines
- Women's Ecumenical Center for Cooperative Education, Inc.
- Ecumenical Church Loan Fund, Inc.
- Lingap Pangkabataan, Inc.

July 4, 2003

The Court of First Instance
European Court of Justice
Luxemburg

Sirs:

The National Council of Churches in the Philippines (NCCP) is deeply involved in processes and movements for just and lasting peace. As such, we are most concerned about the peace negotiations between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP). This concern has led our Executive Committee to issue an opinion on the case of Prof. Jose Maria Sison in the European Court of Justice. The said opinion is embodied in a letter addressed to the Philippine President, a copy of which is attached hereto.

We wish to share this letter with this august body as an expression of our support for a global recognition of the rights of political refugees, the inalienable right to self-determination and national sovereignty of countries, and the liberation of peoples everywhere.

Very respectfully yours,

MS. SHARON ROSE JOY RUIZ-DUREMDES
General Secretary

Attachment.

SANGGUNIANG PAMBANSA NG MGA SIMBAHAN SA PILIPINAS

National Council of Churches in the Philippines

879 Epifanio delos Santos Avenue, Quezon City, Philippines:
PO Box 2639 Quezon City; PO Box 1767 Manila 1099
(632) 9288636 / 9293745 / 9251797: FAX: (632) 9267076
E-Mail: nccp-ga@philonline.com Cable Address: OIKOUMENE MANILA

July 4, 2003

Her Excellency
Gloria Macapagal Arroyo
President
Republic of the Philippnes

Madame President:

Greetings from the National Council of Churches in the Philippines (NCCP), a fellowship of ten (10) mainline Protestant and non-Roman Catholic Churches and ten service-oriented organizations with a following of no less than thirteen (13) million persons. This 40-year-old Council has, since its inception, been a channel for united witness to the Good News of salvation through its prophetic role on issues affecting the powerless and its active engagement with the people in their struggle for social transformation. As such, peace building is the center piece of our apostolate. We have been visibly involved in peace initiatives on all levels. We have consistently encouraged warring factions in the country to come to the table for principled peace negotiations. We have been involved in the peace talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP) as a Third Party Depository since 1997. A part of our peace education was the Solidarity Conference for Just and Lasting Peace held on April 18, 2001 at which we brought together the Peace Panels of the government and the NDFP for a discussion on the prospects of the peace talks.

In the most recent meeting of the Executive Committee of the NCCP at which the duly authorized representatives of the member churches, including their respective Head Bishops and Presidents, were present, this policy-making body of the Council passed an official position expressing dismay over the action of the Council of the European Union which, to our mind, echoes the perspective of the United States vis-à-vis "terrorists". By welcoming this action, grave doubts are cast on the sincerity of the Philippine government in pursuing the peace talks. By tagging the Communist Party

of the Philippines/New People's Army (CPP/NPA) as a Foreign Terrorist Organization and Prof. Jose Maria Sison as a "terrorist", the government has, in essence, already pronounced judgment on the NDFP – a condition that is inimical to the proper environment for negotiations.

Madame President, the National Council of Churches in the Philippines strongly appeals to you to urge the European Union Council to de-list the CPP/NPA as a Foreign Terrorist Organization and to remove the "terrorist" tag imposed on Prof. Jose Maria Sison. Then and only then can the peace talks proceed. Principled discussions between contending parties can go a long way in identifying and, hopefully, excising the root causes of injustice and unpeace which have long plagued our people. If peace and prosperity are top priority in the government's agenda, and we would like to believe that it is, we expect that you will leave no stone unturned nor waste no time in ensuring that the conditions for just and lasting peace are laid down. The place to start is to take away the unfair "terrorist" label of the CPP/NPA and Prof. Jose Maria Sison.

Please rest assured that the NCCP will continue to commit itself to working for peace.

Very respectfully yours,

FOR AND ON BEHALF OF THE EXECUTIVE COMMITTEE:

MS. SHARON ROSE JOY RUIZ-DUREMDES
General Secretary

SWORN STATEMENT

I, **THE MOST REV. TOMAS A. MILLAMENA, D.D.**, of legal age, Filipino citizen, with postal address at Iglesia Filipina Independiente (Philippine Independent Church), 1500 Taft Avenue, Ermita, Manila, Philippines, after being duly sworn to in accordance with law hereby depose and state: That –

1. I am the 10th Supreme Bishop of the Iglesia Filipina Independiente (Philippine Independent Church). I am the Chief Pastor, the Spiritual Head and the Chief Executive Officer of 43 bishops, 600 priests and deacons and six (6) million faithful in the Philippines and abroad.

2. I have been a parish priest for 12 years, a diocesan bishop for 12 years, an executive assistant to the Supreme Bishop for one year, and general secretary of our Church for three years.

3. I am a recipient of Pride of Sibalom on Public Service Award given by the Municipality of Sibalom, Antique, Philippines, and Pride of Antique on Community Leadership Award given by the Province, Binayaran Foundation and Rotary Club of Antique.

4. I am a co-convenor and member of different ecumenical, civic and church organizations like the Ecumenical Jubilee 2000 Network, National Coalition for the Protection of Workers Rights, Ecumenical Bishops Forum, National Council of Churches in the Philippines, National Ecumenical Consultative Commission, Bishops-Ulama Forum, National Movement for Free Election, among others.

5. As Supreme Bishop, I have been exposed to the ecumenical world like the Ecumenical Officers Meeting of the World Council of Churches, Christian conference of Asia General Assembly, Southeast Asia Consultation on Partnership, Council of the Church of East Asia Meeting, East Asia Anglican Bishops Meeting, Episcopal Asiamerica Ministry and Episcopal Church of USA General Convention, among others.

6. I represent our Church in many concordat and ecumenical gatherings with the Anglican Communion, Church of Sweden, Old Catholic Church in Union with Utrecht and United Church of Christ in the Philippines.

7. I was part of the Mission Appeal to the National Democratic Front (NDF) in Utrecht, The Netherlands with Bishop Jesus Varela of Sorsogon and Senator Loren Legarda to appeal for the immediate release of NPA captives Police Inspector Abelardo Martin and Major Noel Buan.

8. I serve as Third Party in the Peace Talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP).

9. It is in these two involvements that I met Professor Jose Maria Sison. In our conversations, I have no doubt on the sincerity and dedication of Prof. Sison in the struggle for national liberation of our country through social transformation to do away with grave injustices, vast poverty and deep social inequities. In fact, he always emphasized that the consciousness of the Filipino people must be raised so that they will organize themselves and mobilize their potentials in the course of transforming the Philippine society through a protracted people's struggle.

10. The struggle of the people of our country is gaining strengths. The Philippine political elite has not hesitated to use military forces which resulted to massacre of entire communities, to arrest, detain and torture political and social activists, and to concoct such myths as that the revolutionary movement and its leaders, especially Prof. Sison, are terrorists and are engaged in drug trade.

11. The inclusion of Prof. Sison in any list of terrorists anywhere is totally unjust and unwarranted. I have never heard or read his writing as saying that the revolutionary movement, which owes its revival to his efforts in the 1960s and 1970s should use terrorist methods. On the contrary, he has condemned such methods as counter-revolutionary and as totally alien to the values and goals of the revolutionary movement.

12. Unsubstantiated by the facts, the labeling of Prof. Sison as a terrorist is also politically motivated. The Philippine government initiated this labeling for the expressed purpose of "forcing the National Democratic Front to the negotiating table," as the Philippine Foreign Affairs Secretary has many times said in public.

13. The NDF has been steadfast in its commitment to peace talks. It is the Philippine government that has several times suspended them. When pressed for reasons, Philippine government spokespersons have said that the talks can only go on if the NDF laid down its arms, and is otherwise weakened through other means. The declaration of the New People's Army as a terrorist group and of Prof. Sison as terrorist is one of these means. Through the inclusion of the NPA and Prof. Sison in the list of international terrorists it hopes to weaken and intimidate the NDF enough to "force it to the negotiating table" under the government's terms.

14. The result of this politically motivated campaign has been to unjustly condemn Prof. Sison who has many times condemned acts of terrorism, and who in fact condemned the September 11 attacks in the United States, as a terrorist himself.

15. The revolutionary movement with which Prof. Sison's name is indivisibly linked and of which he has been a leader and a continuing inspiration, is not a terrorist movement by a few conspirators who must use terrorist means for political ends.

16. This movement is supported by millions of Filipinos in the Philippines and abroad, as well as by men and women in other countries who correctly see the movement as a genuine response to the grave social injustice, mass poverty and disenfranchisement of the Filipino majority. It has established governments in many areas of the Philippines, and commands the respect and admiration of the Filipino masses who have benefited from the reforms it has implemented in those areas, and the protection it provides them from criminal elements and the others marauders.

17. This movement is the Filipino people's only hope for a change in the misery and brutality of their circumstances, which for hundreds of years have prevailed in the Philippines. The revolution, the NDF and its allied organizations are fighting is continuation of the 1896 Philippine Revolution thwarted by the United States at the turn of the century, when that Revolution had defeated Spanish colonial power and founded the first Asian Republic. While the Philippine Revolution was not the creation of Prof. Sison, his role in its resurgence makes him a patriot, not a terrorist.

18. I have also had occasion to listen to him speak and to read his writings many of which condemn the use of tactics such as that proposed by *Simoun*, a character in our national hero Jose Rizal's novel *Noli me Tangere*, of worsening the social crisis by contributing to the people's misery. I have read and heard him condemn any act that targets civilians and non-combatants. Terrorism by definition targets ordinary people and non-combatants. It is inconceivable for someone who has committed all his life to the service of the Filipino masses to treat their lives as cavalierly as terrorists do.

19. While Prof. Sison's contributions to the Filipino people's revolution are undisputed, Prof. Sison is also a poet whose writing and views on literature have taught and inspired two generations of Filipino people.

20. His political thoughts have had the same influence. Since the began writing on Philippine politics more than three decades ago, Prof. Sison has provided thousands upon thousands of Filipinos a framework for the analysis of the political structures of the Philippines, and thousands upon thousands of activists involved in changing Philippine society and indispensable means for understanding the interplay between Philippines social relations, politics and culture.

21. Just as I regard his collections of poetry as valuable contributions to the development of Philippine literature, I regard his political writings as equally important to the development of Philippine political thought since the Revolutionary period when, in the course of the struggle against Spanish rule, such Filipinos as Jose Rizal and Apolinario Mabini examined the realities of Philippine politics and its role in the making of a just society.

22. To label a patriot, political thinker, and a poet such as Prof. Jose Ma. Sison as terrorist is therefore a gross injustice driven by the narrowest political motives.

+ TOMAS A. MILLAMENA, D.D.
Supreme Bishop
Iglesia Filipina Independiente

SUBSCRIBED AND SWORN TO before me this 11th day of July 2003, affiant exhibiting to me his community Tac Certificate No.12710376 issued on January 3, 2003 at Manila City.

Doc. No. 64;
Page No. 14;
Book II
Series of 2003

ATTY. VOLTAIRE G. QUIZON
NOTARY PUBLIC
UNTIL DEC. 31, 2004
ROLL NO. 41087
IBP NO.579950/02-04-03/BATANGAS
PTR NO.7684967/02-04-03/MAKATI

His Eminence, The Most Rev.
TOMAS AMABRAN MILLAMENA
10th Supreme Bishop of the Iglesia Filipina Independiente

Date of Birth	:	January 24, 1947
Place of Birth	:	Millamena, Sibalom, Antique
Parents	:	Loreto V. Millamena (D) & Consuelo B. Amabran (D)
Wife	:	Leticia Javier Alpas, MT I (Culasi Choir Trainor & Organist)
Children	:	Faith A. Millamena, BSN (Nurse, DECS Culasi) Dakila A. Millamena, BSEE (General Services, Philippine Senate) Hope A. Millamena, BSC (Legislative Office, Philippine Senate)
Residence	:	Centro Sur, Culasi, Antique

Educational Background

Elementary	Sibalom Elementary School	1959
High School	Antique Academy	1963
Bachelor of Theology	St. Andrew's Theological Seminary	1970
Master of Divinity	St. Andrew's Theological Seminary	1988

Doctor of Divinity, Seabury Western Theological Seminary, Evaston,Illinois May 2002

Post Graduate Courses

Approaches to Human Development, Ateneo de Manila
Basic Rural Banking Course, Central Bank of the Philippines

Ordination

Diaconate	St. Andrew's Theological Seminary Cathedral Heights, Quezon City	April 16, 1970
Priesthood	National Cathedral 1500 Taft Avenue, Ermita, Manila	April 19, 1970
Episcopate	Pro-Cathedral of St. Michael & All Angels Culasi, Antique	March 06, 1982

Installation as the 10th Supreme Bishop, National Cathedral — June 11, 1999
Feast of St. Barnabas

Ministry

Associate Parish Priest	Odiongan, Romblon	1970-1971
Parish Priest	Culasi, Antique	1971-1982
Diocesan Bishop	Diocese of Antique & Palawan	1982-1994
Executive Assistant to the Supreme Bishop	IFI National Office	1994
General Secretary	IFI, National Office	1995-May 1999
Supreme Bishop	IFI	May 1999-May 2005

Awards:

Bugal Kang Sibalom (Pride of Sibalom) on Public Service given by the Municipality of Sibalom, Antique — December 23, 2000

Bugal Kang Antique (Pride of Antique), on Community Leadership
- given by the Province, Binarayan Foundation and Rotary Club of Antique — December 27, 2001

Present Involvements

Third Party, Peace Talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP)
Chair, St. Andrew's High School Board, Anini –y, Antique
Co-chair, Center for Trade Union & Human Rights (CTUHR), Manila
Co-chair, Sentenaryo ng Sambayanan, Manila
Co-chair, International Committee Against Disappearances (ICAD), Manila
Co-convenor, Plunder Watch
Co-convenor, Church People's Conference on Peace and Human Rights, Manila
Co-convenor, National Church Peasant Conference, Manila
Co-convenor, Church People's Movement Against VFA, Manila
Co-convenor, Ecumenical Jubilee 2000 Network, Manila
Co-convenor, Interfaith Solidaritytor Justice and Peace, Manila
Co-convenor, National Coalition for the Protection of Workers Rights, Manila
Member, National Council of Churches in the Philippines Executive Committeee (NCCP), Quezon City
Member, Ecumenical Bishops Forum (EBF), Manila
Member, Nationalist People's Alliance National Executive Council, Manila
Member, National Ecumenical Consultative Commission (NECCOM)
Member, Bishops-Ulama Forum
Member, Humanitarian and Peace Mission
Member, Management Board, Visayas-Mindanao Regional Office for Development (VIMROD)
Member, Board of Trustees, Trinity College of Quezon City
Member, International Antiqueño Foundation, Inc.
Member, Asian Institute of Liturgy and Music (AILM) Board
Member, St. Andrew's, Theological Seminary Board, Quezon City
Member, Aglipay Central Theological Seminary Board, Urdaneta, Pangasinan
Member, St. Paul's Theological Seminary Board, Iloilo City
Member, All IFI School Boards of Trustees
Member, National Movement for Free Election
Editor, Ang Tagapunla (The Sower)

Exposures *(For the last six years)*

Concordat Celebrations, Uppsala, Sweden and Deputation, Stockholm, Sweden	March 1996
World Council of Churches (WCC), Ecumenical Officers Meeting, Morges & Geneva, Switzerland	May 1996
Asiamerica Ministry, Kauai, Hawaii	August 1997
Southeast Asia Consultation on Partnership, Hongkong & Macau	November 1997
Assessment with Church of Sweden, Uppsala & Gothenberg, Sweden	October 1998
Council of the Church of East Asia Meeting, Malaysia	October 1999
Consultation with Churches on Mission for Migrants in Japan	November 1999
Mission Appeal to the National Democratic Front (NDF), Utrecht	January 2000
Christian Conference of Asia General Assembly, Indonesia	May 2000
Episcopal Asiamerica Ministry & ECUSA General Convention, Colorado	July 2000
Council of the Church of East Asia Bishops Retreat and Meeting, Macau & Hongkong	October 2000
GRP-NDFP Peace Talks, Oslo, Norway	April 2001
GRP-NDFP Peace Talks, Oslo, Norway	June2001
Episcopal Asiamerica Ministry, San Jose City, California	July 2001
Peace Talks between GRP & NDFP, Oslo, Norway	September 2001
Council of the Church of East Asia Bishops Retreat and Meeting, Taiwan	October 2001
Commencement, Seabury-Western Theological Seminary, Evanston, Illinois and Pastoral Visits in California, Chicago and New York	May-June 2002
Centennial celebrations in Europe	October 3-6, 2002
East Asia Anglican Bishops Meeting Coffs Harbour, Australia	October 8-16, 2002

UNIVERSITY OF THE PHILIPPINES
Quezon City

OFFICE OF THE PRESIDENT

SWORN STATEMENT

I, **FRANCISCO NEMENZO**, of legal age, Filipino citizen, with postal address at 51 Mabini Street, UP Campus, Diliman, Q.C. 1101, Philippines, after being duly sworn to in accordance with law hereby depose and state: That -

1. I am the President of the University of the Philippines (U.P.) and a professor of Political Science in the same university. Previously I was the Dean of the College of Arts and Sciences and was Chancellor of U.P. in the Visayas;

2. As an academic, I have specialized in the study of unconventional politics, including the ideology and dynamics of revolutionary movements in the Philippines.

3. I have written a number of published works on the above subjects. (Please see the attached list.)

4. JOSE MA. SISON is a friend of long standing. We were contemporaries as undergraduates, but I was doing my Ph.D. at the University of Manchester in England when he taught English literature in U.P. During that period, however, we were in constant correspondence, exchanging ideas about the problems and future of our country.

5. Upon my return to the Philippines, we worked closely together in the campaign against the Vietnam War and collaborated in organizing the Movement for the Advancement of Nationalism.

6. A prolific writer, the books and articles of JOSE MA. SISON played a crucial role in raising the political consciousness of a whole generation of Filipino youth.

7. I am extremely disturbed by the inclusion of JOSE MA. SISON in Washington's and European Union's list of "terrorists," and outraged by the readiness of the Philippine government to accede to this brazen slander.

8. "Terrorism" properly so-called is a desperate tactic of a political movement devoid of popular support. The movement that JOSE MA. SISON inspired abhors terrorist tactics but relies on popular support. Forced to take up arms by the cruel Marcos dictatorship, it focused its blows at the agents of armed repression, avoiding as much as possible inflicting harm on innocent civilians.

9. A fair judgment on the legitimacy of armed struggle should be formed in the context of political realities in our country. Since World War II, the Philippine state has not had a monopoly of arms. Even the conservative politicians, landlords, capitalists and some religious sects maintain private armies to protect and promote their interests. This situation has prompted groups that are striving for change and social justice to do likewise.

10. The only hope to change this unfortunate situation is through a negotiated political settlement. JOSE MA. SISON has been cooperating in this effort. In fact, the Philippine government should be grateful that in exile, he serves as the chief political consultant of the National Democratic Front of the Philippines in peace negotiations with the Philippine government.

11. By branding him a terrorist, the Philippine government and other governments deprive him of that useful role, a critical factor in the quest for a just and lasting peace in our country.

FRANCISCO NEMENZO, Ph.D.
President
University of the Philippines

SUBSCRIBED AND SWORN TO before me on this 14th day of July 2003, affiant exhibiting to me his Community Tax Certificate No. 21495669 issued on January 4, 2003 in Quezon City.

Doc. No. 73;
Page No. 16;
Book II
Series of 2003

ROM-VOLTAIRE C. QUIZON
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FRANCISCO NEMENZO
President
University of the Philippines

Education

1. Ph.D., University of Manchester (England), 1965.
2. M.P.A., University of the Philippines, 1960.
3. B.A., University of the Philippines, 1957.

Present Academic Position

Professor of Political Science, University of the Philippines

Previous Positions

1. Dean, College of Arts and Sciences, University of the Philippines (1976-81)

2. Senior Research Fellow, Australian National University, Canberra (1982-85)

3. Faculty Regent, University of the Philippines (1988-89)

4. Chancellor, University of the Philippines in the Visayas (1989-92)

5. Visiting Professor, International Christian University, Tokyo (1995-97)

Publications

A. Books

1. with R.J. May (eds.), ***The Philippines After Marcos*** (London: Croom Helm, 1985 and N.Y.: St. Martin's Press, 1985).

2. with Ed Garcia, ***The Sovereign Quest: Freedom from Foreign Military Bases*** (Quezon City, Metro Manila: Claretian Publications, 1988).

3. ***UP Into the 21st Century and Other Essays***. Quezon City: UP Press, 2000.

1. "Rectification Process in the Philippine Communist Movement," in Lim Joo-Jock and Vani S. (eds.), ***Armed Communist Movements in Southeast Asia*** (Hampshire, U.K.: Gower Publishing House, 1984 and Singapore, Institute of Southeast Asian Studies, 1984).

2. "The Millenarian-Populist Aspects of Filipino Marxism," in R.S. David (ed.), ***Marxism in the Philippines*** (Quezon City, Metro Manila: UP Third World Studies Centre, 1984).

3. "The Continuing Crisis: Recent Trends in Philippine Politics," in Robert Catley (ed.), ***Australia and Asia: Towards New Horizons?*** (Canberra: Australian Institute of International Affairs, 1984).

4. "From Authoritarianism to Elite Democracy" in Aurora Javate-de Dios, Petronilo Bn. Daroy and Lorna Kalaw-Tirol, eds. ***Dictatorship and Revolution: Roots of People's Power*** (Manila: Conspectus Foundation, 1988).

5. "Beyond the Cold War" in Carmencita Karagdag and Augusto Miclat, ***Beyond the Cold War: Philippine Perspectives on the Emerging World Order*** (Manila: People's Diplomacy Training Program for Philippine NGOs, 1992).

6. "The University of the Philippines Today: An Assessment" in Gemino H. Abad et al., ***U.P. in Search of Academic Excellence: Lectures in honor of President Jose V. Abueva*** (Quezon City: University of the Philippines Press, 1994).

7. "People's Diplomacy for Human Rights: The Philippine Experience" in James T.H. Tang, ***Human Rights and International Relations in the Asia-Pacific*** (London: Printer Publishers, 1995).

C. Articles in Journals

1. "Une annee de tumulte" (tr. by Nicole Revel), ***Les Temps Modernes,*** November 1988. [Special issue entitled "Historie au Present: les Philippines, Novembre 1985 – Decembre 1987"].

2. "A Nation in Ferment: Analysis of the February Revolution," in M. Rajaretnam (ed.), ***The Aquino Alternative: Trends in the Philippines*** (Singapore: Institute of Southeast Asian Studies, 1986).

3. "The Philippines and Australia," ***Australian Outlook*** (journal of the Australian Institute of International Affairs, August 1985).

4. "The Philippines: Current Crisis," in *Arena* (a Marxist intellectual quarterly published by a group of academics in Melbourne universities, December 1983).

5. "Beyond February: The Tasks of Socialists," ***Kasarinlan: Philippine Quarterly of Third World Studies*** (Vol. 2, No. 1, 1986). [This article was translated into Korean and published in Seoul as a chapter of a book on the Philippines.]

6. "A Season of Coups: Military Intervention in Philippine Politics," ***Diliman Review*** (Vol. 34, Nos. 5-6, 1986) and reprinted in ***Kasarinlan: Philippine Quarterly of Third World Studies*** (Vol. 2, No. 4, 1987).

7. "Military Insurgency," ***Kasarinlan: Philippine Quarterly of Third World Studies*** (Vol. 3, No. 2, 1987).

8. "Questioning Marx, Critiquing Marxism," ***Kasarinlan: Philippine Quarterly of Third World Studies*** (Vol. 8, No. 2, 1992).

9. "The Philippine Left: Disarray and Prospects of Resurgence," ***Links: International Journal of Socialist Renewal*** (Australia), (Vol. 1, No. 2, July-September 1994).

Miscellaneous

1. Distinguished Scholar of Southeast Asia lecturer, University of Hawaii, 1984.

2. Keynote speaker, 2nd International Socialist Scholars Conference, Melbourne, July 1991.

3. Distinguished Alumni Award (for the social sciences), UP College of Arts and Sciences Alumni Association, 1985.

4. Distinguished Alumnus (for university management), UP Alumni Association, 1992.

5. Keynote speaker, International Philippine Studies Conference, Honolulu, April 1996.

6. Founding Chairman, BISIG (Union of Filipino Socialists), May 1986.

7. Keynote speaker, Founding Congress, AKBAYAN! (Citizens Action Party), January 1998.

8. Member, Phi Kappa Phi and Pi Gamma Mu honor societies.

9. Political detainee under Martial Law (1972-74).

Republic of the Philippines)
City of Makati) S.S.
METRO MANILA)

SWORN STATEMENT

I, **LUIS V. TEODORO**, of legal age, Filipino citizen, with postal address at College of Mass Communication, University of the Philippines, Diliman, Quezon City, after being duly sworn to in accordance with law hereby depose and state: That -

1. I am a professor of journalism at the University of the Philippines (U.P.), Diliman, Quezon City. I was Dean of the College of Mass Communication of U.P. for two terms and am the highest ranking professor of the College, which has a complement of about 34 full-time faculty members, and 40 lecturers;

2. I have been a writer and journalism practitioner for more than 30 years. I am currently the Editor of the *Philippine Journalism Review*, a bimonthly publication that monitors the performance of the Philippine press in terms of accuracy, balance, fairness and contribution to the making of a well-informed citizenry; and of *Journalism Asia*, an annual review which does the same thing on an Asia-wide basis and which is composed of journalists and academics from several countries of the region;

3. I am a columnist for the Manila newspaper *Today*, as well as for the online news service *abs-cbnnews.com*. In these columns, I comment on Philippine political developments as well as on the problems of Philippine society, culture, and politics and governance. These publications may be accessed through the Internet for confirmation;

4. I have written a number of books, among them *Out of This Struggle: The Filipinos in Hawaii*, published by the University Press of Hawaii, USA in 1982; *Two Views on Philippine Literature and Society (with E. San Juan, Jr.)*, published in 1981 by the Center for Asian and Pacific Studies of the University of Hawaii; *The Summer of Our Discontent*, a collection of literary criticism published in 1987; *Mass Media Laws and Regulations in the Philippines* (with Rosalinda Kabatay), published by the Asian Media and Information Centre of Singapore in 1998 and 2001; *The Press and the Mass Media, Development and Democracy (with Melinda de Jesus)*, published in 2002 by the University of the Philippines' National College of Public Administration and Governance. A collection of my short fiction and literary criticism is under preparation, to be published by the University of the Philippines Press. I am also a writer of social

realist fiction who has won several writing awards starting 1968. A copy of my curriculum vitae is hereto attached as ANNEX "A".

5. I met Prof. Sison at the University of the Philippines' student newspaper the *Philippine Collegian* sometime in 1962, when I was a student of literature and Prof. Sison a graduate student taking his masters' degree. Prof. Sison was Research Editor of that publication, while I was Features, and later, Literary Editor. I had the opportunity to read the articles written by Prof. Sison at the time, among them one called "Requiem for Lumumba," which described the assassination of that leader and patriot of the people of the Congo at the instigation of the US Central Intelligence Agency. This article was a turning point in my political development; it revealed to me the reality of imperialism. Indeed it was not only the articles of Prof. Sison which had a profound influence on me as well as other staff members of the Collegian, but also his analysis of events in the Philippines at the time.

6. Because of my work experience in the Collegian, I was asked by Prof. Sison to edit the first edition of his work *Struggle for National Democracy*, a collection of his essays and speeches in which he analyzed Philippine social and political reality, and which has since become a classic every political activist in the Philippines has had occasion to read and learn from.

7. One cannot over-emphasize the impact of Prof. Sison's work and writing on Philippine society. His analysis of its problems is still one of the most incisive and relevant to have ever been written since the days of the Philippine Revolution of 1896, and his literary writings, consisting mostly of poetry as collected in *Selected Poems*, *The Guerilla is Like a Poet*, and *Prison Poems* have been models for an entire generation of revolutionary poets.

8. In response to the reality of a country of grave injustice, vast poverty and deep social inequities, Prof. Sison proposed the revolutionary solutions of achieving authentic independence and social revolution. He has many times asserted that this will not happen without a protracted struggle, and events have proven him right.

9. The Philippine political elite has not hesitated to massacre entire communities, to arrest, detain and torture political and social activists, and to concoct such myths as that the revolutionary movement and its leaders, specially Prof. Jose Ma. Sison, are terrorists.

10. The inclusion of Prof. Sison—a writer, revolutionary and patriot-- in any list of terrorists anywhere is totally unwarranted. I have never heard or read him as saying that the revolutionary movement, which owes its revival to his efforts in the 1960s and 1970s should use terrorist methods. On the contrary, he has condemned such methods as counter-revolutionary and as totally alien to the values and goals of the revolutionary movement.

11. Unsubstantiated by the facts, the labeling of Prof. Sison as a terrorist is also politically motivated. The Philippine government initiated this labeling for the expressed purpose of "forcing the National Democratic Front to the negotiating table," as the Philippine Foreign Affairs Secretary has many times said in public.

12. The NDF has been steadfast in its commitment to peace talks. It is the Philippine government that has several times suspended them. When pressed for reasons, Philippine government spokespersons have said that the talks can only go on if the NDF laid down its arms, and is otherwise weakened through other means. The declaration of the New People's Army as a terrorist group and of Prof. Jose Ma. Sison as a terrorist is one of these means. Through the inclusion of the NPA and Prof. Sison in the list of international terrorists it hopes to weaken and intimidate the NDF enough to "force it to the negotiating table" under the government's terms.

13. The result of this politically motivated campaign has been to unjustly condemn Prof. Sison, who has many times condemned acts of terrorism, and who in fact condemned the September 11 attacks in the United States, as a terrorist himself.

14. The revolutionary movement with which Prof. Sison's name is indivisibly linked and of which he has been a leader and a continuing inspiration, is not a terrorist movement by a few conspirators who must use terrorist means for political ends.

15. This movement is supported by millions of Filipinos in the Philippines and abroad, as well as by men and women in other countries who correctly see the movement as a genuine response to the grave social injustice, mass poverty and disenfranchisement of the Filipino majority. It has established governments in many areas of the Philippines, and commands the respect and admiration of the Filipino masses who have benefited from the reforms it has implemented in those areas, and the protection it provides them from criminal elements and other marauders.

16. This movement is the Filipino people's only hope for a change in the misery and brutality of their circumstances, which for hundreds of years have prevailed in the Philippines. The revolution the NDF and its allied organizations are fighting is a continuation of the Philippine Revolution thwarted by the United States at the turn of the century, when that Revolution had defeated Spanish colonial power and founded the first Asian Republic. While the Philippine Revolution was not the creation of Prof. Sison, his role in its resurgence makes him a patriot, not a terrorist.

17. I have known Prof. Sison for over thirty years, since his days as a faculty member of the Department of English and Comparative Literature of the University of the Philippines. In all the years I have known him he has steadfastly upheld the rights of the Filipino people, whom he regards as his sovereign.

18. I have also had occasion to listen to him speak and to read his writings, many of which condemn the use of tactics such as that proposed by *Simoun*, a character in our national hero Jose Rizal's novel *Noli me Tangere*, of worsening the social crisis by contributing to the people's misery. I have read and heard him condemn any act that targets civilians and non-combatants. Terrorism by definition targets ordinary people and non-combatants. It is inconceivable for someone who has committed all his life to the service of the Filipino masses to treat their lives as cavalierly as terrorists do.

19. While Prof. Sison's contributions to the Filipino people's revolution are undisputed, Prof. Sison is also a poet whose writing and views on literature have taught and inspired two generations of Filipino writers, including myself and literally hundreds of others.

20. His political thoughts have had the same influence. Since he began writing on Philippine politics more than three decades ago, Prof. Sison has provided thousands upon thousands of Filipinos a framework for the analysis of the political structures of the Philippines, and thousands upon thousands of activists involved in changing Philippine society an indispensable means for understanding the interplay between Philippine social relations, politics and culture.

21. Just as I regard his collections of poetry as valuable contributions to the development of Philippine literature, I regard his political writings as equally important to the development of Philippine political thought since the Revolutionary period when, in the course of the struggle against Spanish rule

such Filipinos as Jose Rizal and Apolinario Mabini examined the realities of Philippine politics and its role in the making of a just society.

22. To label a patriot, political thinker, and poet such as Prof. Sison a terrorist is therefore a gross injustice driven by the narrowest political motives.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 10th day July 2003 at Makati, Philippines.

LUIS V. TEODORO
Affiant

SUBSCRIBED AND SWORN to before me this 10th day of July 2003 at Makati City, Philippines. Affiant Luis V. Teodoro exhibited to me his Community Tax Certificate No. 18742227, issued on January 16, 2003 at Antipolo City.

RDM-VOLTAIRE G. QUIZON
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Doc. No. 54;
Page No. 12;
Book No. II;
Series of 2003.

LUIS V. TEODORO is a professor of journalism and former Dean of the University of the Philippines College of Mass Communication. He is chair of the Commission on Higher Education's Humanities, Social Sciences and Communication Committee's Technical Committee on Journalism Education. He was a member of the management team of the UNESCO Tambuli Project, which has established low-power radio stations in selected Philippine communities with limited or no media access. He has served in numerous University of the Philippines and UP College of Mass Communication committees and other bodies, among them the University Council Committee on National Issues and the Collegian Board of Judges.

He began teaching in 1964 as an Instructor in English with the then College of Arts and Sciences' Department of English and Comparative Literature. He is a literature graduate, with cognates in creative writing and journalism. He was elected to the international honor society of Phi Kappa Phi and to the international social science honor society of Phi Gamma Mu upon his graduation from the University in 1964.

He attended the Indian Institute of Mass Communication in New Delhi, India in 1967, and was a research intern at the East-West Center Communication Institute in 1980.

He has served as director of the UP Summer Writers workshop twice, and director of the UPCMC-AMIC (Singapore) Graciano Lopez Jaena Workshop in Community Journalism five times. He was the first chair (1988-94) of the Journalism Department of the College of Mass Communication. From 1975 to 1978 he was Head of Publications of the Philippine Center for Advanced Studies.

Professor Teodoro has published three books, Two Perspectives on Philippine Literature and Society (with Epifanio San Juan, Jr., 1982), published by the Center for Asian and Pacific Studies of the University of Hawaii; The Summer of Our Discontent (a selection of his critical essays), published in 1990 by Kalikasan Press Manila; and Mass Media Laws and Regulations in the Philippines (with Rosalinda V. Kabatay), published by the Singapore-based Asian Mass Media and Information Centre in 1998 and 2001 (second edition).

He was the principal contributor to, and was editor of Out of This Struggle: The Filipinos in Hawaii (an account of the Filipino experience in that state), published in 1980 by the University Press of Hawaii. He is also one of the editors of Community Communication : An Introduction (1997), published by the Institute of Development Communication of UP Los Banos.. He also edited and wrote the lead essay for Media in Court, a manual for justice reporters published by the Center for Media Freedom and Responsibility in 1998. He is one of the editors of Pamana, the UP Anthology of Filipino Socio-Political Thought Since 1872 under the over-all editorship of former UP President Jose V. Abueva. He edited the volume on Mass Media, Democracy and Development.

He completed between 1998-2001 three books still to be published, one a textbook on investigative reporting (Investigative Reporting: A Tentative Text), another a collection of his essays and columns published in the Sunday Times Magazine, the Manila Standard and the Manila Times, and the third a journalism textbook in the Philippine national language, consisting mostly of translations of his essays on various aspects of journalism practice, which the CMC Department of Journalism is publishing as part of its work plan as a CHED Center of Excellence. He is also putting together a collection of his essays on contemporary issues in the Philippine press for publication by the Center for Media Freedom and Responsibility.

In almost four decades of writing and teaching he has written over 200 essays and book reviews, plus over 400 opinion pieces.

Professor Teodoro writes a twice-weekly column for the Manila newspaper Today and a once a week column for ABS-CBN News Online (www. abs-cbnNews.com)

He is editor of the Philippine Journalism Review, a journal monitoring the performance of Philippine journalism published by the non-governmental Center for Media Freedom and Responsibility, the Board of Directors of which he is also a member. He writes regularly for the Review on professional and ethical issues in Philippine journalism. He writes a regular analysis for the alternative online (Internet) news agency Philippine News and Features and was the principal writer for the discontinued online magazine Archipelago (www.archipelago.com.ph/).

He was a columnist of the Manila Times from 1993 to 1995, and was editor of National Midweek magazine (1990-1994), the progressive magazine of general circulation, and of the print version of the alternative news agency Philippine News and Features (1984-1986; 1987-1990). His experience in mainstream Philippine media includes serving as book editor of the pre-1972 Graphic and Asia- Philippines Leader magazines, and as sub-editor of the Manila Chronicle in 1986. He has also written columns for the Manila Standard. He was editor-in-chief of the UP student newspaper Philippine Collegian in 1962.

He is a member of the National Union of Journalists of the Philippines, the UP Writers Club, and the International Organization of Journalists (Prague). In 1998 he was among the founders of the non-government Southeast Asian Press Alliance (SEAPA) in Bangkok, Thailand.

In 1996 he helped organize, and became a member of the board of directors of, Cyber Press, which seeks to provide journalists a venue as well as adequate facilities by way of television monitors, computers with Internet access and fax machines to assist them in discharging their daily responsibilities.

He is a member of the board of directors of Management Systems Assistance Inc. (MASAI), an NGO that assists other NGOs in addressing their management problems. He is also a member of the September 21 Committee, founded August 1999 to combat the restoration of authoritarianism in the Philippines and to encourage Filipino remembrance of the perils of authoritarian rule. He is a member of Selda, the organization of former political prisoners.

He was among the founders of the Media Academy of the Philippines, an organization of editors, publishers and other press practitioners established in December 1993 to help improve Philippine journalism by raising its ethical and professional standards.

He has won a number of writing awards, among them the Carlos P. Romulo award for fiction, the Carlos Palanca Memorial Award for the short story (three times), the Philippines Free Press short story award (twice), and the Graphic magazine fiction prize. Some of his short stories appear in various anthologies and textbooks.

He has been a resource person and speaker in a number of seminars, lectures and other fora on the press and other subjects, including the Interrelationship Between Mass Media and the Social Sciences Conference sponsored by the Philippine Social Science Council in 1998; the Roundtable Conference on Gender Sensitivity for Journalists sponsored by the Center for Media Freedom and Responsibility in 1997; and more recently, the Conference on Remembering Martial Law at Ateneo de Manila University on September 21, 1999; the Southeast Asian Press Alliance-Philippine Center for Investigative Journalism Conference on Freedom of Information in Southeast Asia held February 10-11 in Jakarta, Indonesia; and the consultations on the publication of an Asian Journalism Review (initially to cover Thailand, the Philippines and Indonesia) held February 12 in Jakarta, and February 14-15 in Bangkok, Thailand.

In 1994, he was a resource speaker at the Munich, Germany Conference on Asian-Western Media sponsored by the German National Council of Churches; in 1990 at the New Delhi, India, Conference on the World Information and Communication Order sponsored by the Institute for Non-Aligned Studies; and in 1987, at the Honolulu, Hawaii Conference on Media and Power sponsored by the East-West Center. Also in Hawaii, he read a paper on Carlos Bulosan at the 1981 Philippine Studies Conference sponsored by the University of Hawaii.

He was the over-all coordinator for the Jaime V. Ongpin Investigative Journalism Awards-the most prestigious in the journalism profession— from 1994 to 1996, and is still involved in the pre-screening of articles for the Awards. From 1994 until 1998 he led a panel of discussants on press issues held on the day of the Awards itself. He was co-chair of the Konrad Adenauer Stiftung Community Journalism Awards in 1998, and chair of the Manila Rotary Club Journalism Awards Technical Committee in the same year.

Sworn Statement
of
Jose Aguila Grapilon

I, JOSE AGUILA GRAPILON, of legal age, Filipino, and a resident of Metro Manila, Philippines, under oath, depose and state, that:

1. I am a practicing attorney in the Philippines and was National President of the Integrated Bar of the Philippines (IBP) from 1997-1999. Attached herewith as Annex "A" is my resume.

2. The Integrated Bar of the Philippines (IBP) is the compulsory bar association composed of all Filipino lawyers numbering about fifty thousand (50,000) nationwide. Before I assumed the presidency of the IBP, I served the IBP as National Chairman of its Committee on Legal Aid from 1995-1997; National Chairman of its Committee on Due Process and Human Rights from 1993-1995; and National Chairman of its Committee on Bar Discipline from 1991-1993.

3. The IBP has an independent and active human rights program which is administered by its Committee on Human Rights and Due Process, whose duties and expertise are focused on:

3.1. monitoring the human rights situation in the Philippines;

3.2. exposing and documenting human rights abuses particularly violations of civil and political rights committed against political dissenters;

3.3. conducting research, studies and analysis of human rights policies and programs of the Philippine Government, including legislation, jurisprudence, executive orders, proclamations and counter-insurgency programs and military campaigns affecting the human rights of Filipinos; and

3.4. conducting research, studies and analysis of international laws, treaties and conventions and national laws of other countries affecting the rights of approximately eight (8) million Filipino migrant workers, expatriates and non-residents abroad.

4. During my term as President of the IBP, and upon my instruction, the IBP's Committee on Human Rights and Due Process, consistent with its mandate, conducted a study of the facts and the laws relevant to the application for asylum of Jose Maria Sison and his wife Juliet de Lima in the Netherlands. On the basis of this study, the IBP through the Committee on Human Rights and Due Process, represented by its then Chairperson and now United Nations ad litem judge Romeo T. Capulong, made submissions before a court in the Netherlands to support the application of the Sisons. Judge Romeo T. Capulong also

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gave testimony in the same proceedings. As former President of the IBP, and because of the continuing need to uphold the rule of law in Sison's "problematic" legal status in the Netherlands, I continue to be consulted and take special concern in behalf of the IBP in connection with the application of Jose Maria Sison before the Court of First Instance of the European Court of Justice in Luxembourg.

5. Jose Maria Sison is a very well-known Filipino political dissenter who opposed the dictatorship of Ferdinand E. Marcos who imprisoned him from 1977 to 1986. After the overthrow of the Marcos dictatorship, Sison sought asylum in the Netherlands and has since applied his efforts, as the most respected consultant of the National Democratic Front (NDF), to negotiating for a peaceful settlement of the armed conflict between forces of the NDF with the Government of Republic of the Philippines.

6. The IBP's interest in supporting the application of Jose Maria Sison for asylum consists in ensuring that the rule of law is upheld, and particularly, that the universally recognized human right to asylum and other fundamental freedoms to which Jose Maria Sison is entitled are respected and not sacrificed for the narrow political or diplomatic interest that the Netherlands government may consider in maintaining good relations with the Philippine government.

7. The well-publicized activities of Jose Maria Sison in the Netherlands, which consists in guiding and aiding the National Democratic Front's negotiating panel based in the city of Utrecht, do not constitute illegal acts under Philippine law, much less, acts of terrorism. In fact, no act of Jose Maria Sison has become the subject of a successful criminal prosecution in the Philippines from the time of his release from prison in 1986 up to the time of his being included in the list of terrorists by the Council of the European Union in 2002.

8. It is significant to note that different Philippine governments after Marcos have taken on publicly labeling Jose Maria Sison as a "terrorist" or criminal and publicizing allegations of his being linked with terrorists. However, no evidence has been put forward establishing or even tending to establish such allegations before a court in the Philippines.

9. There is yet no definition of "terrorism" under the penal laws of the Philippines. However, what are normally considered acts of terrorism defined in several international conventions and treaties dealing with such acts are punished as ordinary crimes under Philippine law. Nevertheless, Jose Maria Sison is not accused before any Philippine court of any ordinary crime.

10. There is also no equivalent in the Philippines of a legal measure by which individuals or organizations are placed in a list of terrorists, and by this means, restrictive or punitive consequences are enforced against them. Thus, in the Philippines, there is no doubt that

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the government's act of publicly calling Jose Maria Sison as a terrorist is purely of political motivation.

11. It is imperative to ensure protection of the human rights and fundamental freedoms of Jose Maria Sison, including his right to due process, particularly, his right to be informed of the nature and cause of the accusation against him, precisely because Jose Maria Sison is a constant target of political persecution and vilification by the Philippine government who maintains good relations with the United States, the Netherlands, and the European Union. Jose Maria Sison must be given full opportunity to examine and contradict evidence used against him by the Council, especially since the chief harm done to him by the assailed decision of the Council consists in public vilification (i.e., being identified in the public consciousness with terrorists).

José aguila grapilon

JOSE AGUILA GRAPILON
Affiant

SUBSCRIBED AND SWORN TO before me this 11th day of July, 2003, affiant exhibiting to me his Community Tax Certificate numbered 00539820 issued on 5 Apr 03 at Quezon City.

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LEGAL OPINION ON STATUS OF NATIONAL LIBERATION MOVEMENTS AND THEIR USE OF ARMED FORCE IN INTERNATIONAL LAW

For : Jan Fermon, Hans Langenberg, Dundar Gurses, Esqs.
Re : Legal Opinion on Legitimacy of National Liberation Movements and their Use of Armed Force in International Law
Date : 17 November 2002
x----------x

GENERAL QUERIES:

- What is the legitimacy under international law of national liberation movements and their use of armed force?
- How should the legal status of the present Philippine liberation movement be viewed?
- How do the peace negotiations between the GRP and the NDFP and the pertinent documents relate to this legitimacy and the status of the CPP-NPA-NDFP?

The status of national liberation movements in international law has been the subject of much scholarly work through the years. The increasingly progressive trend and view in international law and diplomatic circles is that such liberation movements are considered to have a *locus standi* in international law in the context of the struggle of peoples against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination.

Now, what are national liberation movements? What are wars of national liberation?

What is meant by the exercise of one's right to self-determination?
What is meant by peoples?
What is meant by struggles against colonial domination, alien occupation and against racist regimes?
Do these include struggles against other forms like the modern day neo-colonialism or imperialism?

And assuming such struggles against neo-colonialism are included, how can and how do these liberation movements adhere or abide to the norms of international law, particularly in the sphere of international humanitarian law?
Regardless of whether these national liberation movements are engaged in armed conflicts of an international or non-international character or both, how does international law view them?

And if so, are they to be regarded as criminals, terrorists, freedom fighters or revolutionaries?

These are some of the necessary questions that arise in order to fully address the main legal query on the legitimacy of national liberation movements and their use of armed force in international law.

I. WHAT INTERNATIONAL LAW AND COMMENTARIES SAY

A. National Liberation Movements and Wars of National Liberation

In **International Law and the Use of Force by National Liberation Movements, Heather A. Wilson** (*The American Society of International Law, The American Journal International Law, October, 1990, 84 A.J.I.L. 981, Edited by Gerald Blake, book review by Natalino Ronzitti of*

University of Pisa), noted that:

"The subject of wars of national liberation attracted much scholarly attention at the end of the sixties and during the seventies, when decolonization was at its peak. While the United Kingdom and France (the latter after the bitter experience of the Algerian revolution) chose the wise path of liquidating their colonial empires and giving independence to territories for which they were responsible, the fight to gain freedom was particularly intense in the colonies under Portuguese rule (Angola, Mozambique, Guinea) and in white Rhodesia, where the settlers seceded from the country because they were unwilling to be ruled by a black majority. Armed struggle also took place in Namibia and in South Africa, if less intense in the latter case. The Palestinian conflict added -- and it is still adding -- more color to this picture. "

In **Wars of National Liberation in the Geneva Conventions and Protocols** (165 Recueil Des Cours, 363-436 (1979-IV)), **Georges Abi-Saab** outlined the different types of armed conflict to which the term "wars of national liberation" has been applied, in terms of humanitarian law.

[Abi-Saab, an Egyptian scholar in humanitarian law, finished Graduate studies in Law, Economics and Political Science at the Universities of Cairo, Paris, Michigan, Harvard, Cambridge and Geneva and is a Professor of International Law and Organization at the Graduate Institute of International Studies in Geneva. He was a Consultant to the United Nations Division of Human Rights for the preparation of the first two Secretary-General's reports on "Respect of Human Rights in Armed Conflicts".]

According to him, these wars may be classified as follows:

(1) Historically, those struggles of peoples fighting a foreign invader or occupant;

(2) Those that have evolved within the United Nations and identified from the practice of States and international organizations, namely colonial and alien domination (or rule or government) and racist regimes which according to Article 1, paragraph 4 of Protocol 1, are armed struggles aimed at resisting the forcible imposition or maintenance of such situations to allow people subjected to them to exercise its right of self-determination.

"Colonial domination" originally refers in this context as classical colonialism or colonies of settlement. "Alien occupation" in said Article 1 has the same meaning as "alien domination" in the United Nations resolutions, namely, colonies of settlement. "Racist regime" is more particularly used to denote cases where race is the exclusive criterion for discrimination, although other different origins between two human groups like religion etc. may also qualify as such. This he says is the contemporary concept.

(3) Dissident movements in several countries which take up arms with a view to overthrowing the government and the social order it stands for. Their members may consider themselves as a "liberation movement" waging a "war of national liberation" against a regime or government which masks or represents "alien domination" but such conflicts do not oppose different "peoples" and the traditional consensus is to consider them as purely internal in the sense of Common Article 3 of the Conventions and possibly Article 1 of Protocol II.

(4) Armed struggle of certain dissident movements representing a component people within a plural State which aims at seceding and creating a new State on part of the territory of the existing one which, according to Abi-Saab, was not directly contemplated in the *[at pp. 393-397]*

In **The Privileged Status of National Liberation Movements Under International Law** (Philippine Law Journal, Vol. 58, pp. 44-65, 1983) **Raul C. Pangalangan,** currently the Dean of the University of the Philippines College of Law, and **Elizabeth H. Aguiling**, presented the following elaboration from a different perspective:

"Parties to an armed conflict, other than states, are legally classified -- 'along a continuum of ascending intensity' -- as (1) rebels, (2) insurgents or (3) belligerents.

"Rebellion consists of sporadic challenge to the established government but which remains "susceptible to rapid suppression by normal procedures of internal security'; it is within the domestic jurisdiction of the state.

"Insurgency is a 'half-way house between essentially ephemeral, spasmodic or unorganized civil disorders and the conduct of an organized war between contending factions within a State. The material conditions for a condition of belligerency are (1) the existence of an armed conflict of a general character; (2) occupation by the insurgents of a substantial portion of the national territory; (3) an internal organization capable and willing to enforce the laws of war; and (4) circumstances which make it necessary for outside states to define their attitude by means of recognition of belligerency." *[citing Lauterpacht, Recognition in International Law 176 (1948).]*

They noted that:

"International publicists contrapose the constitutive and the declaratory theories of recognition. The emerging consensus toward the declaratory thesis stresses the sufficiency of the factual element. Mc Nair, though, says that 'it is a status that (belligerents) possess only insofar as States recognize them to possess it.' But in Lauterpacht, 'the essence of the principle of recognition is not in the nature of a grant of favor or a matter of unfettered political discretion, but a duty imposed by the facts of the situation. Given the requisites of belligerency as laid down by international law, the contesting parties are legally entitled to be treated as if they were engaged in a war waged by two sovereign states.' At the very least, then, once the requisite material elements concur, other states may recognize the belligerent party without incurring any breach of the international legal principle of non-intervention in the domestic affairs of a state." *[Underscorings supplied; footnote No. 30]*

"One distinction, it has been proposed, between the aforementioned categories is that belligerency gives rise to legal rights and obligations, while insurgency amounts to a mere factual recognition of the existence of a limited international personality. Another effect of such distinction is that an armed conflict characterized as an insurgency is deemed to be governed by Article 3, while those classified under belligerency fall under the more rigorous provisions of Article 2 concerning conflicts of an international character." *[referring to the 1949 Geneva Conventions.]*

"In summary, the "old" framework pivots around the key determinant which is the geo-military standing of the parties, which in turn determines the international legal status of said parties. It does not go into the content of the conflict; it stops at a determination of the material elements present. Finally, it operates upon a tacit presumption in favor of domestic jurisdiction."

Pangalangan et. al., however, agreed with Abi-Saab when they proposed:

> A more flexible interpretation would assess the effectiveness of liberation movements not in isolation, but in relation to that of their adversary; it would take into consideration not only the elements which they succeeded in controlling, but also those which they succeeded in extracting from the control of that adversary. Such an interpretation would logically lead to the conclusion that, though not exercising complete or continuous control over part of the territory, liberation movements, by undermining the territorial control of the adversary as well as their own control of the population and their command of its allegiance, muster a degree of effectiveness sufficient for them to be objectively considered as a belligerent community on the international level. *[citing Abi-Saab; Underscorings supplied.]*

"Following this line of reasoning, therefore, a liberation movement using guerilla warfare may still satisfy geo-military standards; it is a 'belligerent' even within the logic of the traditional framework."

"But the national liberation concept transcends this framework altogether. Traditionally, belligerency is the legal acknowledgment of the material conditions of an armed conflict and of the de facto existence of the belligerent community as a separate entity. "It is an entity whose de facto authority is recognized only over areas it effectively

controls... and whose international legal capacity is conceded only to the extent it is necessary or useful for the prosecution of the armed conflict.' Consequently, such international legal status is 'rigorously limited both territorially and functionally.' On the other hand, a national liberation movement is not subject to such limitations. While belligerents can only speak for themselves, a liberation movement represents not only itself or the territory it controls but the whole people whose right to self-determination is being denied. It is this representative capacity which makes the status of a national liberation movement inherently independent of a geo-military dimension. The Protocol acknowledges this representative character in Article 96, wherein it refers to a liberation movement as '(t)he authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4.'" *[Underscorings supplied.]*

On the issue of subjectivity because the national liberation framework does not seek only to govern the conduct of hostilities but also goes into the justness of the cause of the hostilities, Pangalangan et. al. contraposed:

"The term 'war of national liberation' is not just a legal construct; it refers to a fact. Long before liberation wars were integrated into international law, they had existed as concrete historical phenomena. The Protocols Additional, therefore, do not invent a new category but merely acknowledge a material situation already existing. There are facts, of course, that are not politically neutral, but that does not make them any less factual. Moreover, this classification of liberation wars as a category of armed conflicts is based not on morality but on law – the legal right to self-determination."

In support thereof, Pangalangan et. al. maintained that:

"A war of national liberation is an objective situation that rests on the issue of whether self-determination may be invoked or not. It is based on a factual ascertainment of the material conditions elaborated in international documents, which give a clear signification and formulation to the right to self-determination and to the status of national liberation movements. 'This criticism reveals a fundamental misunderstanding. For what is legal in contrast to the political? Legal is an adjective describing what is based on a rule of law... (and) the principle of self-determination is a legal principle. *"[citing Abi-Saab]*

">From a policy perspective, international law has in the past allowed for a certain margin of legal imprecision if only to be enable the world community to come to grips with concrete social phenomena not hitherto encompassed by the old rules. Thus, even the traditional framework contained an intermediate status between rebellion and full-fledged statehood, i.e. the status of belligerency and of insurgency; ascertainment of this status was decentralized among the outside states and was in itself vague and susceptible of various interpretations."

In the **Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Bruno Zimmermann** with the collaboration of Jean Pictet, (Yves Sandoz et. al., eds., International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva 1987) gave his views on this subject matter.

[The Commentary is supposed to explain the provisions of the Protocols primarily on the basis of the work of the Diplomatic Conference and other preparatory work where the authors were guided by existing international humanitarian law, general international law and legal literature. However, the editors caution that "if the interpretation of the texts gives rise to some uncertainty, the opinions put forward are legal opinions, and not opinions of principle."]

Zimmermann explains the concept of people in the context of national liberation movements thus:

"In international law there is no definition of what constitutes a people; there are only instruments listing the rights it is recognized all peoples hold. Nor is there an objective or infallible criterion which makes it possible to recognize a group as a people: apart from a defined territory, other criteria could be taken into account such as that of a common language, common culture or ethnic ties. The territory may not be a single unit geographically or politically, and a people can comprise various linguistic, cultural or ethnic groups. The essential factor is a common sentiment of forming a people, and a political will to live together as such. Such a

sentiment and will are the result of one or more of the criteria indicated, and are generally highlighted and reinforced by a common history. This means simultaneously that there is a bond between the persons belonging to this people and something that's separates them from other peoples; there is a common element and a distinctive element." *[at p. 52; Underscoring supplied.]*

On this score, **Article 96, paragraph 3 of Protocol I** defines liberation movements as:

> The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4.

B. Legal Development and Trends on Recognition of the Right to Self-determination, the Use of Armed Force and the Right to Revolution

A survey of international documents through the years concerning the subject helps in understanding the conceptualization, contours and development on these points.

Even from a liberal bourgeoisie legal point of view, resort to revolution has been recognized for the longest time, though much more as merely rhetoric today in the context of the international situation.

Paust provides this kind of perspective (**Human Rights and Human Wrongs: Establishing Jurisprudential Foundation for a Right to Violence: The Human Right to Participate in Armed Revolution and Related Forms of Social Violence: Testing the Limits of Permissibility,** Jordan J. Paust, Emory University School of Law, Emory Law Journal, Spring 1083, 32 Emory L.J. 545).

[Mr. Paust is a Professor of Law, University of Houston. A.B., 1965, J.D., 1968, University of California, Los Angeles; LL.M. University of Virginia, 1972; J.S.D. Candidate, Yale University.]

"The right of "revolution" refers to the right fundamentally to change a governmental structure or process within a particular nation-state, thus including the right to replace governmental elites or overthrow a particular government. Such a change can occur slowly or quickly, peacefully or with strategies of violence. Thus defined, one might distinguish "revolution" from claims for minority protection, claims to be free from external oppression, and claims to secession.

"x x x What Abraham Lincoln recognized was the fundamental democratic precept that authority comes ultimately from the people of the United States, and that with this authority there is retained a "revolutionary right to dismember or overthrow" any governmental institution that is unresponsive to the needs and wishes of the people.

"The right of revolution recognized by President Lincoln has, of course, an early foundation in our history. Both the Declaration of Independence (1776) and the Declaration of the Causes and Necessity of Taking Up Arms (1775) contain recognitions of this right, and several state constitutions within the United States consistently recognized the right of the people "to reform, alter, or abolish government" at their convenience. Representative of these expectations and even the later recognition of President Lincoln, were the words of one Benjamin Hichborn of Boston in 1777: "I define civil liberty to be . . . a power existing in the people at large, at any time, for any cause, or for no cause, but their own sovereign pleasure, to alter or annihilate both the mode and essence of any former government, and adopt a new one in its stead." *(Corwin,* The "Higher Law" Background of American Constitutional Law, *42 Harv. L. Rev.. 149, 408 (1929.)*

"Indeed, our Republic was founded on revolution. As Justice Black has recognized:

"Thomas Jefferson was not disclaiming a belief in the "right of revolution" when he wrote the Declaration of Independence. And Patrick Henry was certainly not disclaiming such a belief when he declared in impassioned words that have come on down through the years: 'Give me liberty or give me death.' This country's freedom was won by men who, whether they believed in it or not, certainly practiced revolution in the Revolutionary War." (In re *Anastaplo, 366 U.S. 82, 113 (1961) (Black, J., dissenting)*

"The American Revolution served as a precursor for numerous others in the Americas, Europe, and elsewhere, even into the twentieth century. Today, it is common to recognize that all peoples have a right to self-determination and, as a necessary concomitant of national self-determination, a right to engage in revolution. x x x" *[Underscoring supplied.]*

Paust tried to clarify the nature and scope of the right of revolution.

"In doing so, it will be necessary to identify the relationship between the right of revolution and the international legal precepts of authority, self-determination, and more general norms of human rights. With these interrelations in mind, one can also identify and clarify relevant legal constraints on armed revolution and the participation of individuals in such a process."

"Such a focus should inform choice with regard to permissibility, but a realistic and policy-serving decision about the legality of any particular strategy of armed revolution (or of social violence in general) must also hinge upon adequate inquiry into the actualities of circumstance or, as Professor Reisman has stated, a contextual analysis of:

"who is using the strategy, for what purpose and in conformity with what international norm, with what authority, decided by what procedures, where and how, with what commensurance to the precipitating event, with what degree of discrimination in targeting, [with what outcomes,] . . . and what peripheral effects on general political and economic processes (or the social process more generally).

"Thus, realistic and policy-serving choice concerning the permissibility or impermissibility of a particular coercive process engaged in by private individuals or groups must be guided by an awareness of community expectations about the process of authority as well as an awareness of all relevant domestic and international legal policies at stake, actual trends in authoritative decision, relevant features of past and present context, and probable future effects that might condition the serving or thwarting of legal policies in the future.

"With such a focus, one should discover that private individuals and groups can and do engage in numerous forms of permissible violence. It is too simplistic to say, therefore, that authoritative violence can only be engaged in by "the government" or by governmental elites and functionaries. As Professor Reisman stated, the notion that only state institutions can permissibly use high levels of violent coercion "is a crucial self-perception and deception of state elites." Thus, the useful question is not whether private violence is permissible, but what forms of private violence are permissible, when, in what social context, and why. *[Underscoring supplied.]*

"As Professor Reisman further suggests:

"[I]nsistence on non-violence and deference to all established institutions in a global system with many injustices can be tantamount to confirmation and reinforcement of those injustices. In certain circumstances, violence may be the last appeal or the first expression of demand of a group or unorganized stratum for some measure of human dignity. *[Underscorings supplied.]*

"Early in our history, we appealed to natural law and the "rights of man" to affirm the right of revolution. Two historic declarations provide an inventory of the forms of oppression thought to justify armed revolution. Our Declaration of Independence proclaimed to the world the expectation that all governments are properly constituted in order "to secure" the inalienable rights of man, that governments derive "their just powers from the consent of the governed," and that "it is the Right of the People to alter or abolish" any form of government which "becomes destructive of these ends." x x x x

In The United States Declaration of Independence, the following appears:

> When in course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature's God entitle them, a decent respect to the opinion of mankind

> requires that they should declare the courses which shall impel them to the separation...whenever any form of government becomes destructive of these ends, it is the right of the people to alter it, or to abolish it, and to institute a new government.

"The Declaration of the Causes and Necessity of Taking Up Arms had also denounced Parliament's "cruel and impolitic purpose of enslaving [the colonial Americans] . . . by violence . . .," the British government's "intemperate rage for unlimited domination," acts of "cruel aggression," and numerous "oppressive measures" that had reduced our ancestors "to the alternative of choosing an unconditional submission to the tyranny of irritated ministers, or resistance by force."

"It is important to note two primary aspects of the right of revolution claimed in these two Declarations. First, the claim was made in a situation in which a ruler and a government sought to subject a people to despotism through various forms of political and economic oppression. Second, and most importantly, the Declaration of Independence was proclaimed "in the Name, and by authority of the . . . People." Thus, although the framers of these Declarations appealed to natural law and inalienable rights, including the right to be free from governmental oppression and to alter or abolish oppressive forms of government, the primary justifying criterion was the proclaimed authority of the people.

"As Thomas Paine wrote in a widely circulated book, The Rights of Man, the "authority of the people" is "the only authority on which government has a right to exist in any country." *(T.Paine, The Rights of Man 8 (1794))*

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"For this reason, the right of revolution is in the nation as a whole and is not a right of some minority of an identifiable people. ("Jefferson did not defend the right of a minority to seize the government and use it to suppress . . . the majority."); (cf. *American Communic. Ass'n v. Douds, 339 U.S. at 440 n.12; Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176 (1803)]* (right to establish government conducive to happiness is the "exercise of an original right of the people"); But see R. POUND, x x x stated that "minority may as justifiably rebel as a majority").In Locke's view, the right of revolution was a right of the majority of a community. x x x (Lincoln also recognized that if "a majority should deprive a minority of any clearly-written Constitutional right, it might, in a moral point of view, justify revolution." He spoke, however, of a "moral" point of view. Moreover, as conceived here, the use of violence in such a circumstance might best be considered as a claim to self-defense or a defense of right as opposed to a claim to engage in revolutionary violence. Factually, one can recognize the difference between minority claims to secede or to defend against majority-backed depredations and claims to rebel against tyrants of the whole community.) *[Underscorings supplied.]*

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"In view of the above, one can also recognize the propriety of a claim by the government, when representing the authority of the people, to regulate certain forms of revolutionary violence or, when reasonably necessary, "incitement to violence" engaged in by a minority of the people of the United States and without their general approval. Indeed, several Supreme Court cases document the permissibility of such a claim, although a few others seem to go too far. If, however, the right of revolutionary violence is engaged in by the predominant majority of the people, or with their general approval, the government (or a part of thereof) would necessarily lack authority, and governmental controls of such violence or incitements to violence would be impermissible. Thus, for example, it would be constitutionally improper to allege that "incitement to violence" is always a justification for governmental suppression of such conduct even if violence is imminent. Permissibility does not hinge upon violence as such, but ultimately upon the peremptory criterion of authority -- i.e., the will of the people generally shared in the community."

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In a different context, Paust clarified that:

"Indeed, Justice Jackson, while condemning the "lawless" effort of the Communist Party to overthrow our democratic system of government, recognized that "our own Government originated in revolution and is legitimate only if overthrow by force may sometimes be justified." *[American Communic. Ass'n v. Douds, 339 U.S. 382, 435, 439-40, 443 (1950)]* (Jackson, J., concurring in part & dissenting in part; He added, "That circumstances sometimes justify [revolution] is . . . an old American belief." (See also Communist Party v. Whitcomb, 414 U.S. at 450 (rejecting notion that advocating violent overthrow is necessarily equivalent to advocating unlawful action). These same points were recognized by James Madison in 1793." *[Underscorings supplied.]*

x x x

"In summary, numerous cases either affirm or are consistent with a distinction between permissible forms of violence approved by the authority of the people and unlawful violence, especially violence engaged in contrary to the authority of the people. Perhaps in recognition of such a distinction, Justice Black has stated:

"Since the beginning of history there have been governments that have engaged in practices against the people so bad, so cruel, so unjust and so destructive of the individual dignity of men and women that the "right of revolution" was all the people had left to free themselves. . . . I venture the suggestion that there are countless multitudes in this country, and all over the world, who would join [the] belief in the right of the people to resist by force tyrannical governments like those. (*In re* Anastaplo, 366 U.S. 82, 113 (Black, J., dissenting)). *[Underscorings supplied.]*

"It is doubtful whether Justice Black had in mind specific portions of the Universal Declaration of Human Rights when he recognized the seemingly wide approval of a general right of revolution, but he could have. The preamble to the Universal Declaration declares, for instance, that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." *[G.A. Res. 217A, at 135, U.N. Doc. A/810 (1948).]* As one commentator has noted, the preamble to the Universal Declaration actually supports the right of revolution or rebellion, and it reflects the growth of acceptance of that right at least from the time of the American Declaration of Independence, *[Sumida,* The Right of Revolution: Implications for International Law and Order, *in Power and Law 130, 135 (Barker ed. 1971),* reprinted in *M. McDougal & W. M. Reisman, International Law Contemporary Perspective – The Public Order of the World Community 168 (1981).]* an acceptance so pervasive as to allow text writers to conclude that "the right of a people to revolt against tyranny is now a recognized principle of international law." X x x x (See also International Terrorism and Political Crimes xii, xxi (M. Bassiouni ed. 1975) (setting forth conclusions of a conference of 38 experts from 18 countries that the right of rebellion against tyranny and oppression is an internationally recognized right); x x x *(Friedlander,* Terrorism and *National Liberation Movements:* Can Rights Derive from Wrongs?, *13 Case W. Res. J. Int'L L.281, 284-86 (1981); Kittrie,* Patriots and Terrorists: Reconciling Human Rights With World Order, *13 Case Res. Int'L L.. 291, 304-05 (1981); Kutner,* A Philosophical Perspective on Rebellion, *in International Terrorism and Political Crimes, 61 (M. Bassiouni ed. 1975)* x x x x [*Underscorings supplied.]*

"Indeed, prior to the American and French Revolutions of the eighteenth century, the right of revolution had been accepted in several human societies. Scholars have identified related expectations, for example, among the early Greeks and Romans; in Germanic folk law; among naturalist theorists such as Thomas Aquinas in medieval Western Europe; and in the writings of early international scholars such as Grotius and Vattel. As noted above, the American colonials inherited many of these expectations as well as those of early English writers of transnational fame. Significantly also, early Americans proclaimed the right of revolution for every nation. Fairly obviously, not all persons agreed that armed revolution engaged in by a people against their governmental elites was permissible either in the eighteenth or nineteenth centuries; but as Abraham Lincoln declared, it is "a right, which we hope and believe, is to liberate the world."

Paust continued:

"Although some have recognized that armed revolution is a form of "self-defense" for an oppressed people and others seek to limit the right of revolution to cases of a reasonably necessary defense against political oppression, the principles of necessity and proportionality should apply only to the strategies of violence utilized during revolution and are not needed for the justification of a revolution. Indeed, according to Lincoln, Jefferson, and so many of the founders, revolution is justified whenever the people generally so desire. Furthermore, no limitation on the right of the people to engage in revolution is consistent with the precepts of authority and self-determination x x x x" *[Underscorings supplied.]*

"The "necessity" test endorsed by some writers might actually relate to another question, the question of when a defense of right arises because of oppression of an individual's right to participate in the political process. It might be argued that an individual or group has a right to use strategies of violence when reasonably necessary and proportionate to the effectuation of a human right to participate. If so, such a use of violence is not to be engaged in to deny participation by others or to oppress others politically, and such a use of violence might not have as its aim the achievement of an authoritative revolution by the people as a whole. Nevertheless, permissible revolution might be stimulated by such a strategy, and governmental elites that deny a relatively full and free sharing of power might themselves be denied some form of participation temporarily in order to effectuate the fuller and freer sharing and shaping of power by all participants."

On these points, Pangalangan et. al. said:

"Based on domestic jurisdiction, the first line of defense of a state is its criminal law on rebellion and subversion. By asserting national law, as state in fact simply affirms the orthodoxy long established in the bourgeois-democratic concept of state, juristically formulated as constitutionalism, that:

> (T)he basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists, till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government. *[citing George Washington, Farewell Address]*

"Ironically, this same framework , by allowing for an 'explicit and authentic act of the whole people,' apart from the constituent acts of the electorate, gives rise to what has been referred to as the right to revolution as a recognized principle of international law. *[Citing Sumada, The Right to Revolution: Implication for International Law and Order in McDougal and Reisman, International Law in Contemporary Perspective: The Public Order of the World Community 167-8 (1981); also in Power and Law 130, 135 (Barker ed. 1971); Underscoring supplied.]* For instance, the American Declaration of Independence of July 1776 categorically states that –

> Whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Governments, laying its foundation on such principles and organizing its powers in such forms, as to them shall seem most likely to effect their Safety and Happiness,

"and Abraham Lincoln in his 1861 Inaugural Address said –

> '(t)his country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, **or their revolutionary right to dismember or overthrow** it.' *(A. LINCOLN, First Inaugural Address (March 4, 1861), in LINCOLN'S STORIES AND SPEECHES 212 (E. Allen ed. 1900); American Communic. Ass'n v. Douds, 339 U.S. 382, 440 n.12 (1950) (also quoting Lincoln's 1848 speech before the House of Representatives). [Underscoring supplied.]"*

This right has been juridically expressed as 'direct state action' by constitutionalists, averred Pangalangan et. al.

"A revolution, therefore, may be illegal from the standpoint of the existing constitutional scheme; it is legal, however, --

> 'from the point of view of the state as a distinct entity not necessarily bound to employ a particular government or administration to carry out its will, it is the direct act of the state itself because it is successful. As such, it is legal, for whatever is attributable to the state is lawful.' *[citing Sinco, Philippine Political Law, 7 (1962)]*

However, Pangalangan et. al., concede that:

"The danger with this formulation is that it is useful only in hindsight. It is premised upon the fact of success thus rendering the whole theory, at best, as an after-the-fact justification. While it is internally self-consistent within its theoretical framework, it is actually useless in practice. Revolution is a right but it remains a crime unless its assertion ripens into victory. The paradox, therefore, is that the process of asserting a right is illegal, but the end-product of that process is legal, at which point the legality retroacts to the inception of the process itself."

In **Terrorism as Impermissible Political Violence: An International Framework, Greene** (*Kevin J. Greene, Associate, Cravath, Swaine & Moore, New York City; J.D.1989, Yale Law School; B.A.1986, State University of New York, College at Old Westbury.; Vermont Law Review Winter, 1992*), had this to say:

"Since the founding of the United Nations, the international community has developed an extensive body of human rights law. The United Nations Charter, the Universal Declaration of Human Rights, and the Covenants on Political, Social and Economic Rights embody this area of law. These international documents define basic and inalienable human rights. They also provide standards to determine those human rights deprivations which justify recourse to violence.

"International humanitarian law, as embodied in the 1949 Geneva Conventions, establishes rules of humane conduct for parties engaged in armed conflict. The norms of humanitarian law require that violent acts be consonant with fundamental human rights. Two principles underlie human rights and humanitarian law: first, "all peoples have a right to self-determination and ... a right to engage in revolution"; and second, "international law ... limits the permissibility of armed revolution and participation of individuals in revolutionary social violence."

Heather Wilson, (Natalino Ronzitti, University of Pisa, Book Review: **International Law and the Use of Force by** National Liberation Movements, The American Society of International Law; The American Journal International Law; October, 1990 ; 84 A.J.I.L. 981, Edited by Gerald Blake), for her part, after a review of UN practice, comes to the conclusion that self-determination is a legal right enjoyed by peoples under colonial rule (trust, mandate and non-self-governing territories). She states that self-determination does not mean "a right of secession from a self-governing State unless a part of that State has become effectively non-self-governing with respect to the whole" *[p. 87]*. In the latter case, a right of self-determination is given, even though it is still a moot point in international law. The trend, however, is in that direction, as proven by the UN resolution on friendly relations.

She wonders whether national liberation movements have a right to use force in international law against established governments and comes to the conclusion that "the trend over the last four decades and since 1960 in particular has been toward the extension of the authority to use force to national liberation movements" *[p. 136]*, even though East and West share opposite views on this matter.

Wilson sees the right to use force by liberation movements as instrumental to the application of *jus in bello* to them. "Probably, a parallel of this kind was in existence when the first codifications of the law of war were made. States had the right to wage war (jus ad bellum). *Jus in bello*, particularly rules on immunity of combatants for acts of war they committed, was consequential

to the lawfulness of the exercise of jus ad bellum. At present, immunity of combatants -- at least for those categories of persons who did not enjoy such status before -- is more rooted in reasons of humanity than in the parallel between jus ad bellum and *jus in bello*, since the right to wage war was abolished by the UN Charter and force is prohibited except in self-defense."

Therefore, the problem according to her is that of the lawfulness of resort to force by liberation movements need not be evaluated for its influence on *jus in bello*. Neither is there a real problem of the lawfulness of resorting to force by liberation movements insofar as they limit themselves to fighting against established governments. The real questions are whether third states can help liberation movements in their war against established governments and what, if any, the content and form of such aid should be.

Pangalangan et. al said that the right to self-determination first appears in positive international law in Articles 1 and 55 of the United Nations Charter, then with General Assembly Resolution 1514 (XV) of 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, then Articles 1 (1) of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both of 1966.

Article 1 of the UN Charter provides, *inter alia*:

> The purposes of the United Nations are:
>
> xxx
>
> 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace.

In 1948, this landmark provision was reached by the international community:

> Whereas, it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. *[Universal Declaration of Human Rights of December 10, 1948]*

In the Declaration Of The Independence Of Colonial Nations And Peoples" (Resolution 1514, XV, December 14, 1960:

> 2. All peoples have the right of self-determination. They are free to politically determine the force of this right and to freely struggle for economic, social, and cultural development.
>
> 4. All armed actions and measures of repression, of any type whatsoever, against dependent peoples are to be halted in order to make it possible for them to peacefully and freely enjoy their right to full independence. The integrity of their national territory will be respected.

In this connection, Abi-Saab explained:

"Since 1949, however, the developments which have taken place both in the international community and, consequently in international law, have led progressively and cumulatively to the establishment and consolidation of the international character of wars of national liberation; and this both within and outside the framework of international organizations, as a result of practice and consensus, on the basis of the principle of self-determination." *[at p. 369]*

"United Nations organs, especially the General Assembly, have confirmed the latter interpretation (the principle of self-determination is a legal principle imposing an obligation on the colonial Powers and establishing a right for all peoples to the exercise of self-determination) in many resolutions, dealing with the subject matter in general or in relation to a specific situation. This trend culminated in general Assembly Resolution 1514 (XV) of 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples. Self-

determination was also recognized as a human right in Article 1 of the International Covenant on Civil and Political rights and of the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly in 1966. The most significant achievement in this respect, however, is the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations which was adopted by General Assembly resolution 2625 (XXV) in 1970..... led to the universal recognition of the legally binding nature of the principle of self-determination." *[at pp. 369-370]*

In Resolution 2105 (XX) of 20 December 1965, the General Assembly recognized the legitimacy of the struggle of colonial peoples against colonial domination in the exercise of their right to self-determination and independence, and it invited all States to provide material and moral support to national liberation movements in colonial territories.

In Common Article 1 of the International Covenant on Civil and Political Rights and on Economic, Social and Cultural Rights (Adopted by Resolution 2200 (XXI) of the General Assembly of 16 December 1966), it is provide unequivocally:

> 1. 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....

Pangalangan et. al said that:

"This development reached a high-water-mark with the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations contained in General Assembly Resolution 2625 (XXV) of October 24, 1970 , which proclaimed the 'progressive development and codification' of, among seven principles, that of equal rights and self-determination of peoples."

> Every State has the duty to promote, through joint and separate action, the realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle in order:
>
> (a) to promote friendly relations and co-operation among States; and
>
> (b) to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned; and bearing in mind that subjections of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental rights, and is contrary to the Charter of the United Nations.
>
> The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.
>
> Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against resistance to such forcible action in pursuit of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the United Nations.
>
> The territory of a colony or other non-self-governing territory has, under the Charter of the United Nations, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised their right to self-determination in accordance with the Charter, and particularly its purposes and principles.' *[Underscorings supplied.]*

With respect to the use of force in the context of self-determination, the 1970 Declaration states:

> Every State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination and freedom and independence. In their action against, and resistance to, such forcible action in pursuit of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

The Declaration , according to Abi-Saab, resolves several intricate and controversial problems posed by cases of violent self-determination, to wit:

(a) It clearly states that the 'forcible action' or force which is prohibited by Article 2, paragraph 4 of the Charter is not that used by peoples struggling for self-determination but that which is resorted to by the colonial or alien governments to deny them self-determination.

[Article 2, paragraph 4 states:

> *"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.]*

(b) Conversely, by armed resistance to forcible denial of self-determination – by imposing or maintaining by force colonial or alien domination – is legitimate under the Charter, according to the Declaration.

© The right of liberation movements representing peoples struggling for self-determination to seek and receive support and assistance necessarily implies that they have a *locus standi* in international law and relations.

(d)This right necessarily implies also that third States can treat with liberation movements, assist and even recognize them without this being considered a premature recognition or constituting an intervention in the domestic affairs of the colonial or alien government." *[at pp. 371-372; Underscorings supplied.]*

Before the adoption of the said 1970 Declaration, Abi-Saab pointed out that different organs of the United Nations affirmed, on several occasions, the legitimacy of such struggles. For instance, the General Assembly said in resolution 2649 (XXV) (1970) that it

> 1. Affirms the legitimacy of the struggles of peoples under colonial and alien domination recognized as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal.

Pangalangan et. al. again pointed out that:

"This 1970 Declaration for the first time gave express formulation to the proposition, first, that self-determination was a principle of international law, and second, that it gave rise to a right of peoples and a corresponding duty of every state to respect it."

> Every State has the duty to refrain from any forcible action which deprive peoples ... of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of their right to self-determination, such peoples are entitled to seek relief and to receive support in accordance with the purposes and principles of the Charter.

"The Declaration has been construed to have legalized the use of armed means to assert the right to self-determination. The 'forcible action' which is prohibited under Article 2 (4) of the Charter comprehends the use of force by colonial governments to deny a people of their right to self-determination. The wording of the Declaration has been interpreted to exclude the armed means of ascertaining the right to self-determination from the general prohibition on the use of

force. In short, the Charter proscribes the forcible denial but permits the forcible assertion on the right to self-determination." *[Underscorings supplied.]*

"Another significant development based on the 1970 Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations is the affirmation that liberation movements had *locus standi* in international law and that wars of national liberation were armed conflicts of an international character."

"Under the 1970 Declaration, a movement representing a people 'in their actions against, and resistance to, such forcible action' used to deny them their right to self-determination, are entitled to seek and receive outside support. Furthermore, third parties who assist such liberation struggles are not deemed to have breached the duty of non-intervention in the domestic affairs of another state, for such assistance is precisely in accordance with the purposes and principles of the Charter itself. The text of the 1970 Declaration shows that both non-intervention and self-determination are enshrined principles of international law in the same instrument, such that the exercise of one cannot possibly be deemed to be in breach of the other co-equal principle. There is, therefore, a built-in 'exception' in favor of self-determination."

"The 1970 Declaration therefore implies that such movement is capable as an international actor to deal directly with outside states. And regardless of whether or not the 1970 Declaration grants international locus standi to those movements, at the very least, it expressly and effectively cracks the protective shell of domestic jurisdiction."

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"The right to self-determination gave rise to a corresponding duty of other states to respect it. And states which use forcible means to deny a people of this right may be legally resisted by armed force as well. Hence, the legal basis of the politico-military means of ascertaining this right to self-determination. The process of this armed assertion is a war of national liberation; the politico-military group which represents a struggling people in that process is a national liberation movement."

"The next logical development was for this war to attain the character of an international armed conflict and for this movement to be deemed an international person."

"A people asserting their right to self-determination are exercising an international right. Other states, in giving them aid in their struggle to assert that right, do not commit an act of intervention; they are simply upholding the Charter of the United Nations and the fundamental principles of international law according to the Charter."

"Furthermore, a state that denies a people this right is liable for an international delict, a breach of duty owed under international law; and if that denial is done by resort to force, it is liable for the illegitimate use of force, contrary to the Charter itself." *[Underscoring supplied.]*

Even **David E. Graham**, a captain in the US Army and Associate Professor of International Law at the Judge Advocate General's School of the Army, in commenting on the impending approval of amended Article 1 of the then Draft Protocol I to the 1949 Geneva Conventions, grudgingly acknowledges that:

> "Although the Declaration on Friendly relations is a resolution of the General Assembly and thus not a binding international agreement, it is nevertheless generally considered to reflect recognized international law concepts. However, the Declaration is relatively innocuous and does not recognize any right to achieve self-determination by force of arms. Consequently, reference to the Charter and the Declaration on Friendly relations in a multilateral convention which defines the scope of international armed conflict as including wars of self-determination against colonialist and racist regimes results in a misleading impression, i.e. that it is the intent of these documents to sanction the use of force by certain 'peoples' seeking to achieve an inherent right. Such an impression is

> extremely dangerous as well as legally unfounded. However, it has recently attained significant credibility as a result of several developments in the international community." *[See **"The 1974 Diplomatic Conference on the Laws of War: A victory for Political Causes and a return to the 'Just War' Concept of the Eleventh Century,"** 32 Washington and Lee Review 24-63; 1975; Underscorings supplied.]*

Pangalangan et. al., on the other hand, maintains that the UN Charter is considered a treaty by its party-signatories. The 1970 Declaration is considered an authentic interpretation of the Charter qua treaty. More important, he says, it was adopted by the General Assembly through a consensus which included the Western Powers. This was the first time that a consensus was reached "not on a vague general formula, but on a detailed explanation making explicit the different legal implications of the principle," *[citing Abi-Saab, Receuil Des Cours 366-436]*

"Soon after, General Assembly Resolution 2649 (XXV) on The Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights (1970) declared that it:

> 1. Affirms the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right to self-determination to restore to themselves that right by any means at their disposal. *[Underscoring supplied.]*

"Every year thereafter, the General Assembly had passed a resolution of identical title affirming the right to self-determination. In Resolution 2787 (XXVI) of December 6, 1971, the General Assembly 'confirmed the legality of the people's struggle for self-determination.' In Resolution 3070 (XXVIII) of 30 November 1973, the General Assembly categorically affirmed the right to pursue self-determination **'by all means, including armed struggle**.' *[Underscoring supplied.]*

In resolution 2787 (XXVI) (1971), it said that it:

> 1. Confirms the legality of the people's struggle for self-determination and liberation from colonial and foreign domination and alien subjugation... by all available means consistent with the Charter of the United Nations, 2. Affirms man's basic human right to fight for the self-determination of his people under colonial and foreign domination. *[Footnote No. 8; Underscorings supplied.]*

After the adoption of the said declaration, the General Assembly reiterated the same principle more explicitly and forcefully, according to Abi-Saab, citing the said Res. 2787 where it further "called upon all States dedicated to the ideas of freedom and peace to give all their political, moral and material assistance to people's struggling for liberation, self-determination and independence against colonial and alien domination." *[footnote No. 8]*

In the same vein, General Assembly Resolution 3103 (XXVIII) on the Basic Principles of the Legal Status of the Combatants struggling against Colonial and Alien domination and Racist regimes (December 12, 1973) proclaimed that:

> 1. The struggle of the people under colonial or foreign rule or under a racist regime to gain their rights to self-determination and independence is legitimate and in full agreement with the Principles of the Rights of Peoples.
>
> 2. All attempts to suppress the struggle against colonial or foreign rule or against a racist regime are incompatible with the Charter of the United Nations, the Principles of the Rights of Peoples, the declaration concerning friendly relations and cooperation between states in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights, and the declaration guaranteeing independence to colonized nations and peoples, and such attempts pose a threat to international peace and security.

> 3. The armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions, and the legal status envisaged to apply to the combatants in the 1949 Geneva Conventions ... is to apply to persons engaged in armed struggle against colonial and alien domination and racist regimes

The said Resolution 3103 stated in its preamble that "the continuation of colonialism in all its forms and manifestations ...is a crime and that all colonial people have the inherent right to struggle by all necessary means at their disposal against colonial powers and alien dominations in the exercise of their right to self-determination.... " *[Underscoring supplied.]*

Abi-Saab also pointed out specific situations in which the General Assembly identified and recognized the legal characterization of armed conflicts as wars of national liberation including those in Southern Africa, the peoples of Zimbabwe, Namibia, Angola, Mozambique, Guinea-Bissau and the Palestinian people (resolution 2787, XXVI, 1971). *[at p. 373]*. He then noted that several liberation movements have been granted observer status in various organs of the United Nations and regional organizations. In fact, many States have even recognized liberation movements, allowed them to establish official representation in their territory and provided and still provide them with moral and material assistance. *[at pp. 373-374; Underscoring supplied.]*

[In this connection, the role of the Dutch, Belgian and Norwegian government in various capacities at various junctures of the peace negotiations between the GRP and NDFP must be appreciated properly.]

In the United Nations Declaration on the Protection of Women and Children in Emergency and Armed Conflict, proclaimed by General Assembly resolution 3318 (XXIX) of 14 December 1974, a similar affirmation appears:

> Expressing its deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm,
>
> Aware of the suffering of women and children in many areas of the world, especially in those areas subject to suppression, aggression, colonialism, racism, alien domination and foreign subjugation,
>
> Deeply concerned by the fact that, despite general and unequivocal condemnation, colonialism, racism and alien and foreign domination continue to subject many peoples under their yoke, cruelly suppressing the national liberation movements and inflicting heavy losses and incalculable sufferings on the populations under their domination, including women and children,
>
> Deploring the fact that grave attacks are still being made on fundamental freedoms and the dignity of the human person and that colonial and racist foreign domination Powers continue to violate international humanitarian law, x x x x [Underscorings supplied.]

Also, the UDRP (Universal Declaration of Peoples' Rights), Article 4, provides that:

> A people have the right to self-determination. Any norm contradicting the right to self-determination is illegal, including the principle of territorial integrity of states.

Even in the Helsinki Accord of 1975, applying the principle of self-determination to internal democracy addressed particularly to European states *[signed by 35 States, 33 European plus Canada and the US]*, Principle VIII, Final Act of Conference on Security and Cooperation in Europe, this principle appears:

> By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they

> wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

According to some authors, the phrase "full freedom" in the above quoted Helsinki Accord, was intended to preclude coercion by a government in respect of the choice by the peoples of their internal regime or policies. Notably, this was made explicit by the sponsor, The Netherlands. [Louis Henkin, Richard Pugh, Oscar Schachter and Hans Smith, eds., International Law: Cases and Materials, 2ed., 1987, West Publishing Co., Minn., USA; "International Status of "Peoples" and their Right of Self-Determination," at p. 284; citing Cassesse, The Helsinki Declaration and Self-Determination, in Human Rights, International Law and the Helsinki Accords 83, 95-103, Buergenthal ed. 1977]

Eventually, Article 1 of Protocol I of 8 June 1977 states that:

> 3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those conventions.
>
> 4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

A very reactionary view was advanced on the other hand by Aldrich on the application of these articles to national liberation movements. (***Symposium: The Hague Peace Conferences: The Laws of War on Land , George H. Aldrich*** *, Edited by George H. Aldrich and Christine M. Chinkin, The American Society of International Law ; The American Journal International Law ; January, 2000; 94 A.J.I.L. 42)*

"In the years since the Geneva Conventions were concluded in 1949, the world has clearly changed greatly. A majority of the present states did not exist as states in 1949, and many of them gained their independence only after armed struggles against colonial powers, which made them naturally sympathetic to clandestine resistance movements. Some of these colonial powers may also have found that it was unhelpful to treat as criminals all those who were members of the armed groups seeking independence. In any event, the changes in the composition of nation-states and in their views were sufficient by the 1970s to produce radical changes in the law."

[Sixty-three states were represented at the Geneva Conference in 1949, whereas 124 states were represented at the Geneva Conference that produced the 1977 Additional Protocols when it convened in 1974. Nonvoting participants in the latter conference included 11 national liberation movements.]

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"Acceptance of this compromise text *[on liberation war provisions in Article 1, paragraph 4 of Protocol I]* permitted the Geneva Conference to adopt Protocol I in 1977. It represented an effort to satisfy the demands of many states that resistance fighters in occupied territory should be given a better opportunity than they had had under the Hague law to operate as legitimate combatants and to be entitled to be prisoners of war if captured, at the same time preserving the distinction between civilians and combatants in the situations where civilians would otherwise be at the most risk. It was apparent to many of us at the Geneva Conference that the Hague rules had not had the intended effect of protecting the civilian population because resistance groups in occupied territory generally could not comply with those rules and consequently were forced to operate illegally under civilian cover. The new rules of Protocol I are designed to give these resistance groups an incentive to comply with the law, and thus to reduce the risks to the civilian population that are inevitably posed if the experience of occupation troops gives them reason to fear that they may be attacked by apparently unarmed civilians. *[Underscorings supplied.]*

xxx

"When the four Geneva Conventions were adopted in 1949, among the many hundreds of articles codifying and developing the laws applicable to the conduct of international armed conflict, only a single one, Article 3, common to all four Conventions, set forth rules applicable to an "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties." While of modest scope, this article was a revolutionary development. Article 3 requires humane treatment of all persons not taking an active part in hostilities, including those who are prisoners and the sick or wounded, and prohibits various illegal acts, including murder, torture, the taking of hostages, and nonjudicial punishments.

"Unfortunately, since 1949 there have been many noninternational armed conflicts, but only very rarely has the state where the conflict occurred acknowledged the applicability of Article 3. Usually, the state concerned has denied that its internal problems have risen to the level of an "armed conflict," which term Article 3 does not attempt to define, and has asserted that the rebels are criminals who respect no laws. In some instances, the governmental authorities may have wanted to be free to murder, torture, and impose arbitrary punishments, but certainly in most instances, the government would have hesitated to accept the applicability of Article 3 largely because it imposes its obligations upon "each Party to the conflict." Governments inevitably see such treaty language as enhancing the status of any rebels to whom it applies by indicating that they, like the state, have rights and duties under international law. *[Underscorings supplied.]*

"During the 1970s, the negotiations in Geneva created an opportunity to expand the law applicable in noninternational armed conflicts by adopting a protocol dealing with such conflicts and to make its implementation more likely by avoiding any use of terms that would appear to enhance the status of rebels or rebel groups. Considerable success was achieved, and the resulting agreement, Protocol II to the Geneva Conventions of 1949, avoids any reference to "Parties to the conflict," largely by resorting to the passive voice, for example, by requiring that "all persons . . . are entitled" and that "all the wounded, sick and shipwrecked . . . shall be respected and protected." The Protocol also substantially expands the protections provided by common Article 3 x x x x"

Thereafter, General Assembly Resolution 32/147 on measures to prevent international terrorism, adopted by 91 in favour, 9 against with 28 abstentions, of 6 December 1977 again:

> 3. Reaffirms the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination, and upholds the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and the relevant resolutions of the organs of the United Nations.
>
> 4. Condemns the continuation of repressive and terrorist acts by colonial, racist and alien regimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedom; x x x x *[Underscoring supplied.]*

Also, in Resolution 40/61 adopted on December 9, 1985 by the 108th Plenary Meeting, the General Assembly adopted a Resolution on Measures to Prevent International Terrorism *[1986 American Society of International Law, Washington, D.C. International Legal Materials, Volume 25, Number 1 , January, 1986 , 25 I.L.M. 239; (1986)]*, to wit:

> Reaffirming also the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination, and Upholding the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, *[Underscorings supplied.]*

In Economic and Social Council Resolution 1986/43, on the Use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination, it is again stated:

> Reaffirming the legitimacy of the struggle of peoples and their liberation

movements for their independence, territorial integrity, national unity and liberation from colonial domination, apartheid, foreign intervention and occupation,

x x x

3. Calls upon all States to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that their territory and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries, or the planning of such activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination, foreign intervention and occupation for their independence, territorial integrity and national unity; x x x x *[Underscorings supplied.]*

Once again, in G.A. res. 48/94, [48 U.N. GAOR Supp. (No. 49) at 199, U.N. Doc. A/48/49 (1993)], the General Assembly, at its 85th plenary meeting on 20 December 1993 on the Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights, agreed in:

Reaffirming also the importance of the universal realization of the right of peoples to self-determination, national sovereignty and territorial integrity and of the speedy granting of independence to colonial countries and peoples as imperatives for the full enjoyment of all human rights,

Reaffirming further the obligation of all Member States to comply with the principles of the Charter of the United Nations and the resolutions of the United Nations regarding the exercise of the right to self-determination by peoples under colonial and foreign domination,

Recalling the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights,

x x x

1. Calls upon all States to implement fully and faithfully all the relevant resolutions of the United Nations regarding the exercise of the right to self-determination and independence by peoples under colonial and foreign domination;

2. Reaffirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation, in all its forms and by all available means;

x x x

11. Strongly condemns the establishment and use of armed groups with a view to pitting them against the national liberation movements;

x x x

27. Urges all States, the specialized agencies and other competent organizations of the United Nations system to do their utmost to ensure the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and to intensify their efforts to support peoples under colonial, foreign and racist domination in their just struggle for self-determination and independence; x x x x *[Underscorings supplied.]*

The International Court of Justice, in advisory opinions, had occasion to affirm that the principle of self-determination as enshrined in the United Nations Charter has through subsequent development of international law been accepted as a "right" of peoples in non-self-governing territories. *[I.C.J. Advisory Opinion on Namibia, (1971) I.C.J. at 31, quoted in Advisory Opinion on Western Sahara (1975), I.C.J. at 31-35.]*

In **Liberation Movements & International Law, Michael Schubert** (Kurdistan Committee of Canada, Theses On Liberation Movements And The Rights Of Peoples, Translated by the Kurdistan Committee of Canada) advance the view that:

"The partisan form of struggle, namely the guerrilla, becomes the most significant form of struggle for oppressed peoples; the entire picture of conventional war, with its limited character of scope and means, is completely lost."

x x x

"Of considerable importance to the contemporary development of the humanitarian rights of people in war and its expansion to include armed liberation struggles is the support of the vast majority of UN member states for the last 50 years ever since the founding of the United Nations Charter on June 26, 1945 *[in Germany: BGBl 1973 II p.431; 1974 II p.770; 1980 II p.1252; cf Berber, Volkerrechtliche Vertraege, 1983, p.17ff.]*, in particular the non-aggression clause in Art. 2 of the Charter, a position which developed despite the negative votes or abstentions of the NATO states. This position was expanded upon in several UN General Assembly resolutions and shows the importance which independence movements have in international developments.

"These resolutions clearly show that oppressed peoples who take up arms are not aggressors, but rather the colonial and occupying powers are, since they are using police and military force to suppress the right to self-determination x x x x(cf. Lombardi, p.189ff. and p.332ff., as well as UN Resolution 3314 XXIX, 14.12.1974). *[Underscoring supplied.]*

"Therefore, the notion of aggression under the rights of peoples is more than just an actual armed attack, it also indicates the aggressive and inhumane structure of a system of which the utilization of police and military repressive machinery is just the external appearance."

While Abi-Saab admits that the questions of the legal basis of the *jus ad bellum* of liberation movements and that the *locus standi* of liberation movements in general international law lie beyond the scope of his present disquisition *[footnotes nos. 8 and 9]*, "as concerns the *jus in bello* – i.e. the law governing relations between belligerents and between them and third parties – the most important consequence of the recognition of self-determination as a legal right (a consequence which inexorably derives also from all the others mentioned above) is to confer an international character on armed conflicts arising from the struggle to achieve this right and against its forcible denial. As such, they are subject to the international *jus in bello* in its entirety." *[at p. 372; Underscorings supplied.]*

Karen Parker, in her **Presentation to the First International Conference on the Right to Self-Determination United Nations,** Geneva (August 2000) entitled **Understanding Self-Determination: The Basics**, said that:

"The right to self-determination, a fundamental principle of human rights law, *(The Universal Declaration of Human Rights provides that "the will of the people shall be the basis of the authority of government." Universal Declaration of Human Rights, G.A. Res. 217A (III)(1948), Art. 21; The International Covenant of Civil and Political Rights (ICCPR), in force Mar. 23. 1976, 999 U.N.T.S. 171, Art. 1; The International Covenant on Economic, Social and Cultural Rights (ICESCR), in force Jan. 3, 1976, 999 U.N.T.S. 3, Art. 1.)* is an individual and collective right to "freely determine . . . political status and [to] freely pursue . . . economic, social and cultural development." (ICCPR, Art.1; ICESCR, Art. 1)The principle of self-determination is generally linked to the de-colonization process that took place after the promulgation of the United Nations Charter of 1945. Of course, the obligation to respect the principle of self-determination is a prominent feature of the Charter, appearing, *inter alia*, in both Preamble to the Charter and in Article 1.

"The International Court of Justice refers to the right to self-determination as a right held by people rather than a right held by governments alone. (Western Sahara Case, 1975 International Court of Justice 12, 31.) The two important United Nations studies on the right to self-determination set out factors of a people that give rise to possession of right to self-determination: a history of independence or self-rule in an identifiable territory, a distinct culture, and a will and capability to regain self-governance.

"The right to self-determination is indisputably a norm of *jus cogens*. (H. Gros Espiell: "[N]o one can challenge the fact that, in light of contemporary international realities, the principle of self-determination necessarily possesses the character of *jus cogens*." Gros Espiell cites numerous references in United Nations documents referring to the right to self-determination as jus cogens. [*Id., at pp. 11-13. See also Legal Consequences for States of the Continued Presence of South Africa in Namibia (S.W.Africa) 1971 International Court of Justice 16, 89-90 (Ammoun, J., separate opinion)(recognizes* jus cogens *nature of self-determination); I. Brownlie, Principles of Public International Law 83, (3d ed. 1979)(argues that combatants fighting for realization of self-determination should be granted a higher status under armed conflict law due to application* of jus cogens *to the principle of self-determination) [Underscorings supplied.] Jus cogens* norms are the highest rules of international law and they must be strictly obeyed at all times. Both the International Court of Justice and the Inter-American Commission on Human Rights of the Organization of American States have ruled on cases in a way that supports the view that the principle of self-determination also has the legal status of *erga omnes*. The term "*erga omnes*" means "flowing to all." Accordingly, *ergas omnes* obligations of a State are owed to the international community as a whole: when a principle achieves the status of erga omnes the rest of the international community is under a mandatory duty to respect it in all circumstances in their relations with each other."

Paust again gave his views on these points:

"Today, the right of revolution is an important international precept and a part of available strategies for the assurance both of the authority of the people as the lawful basis of any government and of the process of national self-determination. Under international law, the permissibility of armed revolution is necessarily interrelated with legal precepts of authority and self-determination, as well as with more specific sets of human rights. For example, the right to change a governmental structure is necessarily interrelated with the question of the legitimacy of that structure in terms of the accepted standard of authority in international law and with the precept of self-determination, both of which are interrelated and are also interconnected with the human rights of individuals to participate in the political processes of their society.

"As recognized in numerous international instruments and by the International Court of Justice, all peoples have the right to self-determination and, by virtue of that right, to freely determine their political status. Similarly it is recognized "that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned." *[Western Sahara Advisory Opinion, 1975 I.C.J. 12, 31-33, 36 (citing several international instruments including the authoritative Declaration on Principles of International Law, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970)].* As noted elsewhere, a state that complies with the principle of self-determination is one possessed of a government representing each and every person -- the whole people -- belonging to its territory. Political self-determination, in fact, is a dynamic process involving the genuine, full and freely expressed will of a given people, that is, a dynamic aggregate will of individuals. The "will of the people" is actually the dynamic outcome of such a process and reflects an equal and aggregate participation by individuals and groups in a process of authority.

"Furthermore, there is a significant consistency among the precept of self-determination, the human right to individual participation in the political process, and the only standard of authority recognized in international law. That consistency is evident in documented expectations of the international community concerning the sharing and shaping of political power through a process involving a relatively full, free, and equal participation by individuals who are the members of a given nation-state. x x x x"

x x x

Paust also advanced that:

"(I)t is evident that the people of a given community have the right to alter, abolish, or overthrow any form of government that becomes destructive of the process of self-determination and the right of individual participation. Such a government, of course, would also lack authority and, as a government representing merely some minority of the political participants, it could be overthrown by the majority in an effort to ensure authoritative government, political self-determination, and the human rights of all members of the community

equally and freely to participate. *[Underscorings supplied.]*

"Thus, as mentioned, the right of revolution supported by the preamble to the Universal Declaration and accepted by text writers as a principle of international law is a concomitant precept and a part of available strategies for the securing of the authority of the people and national self-determination. Importantly also, the international precepts of authority and self-determination provide criteria relevant to our inquiry into the permissibility of individual participation in armed revolution. As in the case of domestic standards, the right of revolution is necessarily a right of the majority against, for example, an oppressive governmental elite. Furthermore, the authority of the people is the only legitimate standard."

x x x

"No matter how rationally one may justify revolutionary means in terms of the demonstrable chance of obtaining freedom and happiness for future generations, and thereby justify violating existing rights and liberties and life itself, there are forms of violence and suppression which no revolutionary situation can justify because they negate the very end for which the revolution is a means. Such are arbitrary violence, cruelty, and indiscriminate terror. *[See Marcuse,* Ethics and Revolution, *in REVOLUTION AND THE RULE OF LAW 46 (E. Kent ed. 1971).]*

">From a legal perspective, Marcuse's statement about the means of violence is equally relevant. Under international law, including the law of human rights, there are certain forms of violence that are impermissible per se. Included here are strategies and tactics of arbitrary violence, cruelty, and indiscriminate terror. International law also prohibits the use of violence against certain targets, and permissible uses of force are conditioned generally by the principles of necessity and proportionality.

"Thus, with regard to questions of legality concerning targets, tactics, and strategies of social violence, international law already provides normative guidance. A realistic and policy-serving jurisprudence is needed, however, to integrate relevant principles of international law into appropriate analysis and choice about the permissibility of a particular method or means of violence in a given social context. x x x x"

x x x

"Revolution is actually one of the strategies available to a people for the securing of authority, national self-determination and a relatively free and equal enjoyment of the human right of all persons to participate in the political processes of their society. *[Underscorings supplied.]*

"With regard to the separate question of the legality of various means of furthering revolution, numerous sets of domestic and international law already proscribe certain forms of social violence. For example, international law, including human rights law, prohibits tactics of arbitrary violence, cruelty, and indiscriminate terror; the targeting of certain persons (such as children) and certain things; and generally any unnecessary death, injury, or suffering.

x x x

"Finally, those who are rightly concerned about the evils of any form of violence and the threat that domestic violence can pose to human dignity and international peace might also consider the warning of former President John F. Kennedy: "[T]hose who make peaceful evolution impossible make violent revolution inevitable." *[Address by John F. Kennedy at Punta del Este,* quoted in *The Law of Dissent and Riots vii (M. Bassiouni ed. 1971). Underscorings supplied.]*

Pangalangan et. al. had this to say:

"That they *[referring to two juristic frameworks or theories, namely, the traditional school anchored on the sovereignty of states, and the national liberation framework based on the right to self-determination]* lead to different conclusions, however, highlights the progressive development of international law: the evolution of the right to self-determination which is

ascribed directly to the people, as contrasted to the power of sovereignty, which though ultimately imputed to the people, is putatively reposed in the state."

x x x

"The four Geneva Conventions of 1949 have a common Article 3 x x x which provides minimum standards of protection in armed conflicts not of an international character." *[refers to humane treatment of non-combatants and* hors de combat, *prohibition against murder, mutilation, torture, taking of hostages, passing of sentences and carrying out executions without judicial guarantees, among others]*

"The first limitation goes into the substantive provisions of Article 3, which excludes from the ambit of its protection those taking part in the hostilities. Article 3 covers only non-combatants and combatants placed hors de combat. Corollarily, combatants belonging to the anti-government faction are not accorded prisoner-of-war status upon capture, and are treated as common criminals."

x x x

"The second limitation to the applicability of Article 3 springs from conditions extrinsic to the law. Governments rocked by civil disorder habitually deny the existence of an armed conflict subject to Article 3. They instead invoke national law and act under emergency or martial law. They claim that Article 3 will jeopardize their security, immunize captured rebels and lower the 'cost or revolution.'"

"Article 3, the historical record shows, has been applied only in one instance – at the time of this paper – during the Algerian conflict. "In 1960, the Gouvernement Provisoire de la Re'publique Alge'rienne (GPRA) notified its accession to the Geneva Conventions to the depository, the Swiss Government. France, the colonial Power, objected to its accession." *[citing James E. Bond, Internal Conflict and Article 3 of the Geneva Conventions, Denver Law Journal, 1971]*

Antonio Cassese , Professor of Political Science, University of Florence, Italy, elaborated on this point: [**Terrorism and Human Rights**; American University Law Review; Summer, 1982; Conference; The American Red Cross–Washington College of Law Conference: International; Humanitarian Law; HUMAN RIGHTS AND HUMANITARIAN LAW; Washington College of Law of The American University].

" Only with regard to a limited category of insurrections, such as wars of national liberation, does humanitarian law grant a right of rebellion. In contrast, human rights standards proclaim a general right of rebellion. This right, however, is implicit and subject to stringent requirements. Provided these requirements are met, the right of rebellion can be exercised by any group, irrespective of the kind of government against which it rebels and of the intensity and scope of the struggle.

"To determine how international human rights standards recognize the right of rebellion, a reading of the Universal Declaration of Human Rights is helpful. The third paragraph of the preamble states that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." (Universal Declaration of Human Rights preamble, para. 3, G.A.Res. 217, U.N.Doc. A/810, at 71 (1948).) Thus, in a state in which the basic human rights are disregarded by the authorities and no democratic or peaceful means are available to enforce respect for those human rights, rebellion is a legitimate reaction. This right to rebel against tyranny is an integral part of the Western liberal tradition, and usually is defined as a "right of resistance" to oppressive government. The American theologian and liberal political thinker Jonathan Mayhew noted in 1750 that "when [the King] ... turns tyrant, and makes his subjects his prey to devour and destroy, instead of his charge to defend and cherish, we are bound to throw off our allegiance to him, and to resist."

"The same concept is addressed in some modern constitutions, such as that of the Federal Republic of Germany, which provides that everyone has the right to resist, absent any other possible remedy, those persons who seek to abolish the constitutional order.

"The right to rebel against oppression is, therefore, well rooted both at an international and a national level, but the method of its implementation raises several questions. First, when is armed violence justified, and within what bounds? The answer of the international community is limited to a set of historical forms of rebellion: struggles against oppression by colonial powers, racist regimes, and foreign occupants. The majority of the numerous U.N. General Assembly resolutions on self-determination grant the right to take up arms to achieve self-determination. International practice has evolved along these lines, and was confirmed in 1977 in the first Geneva Protocol on the Humanitarian Law of Armed Conflict (Protocol I). Thus, we can conclude that in those three categories of fighting for self-determination, the rebels can legitimately use armed violence to exercise their right of rebellion."

x x x

"I have been speaking of the reaction of the international community to one particular category of rebellion against oppression--that of liberation movements. It is not clear whether the international community sets permissible limits on other forms of rebellion against tyranny. International standards do not determine whether internal rebellion can legitimately take the form of armed violence. Because this is a sensitive issue, the states have not developed international legislation to address it, each individual state preferring instead to pass regulations unique to its needs. Despite this practice, the international norm indicates that terrorism is strongly condemned. x x x x"

C. The Application of Article 1, paragraph 4 and Article 96, paragraph 3 of Protocol I and other pertinent international humanitarian law instruments to National Liberation Movements

To start with, International Humanitarian Law (IHL) in this opinion is meant the body of principles, standards, norms and rules in armed conflicts principally embodied, contained and expressed in:

(a) The Four Geneva Conventions of 12 August 1949:

I. For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;

II. For the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;

III. Relative to the Treatment of Prisoners of War; and

IV. Relative to the Protection of Civilian Persons in Time of War;

(b) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; and

(c) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.

Of course, the pertinent "principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience," otherwise known as the "Martens clause," complete the whole universe of international humanitarian law (IHL) relevant to the Agreement. (Protocol 1, Article 1(2))

By legal contemplation, the Geneva Conventions and Protocol 1 are applicable to:

a. all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties to the said Conventions and Protocol, even if the state of war is not recognized by one of them;

b. all cases of partial or total occupation of the territory of a High Contracting Party, even if said occupation meets with no armed resistance; and

c. armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination. (Geneva Conventions, Common Article 2; Protocol 1, Article 1 (3) (4))

Protocol 2, on the other hand, (which develops and supplements Common Article 3 of the Geneva Conventions) applies by legal contemplation to:

a. all armed conflicts which are not covered by Article 1 of Protocol 1 and which takes place in the territory of a High Contracting Party between its armed forces and

i. dissident armed forces or other organized armed groups which

ii. under the leadership of a responsible command,

iii. exercise such control over a part of the territory

iv. as to enable them to carry out sustained and concerted military operations and to implement Protocol 2. (Protocol 2, Article 1)

In contrast, Common Article 3 of the Geneva Conventions applies in legal contemplation, to all armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties to the said Convention and which do not meet all the requirements for the application of Protocol 2. (Geneva Conventions, Common Article 3). For purposes of easy reference and to determine, by way of elimination, which are the rules, principles and standards of IHL that are not contained or embodied in Common Article 3, the same is hereunder reproduced *in toto*:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (b) taking of hostages;
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
>
> (2) The wounded and sick shall be collected and cared for.
>
> An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
>
> The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
>
> The application of the preceding provisions shall not affect the legal status of the

Parties to the conflict." *[Underscoring supplied.]*

Thus, in case of intensive fighting, and in the absence of the acknowledgment of a state of war involving the application of the entire law of war, the provisions of Common Article 3 still apply. Additionally, the rest of the rules of Protocol 2 must be observed. Otherwise, at the very minimum, only the provisions of Common Article 3 apply provided that there are clear and unmistakable hostilities between the armed forces and other organized armed groups. *[Basic Rules of the Geneva Conventions and their Additional Protocols, ICRC, 1987, pp. 52-53]*

It is instructive to note that there are caveats in Protocol 1 and Common Article 3 of the Geneva Conventions, to wit:

> a. The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, hall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question. (Protocol 1, Article 4); and
>
> b. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict." (Common Article 3, par. 2, Geneva Conventions)

No such counterpart caveat expressly appears in Protocol 2. However, considering that Common Article 3 is suppletory thereto, the same is read into it.

On the other hand, the 3RD Geneva Convention, Article 2 includes an expanded definition of war which includes international conflicts which are not declared wars and armed conflicts between peoples. In other words, there could be a war situation "even if one of the parties refused to acknowledge the crisis"

Common Article 2, paragraph 3 of the Conventions provides:

> "Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall be bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

Abi-Saab maintains that the non-recognition of the declaring party or of the authority representing it, in the context of common Article 2, paragraph 3, of the Conventions, inspired Article 96, paragraph 3 of the Protocol, and as such applies to the latter. *[at p. 407]*

He posits that though the term 'Power' usually denotes a State in diplomatic language, it has occasionally been used in a wider sense to include some other entities not having this character *[at p. 400, citing Dictionnaire de la terminologie du droit international, 1960, p. 492, Puissance]*, and, therefore, in that sense, liberation movements can become parties to the Conventions especially so that a wider interpretation is more compatible with the humanitarian objective and purpose of the conventions which, to be fully realized, commend universal application. *[at p. 400]*

Abi-Saab advances persuasively the following views on whether such an "authority" has to fulfill certain conditions for it to be able to make the declaration:

(1)The attempt to impose the condition that there must be recognition of the liberation movement by the regional intergovernmental organization concerned did not succeed and cannot be read into the language of Article 96 as it stands because such a condition would have led to a restrictive interpretation incompatible with the object and purpose of humanitarian law. While such recognition reduces the margin of possible controversy, "it is not constitutive of the international status or *locus standi* of the liberation movement for the purposes of the Conventions and the Protocol."

(2) As to the question of territorial control by the liberation movement, Abi-Saab maintains that it is a restrictive line of reasoning to base it on the assumptions of

conventional warfare and disregards in the process the special features of guerilla warfare characteristic of wars of national liberation. "Though not exercising complete or continuous control over part of the territory, liberation movements, by undermining the territorial control of the adversary as well as their own control of the population and their command of its allegiance, muster a degree of effectiveness sufficient for them to be objectively considered as a belligerent community on the international level." At any rate, it is significant that neither Article 1, paragraph 4 nor Article 96, paragraph 3, require territorial control. *[Underscoring supplied.]*

(3) As to the condition that there must be proof that the liberation movement be truly representative of the people in whose name it is prosecuting the war of national liberation: Abi-Saab says that "In fact, until self-determination can be freely and openly exercised, one has to be content with certain indices of the representative character of liberation movements. Prominent among them is the fact that a liberation movement can hold on and continue the struggle even at a low level of intensity, in spite of the difficult conditions in which, and the uneven position from which, it has to operate; something it could not have done if it did not enjoy wide popular support. In other words, a certain degree of continued effectiveness creates a presumption of representativeness. " *[Underscorings supplied, at pp. 412-413]*

(4) As to the condition that the liberation movement should attain a minimum of effectiveness as a belligerent, i.e. it should be a party to a real ongoing armed conflict: it is the whole approach of the Conventions that international armed conflicts are defined not as a function of the degree of intensity of hostilities, but in terms of its parties and the type of relations existing among them. It does not appear as a requirement in either Article 1 or Article 96 nor for that matter common Article 2 of the Conventions. *[at pp. 407-414]*

"The effectiveness of the liberation movement is measured first of all by its organization and internal discipline, as prescribed by Article 43 of Protocol I, It is also revealed by the fact that a liberation movement manages to hold on and continues to operate in spite of the great disparity of means and position between it and its adversary (a fact which can also be considered as a presumption of its representative character)*.[at pp. 414]*

For reference, Article 43 of Protocol I provides:

> 1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict. x x x x

Now, the most pertinent and key provisions to be examined are ARTICLE 1, PARAGRAPH 4, in relation to ARTICLE 96, PARAGRAPH 3 of PROTOCOL 1 ADDITIONAL to the GENEVA CONVENTIONS of 12 August 1949:

ARTICLE 1, PARAGRAPH 4 (On General Principles and Scope of Application):

> The situation referred to in the preceding paragraph [Conventions of 12 August 1949 for the Protection of War Victims, shall apply in the situations referred to in Article 2 Common to those Conventions] include *[which means in statutory construction as non-exclusive and merely illustrative]* armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations. *[Underscorings supplied]*

ARTICLE 96, PARAGRAPH 3 (On Treaty Relations upon entry into force of this Protocol):

> The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:
>
> (a) The Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;
>
> (b) The said authority assumes the same rights and obligations as those which have been assumed by a [N.B., referring to any High Contracting Party and not a particular entity] High Contracting Party to the Convention and this Protocol; and
>
> © The Conventions and this Protocol are equally binding upon all Parties *[N.B.. not necessarily a High Contracting Party]* to the conflict.

Are the instance of colonial domination, alien occupation or racist regimes illustrative or exhaustive a listing to qualify whether a struggle of a people in the exercise of its right to self-determination should be considered an international conflict?

Zimmermann notes:

"One delegation considered that in interpreting the word 'include' literally, the list following is not exhaustive. In contrast, another delegation expressed regret that the paragraph remained selective and does not cover all situations entering the concept of the right of peoples to self-determination."

He noted, though, that the Charter of the United Nations and the Friendly Relations Declaration grant the right to self-determination "to all peoples equally and in every respect."

However, he concludes - without further reasoning - that, despite the use of the word "include", it should be interpreted as introducing an exhaustive list of cases and that the same essentially cover all circumstances in which peoples are struggling for the exercise of their right to self-determination. He explained that "colonial domination" is where a people has had to take up arms to free itself from the domination of another people, "alien occupation" involves partial or total occupation of a territory which has not yet been fully formed as a State, while "racist regimes" are those founded on racist criteria.

Zimmermann then maintains:

"In our opinion, it must be concluded that the list is exhaustive and complete: it certainly covers all cases in which a people, in order to exercise its right of self-determination, must resort to the use of armed force against the interference of another people, or against a racist regime. On the other hand, it does not include cases which, without one of these elements, a people take up arms against authorities which it contests, as such a situation is not to be considered international." *[at p.54-55; Underscorings supplied.]*

Having said these, however, Zimmermann concedes:

"As regards the crucial question of the inevitable disputes regarding the qualification of a specific conflict, one must assume that the Parties concerned will carry out their obligations in good faith, and count on the positive influence of all the High Contracting Parties. " *[at p. 56, underscorings supplied.]*

Aldrich explained in this connection that:

"Reality can be messy, and armed conflicts in the real world do not always fit neatly into the two categories -- international and noninternational -- into which international humanitarian law is divided. Sometimes a state will intervene militarily in the territory of another state where a civil war is in progress, perhaps at the invitation of the government of that state or perhaps in support of another party to the civil war. Sometimes several states will intervene. For purposes of analyzing the rights and duties under international humanitarian law of each of the parties to

such mixed conflicts, to what do we turn? Intervening states are likely to see themselves as involved in an international armed conflict, if only to claim prisoner-of-war status for any of their troops that may be captured by an enemy, but such a claim is weak analytically if they are assisting the government at its request against a rebellious party, at least unless a third state is assisting the rebels.

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"My experience with the law in the Vietnam War and my subsequent thoughts about it have convinced me that, whenever a state chooses to send its armed forces into combat in a previously noninternational armed conflict in another state -- whether at the invitation of that state's government or of the rebel party -- the conflict must then be considered an international armed conflict, and the rebel party must be considered to have been given, from the date of such intervention, belligerent status, which, as a matter of customary international law, brings into force all of the laws governing international armed conflicts. If a state other than the state in which a civil war is occurring commits its armed forces to the battle on one side or the other, the nature of the armed conflict changes fundamentally. While one can understand that a government involved in a civil war in its territory might object to its internal enemy's acquiring belligerent status merely because another state has been induced to join the war, the armed conflict will certainly have become international, and it will be practically impossible to apply both the rules on international armed conflict and those on noninternational armed conflict to what, in fact, is a single armed conflict with two warring sides." *[Underscorings supplied.]*

Zimmermann clarifies that the armed conflict must be between a people fighting for self-determination and a Party to Protocol I for this article to apply. If on the other hand the State in whose territory such a conflict takes place is a Party to the Conventions and to Protocol II [and not Protocol I], Article 3 common to the Conventions and Protocol II will bind all the Parties to that armed conflict "straightaway." *[at pp. 1088-1089]*

Zimmermann further examines the situation if an armed conflict within the meaning of Article 1, paragraph 4, is conducted against a Party not bound by the Protocol I:

a) If the State is a Party to the Geneva Conventions:

"The gradual recognition in international law of the right of self-determination and of the international nature of armed conflicts conducted in the exercise of this right had led to the view, even before the Protocol, that common Article 2, paragraph 3, of the Conventions opened also to national liberation movements a possibility to accept the Conventions. x x x

" In fact the same majority of States had insisted on the international character of armed conflicts in the exercise of self-determination already before the adoption of the Protocol, and had then proposed, defended and obtained the inclusion of paragraph 4 of Article 1 and paragraph 3 of the present Article 96 of the Protocol.

"These States did not for one moment think of taking away from national liberation movements a right which they had recognized on many occasions as due to these movements and which will now be regulated and clarified in this article once the Protocol is in force for the State concerned. Consequently, for a very large majority of States the route of acceptance of the Conventions in accordance with their common Article 2, paragraph 3, remains open to authorities representing peoples fighting for self-determination against a State which is a Party only to the Conventions. In the same case a declaration of acceptance of the Protocol would only count as a unilateral undertaking of obligations in matters which are not covered by customary law."

b) If the State is not a Party to the Geneva Conventions:

"In this situation, which is highly exceptional nowadays, any declaration by a liberation movement could only have the effect of a unilateral commitment in matters not covered by customary law." *[at pp. 1091-1092; Underscorings supplied.]*

Another insight can be had in **The International Hostages Convention and National Liberation Movements, Wil D. Verwey** [The American Society of International Law, The American Journal International Law; January, 1981 ; 75 A.J.I.L. 69]:

[Mr. Verwey is a Professor of International Law, the University of Groningen, the Netherlands. He took part, as the Netherlands representative to the Sixth Committee of the General Assembly during its 34th session, in the final rounds of negotiations on the International Convention against the Taking of Hostages.]

"The next question to be considered is the extent to which the law of Geneva covers acts committed by national liberation movements. From the point of view of international law, until recently national liberation movements could doubtlessly have been regarded as parties to noninternational armed conflicts, to which the provisions of Article 3 apply, unless the conditions for their recognition as "belligerents" were met. During the sixties and seventies, however, the nonaligned countries, supported by those of Eastern Europe, launched a massive campaign aiming at the recognition of the armed struggle of national liberation movements as being "international" by definition: i.e., from the first shot, so to speak, without taking into account the traditional condition of presenting a real and sustained challenge to the government. Thus, General Assembly Resolution 3103 (XXVIII) of December 12, 1973, provides:

"The armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions and the legal status envisaged to apply to the combatants in the 1949 Geneva Conventions and other international instruments are to apply to the persons engaged in armed struggle against colonial and alien domination and racist regimes.

x x x

"At best, one could agree with the delegate of Mexico who said that "the current trend in international law was to regard wars of national liberation as armed conflicts of an international character." Thus, it is uncertain whether the provisions of Article 3 or the rules of Geneva with respect to international armed conflict should be considered applicable to national liberation movements, assuming in the latter case that these rules are now generally binding customary law and are no longer subject to the conventional inter se clause, which excluded parties other than states from being covered.

"In 1977, the effort to solve this legal dispute resulted in the insertion into Article 1, paragraph 4 of Additional Protocol I of the provision that "international armed conflicts" in the sense of Article 2 of the four Geneva Conventions, include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination x x x x"

Furthermore, Verwey presented a conservative view on the application of the provisions of Article 96, paragraph 3 of Protocol I to national liberation movements:

"It is clear from this latter quotation that national liberation movements have acquired only a conditional treaty-making capacity. The legal validity of any such unilateral declaration depends on the prior ratification of Protocol I by the government against which the liberation movement is directed. Moreover, the fact that so far only 11 countries have ratified Protocol I, and that no potential adversary of any national liberation movement is among them, entirely precludes the possibility of concluding that the rule formulated in Article 1 had developed into a rule of customary international law. (Ten out of eleven contracting parties are nonaligned countries (Botswana, Cyprus, Ecuador, Ghana, Jordan, the Libyan Arab Jamahiriya, Niger, El Salvador, Tunisia, and Yugoslavia); the eleventh country is Sweden. The call made by the Sixth Committee in draft Res. A/C.6/34/L.9, adopted by consensus on November 14, 1979, "that all States consider without delay the matter of ratifying or acceding to the two Protocols," affirms that we are dealing here with conventional, not customary, rules of law.)

"Thus, it would be incorrect to suggest at present that national liberation movements could become a party to the Geneva Conventions. Accordingly, their enemies normally will consider their struggle as covered by the provisions of Article 3, which prohibit hostage taking by national liberation movements, if only with respect to persons protected under the terms of that article, under the conditions indicated above."

Abi-Saab, for his part pointed out that one of the objections to the inclusion of the subject amendment to Article 1 of protocol 1 is the argument of discrimination, i.e. that humanitarian protection should extend to all war victims without distinction and not only to those of wars of national liberation. He contended, however, that:

"This line of argument would have been convincing if its proponents were consistent and stood for the elimination of the distinction between international and non-international armed conflicts. But that was not their case. By contrast, Norway, for example (one of the initiators of the 15-Power amendment), adopted a consistent attitude aiming at maximum extension of protection, by advocating the abolition of the above-mentioned distinction; but short of reaching such a result, it defended the largest possible definition of international conflicts to extend as far as practically feasible the scope of humanitarian protection."*[at p.381; Underscoring supplied]*

In expounding on the application of Article 1, paragraph 4 of Protocol 1, Abi-Saab posits a very progressive view:

"Article 1, paragraph 4, does refer to the exercise of the right of self-determination; but only in order to qualify the struggles of peoples in the three types of situations mentioned therein, i.e. armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.

"Does this mean that the provision is limited to these three specific cases of denial of self-determination? The literal interpretation of the text leads to an affirmative answer to this question. But it may be useful in this context to recall the explanation given by the Australian representative in Plenary at the end of the first session, for his renewed support of Article 1 as amended x x x:

> 'At that time (of voting in the Committee his delegation had explained that, although it favoured a broadening of the field of application of draft Protocol 1, it feared that the terms used . . . might be too restrictive and exclude all conflicts other than those enumerated. After due consideration, his delegation had realized that if paragraphs 1 and 2 (4 in the final version) were taken together and if the word 'include' in paragraph 2 was taken literally, the list could be interpreted as not being exhaustive. ' [Underscorings supplied.]

"In other words, the Australian representative tried to put forward an interpretation of the provision, which considers the enumeration of the specific types of situations as illustrative and not exhaustive.

"Such an interpretation is more in accord with the spirit of the Protocol and the Conventions: for if we proceed from a humanitarian point of view, we have to favour the application of as much humanitarian law to as many conflicts as possible. This has been the systematic policy of the ICRC; and it is through the practice of the ICRC, of international organizations and of States that such a liberal interpretation can progressively consolidate." *[at pp. 397-398; Underscorings supplied.]*

He continued:

"Article 1, paragraph 4, can be plausibly construed in a more liberal way, by interpreting the enumeration of the three categories mentioned therein as illustrative and not exhaustive; an interpretation which brings within its ambit all cases of denial of self-determination, within as well as beyond the colonial context. The absence of the requirement of recognition by the regional organizations either in the definition or for establishing the *locus standi* of liberation movements, facilitates the adoption of this interpretation by the ICRC and by third States in dealing with specific situations. And it is through such subsequent practice that this liberal interpretation - which is much more compatible with the humanitarian object and purpose of the provision and of the whole Protocol – can be anchored in reality and made to prevail." *[at p. 432]*

Abi-Saab also clarified on the effect of non-acceptance by an existing government to Protocol 1 on the applicability of Article 96, paragraph 3 thereof:

"Even if Protocol 1 is not accepted as a separate legal instrument by the handful of governments facing a war of national liberation, its provisions assert themselves as the proper interpretation of the Geneva Conventions.

"In this respect, the fact that the *locus standi* of liberation movements was codified in Article 96, paragraph 3, vindicates the earlier interpretation of 'Power' in the Conventions to include such movements, at least for the purposes of common Article 2, paragraph 3 of the Conventions, whose formula was more or less borrowed by Article 96 of the Protocol.

"This means that if a liberation movement makes a declaration accepting the provisions of the Conventions, these Conventions, as interpreted in the light of Protocol I, become applicable in the ongoing war of national liberation, regardless of the opposition of the adversary government, as long as it is itself bound by the Conventions.

"A very strong case can thus be made for considering the 'declarations of intention' made recently by certain liberation movements *[e.g. that of the African National Congress or ANC in Revue Internationale de la Croix Rouge, Vol. 63, No. 727, Jan.-Feb. 1981, p. 21]* to respect the rules of the Conventions and of Protocol 1, as satisfying the requirements of common Article 2, paragraph 3, and thus bringing the Conventions, as interpreted by the Protocol, into operation in the ongoing conflict." *[at pp. 433-434; Underscorings supplied.]*

In this connection, Pangalangan et. al. shared this view:

"Wars of national liberation were hitherto considered as internal armed conflicts and were therefore within the domestic jurisdiction of states. They become international conflicts only when they had crossed a geo-military threshold, beyond which the world community was placed on notice that said revolutionaries qua belligerents were entitled to *locus standi* as international persons."

"With the progressive development of the people's right to self-determination, it became legally possible to justify the international characterization of civil wars, without negating the principle of non-interference. First, the right of self-determination is ascribed to a people, such that said possessor of an international right must necessarily be an international person in order to assert and enjoy that right. Second, wars of national liberation were deemed the politico-military assertion of the right to self-determination. A liberation movement, therefore, is asserting an international right against a state, which by denying that right, is in breach of international obligations. Third, the use of armed force to deny a people of their right to self-determination is an act of aggression and entitles the party thus aggrieved to legitimately resort to armed means to resist such forcible denial of their right to self-determination." *[Underscorings supplied.]*

x x x

"The geo-military criterion, therefore, as a norm for the characterization of armed conflicts, is international law from the standpoint of the individual claims of outside states. x x x x"

x x x

"In contrast, the national liberation concept creates a new standard: the international nature of the rights being asserted/violated, such that the world community is taken to task if it allows its norms to be trifled with."

"The national liberation theory of internationalization is the complete reverse of the basic theory of old. Wars of national liberation are international in character because they express the extent to which contradictions in global relations have been internalized within the boundaries of a nation-state. Legally formulated, the new criterion is the international nature of the rights being internally violated within the boundaries of a state. "

x x x

"While the old theory measures the extent to which an internal conflict reaches out to the world community and affects outside parties, the new theory examines the extent to which international sources of tension creep into the domestic affairs of a state."

"Prof. Abi-Saab in Wars of National Liberation in the Geneva Conventions and Protocols refers to this as 'poetic justice'":

> "x x x The present situation partakes of what one is strongly tempted to call 'poetic justice'. If the internalization of relations between the 'centre' and the 'periphery' preceded direct political domination, a very strong tendency has recently shaped up within the international community to consider armed struggles which aim at overthrowing domination as international conflicts, even before this objective is reached."

Pangalangan et. al. asserts that while the aforecited text refers to classic cases of colonialism, "it is submitted that this 'poetic justice' equally applies to **neo-colonialism**." *[footnote No. 40]* Thus:

"Through classical colonialism, erstwhile international matters were legally subordinated to the municipal law of the colonializing power. With neo-colonialism, through the granting of nominal independence, two processes simultaneously transpire. Oftensibly, the relationship between the colonizer and its subject is once again 'internationalized', replete with all the trappings of the diplomatic relations between sovereign states. At the same time, however, the client-patron relationship has been so institutionalized, that through sophisticated legal and economic devices, colonial plunder persists. Domestic comprador elements, for instance, shall continue to fight local battles, politically and even militarily, for their patron, a most apt example of a 'war by proxy'.

"Furthermore, the center-periphery relationship that used to exist only as a relationship between the colonizing power and its colony, later comes to exist as a relationship within the colony itself. The anti-colonial struggle is then fought within the boundaries of the neo-colonial state. The 'national sovereignty' of a neo-colony is legal fiction through which the colonizing powers – and the international community in which they are dominant – seek to insulate themselves from the obstinate efforts of peoples to ascertain their right to self-determination. The national liberation framework unmasks that fiction, and in the logic of corporate litigation, pierces the veil of national sovereignty to give aid to those peoples." *[Underscorings supplied.]*

They noted furthermore:

"Under the Protocols Additional to the 1949 Geneva Conventions, the scope of armed conflicts of an international character comprehends those 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination."

"In Cassese, The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts *[at p. 398]*, this formulation was considered restrictive of the scope of the term 'wars of national liberation'. However, in Abi-Saab, the formulation was taken to be merely a specification of three concrete instances of denial of self-determination, an enumeration not necessarily exclusive." *[Footnote No. 44; Underscorings supplied.]*

In view of the above discussions, what is meant or contemplated by colonial domination, alien occupation and racist regimes in Article 1, paragraph 4?

There is existing and increasingly progressive legal literature that says the struggle against neo-colonialism may be contemplated in theses terms.

Does this provision require that there be both colonial domination and alien occupation as one integral ground for unilateral declaration under Article 96, paragraph 3 or are the three grounds, i.e. colonial domination, alien occupation and racist regime – three separate and distinct grounds which are independent of one another?

There seems to be divergent opinions on this although there is sufficient existing legal literature that says they can be both distinct and independent and at the same time an integral ground.

On another point, Pangalangan et. al. addressed the issue of subjectivity that the national liberation framework uses "political rhetoric that passes for legal terminology", Pangalangan et. al took note of Baxter's view *[Baxter, Humanitarian Law or Humanitarian Politics? The 1974 Diplomatic Conference on Humanitarian Law, 16 Harv. Int'l. L.J. 1-26 (1975) at 15]*:

> (T)he danger of such expressions as 'fighting against colonial domination and alien occupation and against racist regimes' is that they could be applied to a wide range of conflicts going far beyond what was contemplated by those states which have led the campaign for application of the whole of the law of war in wars of national liberation... A subjective appraisal of the situation might be expected, each side choosing the characterization of the conflict that would best suit its interests, and claiming that its adversary had completely misconstrued and violated the law. Therein lies legal chaos x x x x

But Pangalangan et. al. argued:

"Lack of terminological precision is a valid criticism but it is an unavoidable shortcoming in dealing with international law concepts, for 'most, if not all, concepts of international law, from the very general such as 'sovereignty' and 'good faith', x x x have a more or less large margin of vagueness around them. What counts is whether they have a minimum hard-core allowing for legal determination. *[citing Abi-Saab; in an extended footnote No. 52, the authors also quoted Jose Diokno in Asian Lawyers, People's Rights and Human Rights, August 27, 1979, thus "Indeed, we are aware that often the utility of a concept lies in its very imprecision: for it allows its content to enlarge or contract according to the situation I which it is to be applied".]*

Wilson acknowledged that:

"The main legal problem to be solved was the following: whether members of liberation movements fighting against colonial powers were entitled to combatant status and consequently to treatment as prisoners of war upon capture, or whether their acts of violence could lawfully be subject to the penal law of the established government. This problem is now solved by Article 1, paragraph 4 of Additional Protocol I (1977) to the Geneva Conventions, which has given members of liberation movements combatant and POW status. At the time of its drafting, this provision was the object of an acrimonious debate, and the Diplomatic Conference that adopted the Protocols risked becoming a fiasco. Article 1, paragraph 4 of Protocol I is still an object of contention and its existence is one of the main reasons that the United States refuses to ratify Protocol I."

On the provisions of Protocol I relevant to liberation movements, i.e., Article 1, paragraph 4, Articles 43 and 44, and Article 96, paragraph 3, these provisions are thoroughly commented on by Wilson and such views are generally correct according to Ronzitti.

Ronzitti further asked:

"Two points, in particular, merit examination. The first is the relevance of Article 1, paragraph 4 in the post-decolonization period. Is this provision to be confined to the history of international law or is it possible to foresee situations in which it will again be invoked? The second is the reconciliation of provisions that have given international status to wars of national liberation, with customary rules of the law of war and conventional humanitarian law in force before the adoption of Protocol I."

"The phenomenon of wars of national liberation does not mark the end of the era of decolonization. Because of the permanent relevance of the right to self-determination and the trend toward its application beyond classic colonial situations, it is foreseeable that conflicts falling under the definition of Article 1, paragraph 4 of Protocol I will recur in the future. Hence the need to consider every possible implication of the fact that wars of national liberation have gained the status of international armed conflict."

D. Are National Liberation Movements and their Participants Criminals, Terrorists, Freedom Fighters or Revolutionaries?

So how should national liberation movements be considered in international law, particularly with respect to international humanitarian law?

Parker further observed:

"Most of you are aware of the facts set out in the above-outlines situations where people have the right to self-determination but have not yet realized it. In these countries there are conflicts -- I do not just mean verbal ones but armed ones. Unfortunately, many of the states involved in attempting to militarily obliterate the peoples with valid self-determination claims try to reduce these conflicts to "terrorism". So depending on which side of the fence you are on, group A is either a terrorist or a freedom fighter. Some of these regimes' friends either acquiesce or actively support this erroneous assertion.

"Apart from the mud-slinging, the tragedy is that states are in open violation of their *jus cogens* and *erga omnes* obligations to defend the principle of self-determination. And also, very sadly, not enough people know sufficiently both the law of self-determination and the law of armed conflict to properly redirect the dialogue. The defenders of self-determination are in a very vulnerable position, charged with terrorism. The supporters of the groups fighting for the realization of national liberation may also be labeled or unduly burdened by laws against terrorism at the extremely serious expense of not only human rights but rights under the Geneva Conventions, other treaties and customary laws of armed conflict."

Parenthetically, Abi-Saab also had occasion to point out the peculiarities of wars of national liberation:

"Wars of national liberation are a typical example of what is sometimes called (in 'peace research' and 'strategic studies') 'asymmetrical conflicts'. These are conflicts between radically unequal parties in terms of the resources they command. The one controls the State machinery with all that goes with it, including the administration, the judiciary and the police, as well as modern means of communication and modern army disposing of powerful and sophisticated weapons. The other is composed of irregular combatants whose only asset is their high motivation and strong faith in the justice of their cause, reflecting popular aspirations which cannot be freely and democratically expressed and pursued.

"In these conditions liberation movements have no choice but to carry on a 'poor man's war', by resorting to non-conventional or guerrilla warfare, which calls on man's ingenuity and cunning to beat the machine and compensate for material inferiority. It is a special kind of warfare which has its own characteristics and internal logic." *[at p. 416]*

Verwey, pertinent to this point, on the other hand, said that:

"The pivot of the compromise was the agreement that Article 10 (Article 12 in the final draft) on the scope of the Convention would refer to the law of armed conflict embodied in the Geneva Red Cross Conventions and the Additional Protocols thereto in such a way as to preclude the conclusion that the Hostages Convention would supersede the law of Geneva. x x x x"

Verwey pointed out the building consensus during the negotiations on the International Convention against the Taking of Hostages:

"Statements made during the final debate in the Sixth Committee that Article 12 represented the "key" or "pivot" of the package deal, or that Article 12 will prevent the Convention from "being used against the struggle for self-determination," could not be taken to mean, therefore, that acts committed by national liberation movements were beyond its scope. They should rather be taken as expressions of the sincere desire to emphasize that the struggle for national self-determination is legitimate and that acts committed by national liberation movements are not to be identified with the performance of ordinary criminal (including terrorist)

acts." *[Underscorings supplied.]*

One commentator noted:

"Some of the organizations included in this section represent the internationally recognized opposition movements within countries where there is a civil war (e.g. Iran) or a war of national liberation (e.g. Sri Lanka). Under the U.N. charter and international treaties, the principle of self-determination provides that historically united groups of people (e.g. the Palestinians) have a right to determine their own form of government. In South Africa, for instance, the black majority was denied self-determination under the apartheid system. Today, there are many different ethnic national groups (like the Karenni in Burma, the Kurds in Iraq, the Kashmiris in Kashmir and the Tibetans in Tibet) who are denied self-determination in violation of international law.

"When armed resistance groups meet certain tests and follow the rules set out by the Geneva Conventions and other humanitarian (armed conflict) law, they are not considered terrorist organizations or mercenaries, but legitimate parties to a conflict. Therefore, like the African National Congress in South Africa during apartheid, they have recognized legal status, granting them specific rights, such as to be treated as prisoners of war if apprehended (i.e. not subject to criminal proceedings for shooting a soldier or for treason). *[Underscorings supplied.]*

Pangalangan et. al. , on the other hand, expounded on their critical view of the traditional concept on national liberation movements:

"Revolutionaries, vanquished, are outlaws; victorious, they are the state. The orthodox framework in interpreting the international legal consequences of revolution hinges upon one determinant factor: the extent of effective control by parties to the conflict, as ascertained on a geo-military scale. Upon this factual determination rests the resolution to key juridical issues – the status to be conferred upon the rebels, i.e. whether they are mobs in a leve'e en masse, insurgents, or full-fledged belligerents; the rights and obligations arising therefrom; and the liability of the rebels, and conversely, the extent of state responsibility, for injuries caused by the conduct of hostilities. Success, in this case, is rebellion's sole justification. Of war, to paraphrase Seneca, the law asks the outcome, not the cause.

"The chief flaw of this framework is that while the world community has evolved international legal safeguards to minimize the human costs of armed conflict *[referring to international humanitarian law on human rights and on armed conflicts]*, international law itself – by its stubborn insistence on the strict categorizing of rebel groups based primarily on their effective strength – has precluded the application of these legal restraints in those cases where they are needed most, i.e. in internal armed conflicts, where there is an appalling asymmetry between the protagonists in terms of men, organization and firepower."

"For unless the rebels have attained the requisite degree of success, international law is deemed inapplicable, deferring to the presumptive primacy of the domestic jurisdiction of the sovereign state. Until then, therefore, the rebels are subject to the impunity of a fevered state whose national security so-called is gravely threatened. Thus, international law comes to the rebel's succor precisely when those rebels are strong enough to demand that it do so. Law, as always, is on the side of the heaviest battalions."

Pangalangan et. al. sought to ascertain the legal mode by which international legal protection can be made applicable to erstwhile internal armed conflicts. They focused on the development of the concept of the national liberation movement and contended that they have a privileged status under international law.

"Hence, a rebel group thus classified may be entitled to *locus standi* as an international person regardless of its geo-military standing. That insurrectionary movement is at once placed under an entirely different regime of law. It may enjoy the benefits of international humanitarian protection as a matter of right, and not merely at the forbearance of the established government. It shall furthermore be freed of the handicaps inherent in the application of domestic jurisdiction, under which a liberation movement is presumed to be criminal and subversive, unless it otherwise proves to be ultimately successful. " *[Underscorings supplied.]*

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"The international status of a national liberation movement, therefore, springs not from a geo-military capacity to assume responsibility for its obligations to the international community; it is based upon a people's inherent eligibility to enjoy an international right, i.e. self-determination, and to demand of the world community that it respects that right."

"To the criticism that the national liberation framework is but an ideology in legal garb, suffice it to say –

> (T)hat no political system has an a priori absolute and universal validity, that liberal capitalism just as authoritarian capitalism or socialism in all its different forms, may well be detested by some and preferred by others; that the right of peoples to self-determination is not linked to any pre-determined system; that freedom has many meanings, and each people has the exclusive right to decide which meaning they will give it....' *[quoting Chaumont, A critical Study of American Intervention in Vietnam in 2 Falk, The Vietnam War and International Law, 125-157 (1969) at 149.]*

In an excerpt from **Responding to Terrorism: Challenges for Democracy** (August 2002, Choices for the 21st Century Education Program, [Watson Institute for International Studies, Brown University], the following view was espoused:

"Throughout history, the world has known political violence and war. For centuries political and religious thinkers from many traditions have wrestled with two key questions. When is the use of force acceptable? What principles govern how force that may be used? These two questions are central to something known as "just war" theory.

"These two questions and the concepts of just war theory may also be useful in considering terrorism. In past debates about terrorism, some have suggested that one person's terrorist is another's freedom fighter. Are these terms merely labels that have to do with whether one agrees or disagrees with the cause? Or is the distinction based on more concrete and objective grounds?

"Today, just war theory underlies much of accepted international law concerning the use of force by states. International law is explicit about when states may use force. For example, states may use force in self-defense against an armed attack. International law also addresses how force may be used. For example, force may not be used against non-combatants. Despite these laws and norms, there are those who oppose the use of violence under any circumstances. For example, this commitment to non-violence led Mohandas Gandhi to build a movement of national liberation in India organized around the practice of non-violent resistance.

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"After the Second World War, the use of violence in struggles for self-determination and national liberation fueled a new aspect of the debate on legitimate use of force-the differences between freedom fighters and terrorists. For example, newly independent Third World nations and Soviet bloc nations argued that any who fought against the colonial powers or the dominance of the West should be considered freedom fighters, while their opponents often labeled them terrorists.

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"...all liberation movements are described as terrorists by those who have reduced them to slavery. ...[The term] terrorist [can] hardly be held to persons who were denied the most elementary human rights, dignity, freedom and independence, and whose countries objected to foreign occupation." (UN Ambassador from Mauritania Moulaye el-Hassan)

"Critics countered that this argument was misleading because it failed to consider the issue in its entirety. What mattered was not the justness of the cause (something that would always be subject to debate) but the legitimacy of the methods used. The ends, they argued, could not be used to justify the means.

"By the late 1970s, significant portions of the international community (though not the United States) had decided to extend the protection of the Geneva Convention to include groups participating in armed struggle against colonial domination, alien occupation, or racist regimes; and to those exercising their right of self-determination. The significance of this change is that it seemed to extend legitimacy to the use of force by groups other than states.

"During the UN debates on terrorism, some argued that the methods of violence used by states can be morally reprehensible and a form a terrorism.

"...the methods of combat used by national liberation movements could not be declared illegal while the policy of terrorism unleashed against certain peoples [by the armed forces of established states] was declared legitimate." (Cuban Representative to the UN)

Cassesse explained that:

"International standards do not provide a clear-cut answer to every possible question, but there are borderline cases that may be open to differing solutions. For example, a faction opposing an indisputedly undemocratic government that denies the most elementary human rights, resorts to forms of terrorism, such as taking hostage members of the army or government to obtain by force, greater respect for human rights. Is this action at odds with the doctrine enshrined in such basic international instruments as the Universal Declaration of Human Rights, the Covenant, and article 3 common to the 1949 Conventions? The contention could be made that the action might be considered legitimate as long as certain strict requirements are fulfilled: the incumbent authorities are unquestionably oppressive and do not leave any room for democratic change; the sole purpose of the "terrorist" action is to achieve some degree of freedom; no innocent civilian is among the victims; and no inhumane or degrading treatment is meted out to the people attacked.

"In summary, international standards of a universal character usually do not allow or condone terrorism, notwithstanding the motivation or ideological matrix of its origin. Rebellion against tyranny and oppression is allowed as a last resort, whether it is a struggle for national liberation or a rebellion against an authoritarian nondemocratic government that allows no form of democratic change. Neither freedom fighters nor rebels, however, are permitted to resort to terrorism." *[Underscoring supplied.]*

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"In conclusion, I present three basic propositions. First, international standards on human rights permit rebellion on two conditions: the target of the rebellious acts must be an authoritarian government that is denying basic human rights, and no democratic and peaceful means of change are available. International standards on human rights, as well as humanitarian law, do not allow rebels to deprive innocent people of their human rights. Even in cases where the goal of the political and military struggle is expressly regarded as legitimate by the international community, such as in wars of national liberation, resorting to terrorist methods is not permitted. x x x x"

Greene had this to say:

"Instead of endeavoring to define terrorism yet again, however, this article proposes an analytical framework for evaluating both private and public political violence under international law. The proposed framework sets forth a method for determining when, and under what conditions, political violence constitutes impermissible conduct or "terrorism"
Under the analytical framework presented, impermissible political violence consists of acts committed by government or private actors who violate fundamental human rights without justification or excuse. Terrorism, therefore, is committed by use of impermissible methods, reliance on impermissible motivations, or attacks on impermissible targets. This framework, unlike those previously proposed, applies to violence undertaken by states as well as by private actors." *[Underscorings supplied.]*

xxx

"For their part, the governments of the democratic capitalist nations, led by the United States, have generally rejected the notion that the political context of anticolonial or revolutionary situations should comprise a factor in determining the contours of terrorism. In

addition, these governments have accused Third World and communist states of fomenting terrorism. However, in marked contradiction to their espoused "antiterrorist" rhetoric, a number of democratic capitalist states have provided material aid or moral support to private actors or states that engage in impermissible acts of violence x x x x" [Underscoring supplied.]

x x x

"The proposed framework that determines the permissibility of political violence has three components. First, the framework identifies methods, motives, and targets of violence which are inherently violative of human rights. "Inherently violative" in this context means that which all humane and principled parties to a conflict agree comprises crimes against humanity that even political objectives linked to fundamental human rights can never justify.

"Second, the proposed framework outlines the circumstances in which actors can justifiably resort to violence in the first instance. International norms restrict states in their first use of violence as a means to resolve grievances; no less should be required of private actors.

"Third, the framework provides standards that identify compelling reasons that justify recourse to political violence. The standards outlined in the framework limit initial recourse to violence, provide viable standards of conduct once violent conflict begins, and require an examination of underlying political grievances.
However, before establishing procedural and substantive requirements for justifiable recourse to violence, the international community must first establish categories of *per se* impermissible conduct and provide harsh and certain criminal penalties for these violations. This category of *per se* impermissible conduct would preclude certain acts regardless of the political motivation of the actor, the political context of the violence, or the actor's state or private status. Violators of *per se* impermissible acts would, by definition, receive international approbation as unprincipled and inhumane. x x x x"
International law identifies three acts or methods about which humane and principled regimes and private actors agree deserve universal condemnation and criminal sanctions.

Schubert clarified:

"In short, anti-colonial and anti-racist liberation struggles are legally equivalent to war (read: international armed conflicts), likewise guerrillas are equal to soldiers in such conflicts. It is irrelevant whether or not the (colonial or racist) state accepts this. Declarations of war are equally irrelevant.

"Neither the Geneva Conventions nor the additional Protocols make use of the term "terrorism" to exclude certain groups from the humanitarian rights of people in war. The only preconditions - stated in Art. 4 of the Third Geneva Convention - are a certain degree of regulated means of struggle and compliance with the rules of war (Art. 4A/2d of the Third Convention). It goes without saying that such rules of war include attacks on the enemy's instruments of war or the killing of enemy combatants x x x x"

x x x

"Criminal law not only has the ability to make members of a party in the civil war "criminals", it can also punish them on a moral level by not seeing them as opponents in a war but rather as morally inferior criminals. Both of these are means of criminalizing political opponents. (in: Politische Prozesse ohne Verteidigung, Berlin 1975, p.18)"

x x x

In **the "Geneva Declaration On Terrorism" of March 21, 1987** which was issued at the end of the conference of the International Progress Organization (IPO), the following comments are edifying:

> The peoples of the world find themselves in countless struggles for a just and peaceful world, based on fundamental rights, which must be seen in the context of a whole series of broadly supported international conventions.

As for present-day confrontations:

> Against this background of suffering and struggle, the international debate in the media and elsewhere concerning terrorism is being distorted and manipulated by the ruling powers: The public are mislead into thinking that terrorism is solely carried out by victims of the system. We would like to make it clear that terrorism is almost always an expression of the ruling structures and has little to do with legitimate resistance struggles. The trademark of terrorism is fear and this fear is stimulated in the population through horrifying forms of violence. The worst form of international terrorism is the preparation for nuclear war, in particular the expansion of this arms race into outer space, as well as the development of first-strike weapons. Terrorism includes state-organized holocausts against the people of the world. The terrorism of modern states and their high-technology weapons is far worse than the political violence practiced by groups who want to end oppression and live in freedom. (*From the "Geneva Declaration On Terrorism", 21.3.1987, translated from Janssen and Schubert, Staatssicherheit, p.187ff.; the first people to sign this declaration were Nobel Prize winner and former Irish Foreign Minister Sean MacBride, former U.S. Justice Secretary Ramsey Clark, Dr. Johann Galtung, peace researcher at Princeton University, and Dr. Richard Falk, also of Princeton University)" [Underscoring supplied.]*

"This definition of terrorism is an accurate one and is fully in line with the criteria of the rights of people in war. The humanitarian rights of people in war forbids the use of violence against uninvolved civilians with the aim of spreading fear. Of course, it is impossible to deny that some political targets are attacked with violence during liberation struggles, thus spreading fear among uninvolved persons - hijacking airliners,
for example - but this does not contradict the fact that guerrilla attacks against persons and objects connected to the colonialist war machine carried out in armed independence struggles against colonialism are in full accordance with contemporary rules of war.

xxx

"We shouldn't confuse the question of the legitimacy of armed operations by guerrillas in an anti-colonial independence struggle under international law with a moral question or with the question of their use of effectiveness. According to the Geneva Declaration On Terrorism:

> To say this more clearly: We recommend that non-violent resistance be used whenever possible, and we respect the genuine efforts made by the liberation movements in South Africa and elsewhere to avoid the use of violence as much as possible in their struggle for justice. We condemn all methods of struggle which inflict violence on innocent civilians. We don't want terrorism, but we must emphasize that the terrorism of nuclear weapons, criminal regimes, state atrocities, attacks with high-technology weapons on Third World peoples, and the systematic violation of human rights are far, far worse. **It is a cruel extension of the scourge of terrorism to classify the struggle against terrorism as "terrorism". We support these struggles and we call for clear political terminology together with the liberation of humanity.** *[Underscorings supplied.]*

Lastly, as applied to the concrete situation of the National Democratic Front, the Communist Party of the Philippines, the New People's Army and its alleged members and leaders, it will be significant to take note at this juncture what the International Association of People's Lawyers (IAPL) - an international formation of human rights lawyers, law students, paralegals and legal workers from India, Turkey, the Philippines, Colombia, the Netherlands, Belgium, Afghanistan, Nepal, Greece, Mexico established in December 2000, with observers from Germany, United Kingdom, Spain and Cuba - had taken on the subject of this instant legal query on 13 October

2002 in its Resolution On the Designation by the US and Dutch Governments of CPP/NPA and Prof. Jose Maria Sison as Terrorists:

> To our knowledge and information, the CPP and NPA are highly responsible and principled political organizations fighting for national liberation and democracy in the Philippines.
>
> They recognize, adhere and conform to international instruments and standards of human rights and international humanitarian law. The CPP and NPA together with 15 other organizations are represented by the National Democratic Front of the Philippines (NDFP) in peace negotiation with the Government of the Republic of the Philippines (GRP) since 1992
>
> These negotiations have been facilitated by the Netherlands, Belgium and Norway and endorsed by the European Parliament. These negotiations have so far produced ten agreements the most important of which is the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law. These peace negotiations are now placed in jeopardy as a result of the designation of the CPP and NPA and Prof. Jose Maria Sison (who is the Chief Political Consultant of the NDFP panel in the peace negotiations) as "terrorists".
>
> x x x
>
> Furthermore, the IAPL commits itself to expose and oppose the ideological and political offensive of reactionary governments all over the world to denigrate as "terrorists" liberation movements and political organizations with valid and legitimate causes.

II. THE NDFP DECLARATION OF JULY 1996 AND ITS POSITION ON ITS STATUS IN INTERNATIONAL LAW

From all the foregoing thus far, a proper appreciation on the status of the national liberation movement in the Philippines can be undertaken.

On 6 July 1996, the NDFP issued its Declaration of Undertaking to Apply the Geneva Conventions and Protocol 1. According to its text, said Undertaking was made on the following premises:

> a. "The NDFP is the political authority representing the Filipino people and organized political forces that are waging an armed revolutionary struggle for national liberation and democracy, in the exercise of the right of self-determination x x x against the persistent factors and elements of colonial domination and against national oppression, including chauvinism and racism, victimizing the entire Filipino nation and particular minorities in the Philippines."
>
> b. "The persistent foreign domination and national oppression are carried through the GRP as a puppet government in the service of the United States government, which controls and uses it x x x perpetuating in essence the factors of US colonial domination over the Philippine economy, politics, security and culture."
>
> c. "Since the beginning of the civil war, the GRP has in one essential respect maintained the character of the armed conflict as an internationalized internal conflict through subservience to US domination and GRP dependence on US military and other forms of intervention and assistance in the armed conflict. x x x x "
>
> d. The revolutionary forces of the Filipino people consist of:
>
> I. The allied revolutionary organizations of the NDFP which are the consolidation of the revolutionary mass base running into millions in rural and urban areas;
>
> ii. The organs of political power duly constituted under a basic law and established in a significant portion of territory in the Philippines;

iii. The CPP as the ruling party in said organs of political power and the leading party in the NDFP; and

iv. The NPA as main armed force and which is under an effective and responsible command and exercises such control over a significant portion of territory in the Philippines as to be able to carry out sustained and concerted military operations and to implement the Geneva Conventions and its Protocols.

e. The abovementioned revolutionary forces have been engaged in a civil war for a protracted period of time against the GRP, a High Contracting Party to the Geneva Conventions and Protocol II.

f. "The consistent pattern of gross and systematic violation of the Filipino people's civil, political, economic, social and cultural human rights is tantamount to a denial of their sovereign right to freely determine and realize their just aspirations. x x x x "

g. "The aforesaid people and forces have established and developed a political organization that has sufficient governmental character. This political organization has sufficient control over a substantial area, population and resources in the Philippine archipelago. If said political organization were left to itself, it has the capability of reasonably and effectively discharging the duties of a state. x x x x"

h. "It has deployed the New People's Army in accordance with the civilized rules of warfare and has informed and trained it accordingly. Even before this declaration, it has complied with the rules of war under international law. It has consciously followed international humanitarian law x x x and is now resolved to assume in good faith rights and responsibilities under the Geneva Conventions and Protocol I. x x x x" *[Underscorings supplied.]*

Consequently, the NDFP had declared:

"The NDFP undertakes to respect the provisions of the four Geneva Conventions of 1949 and Protocol I of 1977, regarding the conduct of hostilities and the protection of the civilian population and the combatants hors de combat in the armed conflict with the GRP and to regard its obligations under the aforesaid instruments of international humanitarian law as having the force of law among its forces and in the areas under its control." *[page 6; Underscorings supplied.]*

It even went further to publicly announce that:

"The NDFP and the forces it herein represents accept the principle of command responsibility for the system of discipline to ensure respect for the rules of international humanitarian law and punish those who break them." *[Underscorings supplied.]*

The aforequoted statements more than speak for themselves. Suffice it to say here that they are consistent with the NDFP's public stand that it is ready, willing and able to abide, as it is already been abiding, by the rules and standards of international humanitarian law in the conduct of its just war.

The point of contention that must be addressed is whether the NDFP has any legal justification to avail of the subject provisions of Protocol 1, i.e. Article 96 (3) in relation to Article 1 (4).

In the "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949" published in 1987 by the International Committee of the Red Cross (ICRC), the following relevant observations by Bruno Zimmermann, legal adviser to the ICRC, appear:

a. The right of peoples to self-determination is the right to "freely determine their political status and freely pursue their economic, social and cultural development." (International Covenants on Human Rights)

b. The idea that a national liberation movement must be recognized by the regional intergovernmental organization concerned for paragraph 4, Article 1 to apply was advanced but was not adopted. (p. 53)

c. There are two requirements for paragraph 4 to apply:

i. there must be an armed conflict in which a people is struggling against colonial domination, alien occupation or a racist regime; and

ii. the struggle of that people must be in order to exercise its right to self-determination. (pp. 54-55)

d. The word "include" in Article 1 (4) prefacing the phrase "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination" should be interpreted as introducing an exhaustive list of cases which are considered to be part of the situations covered. "It our opinion, it must be concluded that the list is exhaustive and complete ; it certainly covers all cases in which a people, in order to exercise its right of self-determination, must resort to the use of armed force against the interference of another people, or against a racist regime. On the other hand, it does not include cases in which, without one of these elements, a people takes up arms against authorities which it contests, as such a situation is not considered to be international." (p.54-55)

e. "Colonial domination" contemplates a situation where a people has had to take up arms to free itself from the domination of another people. "Alien occupation", as distinct from belligerent occupation in the traditional sense of all or part of the territory of one State being occupied by another State, covers cases of partial or total occupation of a territory which has not yet been fully formed as a State. "Racist regimes" covers cases of regimes founded on racist criteria. (p. 54)

f. According to the Conventions and Protocol 1, the only real requirements for the correct application of the law when persons in such an armed conflict are protected persons within the meaning of these instruments are:

i. an authority representing the people engaged in the struggle; and

ii. an organized structure of its armed forces, including a responsible command, in accordance with the requirements of Article 43 (Armed forces). (p.55)

g. Article 96 of Protocol 1 contains an "ad hoc mechanism" by which an authority representing a people engaged in a struggle may make an undertaking. (p. 55)

h. "One thing is certain: the characteristics of a conflict, especially its intensity or its length, may justify the application of the Conventions and of the Protocol [1] as a whole, or part of these instruments, but this is merely a question of common sense, which also applies to any conflict between States. x x x As regards the crucial question of the inevitable disputes regarding the qualification of a specific conflict, one must assume that the Parties concerned will carry out their obligations in good faith, and count on the positive influence of all the High Contracting Parties." (p. 56)

i. Armed conflicts for self-determination are conflicts of an international character. (p. 1088)

j. the following conditions must be present for Article 96 (3) of Protocol 1 to apply:

i. there must be an armed conflict involving the enumerated situations in Article 1 (4);

ii the armed conflict must be between a people fighting for self-determination and a Party to the Protocol [1];

iii. there must be a declaration addressed to the depositary; and

iv. the declaration must come from an authority representing the people engaged in the conflict concerned. (pp. 1088-1089)

k. The subject declaration is unilateral since it produces its effects irrespective of the conduct of the Contracting Party. On the other hand, it does not create merely unilateral obligations, it brings into force rights and duties between the two Parties to the conflict which flow from the Conventions and the Protocol [1] and it does so because of the fact that the Contracting Party against which the fight is directed had previously become a Party to the Protocol [1]. (p. 1089)

l. The declaration is a condition for the effects of Article 96 to apply: "the status recognized to liberation movements indeed gives them, as it gives States, the right to choose whether or not to submit to international humanitarian law, insofar as it goes beyond customary law. In this respect they are in a fundamentally different legal position from insurgents in a non-international armed conflict: if the State in whose territory such a conflict takes place is a Party to the Conventions and to Protocol II, Article 3 common to the Conventions and, as the case may be, Protocol II, will bind all the Parties to that armed conflict straightaway." (pp. 1089-1090)

m. The declaration laid down in Article 96 (3) "is only possible if an armed conflict is conducted against a Party to the Protocol [1]. (p. 1091)

[Zimmermann's analysis on the possibilities in case of an armed conflict within the meaning of Article 1 (4) is conducted against a Party not bound by the Protocol 1 had been discussed above.]

Measured against these views, is there any legal basis or justification for the subject NDFP Declaration? There seems to be no dispute that the present armed conflict is in the exercise of the right of self-determination even as conventionally defined.

The question is whether it is directed among the types of struggles contemplated by the subject provisions of Protocol 1(4). The conservative view espoused by the commissioned writer of the ICRC takes the position that "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination" is an exhaustive and complete listing. The opinion proffered that "it does not include cases in which, without one of these elements, a people takes up arms against authorities which it contests, as such a situation is not considered to be international" apparently militates against the NDFP's Declaration. Worse, the three types of struggles are restrictively and conservatively construed. However, the NDFP, has rightfully construed it more expansively in keeping with the progressive trend among liberation movements and a substantial number of States in the international community.

Having said all these, the opinion of the ICRC writer provides positive justifications for the NDFP Declaration, when the former categorically admitted that "the characteristics of a conflict, especially its intensity or its length, may justify the application of the Conventions and of the Protocol [1] as a whole, or part of these instruments, but this is merely a question of common sense." Further, " as regards the crucial question of the inevitable disputes regarding the qualification of a specific conflict, one must assume that the Parties concerned will carry out their obligations in good faith."

It should be remembered that the GRP is a signatory and has ratified the Geneva Conventions on 6 October 1952 and has acceded to Protocol 2 on 11 December 1986, both without any reservations. It has yet to accede to Protocol 1.

Incidentally, "a treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been endorsed by ratification. The time limits having elapsed, the Conventions and the Protocols are no longer open for signature. The States which have not signed them may at any time accede, or in the appropriate circumstances, succeed to them. Thus, instead of signing and ratifying a treaty, a State may become party to it by the single act called accession." (ICRC, March-

April 1996, p. 248)

Consequently, the final remaining issue is whether the subject NDFP Declaration can be invoked against the GRP who has yet to accede to Protocol 1 at the time the said Declaration was made. The categorical interpretation of Zimmermann is that the armed conflict must be between a people fighting for self-determination and a Party to the Protocol 1. He advances the observation that the majority view is that "the route of acceptance of the Conventions in accordance with their common Article 2, paragraph 3, remains open to authorities representing peoples fighting for self-determination against a State which is a Party to only the Conventions. In the same case a declaration of acceptance of the Protocol [1] would only count as a unilateral undertaking of obligations in matters which are not covered by customary law."

At any rate then, even if the GRP is not yet a Party to Protocol 1, the NDFP Declaration arguably has legal justification inspire of the restrictive and legal interpretation by the aforequoted commissioned writer of the ICRC. In short, the ICRC writer's opinions would validate the moral, legal and political soundness of the NDFP Declaration even if the applicability of all the effects of the subject provisions of Protocol 1 are not beyond question by virtue of the fact that the GRP is not a signatory to Protocol 1.

One way or the other, it must be borne in mind, however, that this Commentary, although published and sanctioned by the ICRC, is not a document representing an official interpretation by the ICRC of IHL. In fact, the ICRC is merely a guardian of IHL. Nonetheless, it has a very strong, though not binding and final, persuasive value. Thus, Alexandre Hay, then President of the ICRC, admitted in his Foreword to the said Commentary so much:

> However, the ICRC also allowed the authors their academic freedom, considering the Commentary above all as a scholarly work, and not as a work intended to disseminate the views of the ICRC." *[Underscoring supplied.]*

On the other hand, the records of the deliberations of the proceedings indicate the following relevant points:

a. The overwhelming vast majority of States, mostly "third world countries," agreed in Article 1 of Protocol 1 that wars of national liberation are of an international character and has been accepted in United Nations resolutions as such because of their right to self-determination.

b. The debates show, however, that "colonial domination," "alien occupation," and "racist regimes" originally referred to situations involving a foreign power or racist regimes in the process of decolonization.

c. There is a view (espoused by Australia) that the three categories of armed conflicts are not exhaustive and the subject provisions are applicable to other struggles for as long as they are in the exercise of the right to self-determination, including for instance a struggle against exploitation. (p.63)

d. There seems to be a general understanding that the subject three categories of armed conflicts are both treated separately and independently.

e. There are views that national liberation movements should have a high level of intensity to qualify as an international armed conflict.

f. Most of the States which abstained in the vote on the subject Article 1(4) of Protocol 1 expressed concern that the said three categories of armed conflicts are not susceptible to objective, legal criteria and can lend themselves to "arbitrary, subjective and politically-motivated interpretation and application."

g. A few of the States (e.g. Turkey, Indonesia) qualified their assent to Article 1 (4) by the requirement that there must be a recognition by the respective regional intergovernmental organizations e.g. Organization of African Unity and the League of Arab States. (Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva,

1974-77.)

Furthermore, the views of the authorities on international humanitarian law are divergent. A general survey of the landscape would reveal the following relevant and differing interpretations on the subject provisions of Protocol 1.

a. Wars of national liberation are mainly in the framework of the decolonization process. The subject three categories of armed conflict are limited in scope to the same. Article 96 (3) will apply only if the State against which the war is being waged is itself a Party to Protocol 1 and the Geneva Conventions. (Kalshoven)

b. The subject three categories of armed conflict are only three subtypes of such conflicts. However, "colonial domination" contemplates a situation where a colonial power denies the people of a dependent territory of their right of self-determination through colonization. Protocol 1 and the Geneva Conventions may be brought into force only if the "State" which is the adversary in a war of national liberation is a Party to Protocol 1. If the said State is a Party only to the Geneva Conventions, then there is no conventional obligation to apply the latter to national liberation movements. (Richard B. Baxter, RDI, 1974, Vol. 57, pp. 193-203)

c. Emphasis should be made on the 5th preambular paragraph of Protocol 1 which states that:

"Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict."

Moreover, the subject three categories of armed conflict contemplate those similar to Portuguese rule, Israeli occupation and the South African apartheid state, respectively. However, current events may force a rethinking of the types of groups entitled to self-determination e.g. secession wars replace anti-colonial wars of the 1950s to '70s as national liberation struggles of the 1990s. (Kennedy)

d. The use of the conjunctive word "and" to preface the subject three types of armed conflict is only the result of poor drafting. (Guy B. Roberts, "The New Rules for Waging War: The Case Against Ratification of the Additional Protocol I, VJIL, 1985, vol. 26, pp. 109-170)

e. The subject provisions of Protocol 1 must include wars of self-determination by peoples gravely and systematically oppressed by authoritarian regimes even if said wars are not akin to the Portuguese, Israeli and South African models or experience. There is a possible objective criteria for their application. Also, from a strictly humanitarian standpoint, humanitarian rules must be extended as safeguards to human life.

Furthermore, the right to self-determination could include as qualifying criteria the existence of a consistent pattern of gross and reliably attested violations of human rights, amounting to a denial of the people's right to freely determine its internal and external political and economic status.

Finally, the basic nature of the Protocols is precisely the aim to protect combatants and war victims as far as possible from the scourge of war, i.e. to place as many restraints as possible on the power of the belligerents to inflict devastation. Whenever the contrary intention is not fully apparent from the origin of the provisions of the Protocols, a construction upholding the human spirit of these provisions should be preferred. This is in accord with Article 31 of the Vienna Convention of the Law of Treaties whereby a treaty is interpreted in the light of its object and purpose, otherwise known as the "principle of effective implementation." (Antonio Cassese, Tentative Appraisal)

It would be seen that despite the lack of unanimity, there are enough progressive interpretations of the subject provisions that would support the decision of the NDFP to invoke and assume the rights and obligations of Protocol 1 and the Geneva Conventions through this novel approach.

Finally, significant inputs were informally provided by Dr. Francois Rigaux of the Faculty of International Law of the University of Louvaine de la Neuve in Belgium on 2 July 1996. While Dr. Rigaux expressed initially the reservation that the present armed struggle being waged by the NDFP and the revolutionary forces cannot legally be considered as a movement against colonial domination in its traditional meaning purportedly because there are other pervasive US influence in other countries anyway, he categorically stated that the NDFP Declaration will raise its moral and political standing. He said that if may enhance the NDFP's claim to a status of belligerency but legally, it does not change anything. He furthermore concluded that at any rate, the Swiss Federal Council as official depositary has ministerial duties in respect to such Declaration and can neither refuse receipt or acknowledgment of the receipt therefor nor entertain objections and make a ruling thereon.

[Pls. refer also to the opinion of Prof. Eric David of the Institute of Sociology of the Free University of Brussels on or about 27 August 1996.]

In sum then, there are enough legal justifications for the NDFP Declaration, namely:

a. The situations referred to in Article 1 (4) of Protocol 1 need not be exhaustive or exclusive as to definitively foreclose the application of other non-traditionally defined armed conflicts in the exercise of a people of their right of self-determination.

b. The intent of Protocol 1 is to fully apply the provisions of the Geneva Conventions and Protocol 1 in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict.

c. The right of self-determination may be exercised if there is a consistent pattern of gross and proven violations of human rights amounting to a denial of the people's right to freely determine its internal and external political and economic status.

d. The principle of effective implementation i.e. a treaty is interpreted in the light of its object and purpose, in the law on treaties favor as far as possible the upholding of the human spirit of the provisions of the Geneva Conventions and Protocol 1.

e. The operative condition in the application of the subject provisions is the justifiability of the right of self-determination.

f. The principles and resolutions of the United Nations as well as the history and development of international humanitarian law unanimously show that the intention is to bring in liberation movements within the ambit of IHL.

Notwithstanding this legal question, what is certain is that:

> The status recognized to liberation movements indeed gives them, as it gives States, the right to choose whether or not to submit to international humanitarian law, insofar as it goes beyond customary law. In this respect they are in a fundamentally different legal position from insurgents in a non-international armed conflict: if the State in whose territory such a conflict takes place is a Party to the Conventions and to Protocol II, Article 3 common to the Conventions and, as the case may be, Protocol II, will bind all the Parties to that armed conflict straightaway." (Commentary, pp. 1089-1090) *[Underscorings supplied.]*

In sum, reliance can be also taken from the firm and categorical public pronouncement of the NDFP Negotiating Panel through its Chairperson, Luis G. Jalandoni, on the issue of its standing in international law: (Press Release, 3 September 2002: Why the CPP and NPA are Not terrorist Organizations, Utrecht, Netherlands):

We, the panel of the National Democratic Front of the Philippines (NDFP) negotiating with the Government of the Republic of the Philippines (GRP), wish to inform the public in the Netherlands and the whole of Europe that the Communist Party of the Philippines (CPP) and the New People's Army (NPA) are not terrorist organizations, contrary to the claims of the US government.

The CPP and NPA are highly responsible political organizations. They are major allied organizations within the NDFP, which so far the US government has not designated as "terrorist" organization. They are revolutionary organizations fighting for national liberation and democracy against US imperialism and the local exploiting classes in the Philippines. In extensive areas of the country, they undertake programs of mass mobilization, public education and literacy, health and sanitation, land reform, raising production, self-defense, cultural activities and so on.

The CPP has been guided by the Program for a People's Democratic Revolution since 1968. And the NPA is bound clearly by the Rules of the New People's Army, including strict rules of discipline. All the revolutionary forces represented by the NDFP, including the CPP and NPA, are bound by the Bill of Rights in the Guide for Establishing the People's Democratic Government, which serves as the constitution of the provisional revolutionary government.

Under international law, the NDFP and all the organizations within its fold have assumed responsibilities for upholding human rights and humanitarian law by depositing with the Swiss Federal Council on 5 July 1996 the NDFP National Council Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of l977.

The NDFP, including the CPP and NPA, has been engaged in peace negotiations with the GRP in Europe since 1992, with the governments of The Netherlands, Belgium and Norway acting at various times as facilitators. These peace negotiations are still in progress under the facilitation of the Norwegian government but are now threatened and assailed by the US in trying to carry out a witch-hunt for "terrorists" within the ranks of the NDFP.

In 1997 and 1999, the European Parliament approved resolutions dealing fairly and even-handedly with the GRP and NDFP as political entities in order to endorse, encourage and support their peace negotiations. Attached hereto are said resolutions, EP Resolution No. B4-0601, 0645 and 0686/97 dated 17 July 1997 and EP Resolution no. B-4, 1096, 1106, 1147, 1158 and 1160/98 dated 14 January 1999.

In the course of the GRP-NDFP peace negotiations, the principals of the GRP and NDFP negotiating panels have mutually approved a series of ten agreements, including the GRP-NDFP Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) in 1998. The GRP and the NDFP have thereby bound themselves to comply with the principles and standards of respect for human rights and humanitarian conduct in the civil war in the Philippines. Both sides in the armed conflict are required to prevent, avoid and combat acts of terrorism against the civilian population and the hors de combat.

Since their respective founding days in 1968 and 1969, the CPP and NPA have been dedicated to uphold, defend and advance the national and democratic rights and interests of the people. In this connection, as a matter of revolutionary principle and practice, they are necessarily against terrorism. It is of decisive importance that they maintain and develop the participation and support of the people in the revolution and that they use their limited weapons judiciously and precisely against the enemies of the people.

In stark contrast to the CPP, NPA and other revolutionary forces, the GRP and all its armed forces like the AFP, PNP, CAFGU, deputized private armies and death

squads commit gross human rights violations on a wide scale against the people, especially the workers and peasants. The records of Amnesty International and other human rights organizations show such rampant human rights violations under the auspices of state terrorism, overshadowing the claims of the GRP against the CPP and NPA.

The aforementioned armed forces use bombs from airplanes, artillery fire, flame-throwers and strafing by rifle fire to attack communities and force them to evacuate. They kill upon sight the leaders and active members of legal mass organizations. They torture and murder suspected revolutionaries and those they capture from the battlefield. In contrast, the NPA applies a lenient policy towards its captives, sharing food with them, giving medical care to the sick and wounded and voluntarily releasing ordinary enemy soldiers in good condition.

After negotiations with the GRP, the NDFP has caused the release of ranking prisoners of war from the custody of the NPA to the representatives of the International Committee of the Red Cross (ICRC) who in turn pass on the released prisoners to responsible GRP officials and families. The whole world knows how the NPA has been able to capture enemy officers, from the rank of general to sergeants, and released them, with no other consideration but the reciprocal release of political prisoners held by the GRP.

In the GRP-NDFP peace negotiations, the NDFP has been the more resolute and vigorous side in demanding the forging and implementation of CARHRIHL. To this day, the NDFP insists that the Joint Monitoring Committee be formed immediately under CARHRIHL in order to have a channel for complaints on alleged violations of CARHRIHL by any side so that the separate and joint implementation of CARHRIHL can become more effective. The Joint Monitoring Committee is provided for by the CARHRIHL as the instrument for preventing, investigating and taking action against human rights violations and acts of terrorism.

If they were to follow subserviently the US government in designating the CPP and NPA as "terrorist" organizations, criminalizing them and taking punitive actions against those suspected of being connected to such organizations, the European Union and particular European governments are liable to run counter to the above-cited 1997 and 1999 resolutions of the European parliament, destroy the GRP-NDFP peace negotiations, prejudice all the ten agreements already forged in these negotiations and extend the witch-hunt for "terrorists" beyond the CPP and NPA.

In fact, our chief political consultant Prof. Jose Maria Sison, who is a recognized political refugee under the protection of the Refugee Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms (EVRM), is already being condemned and assailed as a "terrorist" and is being subjected to punitive actions, including the freezing of his small personal bank account.

The hysterical "anti-terrorist" official pronouncements and actions of US and European governments as well as the mass media campaign against the CPP, NPA and Prof. Sison are destroying the GRP-NDFP peace negotiations and inflaming the civil war in the Philippines. In fact and in effect, the US is already misrepresenting the NDFP and all the panelists, consultants and staffers of the NDFP negotiating panel as "terrorists".

The vile propaganda in the so-called conservative mass media is that there are thirty "terrorists" in Utrecht, Netherlands. Such demonization of so many Filipinos is a preparation for further attacks. It is only a matter of time that the US will malign the NDFP as a "terrorist" organization.

Under the pretext of anti-terrorism, the US is whipping up the repressive and fascist principles of preemptive punishment, guilt by association, executive action

in lieu of judicial process and the like. The GRP-NDFP peace negotiations are doomed if the European governments follow the state terrorism and fascism that the U.S. is spreading globally.

We, the undersigned NDFP negotiating panel, urge the broad masses of the people and all just and reasonable forces to appeal to the European Union and particular European governments to respect the democratic rights of the overseas Filipinos, especially the Filipino progressives who are desirous of national liberation and democracy for the Filipino people, and to cease and desist from witch-hunting our panelists, consultants, staffers and supporters and from intimidating entire Filipino communities.

III. IMPLICATIONS OF THE PEACE NEGOTIATIONS BETWEEN THE GRP AND THE NDFP

In addition to all the above, it will be instructive to refer to the other official pronouncements of the National Democratic Front in regard to its adherence to international humanitarian law, its own rules of discipline, and the implications of the peace negotiations with the Government of the Republic of the Philippines (GRP) and the documents so far reached with it.

A revisit of an analysis of the latter, particularly on the pertinent provisions of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) of 16 March 1998 on the recognition and application of international humanitarian law and the attributes of the GRP and the NDFP may be instructive.

Initially, pertinent excerpts from the "Comparative Analysis of 5 August 1997 Common Tentative Draft and 16 March 1998 Comprehensive Agreement on Respect for HR & IHL - A Proposed basis for a Basic Study Guide on the CARHRIHL (31 March 1998; Legal Consultant for HR & IHL, NDFP Negotiating Panel) may be considered:

> THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, including the executive department and its agencies, hereinafter referred to as the GRP AND THE NATIONAL DEMOCRATIC FRONT OF THE PHILIPPINES, including the Communist Party of the Philippines (CPP) and the New People's Army (NPA), hereinafter referred to as the NDFP Hereinafter referred to as "the Parties",

The present formulation emphasizes the continuing force and binding effect of the Agreement between the successors of the Parties. It is also an express recognition in writing of the existence of a separate and distinct responsible political authority or command and a separate armed force other than those of the GRP's.

As used in the Agreement, the term "the Parties" therefore not only collectively refers to the present GRP and the NDFP but also to its rightful successors. More significantly, the use of the term "the Parties" in any part of the Agreement implies that, as far as the NDFP is concerned, it necessarily includes the CPP as a separate and distinct political authority and the NPA as its separate army.

PREAMBLE

> ACKNOWLEDGING that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and the principles of international humanitarian law,

It expresses in no uncertain terms of the acknowledgment of: (a) the present protracted people's war ("prolonged armed conflict') and (b) the imperative to apply HR&IHL to such conflict.

> REALIZING the necessity and significance of assuming separate duties and responsibilities for upholding, protecting and promoting the principles of human rights and the principles of international humanitarian law,

It acknowledges the fact that the Parties are assuming separate duties and responsibilities with respect to the application, promotion and protection of HR&IHL. For the NDFP, it may be argued that this is an implicit recognition on paper by the GRP that the former has a separate political authority and organs of political power and has its own principles and organizational structure as embodied in its 12-Point Program, Constitution and Guide for Establishing the People's Democratic Government (hereinafter, "NDFP Guide"). It also implies that it has its own constituency and that it is capable and ready to assume and be bound by such duties and responsibilities through its responsible political command and authority.

DECLARATION OF PRINCIPLES

Article 2
The Parties uphold the principles of mutuality and reciprocity in the conduct of the peace negotiations in accordance with The Hague Joint Declaration. The Parties likewise affirm the need to assume separate duties and responsibilities in accordance with the letter and intent of this Agreement.

The present provision is a reiteration of paragraph 6 of the Preamble (Assumption of separate duties and responsibilities. The letter and intent of this Agreement reveal that the NDFP in particular has its own political and organizational principles and circumstances. In fact, if we correlate this with other provisions of the Agreement, there are enough expressions of recognition of these circumstances, to wit:

a. paragraph 6, Preamble (Assumption of separate duties and responsibilities);

b. Article 6, Part I (Application of and faithful compliance with HR&IHL to armed conflict);

c. Article 3, Part II (Full scope of HR and consideration to respective principles and circumstances), particularly: "In complying with such obligation due consideration shall be accorded to the respective political principles and circumstances of the Parties."; and

d. Article 1, Part VI (Assumption of separate duties according to respective political principles etc.), particularly: "The Parties shall continue to assume separate duties and responsibilities . . . in accordance with their respective political principles, organizations and circumstances . . . . "

Article 6
The Parties are aware that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and the principles of international humanitarian law and the faithful compliance therewith by both Parties.

This is a reiteration of paragraph 4 of the Preamble (Necessity of application of HR&IHL to armed conflict). It further stresses not only the imperative to apply HR&IHL to the protracted people's war but also holding in writing the Parties (in particular the GRP) for their faithful compliance thereto. This is but consistent with the assumption of the NDFP of separate duties and responsibilities with respect to HR&IHL. At the same time, the use of the term "faithful" (i.e. substantial and not strict) gives enough latitude for the recognition of the distinct political principles and circumstances of the NDFP and the peculiarities of the nature and demands of its just war in respect to such compliance

Article 7
The Parties hereby forge this Agreement in order to affirm their constant and continuing mutual commitment to respect human rights and the principles of international humanitarian law and hereby recognize either Party's acts of good intention to be bound by and to comply with the principles of international humanitarian law.

This expresses in categorical terms not only the inherent right of the Parties (particularly the NDFP) to adhere, be bound and to comply with IHL but also recognizes such acts to do so for as long as the same are "acts of good intention."

In sum, this gives further legal and moral validity specifically to the NDFP's Adherence to Protocol II Additional to the 1949 Geneva Conventions made on 15 August 1991(hereinafter, "Adherence to Protocol II") and its Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977 made on 5 July 1996 (hereinafter, "Undertaking to Apply the Geneva Conventions and Protocol I) as well as other similar diplomatic, legal and international undertakings. In relation to the latter Undertaking, the NDFP in fact stated in paragraph 2, page 5 therein:

> Being a party to the armed conflict, civil war or war of national liberation and authorized by the revolutionary people and forces to represent them in diplomatic and other international relations and in the ongoing peace negotiations with the GRP, we the National Democratic front of the Philippines hereby solemnly declare in good faith to undertake to apply the Geneva Conventions and Protocol I to the armed conflict in accordance with Article 96, paragraph 3 in relation to Article 1, paragraph 4 of Protocol I.

Therefore, the effects of the Undertaking to Apply the Geneva Conventions and Protocol I have been implicitly sanctioned in this Agreement, notwithstanding the arguments of the GRP to the contrary and notwithstanding its reliance on the unpublished "opinion" of the International Committee of the Red Cross.

> PART II
> BASES, SCOPE AND APPLICABILITY
>
> Article 2
> The objectives of this Agreement are: (a) to guarantee the protection of human rights to all Filipinos under all circumstances, especially the workers, peasants and other poor people; (b) to affirm and apply the principles of international humanitarian law in order to protect the civilian population and individual civilians, as well as persons who do not take direct part or who have ceased to take part in the armed hostilities, including persons deprived of their liberty for reasons related to the armed conflict; © to establish effective mechanisms and measures for realizing, monitoring, verifying and ensuring compliance with the provisions of this Agreement; and, (d) to pave the way for comprehensive agreements on economic, social and political reforms that will ensure the attainment of a just and lasting peace.

This affirmed the application of IHL "in order to protect the civilian population and individual civilians, as well as persons who do not take direct part or who have ceased to take part in the armed hostilities" which is after all, the essence and substance of applying IHL to the present armed conflict (aside of course from its implication to the status of the NDFP) and this is the very same essence, intent and language in international humanitarian law.

The term "persons deprived of their liberty for reasons related to the armed conflict" is the same terminology used in the 8 June 1977 Protocol II Additional to the Geneva Conventions of 12 August 1949 (hereinafter "Protocol II") relating to the protection of victims of non-international armed conflicts. At the very minimum, the nature of the present armed conflict is characterized as something involving more than a "dissident force" that should be governed by Article 3 Common to the Four Conventions and Additional Protocol II. It can be advanced then that the NDFP and the CPP and NPA cannot be deemed as mere insurgents or "dissident forces."

> Article 3
> The Parties shall uphold, protect and promote the full scope of human rights, including civil, political, economic, social and cultural rights. In complying with such

> obligation due consideration shall be accorded to the respective political principles and circumstances of the Parties.

This provision connotes a recognition that the NDFP has its own Constitution, Program, Guide and distinct rules and processes.

> Article 4
> It is understood that the universally applicable principles and standards of human rights and of international humanitarian law contemplated in this Agreement include those embodied in the instruments signed by the Philippines and deemed to be mutually applicable to and acceptable by both Parties.

It may be argued positively for the NDFP that not all universally accepted principles and standards of HR&IHL are universally applicable. With the present formulation, these principles and standards are universally applicable and, specifically, this would include its application to the present protracted armed conflict. The use of the term "include those embodied" immediately means that it is non-exclusive i.e. it was not intended to exclude any other relevant instruments like the Geneva Conventions and the Protocols Thereto.

The use of the term "instruments signed by the Philippines" may arguably mean not only those signed by the GRP but also those signed or adhered to by the NDFP independently and in the exercise of its inherent rights. Parenthetically, the conscious use of the word "by the Philippines" and not the customary "by the GRP" supports this reading. In fact, this is the only instance where reference is to the Philippines as a generic term and not to the GRP. Hence, even if the GRP has yet to sign Protocol I, by this interpretation, Protocol I, to which the NDFP has already made an Undertaking to Apply, is included as one of the instruments signed by the Philippines and thereby contemplated as included in this Agreement.

Note should be taken that the seemingly restrictive terms - "mutually applicable to and acceptable by both Parties" to qualify those instruments signed by the Philippines is qualified in the first place by the phrase "deemed to be." Thus, if the GRP argues that a specific instrument, say Protocol I or the Geneva Conventions, is not contemplated in this Agreement because it does not consider it as applicable to the NDFP and/or its applicability is not acceptable to the GRP, then it may be countered that by virtue of the NDFP's Undertaking to Apply Geneva Conventions and Protocol I, any question as to whether it is deemed or considered to be mutually applicable to and acceptable to both the GRP and NDFP is rendered moot and academic -notwithstanding the "opinion" of the ICRC alluded to by the GRP - in the light of the following *ipso facto* (i.e. immediately upon and by the mere fact of receipt by the depositary) effects of said Undertaking:

> W]e the National Democratic Front of the Philippines hereby solemnly declare in good faith to undertake to apply the Geneva Conventions and Protocol I to the armed conflict in accordance with Article 96, paragraph 3 in relation to Article 1, paragraph 4 of Protocol I.
>
> The NDFP is rightfully and dutifully cognizant that this declaration, upon receipt by the Federal Council of the Swiss Government, shall have in relation to the armed conflict with the GRP the following effects:
>
> a. the Geneva Conventions and Protocol I are brought into force for the NDFP as a Party to the conflict with immediate effect;
>
> b. the NDFP assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Geneva Conventions and Protocol I; and
>
> c. the Geneva Conventions and this Protocol are equally binding upon all Parties to the conflict.

By virtue of this unilateral declaration of the NDFP, duly deposited with the Swiss

Federal Council, the GRP is bound as before by the Geneva Conventions and henceforth by Protocol I in accordance with Article 96, paragraph 3(c) of Protocol I." (at page 5) *[Underscorings supplied.]*

If this Article is correlated with: a. Article 7, Part I (Commitment to HR&IHL and recognition of acts of good intention regarding IHL); b. Article 1, Part III (Inherent right to adhere to international instruments on HR); and c. Article 1, Part IV (Inherent right of Parties to adhere to principles and standards of IHL), then any doubt as to its interpretation will be resolved in favor of the consistent position of the NDFP that HR&IHL as embodied in international instruments is applicable to the present armed conflict and human rights situation.

Besides, the Agreement contains a plethora of principles, rules, standards, objectives, premises, imperatives and directives derived, inspired or culled from or substantially similar to these international instruments on HR&IHL.

Parenthetically, the following quotation from a landmark and hitherto unreversed decision of the GRP Supreme Court, is instructive to all these discussions on "principles and standards" of IHL:

"[It] can not be denied that the rules and regulations of the Hague and Geneva Conventions form part of and are wholly based on the generally accepted principles of international law. x x x Such rules and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them, for our Constitution has been deliberately general and extensive in its scope, and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory." (Kuroda vs. Jalandoni, 83 Phil 171 (1949)) *[Underscoring supplied]*

Article 5
This Agreement shall be applicable in all cases involving violations of human rights and the principles of international humanitarian law committed against persons, families and groups affiliated with either Party and all civilians and persons not directly taking part in the hostilities, including persons deprived of their liberty for reasons related to the armed conflict. It shall likewise be applicable to all persons affected by the armed conflict, without distinction of any kind based on sex, race, language, religion or conviction, political or other opinion, national, ethnic or social origin, age, economic position, property, marital status, birth or any other similar condition or status.

Note, the use of the crucial words "affiliated with either Party", implying the recognition that the NDFP itself has its own separate and distinct constituency and territory.

PART III - RESPECT FOR HUMAN RIGHTS

Article 1
In the exercise of their inherent rights, the Parties shall adhere to and be bound by the principles and standards embodied in international instruments on human rights.

It expressly recognizes that even the NDFP, being a Party to this Agreement, despite its being a non-state for the moment, has nevertheless the inherent right and capacity to adhere and be bound by international instruments on HR. It is but consistent with the NDFP position that it is willing, ready and able to assume separate duties and responsibilities in protecting and promoting HR (and IHL). Together with other pertinent provisions, this Article elevates and respects the political, organizational, even legal integrity and status of the NDFP.

Article 2
This Agreement seeks to confront, remedy and prevent the

most serious human rights violations in terms of civil and political rights, as well as to uphold, protect and promote the full scope of human rights and fundamental freedoms, including:

1. The right to self-determination of the Filipino nation by virtue of which the people should fully and freely determine their political status, pursue their economic, social and cultural development, and dispose of their natural wealth and resources for their own welfare and benefit towards genuine national independence, democracy, social justice and development.

The right to self-determination of course is the right of the Filipino people as a nation. The import of this provision cannot be overstated as it is consistent with the NDFP's Program and the people's struggle towards national democracy and liberation.

This provision must be read in conjunction with: a. Article 4, Part I (Realization of rights under conditions of national and social freedoms); b. paragraph 2, Article 2, Part III (Right to establish a democratic society and oppose oppression); and c. paragraph 25, Article 2, Part III (Right of minority communities to autonomy, ancestral lands, etc.).

2. The inherent and inalienable right of the people to establish a just, democratic and peaceful society, to adopt effective safeguards against, and to oppose oppression and tyranny similar to that of the past dictatorial regime.

The provision emphasizes the right as something essentially inherent and inalienable, something which can not be granted or denied a people in struggle.

The phrase "to establish a just, democratic and peaceful society" amounts substantially to the right to revolt against tyranny, exploitation and oppression. In fact, to establish a just, democratic and peaceful society is equivalent fundamentally with the right to revolution in order to install, in its revolutionary sense, a truly just, democratic and peaceful society.

The reference to the Marcos dictatorship suffices to imply the kinds of regime the right to revolt is directed against.

Incidentally, this provision should be read in conjunction with Paragraph 12, Article 2, Part III (Right to free speech, association and redress of grievances) where the formulation of such Article is meaningful enough to include the right to revolt.

Article 3
The Parties decry all violations and abuses of human rights. They commend the complainants or plaintiffs in all successful human rights proceedings. They encourage all victims of violations and abuses of human rights or their surviving families to come forward with their complaints and evidence.

Article 4
The persons liable for violations and abuses of human rights shall be subject to investigation and, if evidence warrants, to prosecution and trial. The victims or their survivors shall be indemnified. All necessary measures shall be undertaken to remove the conditions for violations and abuses of human rights and to render justice to and indemnify the victims.

The provision was also "mutualized" so as to refer to "the Parties" and not to the GRP alone. The collective use of "abuses and violations" to refer to the Parties unwittingly vests on the NDFP the qualities of a state and its ability to exercise political authority and assume responsibility.

> Article 6
> The GRP shall abide by its doctrine laid down in People vs. Hernandez (99 Phil. 515, July 18, 1956), as further elaborated in People vs. Geronimo (100 Phil. 90, October 13, 1956), and shall forthwith review the cases of all prisoners or detainees who have been charged, detained, or convicted contrary to this doctrine, and shall immediately release them.

First of all, the landmark "Hernandez doctrine," and as validated and affirmed as a legal precedent in the *Geronimo* case, extensively discussed further below, in essence follows the almost universally accepted principle that all acts in pursuit of a political objective are absorbed or subsumed under one political offense.

In other words, if in the pursuance of the armed struggle, a revolutionary incites the people, exposes the irregularities and opposes the policies of the existing government, takes up arms, kills or wounds the enemy armed combatant, and is a member of an outlawed underground organization, then he should be tried only for one political offense of rebellion and all other acts are absorbed and deemed as necessary for the rebellious act in pursuance of a political objective. Hence, he should not be charged, detained, tried or convicted for separate offenses of sedition, inciting to sedition, illegal possession of firearms, serious physical injuries, murder, homicide, arson, kidnapping or subversion. He should be treated as a "prisoner of conscience" and not as a common criminal.

PART IV
RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

At the outset, basic premises should be spelled out to put in context the following provisions on IHL. Based on available documents and its own history and pronouncements, it mat be culled that the NDFP is in the main guided by the following basic principles and premises in the negotiations with GRP on IHL:

(a) the NDFP is a revolutionary organization that is not subject or subsumed within the legal and constitutional system and processes of the GRP;

(b) the NDFP and its patriotic and progressive organizations, primarily through the Communist Party of the Philippines (CPP) and the New People's Army (NPA) , are principally engaged in protracted, concerted and sustained armed struggle against the GRP and the imperialist forces;

(c) the NDFP has a responsible political command in all levels and possesses organs of political power that enforce its own legal and judicial system and rules in accordance with its political principles and circumstances;

(d) the NDFP has a separate and distinct armed force that is guided by the appropriate political authority and which is governed by a set of rules of conduct and discipline;

(e) the NDFP through its collective organs of leadership, and in the exercise of its inherent rights, is willing, ready and able to assume and is undertaking its own distinct duties and responsibilities in adhering, respecting and being bound by international humanitarian law;

(f) the NDFP has its own constituency and exercises control in a significant portion of the territory of the Philippines with its own organs of political power;

(g) the NDFP has maintained and is conducting bilateral and multilateral diplomatic and political relations with fraternal organizations and international institutions and even foreign governments as a separate entity from the GRP; and

(h) there is a complementary relationship between the application of the rules, standards and principles of human rights and of international humanitarian law in the context of the present armed conflict; and

(l) the people's war being waged by the NDFP and its revolutionary government and army is characterized both as an armed conflict which is of a non-international character in terms of its occurrence within the Philippines but is at the same time an internationalized internal conflict as it involves the exercise of self-determination against colonial domination and national oppression.

> Article 1
> In the exercise of their inherent rights, the Parties to the armed conflict shall adhere to and be bound by the generally accepted principles and standards of international humanitarian law.

The express recognition of the inherent right of and the exercise of such right by the Parties to the armed conflict to adhere and be bound to such principles and standards of IHL is of positive and far-reaching implication to the status of the NDFP.

> Article 3
> The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the persons enumerated in the preceding Article 2:

It should be noted that the so-called "acts" in the present Article as well as the "cases or situations" in the immediately succeeding Article 4 (Persons, entities or objects to which IHL apply in certain cases or situations) are all principles, rules, norms and standards of IHL. Read in relation to the in paragraph 4, Preamble (Necessity of application of HR&IHL to armed conflict) and Article 6, Part I (Application of and faithful compliance with HR&IHL to armed conflict), there could be no doubt that the application of the principles and standards of IHL has been recognized in this bilateral document to apply to the present civil war.

The prohibition of all these acts underscore not only the respect for human rights of the subject persons and their protection but are equally intended to "humanize" the present armed conflict in accordance with the civilized and respected rules of warfare contained in international humanitarian law.

> 5. failure to report the identity, personal condition and circumstances of a person deprived of his/her liberty for reasons related to the armed conflict to the Parties to enable them to perform their duties and responsibilities under this Agreement and under international humanitarian law;

A significant reference to such duties and responsibilities not only "under this Agreement" but also "under international humanitarian law" must be noted. While the duties and responsibilities under this Agreement include those specifically stipulated as well as those contemplated under IHL, the expression of the additional reference strengthens its binding force. In addition, it highlights the mutual assumption of separate duties and responsibilities consistent with the political and legal standing claimed by the NDFP.

Specifically, these duties and responsibilities with respect to persons deprived of their liberty for reasons related to the armed conflict would include those contained and contemplated in Articles 3 (1), (2), (3), (4), (5), (6), ; Article 4 (3), (6), (7), (9); and Article 11 of Part IV of the Agreement as well as those in other applicable provisions of the Geneva Conventions and the Protocols.

> 6. denial of the right of relatives and duly authorized representatives of a person deprived of liberty for reasons related to the armed conflict to inquire whether a person is in custody or under detention, the reasons for the detention, under what circumstances the person in custody is being detained, and to request directly or through mutually acceptable intermediaries for his/her orderly and expeditious release;

The reference to "the relatives and duly authorized representatives of a person deprived of liberty for reasons related to the armed conflict" implies the assumption of separate duties and responsibilities of the Parties to the armed conflict, and its consequent implication on their parity and their mutual and reciprocal relations. This additional formulation provides much latitude to mean that it may include either one of the Parties, as would logically follow in the context of the armed conflict, as such "duly authorized representatives." This is strengthened by the subsequent reference to "mutually acceptable intermediaries" in respect to the request for release of such persons. Of course, aside from the Parties, the duly authorized representatives and the mutually acceptable intermediaries may be the ICRC, a foreign government or entity or other humanitarian institutions. Consequently, these are additional points for the continuing recognition of the status of the NDFP because it is being regarded as a separate entity from the GRP.

The inquiry or a negotiation or request for release of a person deprived of liberty for reasons related to the armed conflict is a logical consequence that said acts are ultimately addressed to the Party under whose power such person is being held in custody or detention. The denial of this right of inquiry or to act on the request for the release of the subject persons can only be done by the Party under whose power they are being held. The phrase "in custody or under detention" implies the existence of a legal and judicial system for both Parties and stresses their separate capabilities in relation to the present armed conflict.

It should further be noted that this present formulation actually provides the groundwork or mode for the mutual exchange of prisoners of war between the Parties to the armed conflict. As such, it is another affirmation of the implicit recognition of the existence of prisoners of war in the armed conflict and the capability of the Parties to exercise power over the armed forces of the other.

> 1. Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives, dignity, human rights, political convictions and their moral and physical integrity and shall be protected in all circumstances and treated humanely without any adverse distinction founded on race, color, faith, sex, birth, social standing or any other similar criteria.
>
> 2. The wounded and the sick shall be collected and cared for by the party to the armed conflict which has them in its custody or responsibility.

As one of the protected persons subject of IHL in the present armed conflict, the wounded and the sick deserve and are entitled to humanitarian treatment. This responsibility of collection and care devolves upon the party to the armed conflict which has them in its custody or responsibility. This obviously implies that the Parties have separate political powers in existence.

> 5. Civilians shall have the right to demand appropriate disciplinary actions against abuses arising from the failure of the Parties to the armed conflict to observe the principles and standards of international humanitarian law.

This again implies the existence of a set of rules of conduct and discipline of the Parties. To recognize the right of civilians to demand disciplinary actions against abuses arising from the failure of the Parties to observe such principles and standards is a recognition of such rules of conduct and discipline. And basically, it is the respective armed forces of the Parties to the conflict that can fail to observe the principles and standards of IHL. Thus, it can read also as a recognition of the existence of the Basic Rules of the NPA

Moreover, the recognition that the Parties to the armed conflict are susceptible to the right of civilians to demand appropriate disciplinary actions against abuses from their failure to observe the principles and standards of IHL imply their common and separate duties and responsibilities in respect thereto.

7. The ICRC and other humanitarian and/or medical entities shall be granted facilitation and assistance to enable them to care for the sick and the wounded and to undertake their humanitarian missions and activities.

First off, the function of the ICRC not only as the official guardian of international humanitarian law and its continuing significant role in the present civil war is given expression in this Agreement. Specifically, the intensity and level of the armed conflict has reached the point that the beneficial intercession and facilitation through the ICRC of the release of the prisoners of war of the NPA have been accepted by both Parties. Aside from this, of course, the active and prominent role of the ICRC in the release of POWs has enhanced and stressed the status of the NDFP as a distinct political force from the GRP. Its having acted as witness and "intermediary" to the release of the POWs of the NPA was furthermore an opportunity to document and prove that the NDFP and its revolutionary army have been and continue to respect and uphold the basic rules in the conduct of war as mandated by IHL and in accordance with its own rules . In fact, the ICRC has seen and verified for itself how the POWs of the NPA have been treated humanely and with leniency and how their physical and mental conditions were ensured.

The phrase "shall be granted facilitation and assistance" in the Final Agreement implies the existence of territories which the NDFP controls distinct from those of the GRP's, because of the operative term "grant". This necessarily means that it is something given by a Party who has effective control over a particular territory. It also means that the Party is capable of providing such facilitation and assistance independent of the other.

Article 5
The Parties decry all violations of the principles of international humanitarian law. They encourage all victims of such violations or their surviving families to come forward with their complaints and evidence.

Article 6
The persons liable for violations of the principles of international humanitarian law shall be subject to investigation and, if evidence warrants, to prosecution and trial. The victims or their survivors shall be indemnified. All necessary measures shall be undertaken to remove the conditions for such violations and to render justice to and indemnify the victims.

Considering that these two present provisions are parallel to Articles 3 (Condemnation of violations and abuses of HR) and 4 (Liability of violators; indemnification of victims; removal of conditions for HRVs) of Part III of the Final Agreement, all the applicable commentaries thereon are hereby adopted and reproduced by way of reference.

Article 14
The Parties shall promote and carry out campaigns of education on international humanitarian law, especially among the people involved in the armed conflict and in areas affected by such conflict.

What is significant about the present provision is these education campaigns will be carried out "especially among the people involved in the armed conflict and in areas affected by such conflict." The idea being conveyed is not only to ensure compliance with the Agreement particularly on the principles and standards of IHL and the basis rules of conduct in armed conflicts but also the implication of the existence of separate and distinct armed forces of the Parties. The wording "the people involved in the armed conflict" necessarily pertains to the respective armed forces of the Parties.

Moreover, the additional reference to "areas affected by such conflict" implies not only the existence of an ongoing civil war but the existence of separate territories. Thus, it would follow that the NDFP, in the exercise of its rights, is mandated to assume its separate duty and responsibility to carry out campaigns of education on IHL with its army, militia, masses, and

revolutionary organizations in its own controlled territories. This is again indicative of its position that it is ready and willing and able to assume the application of IHL in the course of its people's war.

PART VI
FINAL PROVISIONS

Article 1
The Parties shall continue to assume separate duties and responsibilities for upholding, protecting and promoting human rights and the principles of international humanitarian law in accordance with their respective political principles, organizations and circumstances until they shall have reached final resolution of the armed conflict.

This conveys the idea that such duties and responsibilities are of course subject to the Parties' respective capabilities and should conform to their respective laws and constitutions. What is additionally peculiar with the present provision is the phrase "until they shall have reached final resolution of the armed conflict." This expresses the basic fact that this Agreement does not by of itself resolve the armed conflict. It means that pending the ultimate resolution of the armed conflict and the attainment of a truly just and lasting peace, the Parties are in the meanwhile expected and are bound to uphold, protect and promote human rights and international humanitarian law in the course of the civil war.

Article 2
The Parties recognize the applicability of the principles of human rights and principles of international humanitarian law and the continuing force of obligations arising from these principles.

Article 3
Nothing in the provisions of this Agreement nor in its application shall affect the political and legal status of the Parties in accordance with the Hague Joint Declaration. Subsequently, this Agreement shall be subject to the Comprehensive Agreements on Political and Constitutional Reforms and on End of Hostilities and Disposition of Forces. Any reference to the treaties signed by the GRP and to its laws and legal processes in this Agreement shall not in any manner prejudice the political and organizational integrity of the NDFP.

As worded, then, neither the Agreement nor its application will affect the legal status of the GRP (and of the NDFP) nor the political status of the NDFP as a revolutionary organization. The reference to the Hague Declaration enforces this meaning as the principle that "no precondition that negates the character and purpose of peace negotiations" shall be imposed has been affirmed in conformity with the underlying fact that the Parties are governed furthermore by the principles of mutuality, reciprocity and parity.

Finally, of transcendental importance, the last sentence indicates the revolutionary integrity of the NDFP even as it enters into peace negotiations with the GRP. In addition, the caveat contained in this last sentence has foreclosed any unfounded interpretation that there is only one set of laws and legal processes in the Philippines, contrary to the fact professed by the NDFP that is has its own system of rules, laws and judicial processes.

By way of concluding this part on the implications of this particular bilateral landmark document then, note should be taken of the deliberate attempts in the provisions of the Agreement to "mutualize" the formulation i.e. the constant usage of the term "the Parties" whenever applicable to both, thereby emphasizing and indicating the principles of mutuality and reciprocity in terms of duties, rights and responsibilities. At the same time, there are provisions that pertain to the GRP alone given its present legal status. But because of the crucial caveat contained in the Final Provisions, there is no basis for the fear that the same is prejudicial to the integrity of the NDFP.

Permeating the whole document of the CARHRIHL are several provisions and formulations that validate and impliedly recognize the reality that the NDFP, particularly the CPP, has achieved a status in international law. A study of its provisions shows that it likewise reflects those contained in the NDFP's Guide for Establishing the People's Democratic Government and its Constitution and Program and the GRP Constitution as well as the universally accepted principles and standards in the international human rights and international humanitarian law instruments. It is a document that endeavored to put in writing the promotion of the rights of the people and their interests, the protection of the civilian population and the "humanization" of the protracted armed conflict.

It signifies the willingness and ability of the NDFP to assume separate duties and responsibilities to respect HR&IHL in accordance with its distinct political principles, organization and circumstances. It may be said, that its political and organizational integrity and standing have been enhanced by entering into the peace negotiations and in entering into this Agreement.

In sum, the words of the NDFP Chief Political Consultant Jose Ma. Sison, (Introduction to "Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law and Related Documents (1992-1998) in the Peace Negotiations between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, 26 September 1998) are very clear on these points:

> As contracting parties in the CARHRIHL, the GRP and the NDFP mutually recognize the existence of opposing constitutional frameworks as well as common frames of reference. They mutually reject the imposition of the constitutional and legal processes of either of them upon the other and stipulate common as well as separate duties and responsibilities in accordance with their respective constitutional frameworks and directives of their respective principals. These underlying principles of equality, mutuality and reciprocity are clearly expressed in such provisions of the CARHRIHL as the following:
>
> Preamble, paragraph 6: The Parties uphold the principles of mutuality and reciprocity in the conduct of the peace negotiations in accordance with the Hague Joint Declaration. The Parties likewise affirm the need to assume separate duties and responsibilities in accordance with the letter and intent of this Agreement.
>
> Article 3, Part II; Article 1, Part III; Article I, Part IV; Articles 1 and 3, Part VI: *[supra]*
>
> In negotiating with the GRP, the NDFP has always stood for its revolutionary integrity and the status of belligerency under international law. x x x x
>
> As co-belligerents in the civil war, the GRP and the NDFP override the existence of their conflicting constitutional frameworks by adopting the International Bill of Rights (Universal Declaration of Human Rights and the UN covenants on human rights) and International Humanitarian Law (the Geneva Conventions and its protocols) as their common frame of reference. While then GRP and the NDFP are bound by these international instruments, they can also perform common and separate duties in accordance with their respective constitutions.
>
> x x x
>
> The status of belligerency of the totality of revolutionary forces in the Philippines has been acquired through revolutionary struggle. By revolutionary forces, we mean the revolutionary organs of democratic political power, the Communist Party of the Philippines (CPP) as the ruling party, the New People's Army (NPA) as main component of state power, the organized masses of people in the territory of the people's democratic government. All these forces are represented by the NDFP in the GRP-NDFP peace negotiations and in diplomatic work. x x x x

IV. LIBERATION MOVEMENTS IN PHILIPPINE LAW AND JURISPRUDENCE

In the domestic or municipal front, what then is the status of the present Philippine liberation movement embodied by the struggle of the Filipino people represented by the NDFP?

It must be remembered that Republic Act No. 1700, as amended – An Act to Outlaw the Communist Party of the Philippines and Similar Associations, Penalizing Membership therein and for Other purposes – of June 20, 1957 (as revived by Executive Order No. 167 on 5 May 1987) had been repealed in 1995 by the Philippine Congress.

Said Act categorically defined the "Communist Party of the Philippines" as to mean and include the organizations known as the Communist Party of the Philippines (CPP), its military arm, the New People's Army (NPA), and its political arm, and "any successors of such organization" (Section 3).

Hence, in the formal legal sense, then, the CP, NPA, NDFP and its member revolutionary organizations, are not illegal. Of course, the reality on the ground is different in terms of policy and practice. Not only are the alleged or suspected members of these organizations openly demonized and criminalized by the Philippine government but they are arrested, charged, prosecuted, convicted and sentenced with common crimes including illegal possession of firearms, murder, arson, robbery, kidnapping and the like instead of rebellion. Worst, they get disappeared, tortured or are even summarily executed.

At any rate, at least juridically, Philippine jurisprudence had been consistent in upholding and affirming the "political offense doctrine" with respect to acts committed by alleged rebels or insurgents.

This was first laid down in the landmark Hernandez [*People vs. Hernandez (99 Phil 515 /52 OG 5506; 1956])* doctrine where the accused therein who was identified with the old "Hukbong Mapagpalaya ng Bayan" (People's Liberating Army) and the "Partido Komunista ng Pilipinas" (Communist Party of the Philippines) was charged with the crime of rebellion with multiple murder, arsons, and robberies. The Philippine Supreme Court laid down the following doctrine, which we quote here extensively:

> One of the means by which rebellion may be committed, in the words of Article 135, is by "engaging in war against the forces of government" and "committing serious violence" in the prosecution of said "war". <u>These expressions imply that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake</u> x x x x. Being within the purview of "engaging in war" and "committing serious violence", said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offense, but only one crime - that of rebellion plain and simple. *(at p. 521; Citing Guinto v. Veluz, 77 Phil 801/44 OG 909 and People v. Pacheco, 93 Phil 521) [Underscorings supplied.]*

Using the same reasoning, *Hernandez* cited the earlier ruling in *People v. Labra* (81 Phil 377) where the lower court found the accused guilty not only of treason but also of murder:

> The essential elements of a given crime cannot be disintegrated in different parts, each one stand as a separate ground to convict the accused of a different crime or criminal offense. The elements constituting a given crime are integral and inseparable parts of a whole. In the contemplation of the law, they cannot be used for double or multiple purposes. They can only be used for the sole purpose of showing the commission of the crime of which they form part. The factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication or amoeba reproduction. Otherwise, the accused will have to face as many prosecutions and convictions as there are elements of treason, in open violation of the constitutional prohibition against double jeopardy. (at p. 523)

> In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippine Islands or any part thereof" then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter. (at pp. 535-536.) *[Underscorings supplied.]*

The Supreme Court ruled that the common crimes of murders, arsons and robberies are mere ingredients of the crime of rebellion. In its own words:

> Thus, national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty. (at p. 541.) *[Underscorings supplied.]*
>
> x x x x
>
> It is evident to us that the policy of our statutes on rebellion is to consider all acts committed in furtherance thereof - as specified in Articles 134 and 135 of the Revised Penal Code – as constituting only one crime, punishable with one single penalty – namely, that prescribed in Article 135. (at p. 547.)

The foregoing doctrine was applied consistently and without interruption in a long line of subsequent cases. Thus:

In *People v. Geronimo* (100 Phil 90/ 53 OG 68; [1956]), the said ruling was affirmed. In this case involving the accused alleged to be ranking officers and members of the "Hukbong Mapagpalaya ng Bayan" and the "Partido Komunista ng Pilipinas" were charged with the complex crime of rebellion with murders, robberies and kidnapping, the Supreme Court again ruled:

> As in treason, where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of both the armed uprising for the purposes expressed in Article 134 of the revised penal Code, and the overt acts of violence described in the first paragraph of Article 135. That both purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to Article 134. It follows, therefore that any or all acts described in Article 135, when committed as a means to or in furtherance of the subversive ends described in Article 134, become absorbed in the crime of rebellion, and cannot be regarded or penalized as distinct crimes in themselves. In law they are part and parcel of the rebellion itself, and cannot be considered as giving rise to a separate crime that, under Article 48 of the Code, would constitute a complex one with that of rebellion. (at p. 95.)

In *People v. Aquino* (108 Phil 814, 820 [1960]), the accused were charged and convicted with murder. On appeal, the Supreme Court ruled, citing *Hernandez,* that "since it appears that the killing was committed not because of any personal motive on the part of the accused but merely in pursuance of the huk movement to overthrow the duly constituted authorities, the proper charge against them would be rebellion and not murder."

Hernandez was again affirmed in *People v. Lava* (28 SCRA 72; at pp. 96-101; [1969]), where the accused alleged to be high ranking officers of the Partido Komunista ng Pilipinas (PKP) and its military arm the Hukbong Mapagpalaya ng Pilipinas (HMB) were charged and convicted by the lower court of the complex crime of rebellion with murders and arsons for acts committed during eight instances for a period staring from 1946 to 1950.

In *People v. Manglallan* (160 SCRA 116; 121 [1988]), involving an admitted member of the New People's Army, the Supreme Court likewise sustained the contention that the crime committed was not murder but the crime of rebellion as the killing was politically motivated in that it was committed as a means to or in furtherance of the ends of the NPA as the military arm of the Communist Party of the Philippines and cited favorably the earlier aforecited rulings in *Hernandez, Aquino and People v. Agarin* (109 Phil 430).

Hernandez was tested anew and reexamined in *Enrile v. Salazar* (186 SCRA 218 [1990]), a case involving a charge for rebellion with murder and multiple frustrated murder committed during a failed *coup d' etat* attempt. In an *en banc* decision, the Supreme Court affirmed the doctrine of *Hernandez* that the proper charge is simple rebellion and emphatically ruled:

> The rejection of both options [abandon *Hernandez* altogether or hold it applicable only to offenses committed in furtherance, or as a necessary means for the commission, of rebellion, but not to acts committed in the course of a rebellion which also constitutes "common crimes of grave or less grave character] shapes and determines the primary ruling of the Court, which is that Hernandez remains binding doctrine operating to prohibit the complexing of rebellion with any other offense committed on the occasion thereof, either as a means necessary to its commission or as an unintended effect of an activity that constitutes rebellion. (at p. 228.)

The parameters of the ruling in *Enrile v. Salazar* were further defined and amplified in the subsequent case of *Enrile v. Amin* (189 SCRA 573 [1990]) which quashed a charge for violation of PD No. 1829 "for harboring or concealing, or facilitating the escape of any person he knows, or has reasonable ground to believe or suspect, has committed any offense in order to prevent his arrest, prosecution and conviction) in addition to an earlier charge for rebellion for the same act. Again, on *en banc*, the Supreme Court affirmed *Hernandez* and ruled:

> The *Enrile* case gave this Court the occasion to reiterate the long standing proscription against splitting the component offenses of rebellion and subjecting them to separate prosecutions, a procedure reprobated in the Hernandez case. x x x If a person can not be charged with the complex crime of rebellion for the greater penalty to be applied, neither can he be charged separately for two (2) different offenses where one is constitutive or component element or committed in furtherance of rebellion. (at pp. 577-578.)

In amplifying *Hernandez*, the Court ruled:

> All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and can not be isolated and charged as separate crimes in themselves. x x x The Hernandez and other related cases mention common crimes as absorbed in the crime of rebellion. These common crimes refer to all acts of violence such as murder, arson, robbery and kidnapping etc. as provided in the Revised penal Code. The attendant circumstances in the instant case, however, constrain us to rule that the theory of absorption in rebellion cases must not confine itself to common crimes but also to offenses under special laws which are perpetrated in furtherance of the political offense. (at pp. 580-581)

Citing *Manglallan, People v. Avila* (207 SCRA 168; at 173-174; [1992]) also found the conviction of the accused for murder to be erroneous. The Court found that the killing of a governor by the accused who were admittedly and indisputably members of the new People's Army were politically motivated and hence, the crime committed was simple rebellion and not murder.

In *People v. Dasig* (221 SCRA 549 [1993]), involving a conviction for murder with assault upon a person in authority, the Court, citing *Manglallan* and quoting the favorable position of the Solicitor General and ruled in this wise:

> In this case, appellant not only confessed voluntarily his membership with the sparrow unit but also his participation and that of his group in the killing x x x x It

> is of judicial notice that the sparrow unit is the liquidation squad of the New People's Army with the objective of overthrowing the duly constituted government. It is therefore not hard to comprehend that the killing x x x was committed as a means to or in furtherance of the subversive ends of the NPA. Consequently, appellant is liable for the crime of rebellion, not murder with direct assault upon a person in authority. (at pp. 557-558.)
>
> The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion though crimes in themselves are deemed absorbed in one single crime of rebellion. The act of killing a police officer, knowing too well that the victim is a person in authority is a mere component or ingredient of rebellion or an act done in furtherance of the rebellion. It cannot be made a basis of a separate charge. (Ibid; Citing *Enrile v. Amin*, 189 SCRA 573) *[Underscorings supplied.]*

Hernandez, handed down in 1956 remain undisturbed up to this day.

[The pertinent provisions of the Revised Penal Code, as amended in 1990 by Republic Act No. 6938 (otherwise known as the Coup D' Etat Law) provides:

> *Article 134. Rebellion or insurrection. How committed. – The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the legislature, wholly or partially, of any of their powers or prerogatives.]*

In the most recent case of *People v. Lovedioro* (250 SCRA 389; 394-395 [1995]), it was acknowledged that:

> The gravamen of the crime of rebellion is an armed uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined *a priori* within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they require a political character. x x x Divested of its common complexion therefore, any ordinary act, however grave, assumes a different color by being absorbed in the crime of rebellion x x x x .(Citing *People v. Hernandez*, 99 Phil 515 and *People v. Geronimo*, 100 Phil 90) *[Underscorings supplied.]*

More graphically, *Hernandez* had this to say:

> In the revolutions, as we conduct them in our countries, the common offenses are necessarily mixed up with the political in many cases. x x x A revolutuionists needs horses for moving, beef to feed his troops, etc.; and since he does not go into the public markets to purchase these horses and that beef, nor the arms and saddles to mount and equip his forces, he takes them from the first pasture or shop he find at hand. This is called robbery everywhere, and is a common offense in time of peace, but in time of war it is a circumstance closely allied to the manner of waging it. (at pp. 539-540; citing *In re Ezeta (62 Fed. Rep. 972), citing International American Conference, Vol. 2, p. 615) [Underscorings supplied.]*

The simple point being made in the survey of this court doctrine is that all acts of alleged members of the CPP-NPA-NDFP in pursuit of their political beliefs must, insofar as municipal law is concerned, be absorbed or subsumed in one political crime of rebellion. Their alleged members cannot be charged, prosecuted, tried, convicted and punished with any other offense or crime. This must be appreciated vis-avis the discussions in the sphere of international law on the status of national liberation movements.

[At the moment, there is yet no anti-terrorism law in the Philippines that would legally penalize even national liberation movements. But there are various proposed bills being considered now in the Philippine Congress including Senate Bills 1458 and 1980, House Bills 3802, 4980, 4987 and 5025.

Most of these proposed bills have odious provisions that run counter, among others, to the aforesaid principles and trends in international law regarding national liberation movement.

Significantly, though, two of the major bills - House Bill 3802 by the principal sponsor Rep. Imee Marcos and the Inter-Agency Draft prepared by different government agencies contain the following identical respective caveats in their application:

> *"an act of violence or threat thereof intended or calculated to provoke a state of terror*
> *in the general public, a particular person or a group of persons for political purposes"*
>
> *"an act or omission committed or threatened in or outside the Philippines*
>
> *"(i) that is committed in whole or in part for a political or ideological purpose, objective or cause, and in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security,*
> *or compelling a person, a government or a domestic or international organization to do or refrain from doing any act, whether the person, government or organization is inside or outside of the Philippines, and*
>
> *"(ii) that is intended by means of any of the unlawful activity as defined (killing, hijacking, kidnapping, arson, assassination, cyberterrorism, etc.)*
>
> *(A) to cause death or serious bodily harm to a person by the use of violence,*
> *(B) to endanger a person's life,*
> *(C) to cause a serious risk to the health or safety of the public or any segment of the public,*
> *(D) to cause substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm related to (A) to (C) and (E) or*
> *(E) to cause serious interference with or serious disruption of an essential service, facility or system, whether public or private,*
> *other than as a result of lawful advocacy, protest, dissent or stoppage of work that does not involve an activity that is intended to result in the conduct or harm referred to in clauses (A) to (C),*
>
> *and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counseling in relation to any such act or omission, but for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law applicable to the conflict, or the activities undertaken by military forces of a state in the performance of their official duties, to the extent that those activities are governed by the rules of international law." [Senate Bill 3802; Underscorings supplied]*
>
> *but does not include an action that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by the rules of international law." [Inter-Agency Draft; Underscorings supplied.]*

[See Public Interest Law Center (PILC), Initial Comparative Matrix of Pending "Anti-Terrorism Bills" in the 12th Philippine Congress, Legal Reference, 27 Aug 2002;

[See also: Public Interest Law Center (PILC), Terrorizing the People Further Through a Legal Monstrosity, A Preliminary Position Paper on the Proposed Anti-Terrorism Act of 2002, Presented before the House Committee on Justice, 15 May 2002, where it was noted that:

> *Concretely, it poses as a further intrusion and serious threat to rights of the people and of legitimate, open, legal formations to assembly, redress of grievances, speech and expression. It also fails to distinguish the legitimate acts of groups involved in an armed conflict under the standards of international humanitarian law. Lastly, we oppose a proposed law that cannot address the atrocious terrorist acts of agents of the State and of foreign governments.]*

V. CONCLUSIONS

>From all the foregoing, it is clear that there are strong bases - backed up by existing international instruments, international reality and practice and increasingly progressive views and trends in international law and international humanitarian law - that would support the proposition that national liberation movements have acquired and posses a level of legitimacy.

Necessarily, their use of armed force can also be recognized as a legitimate means in pursuit of their right to self-determination against colonial domination, alien occupation, racist regimes and against all other forms of neo-colonialism, systemic and systematic oppression and repression of peoples.

The dangerous tack after September 11 in different state, bilateral and multilateral laws, agreements and policies and the arbitrariness of putting into various "terrorist" lists what are otherwise legitimate national liberation movements and their alleged leaders run counter to the above doctrines and trends in international law and are therefore legally untenable when measured by the standards, principles, and practice that have gained hitherto universal acceptance.

Admittedly, the available legal materials and commentaries on these points used in this legal opinion did not deal unequivocally with the lawfulness or legitimacy of national liberation movements but only in relation to humanitarian questions.

However, the point worth considering and determining is whether - irrespective of the international or non-international character of national liberation movements - they adhere and conform to international conventions and practice on human rights and international humanitarian law as gauged from an examination of their activities, policies and pronouncements.

In view of all the above considerations and discussions, it can be validly and cogently argued that the present Philippine liberation movement of the broad masses and different forces of the Filipino people as represented by the National Democratic Front of the Philippines, the Communist Party of the Philippines, the New People's Army and the other revolutionary organizations in the Philippines qualify as a legitimate national liberation movement from the point of view of international law, particularly international humanitarian law.

In addition to its own pronouncements and consistent and firm representations, these organizations, when they entered into peace negotiations with the Government of the Republic of the Philippines, have enhanced their status. Such negotiations have both expressly and impliedly recognized this status as a co-belligerent with a responsible command and with readiness and willingness to assume their responsibilities in accordance with international human rights and humanitarian law.

It is, therefore submitted, by way of legal opinion and as a logical consequence of all these views that the national liberation movement in the Philippines and its alleged members and participants cannot be validly regarded as criminals or terrorists insofar as international law and international political and diplomatic perspectives are concerned. #

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ANNEX 97/469D

12(c) B4-0601, 0645 and 0686/97

Resolution on the Philippines

The European Parliament,

A. *having* regard to its resolution of 13 December 1990 on the human rights situation in the Philippines(1) in which it encouraged and supported peace negotiations between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines,

B. encouraging and supporting the formal peace negotiations between the two parties within the framework of The Hague Joint Declaration bilaterally forged by them on 1 September 1992,

C. welcoming the start of the formal peace negotiations on 19 June 1995 in Brussels and their resumption on 19 June 1996 in The Hague, hosted and sponsored by the Belgian and Dutch governments respectively,

D. welcoming the progress of these negotiations which are being held in Europe and are now dealing with two major headings of the substantive agenda: namely, mutual respect for human rights and international humanitarian law, and social and economic reforms,

E. recognising the determination, expressions of good intention and agreements of the two parties to adhere to the principles and instruments of respect for human rights and international humanitarian law, before, during and after the final resolution of the armed conflict,

F. endorsing the bilateral agreements of the parties to create a favourable climate for the peace negotiations through mutual safety and immunity guarantees, security of consultations and confidence-building measures and to lay the ground for a just and lasting peace through socio-economic and educational projects,

1. Expresses its appreciation to the Government of the Republic of the Philippines and the National Democratic Front of the Philippines for their mutual commitment to pursue formal peace negotiations in Europe within the framework of The Hague Joint Declaration of 1 September 1992 and congratulates them for all the progress that they have achieved so far;

2. Supports all the bilateral agreements and confidence-building measures that they have reached in order to create a favourable atmosphere for peace negotiations and to lay the ground for a just and lasting peace;

3. Recognizes and encourages the common and separate efforts of the parties to adhere to the principles and instruments of respect for human rights and international humanitarian law;

4. Requests the Commission and Council to provide and facilitate support and assistance to the parties in carrying out their formal peace negotiations and in undertaking development, relief and rehabilitation programmes and projects to lay the ground for a just and lasting peace;

5. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States and the Republic of the Philippines, and the National Democratic Front of the Philippines.

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(1) OJ C 19, 28.1.1991, p. 233.

51998IP1096

Resolution on the Philippines

Official Journal C 104 , 14/04/1999 P. 0116

B4-1096, 1106, 1147, 1158 and 1160/98

Resolution on the Philippines

The European Parliament,

A. reaffirming its resolution of 17 July 1997on the Philippines supporting peace negotiations between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines (NDFP) within the framework of their Joint Declaration in The Hague ((OJ C 286, 22.9.1997, p. 245.)),

B. congratulating the aforesaid parties on their success in forging the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, approved by the Philippine Government on 7 August 1998 and by the NDFP on 10 April 1998,

C. further congratulating the aforesaid parties on their success in forging the Joint Agreement in Support of Socioeconomic Projects of Private Development Organisations and Institutes and the Additional Rules Implementing the Joint Agreement on Safety and Immunity Guarantees Pertinent to the Security of Personnel and Consultations in the Furtherance of the Peace Negotiations,

D. welcoming all the expressions and acts of good intention of the Government of the Republic of the Philippines and the NDFP within their respective spheres of responsibility and in accordance with international law and their common determination to implement all their bilateral agreements and accelerate the progress of the peace negotiations,

E. encouraging and supporting all the common and separate efforts of the Government of the Republic of the Philippines and the NDFP to apply the International Bill of Rights and International Humanitarian Law and pave the way for a just and lasting peace,

The European Parliament,

1. Urges the Government of the Republic of the Philippines and the NDFP to realise their mutual commitment to accelerating the progress of their peace negotiations in Europe, forging the comprehensive agreements on social and economic reforms and political and constitutional reforms and achieving a just and lasting peace;

2. Continues to support all the bilateral agreements and confidence building measures that they have reached and undertaken in order to create a favourable atmosphere for peace negotiations and to lay the foundations for a just and lasting peace;

3. Recognises and appreciates all the acts of good intention of the Parties and their common and separate efforts to adhere to and apply the principles and instruments of respect for human rights and international humanitarian law and the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law;

4. Requests the Commission and Council to provide and facilitate support and assistance to the Parties in carrying out their formal peace negotiations, in the implementation of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law and in undertaking development, relief and rehabilitation programmes;

5. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States and the Government of the Republic of the Philippines and the National Democratic Front of the Philippines.

ANNEX 1-1

[illegible]

[illegible],
Complainant,

-versus-

[illegible]

FOR: [illegible]
[illegible]

Jose Ma. Sison,
[illegible] Atienza,
Herminigildo Garcia IV,
Manuel Collantes,
[illegible],
John Doe Alias Ka [illegible], and
[illegible] Doe Alias Ka Daniel,
Respondents.

x - x

R E S O L U T I O N

[illegible] refers to the infamous Plaza Miranda Bombing which occurred in the evening of August 21, 19[illegible] wherein several persons were killed and others severely injured.

At the instance of the PNP- CISC, the leaders of the CPP NPA led by respondent Jose Ma. Sison were charged of multiple murder in connection with the same.

Based on the report of the PNP- [illegible], earlier that day, Jose Ma. Sison called for a conference attended by the party's top officials and among them were respondents Monico Atienza, Herminigildo Garcia IV, Manuel Collantes, Roque Mactongpel, John Doe alias Ka Donald, and Robert Doe alias Ka Daniel. Accordingly, the prime purpose of the meeting was to discuss a scheme to bring chaos between the two political parties (Liberal Party and Nacionalista Party) and in effect increase the sympathizers for the CPP/NPA and its manpower. Presumably this was the bombing of the Liberal Party's political rally which would create a showdown between the Liberal Party and the Nacionalista Party The actual bombing was allegedly implemented by Danny Cordero, alias Ka Danny or Ka Kris.

In support of the foregoing, the PNP- CISC submitted sworn statements of former members of the party who claimed to have knowledge of the bombing and further implicated the above respondents as the supposed planners of the bombing incident. Nothing shows clearly however, that the aforestated meeting delved on the planning of the Plaza Miranda Bombing . If at all only inferences were made in the statements. In other words the supposed participations of the respondents as planners or masterminds are mere speculations. And if the only evidence against them consist, merely of the said statements, the same is not sufficient to charge them of multiple murder. Moreover, the implicated persons who supposedly have carried out the carnage are no longer around or nowhere to be found in order to shed light on the incident or dispute them.

To indict the respondents, therefore based solely on the submitted sworn statements is tantamount to a hasty, malicious and oppressive prosecution which is precisely what is being avoided through a preliminary investigation. There has to be

more than what was published in accordance with law.

The undersigned therefore recommends the dismissal of the instant case against all the respondents for lack of merit on legal basis.

Manila, March 2, 19[illegible].

RECOMMENDING APPROVAL:

[illegible]
CHIEF, INVESTIGATION DIVISION

APR. [illegible], 19[illegible]

TRUE COPY

OFFICE OF THE CITY PROSECUTOR
MANILA

PNP-CISC — I.S. NO. 91-24854

-versus- — FOR: MULTIPLE MURDER

Jose Ma. Sison,
Moncio Atienza,
Herminigildo Garcia IV,
Manuel Collantes,
Roque Magtanggol,
John Doe Alias Ka Donald, and
Robert Doe Alias Ka Daniel.
Respondents

x----------x

RESOLUTION

This refers to the infamous Plaza Miranda bombing which occurred in the evening of August 21, 1971 wherein several persons were killed and others severely injured.

At the instance of the PNP-CISC, the leaders of the CPP-NPA led by respondent Jose Ma. Sison were charged of Multiple Murder in connection with the same.

Based on t he reports of the PNP-CISC, earlier that day, Jose Ma. Sison called for a conference attended by the party's top officers and among them were respondents Monico Atienza, Herminigildo Garcia IV, Manuel Collantes, Roque Magtanggol, John Doe alias Ka Donald, and Robert Doe alias Ka Daniel. Accordingly, the prime purpose of the meeting was to discuss a scheme to bring chaos between the two political parties (Liberal Party and Nacionalista Party) and in effect increase t he sympathizers for the CPP/NPAS and its manpower. Presumably this was the bombing of the Liberal party's political rally which would create a showdown between the Liberal Party and the Nacionalista Party. The actual bombing was allegedly implemented by Danny Cordero, alias Ka Danny or Ka Kris.

In support of the foregoing, the PNP-CISC submitted sworn statements of former members of the party who claimed to have knowledge of the bombing and further implicated the above respondents as the supposed planners of the bombing incident. Nothing shows clearly however, that the aforesaid meeting delved on the planning of the Plaza Miranda Bombing. If at all, only inferences were made in the statements. In other

words, the supposed participations of the respondents as planners or masterminds are shere speculations. And if the only evidence against them consist, merely of the said statements, the same is not sufficient to charge them of multiple murder. Moreover, the implicated persons who supposedly have carried out the carnage are no longer around or nowhere to be found in order to shed light on the incident or dispute them.

To indict the respondents, therefore, based solely on the submitted sworn statements is tantamount to a hasty, malicious and oppressive prosecution which is precisely what is being avoided through a preliminary investigation. There has to be more than what was submitted to establish probable cause.

The undersigned therefore recommends the DISMISSAL of the instant case against all the respondents for lack of sufficient basis.

Manila, March 2, 1994.

(Sgd) FELIPE M. PACQUING
Assistant Prosecutor

RECOMMENDING APPROVAL:
(Sgd) CECILIA SIOCO FERNANDEZ
Chief, Investigation Division

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Deparment of Justice
Manila

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that based on the records of the Department of Justice of the Republic of the Philippines there is no pending criminal charge against Prof. Jose Maria Sison.

Criminal Case No. 74896 which was filed against him on October 17, 1988 in the Regional Trial Court of Pasig, Metro Manila, for violation of the Anti-Subversion Law Republic Act No. 1700, was motu propio dismissed by the court due to the. repeal of the Rnti-Subversion Law, Republic **Act** No. 1700 by Republic Act No. 7636 on September 22, 1992.

The. case filed in the City Prosecutor's Office of Manila, I.S. No. 91-24834, entitled Philippine National Police-Criminal Investigation Service Command (PNP-CISC) vs. Jose Maria Sison et al., was dismissed on March 2, 1994, "for lack of sufficient evidence".

This Certification is being issued in connection with Prof. Sison's plan to attend the special ceremony in commemoration of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law signed in The Hague, The Netherlands on March 16, 1998 by the respective Peace Panels and witnesses of the Government 01the Republic of the Philippines and the National Deniocratic Front of the Philippines/Communist Party of the Philippines/New People's Army.

Manila, Philippines
April 20, 1998

SILVESTRE H. BELLO III
Secretary

Vergaderjaar 2002–2003

Aanhangsel van de Handelingen

Vragen gesteld door de leden der Kamer, met de daarop door de regering gegeven antwoorden

143

Vragen van het lid **De Wit** (SP) aan de minister van Buitenlandse Zaken over *banktegoeden van Filippijnse oppositionele organisaties.*
(Ingezonden 16 augustus 2002)

1
Is het waar dat u banktegoeden van Filippijnse oppositionele organisaties en personen verblijvend in Nederland hebt laten bevriezen?[1] Zo ja, welke organisaties en personen betreft het?

2
Kloppen de persberichten die melden dat u dat op grond van een Amerikaans verzoek heeft gedaan? Zo ja, wat waren de Amerikaanse argumenten?

3
Heeft de CPP-NPA (Cummunist Party of the Philippines, New Peoples Army) «acties tegen het Amerikaanse volk» ondernomen, zoals in persberichten staat vermeld? Zo ja, welke acties betreft dit, en waar en wanneer vonden die plaats?

4
Heeft Nederland zelfstandig onderzoek gedaan naar de beschuldigingen van terrorisme van deze organisaties en personen? Zo ja, sinds wanneer en op welke wijze?

5
Welke overwegingen hebben de doorslag bij uw besluit gegeven?

6
Is het waar dat de Filippijnen geen anti-terrorismewet kent en geen officiële definitie van terrorisme in dit licht? Zo ja, hoe beoordeelt u dat feit in het licht van het Amerikaanse verzoek?

7
Is het waar dat CPP-NDF onderhandelingspartners zijn van de Filippijnse regering?

8
Heeft de Filippijnse regering gevraagd om de uitlevering van van terrorisme verdachte personen? Zo ja, wie betreft het daarbij?

9
Indien het om José Sison gaat, zijn er aanwijzingen dat de situatie sinds 1997, toen hij een verblijfsvergunning kreeg, is veranderd? Zo ja, op welke punten?

[1] Teletekst, 13 augustus jl.

Antwoord

Antwoord van minister **De Hoop Scheffer** (Buitenlandse Zaken), mede namens de ministers van Financiën, van Justitie, voor Vreemdelingenzaken en Integratie en van Binnenlandse Zaken en Koninkrijksrelaties. (Ontvangen 8 oktober 2002), zie ook Aanhangsel Handelingen nr. 1656, vergaderjaar 2001–2002

1
Op 13 augustus jl. heb ik een ministeriële regeling op grond van de Sanctiewet 1977 vastgesteld die opdracht geeft tot bevriezing van tegoeden van de Communist Party of the Philippines/New People's Army (CPP/NPA) en van de heer Sison in Nederland. Dit heeft inmiddels tot bevriezing van tegoeden op een aantal in Nederland aangetroffen rekeningen geleid.

2 en 4
Nederland heeft onderzoek gedaan naar de activiteiten van de CPP/NPA en de heer Sison in Nederland. Dit blijkt ondermeer uit het jaarverslag 2001 van de Binnenlandse Veiligheidsdienst (BVD, inmiddels omgevormd tot de Algemene Inlichtingen- en Veiligheidsdienst, AIVD). Hierover kan, indien door uw Kamer gewenst, nadere informatie worden verstrekt in de Commissie Inlichtingen- en Veiligheidsdiensten. Onder meer op grond van aanwijzingen van de AIVD dat vanuit Nederland sturing wordt gegeven aan de CPP/NPA is onder verantwoordelijkheid van het Openbaar Ministerie bezien of voldoende gronden bestonden om een strafrechtelijk onderzoek in te

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ISSN 0921 - 7398
Sdu Uitgevers
's-Gravenhage 2002

stellen. Dat bleek niet het geval te zijn.
Na de aanslagen van 11 september zijn nationaal en internationaal een groot aantal maatregelen ter bestrijding van terrorisme genomen. Zo heeft de Veiligheidsraad van de Verenigde Naties resolutie 1373 aangenomen, die alle lidstaten van de Verenigde Naties ondermeer verplicht tegoeden van terroristen te bevriezen. Tot voor kort beschikte Nederland over onvoldoende rechtsmiddelen om nationaal aan deze verplichting in volle omvang uitvoering te kunnen geven. Inmiddels is door een aanpassing van de Sanctiewet 1977 de mogelijkheid verruimd om uitvoering te geven aan internationale sanctieregimes gericht op de bestrijding van terrorisme. Deze wijziging is zeer recent, namelijk op 6 juni 2002 (Stb. 270) in werking getreden, waardoor ook bevriezing van tegoeden in dit kader mogelijk werd.
De Verenigde Staten hebben op 9 augustus jl. de CPP/NPA op de Amerikaanse lijst van terroristische organisaties geplaatst. Op 12 augustus jl. zijn de CPP/NPA en de naam van de heer Sison toegevoegd aan de Amerikaanse lijst met namen behorende bij executive order 13224, die het blokkeren van financiële tegoeden van terroristische organisaties en daaraan gelieerde personen tot doel heeft. De Verenigde Staten beschouwen de activiteiten van CPP/NPA en Sison als een bedreiging voor Amerikaanse onderdanen en voor de nationale veiligheid en het Amerikaanse buitenlandse beleid.
De Verenigde Staten hebben ook Nederland gevraagd de tegoeden van de CPP/NPA en van de in Nederland woonachtige heer Sison te bevriezen. Nederland heeft, op basis van reeds beschikbare informatie en het Amerikaanse verzoek ter zake besloten tot bevriezing over te gaan. Het Verenigd Koninkrijk heeft soortgelijke maatregelen getroffen. Daarnaast zal Nederland zich er sterk voor maken dat de CPP/NPA en de heer Sison worden geplaatst op de terrorismelijst van de Europese Unie, die is gebaseerd op Verordening 2580/2001 uit december 2001.

3
De CPP/NPA wordt gekenmerkt door een sterk anti-Amerikaanse houding. De organisatie is een fervent tegenstander van het pro-Amerikaanse beleid van de huidige Filipijnse regering en van de aanwezigheid van Amerikaanse troepen in de Filipijnen in het bijzonder, die het Filipijnse leger in de eerste helft van 2002 hebben geadviseerd in de strijd tegen moslimrebellen van Abu Sayyaf.
In de jaren tachtig en negentig zijn zes Amerikanen bij aanslagen door de NPA om het leven gebracht. In april 2002 heeft CPP/NPA nog gedreigd met aanvallen op in de Filipijnen aanwezige Amerikaanse militairen en burgers, waaronder diplomaten.

5
Het geheel van factoren, genoemd in mijn antwoord op de vragen 2 en 4, heeft geleid tot mijn besluit.

6
De Filipijnen kennen inderdaad geen anti-terrorismewet en daarmee geen officiële definitie van terrorisme. De Filipijnse President, Gloria Macapagal-Arroyo, heeft overigens tegenover journalisten en via haar woordvoerder waardering uitgesproken voor het Amerikaanse verzoek en voor de Nederlandse en Britse reacties.

7
De Filipijnse regering heeft tot juni 2001 officieel onderhandeld over een vredesregeling met het NDF (National Democratic Front), dat daarbij namens CPP en NPA optreedt. De regering brak deze officiële onderhandelingen in juni 2001 af, nadat het NDF-panel zich positief uitliet over de moord op een lid van het Filipijnse Huis van Afgevaardigden, waarvoor de NPA verantwoordelijk gehouden wordt. Tot dusverre zijn de formele besprekingen niet hervat. Wel heeft een aantal «backchannel-besprekingen» plaatsgevonden. De heer Sison is bij alle besprekingen betrokken. Hij presenteert zich daarbij als «chief political consultant» van het NDF.

8
Nee.

9
Aan de heer José Maria Sison is in 1997 en ook nadien geen verblijfsvergunning toegekend. Op 11 september 1997 besloot de Rechtseenheidskamer dat Sisons beroep tegen eerdere afwijzingen van zijn asielverzoek ongegrond was, maar dat hij niet naar de Filipijnen mag worden uitgezet omdat er een reëel risico bestaat dat hij daar wordt onderworpen aan een onmenselijke behandeling; de rechter achtte terugkeer daarom in strijd met artikel 3 van het Europees Verdrag van de rechten van de Mens (EVRM). Door deze uitspraak is betrokkene in Nederland uitgeprocedeerd. Tegen het niet verlenen van een verblijfsvergunning heeft betrokkene een klacht ingediend bij het Europese Hof voor de Rechten van de Mens in Straatsburg. Het Hof heeft de zaak nog niet in behandeling genomen.

(Unofficial translation from the Dutch original)

TWEEDE KAMER DER STATEN-GENERAAL
(SECOND CHAMBER OF THE STATES-GENERAL)

Meeting year 2002-2003 **Appendix of the Acts**

Questions posed by members of the chamber, with the answers given to them by the government

---

143
Questions my the member De Wit (SP) to the Minister of Foreign Affairs concerning bank assets of Philippine opposition organizations (Sent in on 16 August 2002)

1
Is it true that you have ordered the freezing of bank assets of Philippine opposition organizations and persons staying in the Netherlands? (1) If so, which organizations and persons does it affect?

2
Are the press reports that give notice that you have done that on the basis of an American request accurate? If so, what were the American arguments?

3
Has the CPP-NPA (Communist Party of the Philippines, New Peoples Army) carried out actions against the American people", as reported in press reports? If so, which actions are referred to, and where and when did these take place?

4
Has the Netherlands made an independent investigation on the accusations of terrorism of these organizations and persons? If so, since when and in what manner?

5
Which considerations were decisive for you in your decision?

6
Is it true that the Philippines does not have an anti-terrorism law and has no official definition of terrorism in the light of this, and is so how can you judge that fact in the light of the American request?

7
Is it true that the CPP-NDF are negotiating partners of the Philippine government?

8
Has the Philippine government asked for the extradition of persons suspected of terrorism? If so, who are referred to by it [extradition request].

9
If it concerns Jose Sison, are there indications that the situation since 1997 has changed, when he got a permit to stay? If so, on which points?

---

(1) Teletekst, 13 August this year.

Answer

Answer of Minister **De Hoop Scheffer** (Foreign Affairs), also in the name of the Ministers of Finances, Justice, Aliens Affairs and Integration, Internal Affairs and Kingdom Relations. (Received on 8 October 2002), see also Appendix of Acts no. 1658, meeting year 2001-2002.

1
On August 13 this year, I laid down a ministerial regulation on the basis of Sanction Law 1977 which gives the order for the freezing of assets of the Communist Party of the Philippines/New People's Army (CPP/NPA) and of Mr. Sison in the Netherlands. This has led in the meantime to the freezing of assets of a number of affected accounts in the Netherlands.

2 and 4
The Netherlands has made an investigation on the activities of the CPP/NPA and Mr. Sison in the Netherlands. Among others, this comes out from the annual 2001 report of the Internal Security Service (BVD), in the meantime transformed into the General Information and Security Service, AIVD). Concerning this, it is possible, in case your Chamber so wishes, additional information is conveyed in the Commission Information and Security Services. Among others, on the basis of indications of the AIVD that direction is being given from the Netherlands to the CPP/NPA the Public Ministry was given the responsibility to see whether there were sufficient grounds to initiate a criminal investigation. It turned out that that was not the case.

After the attacks of September 11 a big number of measures were taken nationally and internationally to combat terrorism. So the Security Council of the United Nations accepted Resolution 1373 which obliges all member states of the United Nations to freeze the assets of terrorists. Until recently the Netherlands has had insufficient legal means to be able to implement this obligation completely on a national level. In the meantime, the possibility for implementing international sanction regulations directed at

the combating of terrorism was enlarged through the adjustment of the Sanction Law 1977. This amendment is very recent, namely on 6 June 2002 (Stb. 270) it became effective, whereby the freezing of assets in this framework became possible.

The US placed on 9 August this year the CPP/NPA on the American list of terrorist organizations. On 12 August this year the CPP/NPA and the name of Mr. Sison were added to the American list with names that go with executive order 13224, which has as its aim the blocking of financial assets of terrorist organizations and persons associated with them. The US regards the activities of the CPP/NPA and Sison as a threat for American subjects and for the national security and the American foreign policy.

The US has also asked the Netherlands to freeze the assets of the CPP/NPA and Mr. Sison who is living in the Netherlands. The Netherlands has decided, on the basis of already available information and the American request, to go into freezing [the assets]. The United Kingdom has taken similar measures.

In addition, the Netherlands will make strong efforts that the CPP/NPA and Mr. Sison be placed on the terrorist list of the European Union, which is based on the Regulation 2580/2001 of December 2001.

3
The CPP/NPA is characterized by a strong anti-American attitude. The organization is a fervent oppositor of the pro-American policy of the current Philippine government and to the presence of American troops in the Philippines, especially those who advised the Philippine army in the first half of 2002 in the fight against Muslim rebels of Abu Sayyaf. In the 80's and 90's six Americans died in attacks by the NPA. In April 2002, the CPP/NPA still threatened with attacks the American military and citizens present in the Philippines, including diplomats.

5
The entirety of factors mentioned in my answer to question 2 and 4 has led to my decision.

6
The Philippines indeed does not have an anti-terrorism law and has no official definition of terrorism. Apart from that, the Philippine President, Gloria Macapagal-Arroyo has expressed appreciation to journalists and via her spokesman for the American requests and for the Dutch and British reactions.

7
The Philippine government has officially negotiated until June 2001 concerning a peace arrangement with the NDF (National Democratic Front), which thereby represents the CPP and the NPA. The government broke up these official negotiations in June 2001, after the NDF panel expressed itself positively on the killing of a member of the Philippine House of Representatives, for which the NPA was held responsible. Up to now these formal talks have not been resumed. There have indeed been a number of

"backchannel talks". Mr. Sison is involved in all talks. He presents himself thereby as "chief political consultant" of the NDF.

8
No.

9
Mr. Jose Maria Sison was not given a permit to stay in 1997 and also after that. On 11 September 1997 the Rechtseenheidskamer [Law Unity Chamber] decided that Sison's appeal against earlier rejections of his asylum request was not grounded, but that he may not be expelled to the Philippines because there exists a real risk that there he would be subjected to an inhuman treatment; the judge considered therefore the return as in violation of Article 3 of the European Convention of Human Rights (EVRM). Through this ruling, the concerned is one whose asylum procedure is finished in the Netherlands. Against the non-granting of a permit to stay, the concerned has submitted a complaint in the European Court for Human Rights in Strasbourg. The Court has not yet taken the case in hearing.

Annex 44

Postbank

Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Blad	Volgnr.
10-10-2002	5822994	1 van 1	34

Totaal opgenomen bedrag in euro's	Vorig saldo in euro's
0,00	2.297,03
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
537,40	1.759,63
	Kredietlimiet in euro's
	500,00

Opgeboekt op	Omschrijving	Code	nr.	Gire-/bankrekening	Af/bij	Bedrag
7 OKT	01 5822994/0057967 POSTBANK NV VERGOEDINGSR	OV			AF	537,40

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Blad	Volgnr.
12-09-2002	5822994	1 van 1	33

Totaal opgenomen bedrag in euro's	Vorig saldo in euro's
209,90	2.087,13
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
0,00	2.297,03
	Kredietlimiet in euro's
	500,00

Opgeboekt op	Omschrijving	Code	nr.	Gire-/bankrekening	Af/bij	Bedrag
5 SEP	ANOVA Verzekeringen AFREKENING NR. 9956805213	VZ	57	6788453619	BIJ	209,90

SPAAR NU € 500 OF MEER EN ONTVANG EEN FRAAIE RUGZAK CADEAU!
LEES DE BIJSLUITER EN STUUR VANDAAG NOG DE COUPON OP.

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Grootboekrek.	Nummer	Volgnr.
29-08-2002		1 van 1	52

Totaal bijgeschreven bedrag in euro's	Vorig saldo in euro's
739,33	1.447,80
Totaal afgeschreven bedrag in euro's	**Nieuw saldo in euro's**
100,00	2.087,13
	Kredietlimiet in euro's
	500,00

Valutadatum	Omschrijving	Code	nr.	Giro-/Bankrekening	Afschr	Bedrag
16 AUG	INC BANC>UTRECHT S1A58400 15082002 15:02 ***H201 7970118	GM			AF	100,00
21 AUG	KN: UITK. 08-2002 BETAALRUN: 5922 VOLGNR: 3532 PERIODE: 01-08-02 T/M 31-08-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		1855685	BIJ	537,40
29 AUG	BESTUUR COA CLUSTER 401 3503 AB UTRECHT Maandsoelage sept'02	OV		3946834934	BIJ	201,93

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Grootboekrek.	Nummer	Volgnr.
15-08-2002		1 van 1	31

Totaal bijgeschreven bedrag in euro's	Vorig saldo in euro's
302,34	1.245,46
Totaal afgeschreven bedrag in euro's	**Nieuw saldo in euro's**
100,00	1.447,80

Valutadatum	Omschrijving	Code	nr.	Giro-/Bankrekening	Afschr	Bedrag
14 AUG	ZIE SPECIFICATIE ZIEKTEKOSTEN NOTA 190020333568 POLIS 804668973 ZILVEREN KRUIS ACHMEA	VZ		562958	BIJ	302,34
14 AUG	UTRECHT HAMMARSKJOLDHOF 1285 00 15082002 17:43 ***H201 4299719	GM			AF	100,00

Postbank

Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Gironummer	Bladnr.	Volgnr.
09-08-2002		1 van 1	30

Totaal bijgeschreven bedrag in euro's	Vorig saldo in euro's
0,00	1.499,16
Totaal afgeschreven bedrag in euro's	**Nieuw saldo in euro's**
253,70	1.245,46

Afschrijving	Naam/omschrijving	Code	nr	Oorsprongkenmerk	Afdrg	Bedrag
2 AUG	PROTEQ VERZEKERINGEN AUG.02 POLISNR/PREMIE 776700025/15,10 776700022/2,03 776700021/6,20 776700030/14,73	IC	51	230132650	AF	38,12
5 AUG	ABONNEMENT 008.3731065.08 ABONNEMENT DIGITALE TV AUGUSTUS INCLUSIEF 19.00 % BTW CasemaPlus	IC		806247	AF	19,75
8 AUG	ANTON SCHLECKER BV EHINGEN	AC		585283842	AF	26,28
9 AUG	KN: 2235-0003741301 Albert Heijn B.V. Distr. 16277 Order 0009058384	IC	51	6667408438	AF	169,55

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Gironummer	Bladnr.	Volgnr.
01-08-2002	5822994	1 van 2	29

Totaal bijgeschreven bedrag in euro's	Vorig saldo in euro's
739,33	1.014,68
Totaal afgeschreven bedrag in euro's	**Nieuw saldo in euro's**
254,85	1.499,16

Afschrijving	Naam/omschrijving	Code	nr	Oorsprongkenmerk	Afdrg	Bedrag
24 JUL	KN: UITK. 08-2002 BETAALRUN: 5858 VOLGNR: 3035 PERIODE: 01-08-02 T/M 31-08-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	201,93
24 JUL	KN: UITK. 07-2002 BETAALRUN: 5858 VOLGNR: 3708 PERIODE: 01-07-02 T/M 31-07-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	537,40
24 JUL	ABONNEENR. 3731065 EVENT01230853 OP 22-07-2002 23.30 U A0 4.00 INCLUSIEF 19.00 % BTW ZIE OVERZICHT D.D : 23-07-2002 CasemaPlus	IC		806248	AF	4,00
24 JUL	KLANTNUMMER: 25900-1 ROOSEVELTLAAN 778 UTRECHT BTW: 24.25 PERIODE: 2002-07 RENU Levering BV	IC		5115	AF	149,36
30 JUL	KN: 0347900072489S SPONSORBINGO LOTERIJ AUGUSTUS 2002 LOT 11.05.97-200 elke maandag bingo bij de Tros	IC	51	3282188812	AF	5,00
30 JUL	KN: 0347900072489A SPONSORBINGO LOTERIJ AUGUSTUS 2002 LOT 05.05.76-557 LOT	IC	51	3282188812	AF	10,00

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA

Datum	Rekening	Nummer	Volgnr.
01-08-2002	5822994	2 van 2	29

Afschrift op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/Bij	Bedrag
	11.05.97-199					
31 JUL	KN: 0347750246941B9 NAT. POSTCODE LOTERIJ AUGUSTUS 2002 LOT 3526BK206 KANJERPUNTEN 10 ZomerKanjer nu 4,7 miljoen!	IC	51	7070705546	AF	6,25
1 AUG	P H M M TEN BERG / TANDARTS	AC	40	481173	AF	44,04
1 AUG	PREMIES ANOVA VERZEKERINGEN 0001985600079010 PERIODE 200208 Anova Zorgverzekeringen	IC		218100	AF	36,20

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Rekening	Nummer	Volgnr.
23-07-2002	5822994	1 van 1	28

Totaal ingekomen bedrag in euro's	Vorige saldo in euro's
0,00	1.164,05
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
149,37	1.014,68

Afschrift op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/Bij	Bedrag
23 JUL	KN: 2192-0000362378 Albert Heijn B.V. Oktr. 16377 Order 0000694822	IC	51	666748438	AF	149,37

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 77B
3526 BK UTRECHT

Datum	Girorekening	Pagina	Volgnr
18-07-2002	5822994	1 van 1	27

Totaal afgeboekt bedrag in euro's	Vorig saldo in euro's
193,00	1.220,32
Totaal bijgeboekt bedrag in euro's	**Nieuw saldo in euro's**
249,27	1.164,05

Datum	Omschrijving	Code	nr.	Giro-/bankrekening	Af/bij	Bedrag
9 JUL	KN: UITK. 06-2002 BETAALRUN: 5824 VOLGNR: 2005 PERIODE: 01-06-02 T/M 30-06-02 GEMEENTE UTRECHT DIENST WELZYN SOC Z GEM	VZ		185608	BIJ	193,00
16 JUL	F.V. AGCAOILI 3513 AG UTRECHT	OV	7	3946669857	AF	97,00
16 JUL	HR J SISON UTRECHT	OV	6	7204253	AF	152,27

STAP NU OVER OP DE NIEUWE MANIER VAN BANKIEREN EN MAAK KANS OP EEN COMPAQ NOTEBOOK TER WAARDE VAN € 1.899! LEES DE FOLDER VOOR MEER INFORMATIE.

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 77B
3526 BK UTRECHT

Datum	Girorekening	Pagina	Volgnr
03-07-2002	5822994	1 van 2	26

Totaal afgeboekt bedrag in euro's	Vorig saldo in euro's
732,41	1.122,34
Totaal bijgeboekt bedrag in euro's	**Nieuw saldo in euro's**
834,43	1.220,32

Datum	Omschrijving	Code	nr.	Giro-/bankrekening	Af/bij	Bedrag
21 JUN	KN: UITK. 07-2002 BETAALRUN: 5779 VOLGNR: 2906 PERIODE: 01-07-02 T/M 31-07-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	201,98
21 JUN	KN: UITK. 06-2002 BETAALRUN: 5779 VOLGNR: 3560 PERIODE: 01-06-02 T/M 30-06-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	530,48
25 JUN	KLANTNUMMER: 25900-1 ROOSEVELTLAAN 77B UTRECHT BTW: 24_25 PERIODE: 2002-06 REMU Levering BV	IC		5115	AF	149,36
26 JUN	KN: 0341750071B147 SPONSORBINGO LOTERIJ JULI 2002 LOT 11.05.97-200 elke maandag bingo bij de Tros	IC	51	328218812	AF	5,00
24 JUN	KN: 0341730250767B MAT. POSTCODE LOTERIJ JULI 2002 LOT 3526BK206 KANJERPUNTEN 9 ZomerKanjer nu 4,7 miljoen!	IC	51	707070546	AF	6,25
26 JUN	KN: 0341750071814A SPONSORBINGO LOTERIJ JULI 2002 LOT 05.05.76-557 LOT 11.05.97-199	IC	51	328218812	AF	10,00

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA

Datum	Gironummer	Bladnr.	Volgnr.
03-07-2002	5822994	2 van 2	26

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/Bij	Bedrag
28 JUN	PREMIES ANOVA VERZEKERINGEN 5001985500079198 PERIODE 200207 Anova Zorgverzekeringen	IC		218100	AF	36,20
2 JUL	VAN DILLEN NUMANS EIZENGA ARTSEN	AC		4104021	AF	69,60
2 JUL	PROTEA VERZEKERINGEN JULI 02 POLISNR/PREMIE 77670022/2,03 77670021/5,99 77670030/14,73 77670025/15,16	IC	51	230132650	AF	37,87
2 JUL	HR J SISON UTRECHT	OV	5	7204253	AF	150,00
3 JUL	ABONNEMENT 008.3731065.07 ABONNEMENT DIGITALE TV JULI INCLUSIEF 19.00 % BTW CasemaPlus	IC		806247	AF	19,75
3 JUL	KN: 2134-0000348962 Albert Heijn B.V. Obtr. 16377 Order 0008275143	IC	51	666748438	AF	150,40

VANAF 1 JULI KUNT U MET UW GIROPAS GRATIS EURO'S PINNEN BIJ GELDAUTOMATEN EN IN WINKELS IN ALLE EUROLANDEN. KIJK VOOR MEER INFORMATIE OP POSTBANK.NL

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Gironummer	Bladnr.	Volgnr.
13-06-2002	5822994	1 van 1	25

Totaal afgeschreven bedrag in euro's	Vorig saldo in euro's
139,20	1.097,60
Totaal afgeschreven bedrag in euro's	**Nieuw saldo in euro's**
114,46	1.122,34

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/Bij	Bedrag
12 JUN	ZIE SPECIFICATIE ZIEKTEKOSTEN NOTA 19002023172 POLIS 804668973 ZILVEREN KRUIS ACHMEA	VZ		562956	BIJ	139,20
13 JUN	KN: 2089-0000336909 Albert Heijn B.V. Obtr. 16377 Order 0007898729	IC	51	666748438	AF	114,46

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr
06-06-2002	5822994	1 van 2	24

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	1.973,77
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
876,17	1.097,60

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
28 MEI	KN: 03361200725002 SPONSORBINGO LOTERIJ JUNI 2002 LOT 11.05.97-200 in juni extra zomerbingoprijzen!	IC	51	328218812	AF	5,00
28 MEI	KN: 03361102530439 NAT. POSTCODE LOTERIJ JUNI 2002 LOT 3526BK206 KANJERPUNTEN 7 ZomerKanjer nu 4,7 miljoen!	IC	51	707070546	AF	6,25
28 MEI	KN: 03361200725001 SPONSORBINGO LOTERIJ JUNI 2002 LOT 05.05.76-557 LOT 11.05.97-199	IC	51	328218812	AF	10,00
28 MEI	KLANTNUMMER: 25900-1 ROOSEVELTLAAN 778 UTRECHT BTW: 24.25 PERIODE: 2002-05 REMU Levering BV	IC		5115	AF	149,36
29 MEI	PREMIES ANOVA VERZEKERINGEN 8001985400079338 PERIODE 200206 Anova Zorgverzekeringen	IC		218100	AF	36,20
30 MEI	Stg Artsen Laboratorium UTRECHT	AC		681660619	AF	258,30
30 MEI	UNIVERSITAIR MED CENTR UTRECHT	AC	34	53763	AF	44,90
3 JUN	ABONNEENR. 3731065 EVENT01214009 OP	IC		806248	AF	4,00

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Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA

Datum	Girorekening	Bladnr.	Volgnr
06-06-2002	5822994	2 van 2	24

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
	25-05-2002 22.15 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus					
4 JUN	PROTEQ VERZEKERINGEN JUNI 02 POLISNR/PREMIE 77670030/14,73 77670025/15,16 77670022/2,03 77670021/5,95	IC	51	230132650	AF	37,87
4 JUN	HR J SISON UTRECHT	OV	4	7204253	AF	304,54
6 JUN	ABONNEMENT 008.3731065.06 ABONNEMENT DIGITALE TV JUNI INCLUSIEF 19.00 % BTW CasemaPlus	IC		806247	AF	19,75

GRATIS STEDENGIDS NAAR KEUZE BIJ GOLDCARD OF DOORLOPENDE REISVERZEKERING!
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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Annex 44
8/22

417/469

Afrekening GIROrekenin

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgr
27-05-2002	5822994	1 van 1	2

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro
1.078,00	1.029,1
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro**
133,35	1.973,7

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedr
27 MEI	KN: UITK. 06-2002 BETAALRUN: 5718 VOLGNR: 2949 PERIODE: 01-06-02 T/M 30-06-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	201,9
27 MEI	KN: UITK. 05-2002 BETAALRUN: 5718 VOLGNR: 3610 PERIODE: 01-05-02 T/M 31-05-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	876,0
27 MEI	KN: 2034-000322891 Albert Heijn B.V. Dbtr. 16377 Order 0007490797	IC	51	666748438	AF	133,3

147-311-004-068448

Girofoon 026 3 555 666 **www.postbank.nl**
Actueel saldo en bij- en afschrijvingen,
dagelijks van 7.00 uur 's ochtends tot 2.00 uur 's nachts.

Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekenin

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgr
23-05-2002	5822994	1 van 1	2

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro
5,00	1.028,1
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro**
4,00	1.029,1

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedra
17 MEI	KN: 0333650002698l SPONSORBINGO LOTERIJ donderdag bingo TROS nederland 2 GEFELICITEERD MET UW BINGOPRIJS	VZ	51	328218812	BIJ	5,0
20 MEI	ABONNEENR. 3731065 EVENTO1211327 OP 16-05-2002 01.15 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,0

SPAAR NU UW VAKANTIEGELD OP UW PLUS- OF KAPITAALREKENING EN KRIJG EEN REISWEKKER CADEAU. KIJK IN DE BIJGEVOEGDE FOLDER VOOR MEER INFORMATIE.

143-501-007-088396

Girofoon 026 3 555 666 **www.postbank.nl**
Actueel saldo en bij- en afschrijvingen,
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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr.
16-05-2002	5822994	1 van 1	21

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	1.265,47
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
237,35	1.028,12

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
15 MEI	VAN DILLEN NUMANS EIZENGA ARTSEN	AC		4104021	AF	92,80
16 MEI	KN: 2009-000317633 Albert Heijn B.V. Dbtr. 16377 Order 0007240438	IC	51	666748438	AF	144,55

136-311-005-080726

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Actueel saldo en bij- en afschrijvingen,
dagelijks van 7.00 uur 's ochtends tot 2.00 uur 's nachts.

Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekening

Annex 44
10/22

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr.
09-05-2002	5822994	1 van 2	20

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	1.380,54
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
115,07	1.265,47

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
30 APR	KN: 03311200729583 SPONSORBINGO LOTERIJ MEI 2002 LOT 11.05.97-200 donderdag bingo TROS nederland 2	IC	51	328218812	AF	5,00
30 APR	KN: 03311200729582 SPONSORBINGO LOTERIJ MEI 2002 LOT 05.05.76-557 LOT 11.05.97-199	IC	51	328218812	AF	10,00
30 APR	PREMIES ANOVA VERZEKERINGEN 1001985300079540 PERIODE 200205 Anova Zorgverzekeringen	IC		218100	AF	36,20
2 MEI	KN: 03311002543565 NAT. POSTCODE LOTERIJ MEI 2002 LOT 3526BK206 KANJERPUNTEN 6 ZomerKanjer nu 4,7 miljoen!	IC	51	707070546	AF	6,25
3 MEI	PROTEQ VERZEKERINGEN MEI 02 POLISNR/PREMIE 77670021/5,95 77670025/15,16 77670022/2,03 77670030/14,73	IC	51	230132650	AF	37,87
6 MEI	ABONNEMENT 008.3731065.05 ABONNEMENT DIGITALE TV MEI INCLUSIEF 19.00 % BTW	IC		806247	AF	19,75

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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA

Datum	Girorekening	Bladnr.	Volgnr.
09-05-2002	5822994	2 van 2	20

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
	CasemaPlus					

129-320-015-110956

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Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr.
26-04-2002	5822994	1 van 1	19

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	1.514,81
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
134,27	1.380,54

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
26 APR	KN: 1967-000307787 Albert Heijn B.V. Dbtr. 16377 Order 0006916503	IC	51	666748438	AF	134,27

Girofoon 026 3 555 666 **www.postbank.nl**
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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

Postbank

Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr.
25-04-2002	5822994	1 van 1	18

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
777,79	986,38
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
249,36	1.514,81

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
19 APR	STORTING EIGEN REKENING	ST			BIJ	45,38
19 APR	UTRECHT HAMMARSKJOLDHOF 1212 00 18042002 14:04 ***H201 9257779	GM			AF	100,00
24 APR	KN: UITK. 05-2002 BETAALRUN: 5669 VOLGNR: 3027 PERIODE: 01-05-02 T/M 31-05-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	201,93
24 APR	KN: UITK. 04-2002 BETAALRUN: 5669 VOLGNR: 3709 PERIODE: 01-04-02 T/M 30-04-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	530,48
24 APR	KLANTNUMMER: 25900-1 ROOSEVELTLAAN 778 UTRECHT BTW: 24.25 PERIODE: 2002-04 REMU Levering BV	IC		5115	AF	149,36

Postbank

Afrekening GIROrekening
421/469

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr
17-04-2002	5822994	1 van 1	17

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	1.453,65
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
467,27	986,38

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
15 APR	VAN DILLEN NUMANS EIZENGA ARTSEN	AC		4104021	AF	46,40
16 APR	ABONNEENR. 3731065 EVENT01202260 OP 12-04-2002 20.30 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,00
16 APR	HR J SISON UTRECHT	OV	3	7204253	AF	304,54
17 APR	KN: 1940-000299429 Albert Heijn B.V. Dbtr. 16377 Order 0006656964	IC	51	666748438	AF	112,33

107-311-004-076551

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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

Postbank

Afrekening GIROrekenin

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgr
11-04-2002	5822994	1 van 1	1

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro
0,00	1.457,6
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro**
4,00	1.453,6

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedr
10 APR	ABONNEENR. 3731065 EVENT01201131 OP 08-04-2002 21.00 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,0

LENEN EN SPAREN TEGELIJK? EN MET LAGE MAANDLASTEN?
DAT KAN MET POSTBANK SPAARKREDIET. BEL DE LEENLIJN: 058 295 95 95.

01-500-016-203703

Girofoon 026 3 555 666 **www.postbank.nl** **Klantenservice 020 5 611 611**
Actueel saldo en bij- en afschrijvingen, Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,

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HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekenin

Datum	Girorekening	Bladnr.	Volgr
04-04-2002	5822994	1 van 1	1

Totaal bijgeboekt bedrag in euro's	Vorig saldo in eurc
90,76	1.602,5
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in eurc**
235,65	**1.457,6**

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedr
2 APR	ANOVA Verzekeringen AFREKENING NR. 9851956816	VZ	51	678843619	BIJ	90,7
2 APR	PREMIES ANOVA VERZEKERINGEN 0001985200079732 PERIODE 200204 Anova Zorgverzekeringen	IC		218100	AF	36,2
3 APR	PROTEQ VERZEKERINGEN APRIL 02 POLISNR/PREMIE 77670022/2,03 77670021/5,95 77670030/14,73 77670025/15,16	IC	51	230132650	AF	37,8
4 APR	ABONNEMENT 008.3731065.04 ABONNEMENT DIGITALE TV APRIL INCLUSIEF 19.00 % BTW CasemaPlus	IC		806247	AF	19,7
4 APR	KN: 1901-000290205 Albert Heijn B.V. Dbtr. 16377 Order 0006369970	IC	51	666748438	AF	141,8

094-310-008-144184

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Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekening

Datum	Girorekening	Bladnr.	Volgnr
28-03-2002	5822994	1 van 2	14

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
954,88	818,27
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
170,61	1.602,54

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
21 MRT	KN: UITK. 04-2002 BETAALRUN: 5593 VOLGNR: 2921 PERIODE: 01-04-02 T/M 30-04-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	201,93
21 MRT	KN: UITK. 03-2002 BETAALRUN: 5593 VOLGNR: 3595 PERIODE: 01-03-02 T/M 31-03-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	530,48
22 MRT	ZIE SPECIFICATIE ZIEKTEKOSTEN NOTA 19002013693 POLIS 804668973 ZILVEREN KRUIS ACHMEA	VZ		562956	BIJ	82,93
27 MRT	ANOVA Verzekeringen AFREKENING NR. 9851932714	VZ	51	678843619	BIJ	139,54
27 MRT	KN: 03253200738296 SPONSORBINGO LOTERIJ APRIL 2002 LOT 11.05.97-200 vanaf 6 april bingo bij de TROS	IC	51	328218812	AF	5,00
27 MRT	KN: 03253102536070 NAT. POSTCODE LOTERIJ APRIL 2002 LOT 3526BK206 KANJERPUNTEN 4 JUBILEUM JACKPOT NU 7+7 MILJOEN	IC	51	707070546	AF	6,25
27 MRT	KN: 03253200738295 SPONSORBINGO LOTERIJ	IC	51	328218812	AF	10,00

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Afrekening GIROrekening

Datum	Girorekening	Bladnr.	Volgnr
28-03-2002	5822994	2 van 2	14

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
27 MRT	APRIL 2002 LOT 05.05.76-557 LOT 11.05.97-199 KLANTNUMMER: 25900-1 ROOSEVELTLAAN 778 UTRECHT BTW: 24.25 PERIODE: 2002-03 REMU Levering BV	IC		5115	AF	149,30

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr.
19-03-2002	5822994	1 van 1	13

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	1.008,50
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
190,23	818,27

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
18 MRT	ABONNEMENT 008.3731065.03 ALL&MC MAART INCLUSIEF 19.00 % BTW CasemaPlus	IC		806247	AF	19,75
19 MRT	KN: 1853-000277133 Albert Heijn B.V. Dbtr. 16377 Order 0005935195	IC	51	666748438	AF	170,48

LET OP: VANAF 1 APRIL WORDEN BETALINGEN IN GULDENS NIET MEER UITGEVOERD!

078-310-008-151131

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zaterdag van 9.00 uur tot 17.00 uur.

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Afrekening GIROrekenin

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgn
14-03-2002	5822994	1 van 1	1

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro
0,00	1.093,8
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro**
85,30	1.008,5

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedra
12 MRT	P H M M TEN BERG / TANDARTS	AC	87	481173	AF	81,3
13 MRT	ABONNEENR. 3731065 EVENT01193424 OP 11-03-2002 21.30 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,0

SLUIT NU EEN SCHADEVERZEKERING AF EN ONTVANG EEN GRATIS BOEK!

3-521-002-017371

Girofoon 026 3 555 666 **www.postbank.nl**
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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur.

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ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekening

Datum	Girorekening	Bladnr.	Volgnr
08-03-2002	5822994	1 van 1	11

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	1.097,2(
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
3,40	1.093,8(

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
8 MRT	KN: 1817-000269257 Albert Heijn B.V. Dbtr. 16377 Order 0005572925	IC	51	666748438	AF	3,4(

Girofoon 026 3 555 666 **www.postbank.nl**
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Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekenin

Datum	Girorekening	Bladnr.	Volgn
05-03-2002	5822994	1 van 1	1(

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro
13,61	1.594,5
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro**
510,95	1.097,2(

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedra
1 MRT	HR J SISON UTRECHT	OV	2	7204253	AF	304,5
4 MRT	ENERCEN NV EENMALIGE PREMIE IVM AANMELDING GROENE STROOM	VZ	51	621688185	BIJ	13,6
4 MRT	PROTEQ VERZEKERINGEN MAART 02 POLISNR/PREMIE 77670030/14,73 77670025/15,16 77670022/2,03 77670021/5,95	IC	51	230132650	AF	37,8
5 MRT	KN: 03213600078884 SPONSORBINGO LOTERIJ MAART 2002, LOT 11.05.97-200 bingopaleis elke maandag RTL4	IC	51	328218812	AF	5,0(
5 MRT	KN: 03213600078883 SPONSORBINGO LOTERIJ MAART 2002, LOT 11.05.97-199 bingopaleis elke maandag RTL4	IC	51	328218812	AF	5,0(
5 MRT	KN: 1809-000266891 Albert Heijn B.V. Dbtr. 16377 Order 0005512711	IC	51	666748438	AF	158,5

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Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Annex 44
17/22

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekening

426/469

Datum	Girorekening	Bladnr.	Volgnr.
28-02-2002	5822994	1 van 2	9

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
780,06	1.018,71
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
204,23	1.594,54

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
18 FEB	ABONNEENR. 3731065 EVENTO1186546 OP 14-02-2002 20.45 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,0C
20 FEB	GEM UTRECHT BURGERZAKEN REST ZALMSNIP2002 002201200000 2	VZ	51	430092970	BIJ	45,38
25 FEB	KN: 03188000255947 NAT. POSTCODE LOTERIJ deze maand 1 gratis jubileumlot GEFELICITEERD MET UW LINGOPRIJS	VZ	51	707070546	BIJ	2,27
25 FEB	KN: UITK. 03-2002 BETAALRUN: 5530 VOLGNR: 2851 PERIODE: 01-03-02 T/M 31-03-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	201,93
25 FEB	KN: UITK. 02-2002 BETAALRUN: 5530 VOLGNR: 3501 PERIODE: 01-02-02 T/M 28-02-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	530,48
27 FEB	ABONNEENR. 3731065 EVENTO1185739 OP 12-02-2002 00.00 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,0C
27 FEB	KN: 03204900730177 SPONSORBINGO LOTERIJ	IC	51	328218812	AF	5,0C

Girofoon 026 3 555 666 **www.postbank.nl**
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Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

059-321-007-054122

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Afrekening GIROrekening

Datum	Girorekening	Bladnr.	Volgnr
28-02-2002	5822994	2 van 2	9

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
27 FEB	MAART 2002 LOT 05.05.76-557 KN: 03204802547003 NAT. POSTCODE LOTERIJ MAART 2002 LOT 3526BK206 KANJERPUNTEN 3 deze maand 1 gratis jubileumlot	IC	51	707070546	AF	5,67
27 FEB	KLANTNUMMER: 25900-1 ROOSEVELTLAAN 778 UTRECHT BTW: 24.25 PERIODE: 2002-02 REMU Levering BV	IC		5115	AF	149,36
28 FEB	PREMIES ANOVA VERZEKERINGEN 7001985100080009 PERIODE 200203 Anova Zorgverzekeringen	IC		218100	AF	36,2C

Girofoon 026 3 555 666 **www.postbank.nl**
Actueel saldo en bij- en afschrijvingen,

Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,

059-321-007-054122

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ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekening

Datum	Girorekening	Bladnr.	Volgnr
13-02-2002	5822994	1 van 1	8

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
1.516,17	152,89
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
650,35	1.018,71

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
1 FEB	VAN DILLEN NUMANS EIZENGA ARTSEN	AC		4104021	AF	22,69
4 FEB	PROTEQ VERZEKERINGEN FEBR.02 POLISNR/PREMIE 77670022/2,03 77670021/5,95 77670030/14,73 77670025/15,16	IC	51	230132650	AF	37,87
6 FEB	STORTING EIGEN REKENING	ST			BIJ	150,00
6 FEB	NECKERMANN NEDERLAND TERNEUZEN	AC	42	860860	AF	213,66
6 FEB	ABONNEMENT 008.3731065.02 ALL&MC FEBRUARI INCLUSIEF 19.00 % BTW CasemaPlus	IC		806247	AF	19,75
12 FEB	KN: UITK. 01-2001 BETAALRUN: 5511 VOLGNR: 78 PERIODE: 01-01-01 T/M 31-01-02 GEMEENTE UTRECHT DIENST WELZYN SOC Z GEM	VZ		185608	BIJ	1.366,17
12 FEB	STICHTING UCK 3512 JC UTRECHT	OV	1	699553636	AF	193,00
13 FEB	KN: 1759-000251850 Albert Heijn B.V. Dbtr. 16377 Order 0005045313	IC	51	666748438	AF	156,38
13 FEB	BIJDRAGE GIROPAS 2002 PASNUMMER ***H201 POSTBANK NV PRODUKTREKENING	DV		925151	AF	7,00

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zaterdag van 9.00 uur tot 17.00 uur.

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ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekening

Datum	Girorekening	Bladnr.	Volgnr
31-01-2002	5822994	1 van 1	7

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	312,85
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
159,96	152,89

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
31 JAN	ABONNEENR. 3731065 EVENT01180063 OP 22-01-2002 18.45 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,00
31 JAN	KN: 03152802550236 NAT. POSTCODE LOTERIJ FEBRUARI 2002 LOT 3526BK206 KANJERPUNTEN 2 deze maand 1 gratis jubileumlot	IC	51	707070546	AF	5,67
31 JAN	KN: 1733-000240450 Albert Heijn B.V. Dbtr. 16377 Order 0004762875	IC	51	666748438	AF	150,29

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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,

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Annex 44
19/22

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekening
428/469

Datum	Girorekening	Bladnr.	Volgnr.
30-01-2002	5822994	1 van 1	6

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
0,00	442,12
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
129,27	312,85

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
30 JAN	KN: 03151300753695 SPONSORBINGO LOTERIJ FEBRUARI 2002 LOT 05.05.76-557 bingopaleis elke maandag RTL4	IC	51	328218812	AF	4,53
30 JAN	KN: 1723-000236549 Albert Heijn B.V. Dbtr. 16377 Order 0003685942	IC	51	666748438	AF	124,74

030-311-005-092314

Girofoon 026 3 555 666 **www.postbank.nl**
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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekenin

Datum	Girorekening	Bladnr.	Volgn
29-01-2002	5822994	1 van 1	

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro
197,82	410,5
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro**
166,26	442,1

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedr
25 JAN	TRANSACTIE GE2002012413338 EUR 197,82 KATHOLIEKE HOGESCHOOL VZW ONKOSTENVERGOEDING 22/11/2001	OV	3338		BIJ	197,8
29 JAN	PREMIES ANOVA VERZEKERINGEN 7001985000080503 PERIODE 200202 Anova Zorgverzekeringen	IC		218100	AF	36,2
29 JAN	KN: 1728-000238502 Albert Heijn B.V. Dbtr. 16377 Order 0003334144	IC	51	666748438	AF	130,0

310-008-145554

Girofoon 026 3 555 666 **www.postbank.nl**
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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,

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Afrekening GIROrekenin

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgn
25-01-2002	5822994	1 van 1	

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro'
604,63	41,7
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro'**
235,81	410,5

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedra
25 JAN	KN: UITK. 02-2002 BETAALRUN: 5466 VOLGNR: 2960 PERIODE: 01-02-02 T/M 28-02-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	179,2
25 JAN	KN: UITK. 01-2002 BETAALRUN: 5466 VOLGNR: 3634 PERIODE: 01-01-02 T/M 31-01-02 GEMEENTE UTRECHT Dienst Welzijn Utrecht	VZ		185608	BIJ	425,3
25 JAN	KLANTNUMMER: 25900-1 ROOSEVELTLAAN 778 UTRECHT BTW: 22.69 PERIODE: 2002-01 REMU Levering BV	IC		5115	AF	148,1
25 JAN	KN: 1720-000233021 Albert Heijn B.V. Dbtr. 16377 Order 0004598757	IC	51	666748438	AF	87,7

025-310-008-154173

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Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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Annex 44
21/22

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekening

430/469

Datum	Girorekening	Bladnr.	Volgnr.
14-01-2002	5822994	1 van 1	2

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
299,09	408,91
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
462,21	245,79

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
7 JAN	ABONNEENR. 3731065 EVENTO1174193 OP 01-01-2002 22.30 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,00
8 JAN	KN: 1000002590000011 ZIE U TOEGEZONDEN NOTA(S) REMU EXCASSO 162 REMU Levering BV	VZ		5115	BIJ	162,96
8 JAN	HR J SISON UTRECHT (GULDEN 670,00)	OV	64	7204253	AF	304,03
9 JAN	ABONNEMENT 008.3731065.01 ALL&MC JANUARI INCLUSIEF 19.00 % BTW CasemaPlus	IC		806247	AF	19,75
11 JAN	STORTING EIGEN REKENING	ST			BIJ	136,13
14 JAN	KN: 1691-000218672 Albert Heijn B.V. Dbtr. 16377 Order 0004217804	IC	51	666748438	AF	134,43

WARME FLEECEDEKEN CADEAU ALS U NU 500 EURO SPAART.
KIJK IN DE BIJSLUITER VOOR MEER INFORMATIE.

014-500-012-125532

Girofoon 026 3 555 666 **www.postbank.nl**
Actueel saldo en bij- en afschrijvingen,
dagelijks van 7.00 uur 's ochtends tot 2.00 uur 's nachts.

Klantenservice 020 5 611 611
Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

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ROOSEVELTLAAN 778
3526 BK UTRECHT

Afrekening GIROrekening

Datum	Girorekening	Bladnr.	Volgnr
17-01-2002	5822994	1 van 1	3

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
199,53	245,79
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
403,58	41,74

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
15 JAN	STORTING EIGEN REKENING	ST			BIJ	199,53
16 JAN	AEGON BANK NIEUWEGEIN NIEUWEGEIN (GULDEN 550,00)	AC		738568325	AF	249,58
17 JAN	UTRECHT HAMMARSKJOLDHOF 12120000 16012002 14:03 ***H201 4362760	GM			AF	150,00
17 JAN	ABONNEENR. 3731065 EVENTO1177895 OP 15-01-2002 00.30 U AD 4.00 INCLUSIEF 19.00 % BTW CasemaPlus	IC		806248	AF	4,00

017-310-002-026952

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zaterdag van 9.00 uur tot 17.00 uur.

Postbank

Afrekening GIROrekening
431/469

HR J M SISON EN/OF MW J SISON-DE LIMA

Datum	Girorekening	Bladnr.	Volgnr
03-01-2002	5822994	2 van 2	1

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
3 JAN	PROTEQ VERZEKERINGEN JAN.02 POLISNR/PREMIE 77670021/5,95 77670022/2,03 77670030/14,73 77670025/15,16	IC	51	230132650	AF	37,8
3 JAN	CORRECTIE FOUT GEBOEKTE STORTING POSTKANTOOR BIJGEBOEKT OP 2-1-02 EXCUUS NAMENS POSTBANK	DV		836100	AF	273,1

HET VOLGNUMMER LAATSTE AFREKENING IN 2001: 28.

VANAF 24 DECEMBER 2001 ZIJN ONZE AFREKENINGEN IN EURO'S

003-321-009-064427

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Afrekening GIROrekening

HR J M SISON EN/OF MW J SISON-DE LIMA
ROOSEVELTLAAN 778
3526 BK UTRECHT

Datum	Girorekening	Bladnr.	Volgnr.
03-01-2002	5822994	1 van 2	1

Totaal bijgeboekt bedrag in euro's	Vorig saldo in euro's
500,00	687,69
Totaal afgeboekt bedrag in euro's	**Nieuw saldo in euro's**
778,77	408,91

1 euro = 2,20371 gulden

Geboekt op	Naam/omschrijving	Code	nr.	Giro-/Bankrekening	Af/bij	Bedrag
21 DEC	KN: 03089300760629 SPONSORBINGO LOTERIJ JANUARI 2002 LOT 05.05.76-557 bingopaleis elke maandag RTL4	IC	51	328218812	AF	4,53
21 DEC	KN: 03089202540970 NAT. POSTCODE LOTERIJ JANUARI 2002 LOT 3526BK206 KANJERPUNTEN 1 elke werkdag Lingo TROS TV2	IC	51	707070546	AF	5,67
21 DEC	EURO-AFRONDING					0,01
28 DEC	VAN DILLEN NUMANS EIZENGA ARTSEN (GULDEN 50,00)	AC		4104021	AF	22,69
28 DEC	STICHTING UCK UTRECHT (GULDEN 425,31)	AC		699553636	AF	193,00
28 DEC	NECKERMANN NEDERLAND TERNEUZEN (GULDEN 416,30)	AC	42	860860	AF	188,91
28 DEC	P H M M TEN BERG / TANDARTS (GULDEN 37,00)	AC	86	481173	AF	16,79
28 DEC	PREMIES ANOVA VERZEKERINGEN 9001984900082453 PERIODE 200201 Anova Zorgverzekeringen (GULDEN 79,78)	IC		218100	AF	36,20
2 JAN	STORTING EIGEN REKENING	ST			BIJ	500,00

003-321-009-064427

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Maandag t/m vrijdag van 8.00 uur tot 21.00 uur,
zaterdag van 9.00 uur tot 17.00 uur.

Amnesty International Response to the European Commission Green Paper on The Presumption of Innocence, COM(2006) 174 final

June 2006

Amnesty International welcomes the Commission's stated intent to develop equivalent standards throughout the EU on the presumption of innocence, which is a fundamental principle of human rights and criminal law. Amnesty International considers that the standards protecting individuals should have the same weight and binding force as judicial cooperation measures that enhance the powers of law enforcement officials in the course of the creation of an "Area of Freedom Security and Justice".

The presumption of innocence has been identified by the Commission as a right in respect of which increased visibility at EU level could promote a higher degree of mutual trust between the member states and therefore strengthen judicial cooperation between Member States, as well as enhance the protection of individual rights throughout the EU. While Amnesty International supports these objectives, we would insist that any harmonisation of rules as regards criminal procedure should never be to the detriment of the existing obligations of Member States under international law, and if anything should lead to a higher level of human rights protection in the European Union. Amnesty International's response to this Green Paper will seek to highlight its understanding of the presumption of innocence in accordance with this objective.

Regarding the Commission's intention to now focus on evidence-based safeguards and follow-up this new consultation with a Green paper on gathering/ handling evidence and criteria for admissibility, Amnesty International would like to reiterate its call to the Commission to address as a matter of urgency the issue of the use of evidence extracted through torture or other ill-treatment to ensure the full respect by EU Member States of their obligation under Article 3 of the ECHR, Article 7 of the ICCPR and Article 15 of the Convention against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment, which prohibit the use of information adduced as a result of torture or other ill-treatment in proceedings except as evidence in proceedings against the persons alleged to be responsible for such treatment.[1]

The presumption of innocence

Everyone has the right to be presumed innocent, and treated as innocent, until and unless they are convicted according to law in the course of proceedings which meet at least the minimum prescribed requirements of fairness. All member states are obliged, under international law, to respect and protect human rights of suspects and accused persons, including the right to the presumption of innocence.[2]

Introductory remarks

Because the respect for the right to the presumption of innocence is a fundamental component of the right to a fair trial, Amnesty International had listed the presumption of innocence as one of the rights that should be contained in the EU wide letter of Rights foreseen in the initial Commission proposal for a framework decision on certain procedural rights in criminal proceedings throughout the European Union. We are concerned that the provision on the Letter of Rights will be deleted from the final text and

[1] See AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005, pages 22-24 [AI Index: IOR61:013/2005]; The EU Network of Independent Experts in Fundamental Rights , Synthesis Report 2005, pages 271-272 [CFR-CFD/conclusions2005]

[2] See inter alia: Article 11 of the Universal Declaration, Article 14(2) of the ICCPR, Article 6(2) ECHR, Article 48 CFREU, Article 21(3) of the Yugoslavia Statute, Article 20(3) of the Rwanda Statute, Article 66 of the ICC Statute.

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we believe that this is inconsistent with the EU's objective to build up a coherent set of measures in the field of criminal justice.[3]

Compliance by EU Member States with their obligations to protect fair trial rights, including the right to the presumption of innocence, is an essential component of mutual trust and is necessary to ensure European citizens that they can rightly expect equivalent standards of protection throughout the EU. Redress for the failure to respect the right to the presumption of innocence must be available at the national level. Recourse at the international level, following exhaustion of domestic remedies, is available through the European Court of Human Rights, as well as through the Human Rights Committee in relation to those countries that have ratified the Optional Protocol to the ICCPR. However, Amnesty International is also advocating for specific regulatory mechanisms to be put in place at EU level to systematically assess and correct the existing gaps in law and practice in each member state. In particular, Amnesty International has welcomed the work of the EU Network of Independent Experts and addressed this issue in the debate over the foreseen Fundamental Rights Agency. We are therefore particularly concerned that the Council is still to decide whether to include or not third pillar police and justice matters from the future agency's remit. We believe that to exclude matters such as fair trial rights, would further discredit an agency whose power to address human rights problems is already limited by the scope of EU law itself.

The latest developments in the field of counter-terrorism, including in cross border situations and international cooperation, have shown disturbing trends which involve unlawful detention, torture or other ill-treatment of persons and disappearances. Reports of extraordinary renditions and the operation of “black sites” in Europe, which involve the extra-judicial detention and transfer of persons through and in some instances with the involvement of EU Member States to third countries, contain within them the spectre of multiple human rights violations.[4] In these cases, fair trial rights, including the right to the presumption of innocence, are being violated outside any legal framework that would make it possible to challenge this violation. We urge the EU to exercise all its political, diplomatic and legal competence and powers to put an end to these practices. Adopting measures to ensure that the principle of the presumption of innocence is consistently respected at all stages of criminal proceedings in the Member States, including when terrorism offences are suspected, would be one step in this direction. (See also Q. 7)

Do you agree with the list of what constitutes the presumption of innocence given in the Green Paper? Are there any other aspects not covered? (Q.1)

The Green Paper notes that the presumption of innocence ‘can only benefit a person who is *“subjected to a criminal charge”*. Given the differing legal systems, codes and procedures, Anmesty International considers that any future EU legislation should incorporate the internationally accepted definition of the term “charge” and the internationally accepted criteria for determining whether a matter is “criminal”.[5]

Amnesty International would also like to add that during the trial, particular attention should be paid that no attributes of guilt are borne by the accused which might impact on the presumption of their innocence. Such attributes could include holding the accused in a cell within the courtroom, requiring the accused to wear handcuffs, shackles or prison uniform in the courtroom.

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[3] Amnesty International has grown increasingly concerned about the way the negotiations on the proposal for a framework decision on procedural safeguards in criminal proceedings have developed, especially about what appears to be the intention of the Council to limit the number and scope of the rights covered and adopt only very general minimum standards. See JHA 1-2 June, draft conclusions (9409/06 Press 144) and *Joint letter of Amnesty International and Justice to the Justice and Home Affairs Council*, 26 April 2006.

[4] See AI reports, *USA: Below the radar – Secret flight to torture and disappearances*, April 2006 (AI Index: AMR 51/051/2006); *Partners in Crime: Europe’s role in US renditions*, June 2006 (AI Index: EUR 01/008/2006)

[5] A person should be determined to be charged when “the situation of the person has been substantially affected, they have been deprived of their liberty, they have been publicly named or they have been given official notification by the competent authority that they have committed an offence, which ever comes first (Human Rights Committee General Comment 13, para 8; *Deweer V. Belgium*, Judgement of the European Court of Human Rights, 27 February 1980, para 44 and 46); in international law, the determination of whether a matter is “criminal” depends on both the nature of the act and the nature and severity and consequences of the possible penalties. While the classification of an act under national law is a consideration, it is not decisive (*Engle and Others v. Netherlands*, (No.1), Judgement of the European Court of Human Rights, 15 July 1982).

As stated in the Green Paper, the right to presumption of innocence requires that judges (and juries) refrain from prejudging any case. It also applies to all other public officials and beyond the strict remit of the criminal trial.[6]

The right to presumption of innocence applies not only to treatment in court and the evaluation of evidence, but also to treatment before trial. It applies to suspects at the interrogation stage, before charges are filed prior to trial and carries out through until a conviction is confirmed following a final appeal. The right also applies after acquittal when public authorities should refrain from implying that the person may have been guilty (please see also below & Q.8 on duration).

At all stages, persons should have a right to remedy in case of violation of his/her right to presumption of innocence.

Are there special measures (in your Member State) during the pre-trial stage in order to safeguard the presumption of innocence? (Q.2)

Beyond national laws and practices, Amnesty International takes this opportunity to elaborate on the rights during the interrogation and pre-trial phases, which among other things safeguard the right to the presumption of innocence.[7]

- Rights during interrogation

There are several rights which aim to safeguard the presumption of innocence of people suspected or accused of crimes during the investigation of an offence. These include, the right to access to counsel, the prohibition against torture and other cruel, inhuman and degrading treatment or punishment, the prohibition against compelling people to confess guilt or testify against themselves, the right to remain silent, the right to be informed of the reasons of the detention, and the right to access to a court to challenge the legality of detention.

There are additional safeguards during interrogation. Among other things, international standards require the authorities not to take undue advantage of the situation of a detained person during interrogation (Principle 21 of the Body of Principles). [8] A key safeguard is the right to the presence of a lawyer during interrogation. Amnesty International calls on the European Commission to ensure that the right to access to and presence of counsel during questioning by the police, including of people arrested or detained but not yet charged with a criminal offence, is included within the EU's set of safeguards to protect the right to presumption of innocence.

- Additional safeguards for people in pre-trial custody

Anyone suspected of, charged with, arrested or detained in connection with a criminal offence who has not yet been tried is to be treated in accordance with the presumption of innocence. International standards require that the treatment of people held in pre-trial custody should be different from that of people who have been convicted. [9] According to the European Prison Rules[10] : "the regime for untried prisoners may not be influenced by the possibility that they may be convicted of an offence in the future".[11]The rules further provide special safeguards for prisoners held before trial, regarding

[6] See for instance a decision from the European Commission for Human Rights, in the case "Petra Krause vs. Switzerland" , 3 October 1978, Application no. 7986/77, D.R. 13, 73, which stated that no state representative can declare a person guilty or make a declaration presuming guilt before the guilt has been legally determined.
[7] See also Amnesty International Response to the European Commission Green Paper on mutual recognition of non-custodial pre-trial supervision measures, COM(2004)562 final, December 2004
[8] See Human Rights Committee General Comment 20, para 11 and Principle 23 of the Body of Principles; Article 15 of the Convention against Torture, Article 12 of the Declaration against Torture.
[9] Article 10(2)(a) of the ICCPR, Rule 84(2) of the Standard Minimum Rules, Article 5(4) of the American Convention.
[10] Rec.(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, Part VII
[11] See Article 95.1, Part VII, *Approach to untried prisoners*, of the amended European Prison Rules. In the commentary of the Rules, one reads: "This rule describes the basic approach regarding untried prisoners in positive terms. It emphasis that they should be treated well because their rights have not yet been restricted by a criminal sentence. The ECtHR has stressed that this presumption applies also to the legal regime governing the rights of such persons and the manner in which they should be

accommodation clothing, legal advice, contact with the outside world, work and access to the regime of sentenced prisoners.[12]

In what circumstances is it acceptable for the burden of proof to be reversed or altered in some way? Have you experienced cross border cooperation situations in which the burden of proof created a problem (Q. 3)?

In some countries, the law requires the accused (rather than the prosecution) to explain elements of certain offences. For example, the accused may be required to explain their presence in a given location (at or near the place where a crime occurred), or their possession of certain things (such as stolen property or contraband). Such requirements, when incorporated into law, are known as statutory presumptions. These have been challenged on the grounds that they impermissibly shift the burden of proof from the prosecution to the accused, in violation of the presumption of innocence.

The European Court of Human Rights has found that, in view of the presumption of innocence, which among other things requires that the state proves the charge beyond a reasonable doubt, statutory presumptions must be defined by law and reasonably limited. They must also preserve the right of the accused to a defence. In other words they must be capable of rebuttal by the accused.[13]

One notes that the Inter-American Commission considers that the definition of a criminal offence based on mere suspicion or association should be eliminated as it shifts the burden of proof and violates the presumption of innocence.[14] Vague definitions of criminal offences can also affect the right to the presumption of innocence and create particular problems in cross-borders cases.

During the negotiations of the Framework Decision on combating terrorism, a number of Member States, as well as NGOs including Amnesty International[15], raised concerns that the definition contained in the Commission proposal was not sufficiently precise as to guarantee legal certainty and that the breadth of the proposed definition could threaten the right to freedom of association and legitimate protest. Requiring criminalisation of "terrorist" acts, it allowed for prosecution for offences such as "unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property"[16], and "promoting of, supporting of or participating in a terrorist organisation"[17]. Amnesty International believes that not clearly defining such terms could lead to criminalisation of activities unrelated in any way to acts of violence. Moreover, the fact that the EU Framework decision only sets minimum standards regarding substantive criminal law means that Member States are free to diverge from those standards. While it was the case that some Member States already had their own national legislation that went further than the Framework Decision and therefore implementation required little change to the law, some of those Member States that did not previously have a definition of terrorism in their national law have transposed the Framework Decision almost exactly into their national legislation thus failing to remedy the problem of the vague definition. The EU cannot legitimately base mutual recognition instruments for judicial cooperation on mutual trust where it is unclear whether national definitions of terrorism which, due to the erosion of the principle of double criminality, now may be applied across the whole EU territory, are

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treated by prison hoards (*Iwanzcuk v. Poland* (applic 25196/94), para 53). They deserve the special protection of the State. All untried prisoners must be presumed innocent of a crime."

[12] "Rule 95.2 provides additional safeguards for [untried prisoners]. Rule 95.3 emphasises that the prisoners can enjoy all the safeguards of part II and also take part in activities such as work, education, exercise and recreation as described in that part. Part VII as a whole is designed to assist untried prisoners by spelling out more fully to what their status entitles them additionally." (commentary to recommendation rec(2006)2 of the Committee of Ministers to Member States on the European prison Rules cont.)

[13] See Pham Hoang v. France, (66/1991/318/390), 25 September 1992, finding that a French customs law which created refutable assumptions did not violate the presumption of innocence.

[14] Annual Report of the Inter-American Commission, 1996, OEA/Ser.L/V/II.95, doc. 7, para.4 p.745, Peru

[15] Comments by Amnesty International on a proposal by the Commission for a Council Framework Decision on combating terrorism, 19 October 2001.

[16] COM(2001)521 final, Article 3.1(f).

[17] Ibid, Article 3.1(m)

in compliance with international human rights obligations, including the obligation to respect the presumption of innocence.[18] (See also below Q.7)

The right to silence (Q. 4)

Amnesty International believes that no one charged with a criminal offence may be compelled to testify against him or herself or to confess guilt. This prohibition is in line with the presumption of innocence, which places the burden of proof on the prosecution, and with the prohibition against torture and other cruel, inhuman or degrading treatment.[19]

Whereas the Green Paper mentions the case-law of the European Court of Human Rights - *John Murray v. United Kingdom*, 8 February 1996 - which allows for limitations of the right to silence [20], we note that it fails to mention that the European Court did find that the failure to grant the accused access to counsel for the first 48 hours of his detention, when he was being questioned by police and had to decide whether to exercise his right to silence, was a violation of Article 6 ECHR. In some EU Member States like the United Kingdom, the right to assistance of a counsel during questioning is of particular importance given the fact that a person's silence during questioning may be the basis of the drawing of adverse inferences against the person in decisions to charge and during trial. (See also Q.2 above)

In absentia proceedings (Q. 6)

Amnesty International believes that the accused should be present in court during a trial to hear the full prosecution case, to put forward a defence or assist their counsel in doing so, to refute or provide information to enable their counsel to refute evidence and to examine witnesses or advise their counsel in the examination of witnesses. The organisation believes that the sole exceptions to this should be if the accused has deliberately absented themselves from the proceedings after they have begun or has been so disruptive that they have had to be removed temporarily. In such cases video or audio links should be employed to allow the accused to follow proceedings. Amnesty International believes that, if an accused is apprehended following a trial in which he or she was convicted in absentia for other than these reasons, the verdict rendered in absentia should be quashed and a completely new trial held before a different trial court.

- cross border situation: European Arrest Warrant (EAW)

Existing safeguards on the use of *in absentia* judgements in extradition procedures have been criticised in the case of the European Arrest Warrant. As argued by Nico Keijzer, while the EAW does provide for safeguards against the reliance upon in absentia judgements, its fails to offer a level of protection which gives full effect to the principle of presumption of innocence.[21] Article 5.1 of the Framework Decision (FD) guarantees against the reliance upon judgements following from a hearing of which the suspect was not informed, but fails to clearly specify that the person has to be made aware of the hearing in person, in addition to other methods of formal notification, e.g. informing the person of his/her last known address.[22] Even when Article 5.1 is invoked, it only provides that the person sought through a EAW has the possibility to apply for re-trial following surrender, falling short of guaranteeing re-trial in all cases as required by the case law of the European Court of Human Rights.[23]The instrument is additionally criticised for failing to guarantee that any re-trial will fully conform to Article 6 ECHR.[24]

[18] AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005 [AI Index: IOR61:013/2005]
[19] Article 14(3)(g) of the ICCPR, Articles 8(2)(g) and 8(3) of the American Convention, Principle 21 of the Body of Principles, Article 21(4)(g) of the Yugoslavia Statute, Article 20(4)(g) of the Rwanda Statute, Article 67(1)(g) of the ICC Statute.
[20] Green Paper on the Presumption of Innocence, page 8
[21] Nico Keijzer (2006) *The EAW Framework Decision between Past and Future*, presentation at conference on the European Arrest Warrant, Centre for European Policy Studies, Brussels, February 2006.
[22] ibid
[23] ibid
[24] ibid

Terrorism: do special rules apply? (Q. 7)

While the Council of Europe Guidelines on human rights and the fight against terrorism [25] indicate that some more severe yet necessary and proportionate restrictions may be placed on persons deprived of their liberty in relation to terrorism related offences (Guideline XI (2)), Amnesty International notes that the Presumption of Innocence is considered one of the rights not subject to restriction of any kind and that the Human Rights Committee (HRC), in its General Comment 29 noted that the presumption of innocence is one of the fundamental fair trial rights that is non-derogable and must be respected at all times. In order to ensure this right, individuals deprived of their liberty, including in connection with terrorism related offences must be granted access to a court to challenge the legality of their detention.[26] Amnesty International believes that there should be no special restrictions of rights of persons deprived of their liberty in connection with terrorism.

The international community as a whole has recognized that even people suspected of the most heinous crimes, such as war crimes, genocide and other crimes against humanity have a fundamental and inalienable right to enjoy respect for the highest procedural rights precisely because of the nature and gravity of the crimes of which they stand accused and the severity of the penalties they may face if convicted. [27]

Amnesty International is concerned that legislation related to terrorism may lead to violations of a person's right to a fair trial. In a recent report on UK anti-terrorism measures[28], Amnesty International discloses how under new legislation adopted in March 2005 – the Prevention of Terrorism Act 2005 (PTA) – the practice of indefinite detention without charge which had been declared illegal in a December 2004 ruling of the Law Lords has come to be replaced with a regime of "control orders" which nevertheless continues to deny the right to liberty and to a fair trial. The PTA gives a government minister unprecedented powers to issue so-called control orders to restrict the liberty, movement and activities of people purportedly suspected of involvement in terrorism, again on the basis of secret intelligence. Amnesty International considers that the PTA 2005 allows the stripping of a person's right to a fair trial, including:

- the right to be informed promptly and in detail, of the nature and cause of the accusations against oneself;
- the right to trial within a reasonable time or to release pending trial;
- the right to the presumption of innocence which applies to all persons charged with a criminal offence, including during times of emergency, and requires the state to prove the charge "beyond reasonable doubt";
- the right to equality before the law and equal protection of the law without any discrimination;
- the right to have a criminal charge against oneself determined by an independent tribunal which has the quality of finality and determinativeness; and
- the right to defend oneself in person or through legal assistance of one's own choosing.

Amnesty International is also concerned that inclusion on terrorist lists may lead to a violation of the right to the presumption of innocence. Considering the serious implications of being identified as a "terrorist", which include the deprivation of basic individual, social and economic rights (in particular the right to freedom of assembly, freedom of expression, the right to respect of private and family life, the right to basic public services and the right to liberty and to a fair trial), it is crucial that such identification is based on clear evidence that is capable of being challenged.[29] However, in the EU, it is not at all clear what effective remedy a person or organisation has to challenge their publication in the official journal of the European Communities as a "terrorist" and to seek reparation for the damages that they may suffer as a consequence of that inclusion.[30]

[25] Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies
[26] Article 9(3) of the ICCPR and Article 5(3) HRC General Comment 29 at para16
[27] See for example Article 55 of the Rome Statute of the International Criminal Court
[28] See AI Report, *Human Rights: A Broken Promise*, AI Index: EUR 45/004/2006; see also EU Network of Independent Experts Synthesis Report 2005
[29] See article 13 ECHR on the right to an effective remedy and similar provision in Article 47 CFREU
[30] The system of implementing terrorist blacklists as required by UN Security Council resolutions has led to a situation where the persons included on EU terrorist lists are deprived of an effective remedy to challenge their inclusion. The EU

In its thematic report of 2003 on "The balance between freedom and security in the response by the European Union and its member states to the terrorist threat", the EU Network of Independent Experts in Fundamental Rights has examined in detail the EU's "terrorist lists" and the application of the EU legislation by the member states. Among the key points of its analysis, one reads that:

-[The asset-freezing provisions] affect the presumption of innocence because the freezing of assets prejudges the guilt of persons who have not been convicted of a crime.
- At this time, in fact, there is no judicial control of the measures adopted in the context of Title V of the Treaty on European Union in the legal order of the European Union. This situation cannot be reconciled with Articles 6 and 13 of the European Convention of Human Rights nor, a fortiori, with Article 47 of the Charter of Fundamental Rights.
-The fundamental rights of the persons include the right to be protected against damage to his/her honour and reputation and the right to be presumed innocent until guilt is established. But these two rights may be threatened, or violated, by the positions of the Council.

The case of the Philippine national Mr Jose-Maria Sison illustrates how the decision and procedure to include an individual in the list of terrorist organisations can violate elementary basic rights, including the right to presumption of innocence, the right to due process and the right to defence. Mr Sison was included in the list adopted in the decision 2002/848/EC of October 28, 2002.[31] He contests his inclusion in the list and any link to terrorism. The lawyers of Mr Sison have lodged several requests for access to the documents which could give the material reasons and elements which led the Council of the European Union to describe him as a terrorist. Their requests were refused each time, with the Council claiming that their disclosure could endanger public safety and the international relations of the EU[32]. The impact of inclusion on the list was among other things that the joint account Mr. Sison had with his wife was frozen and his social benefits terminated. Such measures are described by the Council of the European Union as merely preventive administrative measures to stop the financing of terrorism and combat terrorism. With the support of the Netherlands, the Council holds the view that the traditional guarantees of the ECHR do not apply as the making of the list is a purely administrative procedure. The proceedings for annulment against the inclusion of Mr Sison in the list introduced in February 2003 are still being examined by the Court of First Instance of the EU[33]. A Belgian couple who are also struggling to be effectively removed from a terrorist list[34], have actually given up to bring their case before the EU Courts since the Court of First Instance has ruled[35] that it is not competent. Despite successful challenges before the Belgian courts, the couple need a decision at UN level to effectively be removed from the list. They have lodged a complaint before the UN Human Rights Committee. [36]

Duration (Q. 9)

- See also questions 1&2.

instruments[30] that give effect to UN Security Council Resolution 1373 create an impenetrable level of secrecy around inclusion on the lists by excessively limiting parliamentary scrutiny of the measures and by effectively removing the possibility of judicial scrutiny of individual decisions. See AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005 [AI Index: IOR61:013/2005]

[31] Mr Sison was included as an individual related to the New Peoples' Army (NPA) identified as a "terrorist" organisation. The decision of he EU followed the decisions from The Netherlands and the United States who had listed Mr Sison and the NPA in August 2002.

[32] See judgement of the Court of First Instance in joined cases T-110/03, T-150/03 and T-405/03 *Jose Maria Sison v Council of the European Union*, 26 April 2005.

[33] See "Sison blacklisting case heard in EU-Court on May 30, 2006 – case T:47/03" by Jan Fermon and Mathieu Beys, Lawyers at the bar of Brussels; see also AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005 [AI Index: IOR61:013/2005] and Statewatch, " terrorist "lists website.

[34] The couple were listed for being members of European branch of Global relief Foundation, declared a terrorist organisation by the USA.

[35] See the judgement of the Court of First Instance of 21 September 2005 in Case T-306/01, *Yusuf and Al Barakaat International Foundation v Council and Commission*

[36] See articles in *Le Monde* on line, 2 June 2006 (www.lemonde.fr) and in *La Libre Belgique*, 1 June 2006 (www.lalibre.be)

The right to appeal is fundamental to guarantee the presumption of innocence throughout all stages of a trial. The right for everyone convicted of a criminal offence to have the conviction and sentence reviewed by a higher tribunal is enshrined in several international instruments[37].

The right to presumption of innocence also applies after acquittal when public authorities should refrain from implying that the person may have been guilty. If a person is acquitted of a criminal offence by final judgement of a court, the judgement is binding on all state authorities. Therefore, the public authorities, particularly prosecutors and the police, should refrain from implying that the person may have been guilty, so as not to undermine the presumption of innocence, respect for the judgements of a court and the rule of law. A recent Swiss case provides an illustration of this situation. The Minister of Justice publicly stated that he could not understand why two men accused by the Albanian government of a series of crimes had been given refugee status. He referred to the two men as two "criminals" despite the fact that the Swiss Courts had recognised their innocence. A complaint has been filed against the Justice Minister for breaching of the presumption of innocence. [38]

[37] See Article 14(5) of the ICCPR, Article 8(2)(h) of the American Convention, Article 2 of Protocol 7 to the European Convention, Article 24 of the Yugoslavia Statute, Article 23 of the Rwanda Statute, Article 81(b) of the ICC Statute; see Article 7(a) of the African Charter.

[38] The Minister failed to point out that the Swiss Asylum Appeal Commission had concluded that the charges against the two men were politically motivated. The Swiss federal Court later agreed, stating that the evidence against the two men supplied by the Albanian authorities was most likely fabricated. The Senate's control committee is now considering whether there was a breach of the presumption of innocence; Swissinfo, May 29, 2006, http://swissinfo.org/eng/swissinfo.html

Annex 46
Jan FERMON 1/2

440/469

De : "joma-inps" <joma-inps@wanadoo.nl>
À : <undisclosed-recipients:>
Envoyé : 1 février 2003 14:43
Joindre : www.inq7.net_brk_2003_feb_01_brkpol_12-1.htm
Objet : Reds must sign peace accord to get off terror list: Ople - Feb. 01, 2003

http://www.inq7.net/brk/2003/feb/01/brkpol_12-1.htm

Reds must sign peace accord to get off terror list: Ople

Posted: 7:29 PM (Manila Time) | Feb. 01, 2003
Agence France-Presse

COMMUNIST rebels in the northern Philippines must sign a peace accord with Manila if they want to be removed from international terror lists, Foreign Affairs Secretary Blas Ople said Saturday.

"Once there is a peace agreement, I will request the EU (European Union), the United States and other countries to delist (the rebels) as terrorists. If they sign, they will no longer be terrorists," Ople said.

Ople said the Philippines had already readied a draft peace accord to be submitted to the insurgent Communist Party of the Philippines (CPP). In exchange for signing the accord, CPP founder Jose Maria Sison and other top officials will be granted complete amnesty.

But Ople stressed that "this is intended to be the final peace agreement," and that negotiations will not proceed if the rebels reject the draft outright.

Ople said he had already sent a copy of the draft accord to the ambassador of Norway, the country that has agreed to host peace talks between the Philippines and the CPP.

The Philippine government has meanwhile been readying criminal charges against Sison, who has been living in self-exile in Utrecht, Netherlands.

While the Netherlands does not have an extradition treaty with the Philippines, officials here are hopeful they can make a case that Sison is guilty of ordering the murder of a congressman and should be sent back to face trial.

"Our entire focus now is for Sison to sign a final peace agreement.

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- Solon urges information drive on absentee voting
- PAL to help fly Filipinos out of Mideast if needed
- Police to charge 2 gov't men tied to

(His) extradition is secondary. If he signs the peace agreement, then he will be covered by the blanket authority - a total and absolute amnesty," said Ople.

Last year, the United States and major European countries declared the CPP a terrorist organization, restricting the flow of support funds to the group.

The CPP and its 9,000-strong guerrilla arm, the New People's Army (NPA) have been waging a 34-year Maoist guerrilla campaign that has left thousands of people dead and hindered investment into the rural areas of the Philippines.

The communists have recently stepped up their attacks on civilian targets. Last month, they killed a former NPA chief and other ex-rebels who had returned to the fold of the law.

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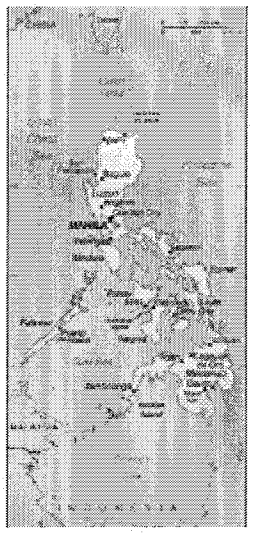
Buitenlandse Zaken

Filipijnen

Hoofdstad Laatst gewijzigd augustus 2005



klik voor een grotere kaart

Inleidende gegevens

Naam land	De Republiek der Filipijnen
Naam landenmedewerker	Bernhard Kelkes
Afdeling	DAO/ZO
Datum	Augustus 2005
Standaardbronnen	Als bronnen voor het landenoverzicht wordt zoveel mogelijk van de beschikbare interne gegevens van het Ministerie van Buitenlandse Zaken gebruik gemaakt. Daarnaast zijn de (meest recente edities/cijfers van de) volgende bronnen gebruikt: · Algemene gegevens, Regional Surveys of the World, Europe Publicaties · Demografische gegevens, Human Development Report · Economische gegevens, Economic Intelligence Unit · Ontwikkelingsrelevante factoren, Human Development Report, UNDP · Handelsbetrekkingen met Nederland, CBS · Investeringscijfers, Nederlandsche Bank
Aanvullende bronnen	CIA World Fact Book

Feitelijke en cijfermatige gegevens

Oppervlakte	300.176 km² (8,9 x Nederland)
Hoofdstad	Manilla
Inwonertal	87,8 miljoen (2005, CIA schatting)
Bevolkingsdichtheid	292 inwoners per km²
Godsdienst	Rooms Katholiek (83%); protestantisme (9%); islam (5%); boeddhisme e.a. (3%)
Taal	Filipijns (officiële taal; gebaseerd op Tagalog); Engels (officiële taal); veel lokale dialecten

Nationale feestdag (en)	12 juni Onafhankelijkheidsdag (van Spanje, 1898); 4 juli Onafhankelijkheidsdag (van VS, 1946)
Klimatologische gesteldheid	Tropisch klimaat

Staatshoofd	President mw. Gloria Macapagal Arroyo
Premier	Niet van toepassing
Minister van Buitenlandse Zaken	Alberto Gatmaitan Romulo
Minister van Economische Zaken	Romulo Neri
Staatsvorm	Republiek
Parlement	Congres, bestaande uit een Senaat (24 leden) en een Huis van Afgevaardigden (250 leden)

Natuurlijke bevolkingsgroei	2,3% (1975-2003) 1,6% (2003-2015, HDR schatting)
Geboorten (per 1000 inwoners)	25,3 per 1.000 inwoners (2005, CIA schatting)
Overlijdens (per 1000 inwoners)	5,47 per 1.000 inwoners (2005, CIA schatting))
Levensverwachting	72,5 jaar (v) - 68,3 jaar (m) (2003)

BBP	US$ 84,6 miljard (2004)
Economische groei	3,6% (2003); 6,1% (2004)
BBP per capita	US$ 989 (2003)
Inflatie	2,9% (2003); 6.0% (2004)
Beroepsbevolking per sector	Landbouw:36%, industrie: 15%, diensten: 48% (2004, CIA schatting)
Werkloosheid	11,7% (2004, CIA schatting)
Uitvoer	US$ 38,7 miljard (2004)
- belangrijke producten	Elektrische en elektronische apparatuur, machine- en transportmateriaal.
- belangrijkste partners	Japan, VS, Nederland
Invoer	US$ 45,1 miljard (2004)
- belangrijke producten	Ruwe materialen, Telecommunicatieapparatuur en elektrische machines
- belangrijkste partners	Japan, VS, China
Valuta	Peso (P) = 100 centavos
Buitenlandse schuld	US$ 65,9 miljard (2003, EIU schatting)
Debt-service ratio	15,7 % (2004, EIU schatting)
Saldo handelsbalans	US$ -6,4 miljard (tekort, 2004)
Lopende rekening betalingsbalans	US$ 2,08 miljard (2004)

Groeisectoren	Diensten (o.a. telecommunicatie)
Energiesituatie	In 2002 werd in 40% van de energie consumptie voorzien d.m.v. geïmporteerde olie.
Human development index	0,758 (2003, 84e plaats)
Human poverty index	16,3% (35e plaats)
Gender-related	

development index	0,755 (63e plaats)
% inwoners dat leeftijd van 40 niet haalt	7,2 % (2000-2005)
Alfabetisering	92,7 % (v) - 92,5% (m) (2003)
% mensen met toegang tot verbeterde waterbronnen	85% (2002)
% mensen met toegang tot essentiële medicijnen	50-79% (1999)
% kinderen tot 5 jaar met ondergewicht	31% (1995-2003)

Hr. Ms. Ambassadeur	drs. R.A. Vornis (sedert augustus 2003)
Geaccrediteerde ambassadeur in Nederland	Z.E. de heer Romeo A. Arguelles (sedert augustus 2002)
Postennetwerk	Manilla (ambassade); Cebu (Consulaat)
Nederlandse gemeenschap	Ca. 1.000 personen
Gemeenschap in Nederland	10.000 (2001) (bron: CBS)

Nederlandse uitvoer	€ 301 miljoen (2004)
- belangrijke producten	Halfgeleiders, voedingsmiddelen (zuivel, eieren, melk, room en bereide voedingsmiddelen)
Nederlandse invoer	€ 1,99 miljard (2004)
- belangrijke producten	Kantoor- en automatiseringsapparatuur, halfgeleiders
Investeringen vanuit Nederland	€ 672 miljoen (2003)
Investeringen in Nederland	Onbekend

Beschrijvende kenschets

De eerste mensen bereikten de Filipijnen waarschijnlijk zo'n 40.000 jaar geleden. Het zijn de voorvaderen van de Aeta, kleine bosnomaden die vroeger overal op de Filipijnen woonden, maar nu alleen nog in de afgelegen hooglanden van Luzon, Palawan, Panay, Negros and Mindanao voorkomen. Rond 2500 voor Christus kwamen vissers en boeren uit de Austronesische taalgroep (verwant aan de Tai-Kadai taalgroep die nog leeft in Laos, Thailand en Birma) van de Chinese oostkust via Taiwan naar Luzon. De afstammelingen van deze groep verspreiden hun taal en cultuur door de Indo-Maleisische archipel. Zij troffen op Luzon vooral onbewoonde kusten en eilanden aan. Waar ze in contact kwamen met de verzamelende en jagende inheemse bevolking, overvleugelden ze deze al snel.

De Portugees Magalhães bereikte in 1521 als eerste Europeaan de Filipijnen. In 1571 bezette de Spanjaard Legazpi Manilla. Geleidelijk aan veroverden de Spanjaarden in naam van Philips II het merendeel van de archipel en vernoemden het land naar hem. Ruim drie eeuwen later riepen de Filipijnen, op 12 juni 1898, de

onafhankelijkheid uit. Door de oorlog die Spanje verloor van de VS kwam de Filipijnen echter onder Amerikaans bestuur. Tijdens de Japanse bezetting in WO II werd het grootste gedeelte van de fysieke infrastructuur vernietigd. Met hulp van de VS werd het eilandrijk bevrijd en op 4 juli 1946 werd Manuel Roxas y Acuna de eerste president van de nieuwe Republiek der Filipijnen.

De jaren vijftig en zestig werden gekenmerkt door een sterke economische groei, mede dankzij investeringen van Amerikaanse multinationals en hoge Amerikaanse militaire uitgaven. Deze geldstroom stopte met het einde van de Vietnam-oorlog.

De in 1965 gekozen president Ferdinand Marcos kondigde vlak voor de afloop van zijn termijn in 1972 de staat van beleg af. Door onder andere manipulatie van verkiezingen en gevangenneming van oppositieleiders, bleef hij tot 1986 aan de macht. Nationaal gewapend verzet werd met name gevoerd door het communistische National Democratic Front (NDF) en het islamitische Moro National Liberation Front (MNLF).

De moord op politiek oppositieleider Benigno Aquino was aanleiding voor de invloedrijke Rooms Katholieke kerk, oppositionele groeperingen en de studentenbeweging om de handen tegen Marcos ineen te slaan. Onder druk van deze 'People Power' won de weduwe Corazon Aquino in 1986 de verkiezingen.

Zij slaagde erin het democratische proces weer op gang te brengen, maar pogingen tot landhervormingen en maatregelen op economisch gebied stuitten op verzet. Een aantal militaire coups mislukte, mede doordat de legerleiding president Aquino bleef bijstaan.

In 1992 werd voormalig generaal Fidel Ramos gekozen tot president. Hij herstelde de rust en orde in de samenleving. Ramos werd in 1998 opgevolgd door Joseph Ejercito Estrada. Onder het bewind van deze voormalig acteur nam de corruptie toe, terwijl de economie de naschokken van de Aziatische crisis moest verwerken.

De huidige grondwet dateert van 1987 en is opgezet naar Amerikaans voorbeeld. Scheiding van de machten is in de grondwet verankerd. De president, tevens staatshoofd, is de hoogste uitvoerende macht en militair opperbevelhebber. Hij wordt rechtstreeks gekozen voor één termijn van zes jaar.

De wetgevende macht berust bij het Congres, bestaande uit een Senaat (24 leden, zittingsperiode zes jaar, meerdere termijnen mogelijk) waarvan iedere drie jaar de helft rechtstreeks wordt gekozen en een Huis van Afgevaardigden (250 leden, van wie de meesten rechtstreeks gekozen worden voor een termijn van drie jaar, meerdere termijnen mogelijk).

De president kan voor maximaal zestig dagen de staat van beleg afkondigen. Dit besluit kan worden herroepen door het Congres. De president kan het Congres niet naar huis sturen en zijn veto kan met 2/3 meerderheid van het Congres teniet worden gedaan.

De wetgevende macht is onafhankelijk van de rechtsprekende macht en besluit over de rechtmatigheid van presidentiële decreten. De president benoemt de leden van het kabinet. Ministers mogen geen lid zijn van het Congres.

Macht in de Filipijnen is een balans tussen kerk, leger, elite en NGO's, waarbij de arme massa als speelbal wordt ingezet. De huidige regering lijkt haar macht te kunnen handhaven, ondanks veiligheidsproblemen in met name het zuiden, de moeizame rechtszaken tegen oud-president Estrada en moslimrebellenleider Misuari en de kritiek op hernieuwde aanwezigheid van Amerikaanse militairen op de Filipijnen. De regeringspositie wordt in belangrijke mate geholpen door een hogere economische groei dan verwacht.

De politieke instabiliteit blijft echter een probleem. Onderhandelingen met zowel de moslimrebellen als het communistisch verzet verlopen moeizaam en stagneren regelmatig. Daarnaast zijn verschillende syndicaten en groeperingen actief, die met name door ontvoeringen voor onrust zorgen. Een voorbeeld is de notoire Abu Sayyaf die streeft naar een onafhankelijke moslimstaat en enkele buitenlanders in gijzeling heeft.

Van januari 2002 tot en met juli 2002 is het Filipijnse leger bijgestaan door Amerikaanse adviseurs in de aanpak van de Abu Sayyaf. Dit gebeurde onder de 'Visiting Forces Agreement', die voorziet in jaarlijkse gezamenlijke militaire oefeningen. De samenwerking was ditmaal echter een stuk intensiever dan voorheen. In oktober 2002 worden de oefeningen, zij het iets kleinschaliger, voortgezet. Hoewel de meerderheid van de bevolking de komst van de Amerikanen verwelkomt, is een deel hier fel op tegen. Het is nog maar enkele jaren geleden dat de Amerikaanse bases op de Filipijnen onder politieke druk gesloten werden.

In januari 2001 leidden grote volksopstanden ("People Power II") tot het aftreden van Estrada. Hij zit inmiddels in voorarrest terwijl er een proces wegens verduistering tegen hem loopt. Zijn opvolger Gloria Macapagal-Arroyo probeert de economie weer op gang te krijgen en moet daarnaast hard werken om de verschillende Filipijnse belangengroeperingen binnen de boot de houden. Na nek-aan-nek-race tussen Arroyo en oppositiekandidaat Poe, kon Arroyo op 30 juni aanvangen met haar tweede ambtstermijn. Tijdens de inaugurele speech ontvouwde de President haar tien-punten-plan, waartoe behoren: onderwijsherzieningen, het tot een goed einde brengen van het lopende vredesoverleg, verzoening brengen tussen de volksbewegingen van EDSA 1, 2 en 3, overal toegang tot schoon water en energie en betere spreiding van de welvaart door ontwikkeling van digitale en fysieke infrastructuur.

De relevante internationale instrumenten zijn vrijwel alle ondertekend en geratificeerd. Het knelpunt zit in (toezicht op) de naleving ervan, waarbij sociale ongelijkheid en armoede belangrijke factoren zijn. Verkiezingen op zowel lokaal als nationaal niveau vormen telkens weer aanleiding voor politieke afrekeningen.

Eind 1993 werd de doodstraf heringevoerd. Het merendeel van de 46 misdrijven waarop de doodstraf staat betreft ontvoering of verkrachting. Eind 2001 waren er meer dan 1000 ter doodveroordeelden. Sinds 1999 werden zeven executies uitgevoerd, maar eind 2000 werd een moratorium ingesteld. Ofschoon dit moratorium door Arroyo echter weer werd opgeheven voor verkrachters en drugshandelaren, hebben tot op heden geen executies plaatsgevonden.

De Filipijnen kent veel armoede. Een extreme sociale ongelijkheid en machtsconcentratie bij een kleine elite

liggen hieraan ten grondslag. Ook de hoge bevolkingsgroei, die onder druk van de kerk nagenoeg onbesproken blijft, is hier schuldig aan. Deze bevolkingsgroei, tezamen met de beperkte overheidsinkomsten en lage economische groei belemmeren voortgang op het gebied van armoedebestrijding.

De economie van de Filipijnen loopt al jaren achter bij andere landen in Zuidoost Azië. In 2003 bedroeg de groei van de economie voor BBP en BNP resp. 4,5% en 5,5%, een lichte verbetering ten opzichte van 2002. Buitenlandse overmakingen maken circa 7 à 8% uit van de Filipijnse economie en zijn van essentieel belang als bron van buitenlandse valuta. Voorts zijn grote delen van de bevolking afhankelijk van deze overmakingen voor hun dagelijks onderhoud.

De schuldpositie is nog steeds niet onder controle ten gevolge van tekortschietende belastinginning. Belastinginkomsten vertoonden de afgelopen zes jaar een gestage neerwaartse trend. De overheidsschuld bedroeg in 2003 78% van het BBP.

De export groeide in 2003 met 3,3% en de import met 10,3%.

De Filipijnen kennen een zeer ernstige milieuproblematiek. Industriële vervuiling, de stedelijke milieuproblematiek zoals in Manilla alsook de toenemende vervuiling van de kustmangrove moerassen vormen enkele van de milieuproblemen waar de Filipijnen mee te maken hebben. Het land heeft een aantal internationale milieuovereenkomsten ondertekend, waaronder de overeenkomsten met betrekking tot Biodiversiteit, Klimaatverandering en Tropisch Hout '94.

3.8 Buitenlands beleid en veiligheidsbeleid

Het buitenlands beleid van de Filipijnen richt zich vooral op de betrekkingen met de ASEAN-partners. Voorts spelen de relaties met de VS en met de APEC-lidstaten een belangrijke rol, alsook het lidmaatschap van multilaterale organisaties.

Met name met China bestaan conflicterende claims inzake bezit van de Spratly-eilanden in de Zuid-Chinese Zee. Provocaties van Chinese zijde worden vooral diplomatiek afgedaan, daar de regering beseft qua militaire macht veruit de mindere van China te zijn.

President Macapagal-Arroyo heeft zich sinds 11 september 2001 vierkant achter de Amerikaanse strijd tegen het terrorisme opgesteld is ook een van de drijvende krachten achter regionale initiatieven op dit gebied.

In juli 2004 besloot Arroyo onder binnenlandse druk de Filipijnse troepen in Irak terug te trekken om het leven te redden van een gegijzelde Filippino (Angelo de la Cruz). Ofschoon het publiek verheugd reageerde op de aftocht werd ze hierover door m.n. Australië en de V.S. bekritiseerd.

Relaties met de Europese landen, waaronder Nederland, zijn goed, maar voor verbreding en verdieping vatbaar.

Voor de Filipijnen is de ALA-verordening (EU-ontwikkelingssamenwerking met Azië en Latijns-Amerika) van de Europese gemeenschap ten behoeve van ontwikkelingslanden in Azië en Latijns Amerika, van toepassing. Ontwikkelingslanden in de regio kunnen aanspraak maken op technische assistentie (bijv. projecten gericht op rurale ontwikkeling) en economische samenwerking (gericht op ontwikkeling van het economisch potentieel).

Voor informatie over resoluties van het Europees Parlement (EP) inzake Filipijnen kunt u contact opnemen met de informatiedesk van het EP in Den Haag (070-3624941) of raadpleeg de internetsite van het EP (http://www.europarl.eu.int/sg/tree/nl/default.htm)

In 1980 is een non-preferentieel samenwerkingsakkoord gesloten (handels-, economische en OS-samenwerking) tussen EU en ASEAN. Dit akkoord is in 1992 versterkt met een 'Joint Declaration'. M.u.v. Vietnam en Laos zijn er geen bilaterale (handels- en samenwerkings) akkoorden gesloten tussen de EU en de individuele lidstaten van ASEAN. Als lid van ASEAN, neemt de Filipijnen deel aan de tweejaarlijkse EU-ASEAN dialoog op ministerieel niveau. In het tussenliggende jaar vindt tevens overleg plaats op Senior Official niveau. De overeenkomst voorziet verder in een jaarlijkse gemengde commissie, die toeziet op de voortgang van de samenwerkingsovereenkomst. In deze dialoog worden belangrijke gemeenschappelijke belangen en prioriteiten van beide regio's op het gebied van economie, politiek en veiligheid besproken.

Naast de ASEAN-EU dialoog is de tweejaarlijkse Asia Europe Meeting (ASEM) op niveau van staatshoofden en regeringsleiders, waaraan naast de EU en ASEAN (met uitzondering van Birma, Cambodja en Laos) ook China, Japan en Zuid-Korea deelnemen. Deze bijeenkomst heeft een informeel karakter. Gespreksonderwerpen zijn van economische, politieke en culturele aard. De ministers van Buitenlandse Zaken van de ASEM-landen komen jaarlijks bijeen voor een politieke dialoog en de coördinatie van activiteiten op de drie samenwerkingsgebieden.

Nederlandse betrekkingen/beleid

In het jaar 2000 werden de 400-jarige betrekkingen tussen Nederland en de Filipijnen met enkele activiteiten en een publicatie gevierd.

De handelsbetrekkingen tussen beide landen zijn al sinds jaren intensief. Nederland is één van de grote buitenlandse investeerders in de Filipijnen. Meer dan 150 Nederlandse bedrijven hebben er een vestiging of vertegenwoordiging. Ook werken veel Filipijnse zeelieden op Nederlandse schepen.

De OS-activiteiten in de Filipijnen zijn gericht op de sector milieu. De projecten die Nederland steunt, worden begeleid door de Nederlandse Ambassade in Manilla.

Enige belasting voor de Nederlands-Filipijnse betrekkingen wordt gevormd door het verblijf van de leiding van het communistisch verzet in Utrecht. Vredesbesprekingen tussen de Filipijnse regering en de verzetsleiding, die vroeger door Nederland gefaciliteerd

werden, vinden nu in Noorwegen plaats. Alleen achterdeur-gesprekken worden nog in Nederland gehouden. Nederland handhaaft hierbij een hands-off policy. De meest prominente leider van het verzet, Jose Maria Sison, is politiek asiel in Nederland geweigerd. Hij heeft een beroep in Straatsburg lopen bij het Europees Hof voor de Rechten van de Mens. De Filipijnen hebben de o.a. naar aanleiding van een Amerikaans verzoek door Nederland getroffen maatregelen ter bevriezing van de tegoeden van de heer Sison, de Filipijnse communistische partij (CPP) en haar gewapende vleugel New People's Army (NPA), verwelkomt.

HM de Koningin, destijds nog Prinses, bezocht de Filipijnen in 1962 en ontving toenmalig president Ramos in 1995.

Inkomend:

Minister Corazon Juliano N. Soliman van Welzijn en Ontwikkeling: oktober 2003

Minister Patricia Santo Tomas van Arbeid: oktober 2001

Filipijnse minister van Handel en Industrie Cesar Bautista: 24-26 april 1998

President Ramos: voorjaar 1996

Uitgaand:

Minister Tineke Netelenbos van Verkeer en Waterstaat: februari 2000

Minister Wijers van Economische Zaken: december 1997

Minister-President Kok: november 1996

HM Prinses Beatrix: 1962

De OS-activiteiten in de Filipijnen richten zich op de sector milieu. De projecten die Nederland steunt, worden begeleid door de Nederlandse Ambassade in Manilla. De ambassade is tevens verantwoordelijk voor een aantal projecten onder het Programma Kleine Ambassadeprojecten (PKP).

De Nederlandse ambassade in Manilla volgt de interne ontwikkelingen in de Filipijnen nauwgezet en rapporteert daarover aan het ministerie van Buitenlandse Zaken in Den Haag. Tevens tracht de ambassade de samenwerking tussen beide landen op het terrein van milieu, politiek, economisch, juridisch, cultureel, onderwijs, landbouw en transport gebied te bevorderen.

De ambassade verleent onder meer verschillende diensten aan het Nederlandse bedrijfsleven in de Filipijnen.

Intensieve contacten worden onderhouden met mensenrechten NGO's, alsmede met internationale organisaties als ICRC en anderen.

Naast deze activiteiten verricht de ambassade veel consulaire handelingen, zoals het registreren van vrijwillig aangemelde Nederlanders, de paspoort- en

visawerkzaamheden en het verlenen van bijstand (in de meest brede zin van het woord) aan Nederlanders (in de Filipijnen woonachtig dan wel aan toeristen), het legaliseren van directe en indirecte aanvragen van geboorte-, huwelijk-, scheidings- en overlijdensakten en het natrekken van notariële akten.

De EVD, een agentschap van het Ministerie van Economische Zaken, biedt aan Nederlandse bedrijven die zich op buitenlandse markten willen begeven, een scala aan instrumenten op zowel informatie- en voorlichtingsterrein als op het gebied van promotionele activiteiten. Nauwe samenwerking met zijn uitgebreide netwerk dat o.a. bestaat uit ambassades, consulaten en overige steunpunten in het buitenland, stelt de EVD in staat Nederlandse bedrijven adequaat met actuele informatie over buitenlandse markten te ondersteunen.

De beschikbare informatie heeft betrekking op o.m. de verschillende fasen van het zakendoen zoals voorbereiding, marktselectie en -bewerking en kansen op overheidsmarkten. De regio-informatiemanagers en het Export Informatiecentrum staan de ondernemer met raad en daad bij. Daarnaast biedt de EVD informatie aan via publicaties zoals landenoriëntaties, het vakblad Buitenlandse Markten, de website www.evd.nl etc.

Het EVD-voorlichtingsprogramma, dat uit spreekdagen en voorlichtingsbijeenkomsten bestaat, geeft de Nederlandse ondernemer de mogelijkheid zich in eigen land op buitenlandse markten te oriënteren. Aan deze bijeenkomsten dragen de handelsafdelingen van Nederlandse diplomatieke posten, handelssteunpunten en andere handelsbevorderende organisaties bij.

Op promotioneel terrein brengt de EVD Nederlandse bedrijven in contact met potentiële buitenlandse zakenrelaties, zgn. matchmaking, via inkomende of uitgaande handelsmissies. Deze activiteiten hebben een collectief karakter.

Meer informatie over genoemde onderwerpen en contactpersonen bij de EVD is te vinden op de EVD-website (www.evd.nl) of via het Export Informatiecentrum (070 - 379 88 11)

Zie voor het meest recente NCM-landenbeleid (http://www.ncm.nl).

Het ORET/MILIEV-programma is open voor de Filipijnen en voorziet in een schenkings-element voor export-activiteiten met een milieucomponent en/of ontwikkelingshulp-karakter.

In 2003 is de Filipijnen tevens toegevoegd aan het Programma Samenwerking Opkomende Markten (PSOM). Dit programma wordt uitgevoerd door SENTER.

Meer in het algemeen kent het ministerie van Economische Zaken een aantal generieke regelingen voor onder meer investeringsfaciliteiten (IOM), haalbaarheidsstudies (PESP), rentesubsidies (BSE), starters op buitenlandse markten (PSB) en herverzekering van investeringen (RHI). Tevens bestaat voor ontwikkelingslanden het door de FMO uitgevoerde IBTA-programma (investeringsbevordering en technische assistentie).

Meer informatie hierover is te vinden op de EZ-internetsite (http://www.minez.nl).

Onder dit kopje zijn de belangrijkste verdragen opgenomen.

- Briefwisseling inzake tewerkstelling van Nederlandse vrijwilligers in de Filipijnen.

13 februari 1968, Manilla

Trb. 1968, 68 (En.vert.Ne.); 1970, 119; 1975, 106;

In werking getreden 16-7-1970

- Overeenkomst nopens het vervoer door de lucht

8 mei 1969, 's-Gravenhage

Trb. 1969, 114 (En.vert.Ne.); 1970, 47; 1979, 122; 1980, 172; 1981, 220

In werking getreden op 19-3-1970

- Overeenkomst ter bevordering en bescherming van investeringen

27 februari 1985, Manilla

Trb. 1985, 86 (En.vert.Ne.); 1987, 178

In werking getreden op 1-10-1987

- Overeenkomst tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen

9 maart 1989, Manilla

Trb. 1989, 57 (En.vert.Ne.); 1991, 153

In werking getreden op 20-9-1991

- Verdrag inzake de erkenning van certificaten op grond van voorschrift I/10 van het STCW-verdrag 1987

31 mei 2001, Manilla

Trb. 2001, 103 (En.vert.Ne), 2001, 128

In werking getreden op 1-6-2002

- Verdrag inzake de export van sociale verzekeringsuitkeringen

10 april 2001, Manilla

Trb. 2001, 96 (En.vert.Ne), 2001, 129

In werking getreden op 1-11-2002

Trb.= Tractatenblad

Onder dit kopje zijn de belangrijkste conclusies van de beschikbare ambtsberichten per laatste updatedatum opgenomen.

Binnenlands verzet

* 28 december 1994 (DAZ/BA-59081). Beschrijft de inspanningen van de regering om door middel van een politieke oplossing een einde te maken aan het verzet van drie zijden (communisten, islamieten, leger) en gaat in op de amnestie voor hen die zich overgeven. Geen conclusie.

* 16 november 1995 (DAZ/BA-65391). Bouwt voort op het voorgaande ambtsbericht. Beschrijft de (amnestie) maatregelen van de regering in het kader van het vredesproces met het communistische verzet.

notities

Er is geen landenbeleidsdocument over de Filipijnen

4.10

Onder dit kopje zijn de meest recente kamervragen opgenomen.

· Vragen van het lid Van Bommel (SP) over *het bezoek van de Filipijnse minister van Buitenlandse Zaken aan Nederland*, ingezonden 22 oktober 2002.

· Vragen van het lid De Wit (SP) over *de banktegoeden van de Filipijnse oppositionele organisaties*, ingezonden 16 augustus 2002.

see-also

terug naar hoofdpagina van Filipijnen

Ministerie van Buitenlandse Zaken
Bezuidenhoutseweg 67
Postbus 20061
2500 EB Den Haag
Tel.: 070-3 486 486
Fax: 070-3 484 848
Internet: www.minbuza.nl

National (as of 4:01 AM)

CPP-NPA terror tag stays – EU

Japanese Foreign Minister Taro Aso (left) and EU foreign policy chat following a group photo shoot yesterday where ARF particij

By PIA LEE-BRAGO

The Philippine Star

The European Union (EU) rejected Thursday the demand of the Communist Party of th New People's Army (CPP-NPA) to be delisted from its roster of foreign terrorist groups rebels resume peace talks with the Philippine government.

The EU was firm in its stand that the terrorist tag on the CPP-NPA will be removed only communists "change" the nature of their organization.

EU foreign policy chief Javier Solana told The STAR in an interview that the terrorist tag NPA and self-exiled communist leader Jose Maria Sison, who is still in the EU roster of not change unless the rebels show proof that the CPP and NPA can no longer be consi groups.

Solana said the EU cannot take any action to remove the CPP-NPA from the list of terr organizations even though it has become a thorny issue that has repeatedly led to the s peace negotiations between the government and the National Democratic Front (NDF)

The delisting of the CPP-NPA and Sison from the EU roster of terrorists is one of the de NDF.

"I think it is normal that in order to get an organization out of the (terrorists) list they hav they have changed their nature," Solana said, stressing that the EU is very much involv the continuing threat of terrorism.

"And as you know many, many years back we would like this change of mindset in the ı crisis management to conflict resolution. The time has arrived to get into the peace proc added.

The Philippine government also pointed out that the listing of the CPP-NPA as a terroris was a decision made by sovereign governments and the Philippines would not interfere

The government said CCP-NPA-NDF had announced its unilateral decision to shelve th because of the terrorist tag.

The CPP-NPA-NDF cited the US action as the reason for its decision to defer peace tal Norway later this month.

Last month, the Dutch government said that Sison remains in the EU's roster of terroris EU Court of Justice overturned EU governments' decision to freeze his assets.

The Dutch Embassy said the judgment does not concern the latest review process of th list.

"Mr. Jose Maria Sison is still part of the EU terrorism list," the Embassy said in a statem

It added that "the judgment does not concern the latest review process of the EU terrori Council, which culminated in a new list adopted on June 29, 2007."

The Council periodically reviews the EU terrorism list. The Council subsequently chang procedures in order to meet the shortcomings pointed out by the Court.

The United Kingdom said the European Community Court of First Instance failed to adc substantive question whether Sison is involved in terrorism or not when it annulled the I decision of the Council of the European Union to retain him in its "terrorist" blacklist.

It said that the court's judgment merely focused on EU procedures.

Political killings tackled

EU holds the government responsible for resolving unexplained killings and punishing t perpetrators.

EU Foreign Minister Javier Solana, at a press conference, said that EU would work clos Philippine government, in accordance with the recommendations of an EU team which country recently to look into the killings.

"We will be working with the government and the government is responsible to resolve t not us. We are helping when we are asked to help in order to contribute technical assis not our responsibility to solve. The responsibility is on the shoulder of the government,"

The EU experts said the government has to exert more effort if it wants concrete progre investigation of the murders and the prosecution of suspects.

The team submitted copies of its report to Malacañang and the Department of Foreign A

The report, called Needs Assessment Mission or NAM and rebuffed by many administra also touched on EU's promise to provide relevant technical assistance to the governme

The report lauded the government's initiatives in resolving the problem but said "they sh translated into effective implementation of measures."

The initiatives include the establishment of Task Force Usig and the Melo Commission, holding of a legal experts' summit on extrajudicial killings by the Supreme Court.

"There is therefore much for the government still to do. All relevant institutions should fu the process of countering these crimes, and this commitment should be matched by the increased government resources to improve both capacity and technical expertise, part only in the field of criminal investigation," the EU report said.

The report said more funds and a review of the criminal justice system may be needed problem.

The mission reiterated that the purpose of its visit from June 18-28 was not an investiga killings. "That is the sole responsibility of the Philippine government," it said.

"The purpose of the mission was to identify, through discussions with relevant departme agencies, areas where EU technical assistance, training and advice on the effective inv prosecution of these types of killings could be most useful," the mission said.

News / Breaking News

UK envoy: Investors want peace between gov't, rebels

By Vincent Cabreza
Northern Luzon Bureau
Last updated 06:52pm (Mla time) 08/08/2007

BAGUIO CITY, Philippines -- British Ambassador to the Philippines Peter Beckingham said the amount of European investments in the country in rising, which is why his government wants the Philippine government to work out a ceasefire with communist rebels and forge peace with the Moro Islamic Liberation Front (MILF).

Speaking before officials of non-government organizations in the Cordillera on Tuesday, Beckingham said the United Kingdom would not be able to push the lifting of a terror label it gave the Communist Party of the Philippines (CPP) and the New People's Army (NPA) "but what we are saying is that we would be delighted-- we in the UK and the European Union -- that in due course, we would be able to remove that tag."

"So we hope this could be possible and eventually there would be a ceasefire. Too many people have been killed on both sides...[yet] we continue to maintain that the CPP-NPA is a terrorist organization. But we hope that in due course, we can remove that [label]," Beckingham said in a press conference at the Supreme Hotel here.

The British ambassador led the launching of a UK-subsidized indigenous peoples' monitoring team composed of agrarian reform beneficiaries.

Led by a corruption watchdog based in Abra, the agrarian reform communities have been empowered to audit "multilateral and local development investments" piped in through the Comprehensive Agrarian Reform Program (CARP).

"We have arranged a number of projects, tried to

Joel Tan
Judge Gabriel T. Ingles
Lloyd Suarez
Lesley Tan
Lino Gilbert K. Parone
Luis H. Francia
Mia B. Zamora
Malou Guanzon Apalisok
Pablo John Garcia
Ruben Carranza
Raymund Fernandez
Robert J. Cheng
Radel Paredes
Ricky Poca
Roy Lu
Rodel Rodis
Rogie I. dela Cuesta
Ronald P. Villavelez
Rev. J. B. O. Bernaldez
Salven Lagumbay
Sofia L. M. de la Cerna
Sem Villareal
Ustadz Haron Magadapa
Sofia Logarta
V.P. Vamenta

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improve the governance of the Philippines. We think the country is important and we have launched economic governance programs, as we call them, in about 10 countries in the world. China is another, Brazil is another, [as well as] Indonesia [and] Nigeria," Beckingham said.

"The Philippines matters to our country for a number of reasons. First of all...we are one of the largest investors in your country. We provide jobs for thousands of your people through the energy sector, through banks. We have companies developing mining, I believe, in a very responsible fashion," he said.

Britain also employs Filipinos and hosts some 200,000 migrants today, he said.

"Five Filipinos are now born every day in Great Britain. That's a lot of Filipinos...who are provided employment in our hospitals, in our care homes," Beckingham said.

But the UK, he said, "pays attention to the risks of terrorism in whatever form it may take."

"We share a common concern with your government to try and iron out terrorism wherever it is, and we very much hope that the peace process in Mindanao...will continue. I might say too that we also hope that perhaps there will in due course be a ceasefire between the NPA and the government, as well," he said.

"A ceasefire there will be extremely welcome to Great Britain and to countries of Europe, and we discussed this with your government recently," he said.

President Macapagal-Arroyo, in her State of the Nation Address, said peace negotiations with communist rebels may soon be revived.

RP chosen site of first ASEAN a
NGOs, CHR list-up neglected Ja
'Sorry' saves American from dep
Direct hires for overseas work sl DoLE
Philippine sailor dies of rabies in
Immigration bureau goes after Ir
RP urged to promote tourism in states
Filipina jailed in Brunei for bullet
Arroyo to bring news of RP ecor meet

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Immigration bureau goes after Indians in illegal trade
RP urged to promote tourism in Russia, other ex-USSR states
Filipina jailed in Brunei for bullet-amulet freed
Arroyo to bring news of RP economic progress to APEC meet

P5_TA(2002)0518

Combating terrorism

European Parliament resolution on 'Assessment of and prospects for the EU strategy on terrorism one year after 11 September 2001'

The European Parliament,

– having regard to Articles 21 and 39 of the Treaty on European Union,

– having regard to its recommendation of 5 September 2001 to the Council, pursuant to Article 39(3) of the Treaty on European Union, on the role of the European Union in combating terrorism (2001/2016(INI)[1],

– having regard to its resolution of 4 October 2001 on the extraordinary European Council meeting in Brussels on 21 September 2001[2],

– having regard to its resolution of 29 November 2001 on the draft Council decision setting up Eurojust with a view to reinforcing the fight against serious organised crime, (12727/1/2001/REV1-C5-0514/2001-2000/0187(CNS))[3],

– having regard to the Council framework decision of 13 June 2002 on combating terrorism and to the Council framework decision of 13 June 2002 on the European arrest warrant and the surrender procedures between the Member States, and its positions of 29 November 2001[4],

– having regard to its resolution of 15 May 2002 on the Commission Communication to the Council on Reinforcing the Transatlantic Relationship: Focusing on Strategy and Delivering Results (COM (2001) 154-C5-0339/2001-2001/2139(COS))[5],

– having regard to the Declaration of the Seville European Council of 21 and 22 June 2002 on the contribution of the CFSP, including the ESDP, in the fight against terrorism,

– having regard to Resolution 1267 of 15 October 1999 of the United Nations Security Council on the situation in Afghanistan,

– having regard to UN-Security Council Resolution 1269 of 19 October 1999 condemning unequivocally all acts of terrorism as criminal and unjustifiable and calling on Member States to adopt specific measures in this respect, UN-Security Council Resolution 1373 of 28 September 2001 requiring international cooperation to combat threats to international peace and security caused by terrorist acts, and UN-Security Council Resolution 1390 of 16 January 2002 on the situation in Afghanistan,

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1 OJ C 72 E, 21.03.2002, p. 135.
2 OJ C 87 E, 11.04.2002, p. 216.
3 OJ C 153 E, 27.06.2002, p. 295.
4 OJ C 153 E, 27.06.2002, p. 275 and p. 284.
5 P5_TA(2002)0243.

A. whereas it is keen to assess the achievements and prospects of the European Union's anti-terrorism policy one year after the tragic events of 11 September 2001,

B. whereas, since the 11 September 2001 attacks, the terrorist threat has taken a global dimension and thus calls for a response at the same level,

C. whereas the fight against terrorism blurs the traditional distinction between foreign and domestic policy,

D. whereas there are links between international terrorist networks and the international drugs and weapons mafias,

E. whereas it is aware of the fact that terrorism is often related to long-lasting armed conflicts, recognising that the international mechanisms for civil conflict prevention and civil crisis management have very often failed and expressing the will to draw lessons from this development and to strengthen timely civil conflict prevention,

F. whereas the European Union is committed to the fight against terrorism in all its dimensions, whether its origin or activities occur inside or beyond its borders, and to supporting the efforts undertaken by its Member States through the effective use they must make of all the necessary instruments, within the limits defined by the rule of law and with full respect for human rights,

G. whereas the need of the European Union to protect itself against the threat of terrorism should be reflected in the Common Foreign and Security Policy and the European Security and Defence Policy, alongside the need to confront other international threats,

H. whereas recognition of the threat posed by terrorism shows that European policy must not be restricted to a narrow definition of defence but must be enlarged to accommodate a wider concept of security,

I. whereas measures, whether international or domestic, to combat the threat of terrorism must strengthen and not weaken the rule of law and should, in particular, be fully in line with the Geneva Conventions,

J. whereas European Union action in this area must be based on a strengthening of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law set out in Article 6(1) of the Treaty on European Union, must fully comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the Member States as general principles of Community law, as stipulated by Article 6(2) of the that Treaty, and must also be based on the measures to prevent and combat terrorism laid down in Article 29 thereof,

K. whereas the fundamental rights of individual citizens must be respected, and measures that limit such rights must be avoided, bearing in mind that any restrictions on freedoms and rights resulting from measures to combat terrorism would represent a success for the terrorists because they would impinge on the true values of functioning democracy,

L. whereas no Member State should use anti-terrorism legislation to eliminate or diminish the rights of those who, within organisations and movements, peacefully challenge the government's policies or practise social opposition or civil disobedience,

M. whereas, if terrorism is to be prevented, the provisions laid down in the Treaties concerning effective Union action at internal and international level must be exploited (Articles 21, 34 and 39 of the Treaty on European Union), while ensuring, nonetheless, that a balance between liberty, justice and security is maintained,

N. welcoming, in principle, the global anti-terrorism strategy which the European Council laid down quickly and effectively, on 21 September 2001, by adopting the European action plan to combat terrorism, which, since that meeting, has been updated at the meetings in Ghent (19 October 2001), Laeken (14 December 2001) and Seville (21 and 22 June 2002),

O. deploring the fact that it was not involved in the drafting of that plan and that it has been involved in the framing of only a few of the 64 measures implementing[1] it,

P. whereas the European Council, in the conclusions of its extraordinary session of 21 September 2001, categorically rejected any equation of groups of fanatical terrorists with the Arab and Muslim world,

1. Welcomes the reaffirmation by the European Council in the Seville Declaration that the fight against terrorism will continue to be a priority objective of the European Union and a key plank of its external relations policy, and emphasises the cross-border nature of terrorism;

2. Condemns all terrorist attacks, including those that occurred recently in Bali, the Philippines and Israel, and expresses its condolences to the families of the victims;

3. Underlines that the fight against terrorism can never be won unless combined with a broad alliance aimed at eradicating poverty and installing democracy, respect for the rule of law and human rights worldwide;

4. Takes the view that a global strategy implemented by the Union and its Member States with a view to preventing and combating terrorism must uphold the principle of the rule of law; be subject ex ante and ex post to democratic scrutiny by national parliaments and the European Parliament; include effective measures to prevent and punish terrorist crimes, but also guarantee respect for fundamental rights and civil liberties; as well as promote democratic dialogue and action to further the attainment of social, economic and political justice;

International implications of the fight against terrorism

5. Considers that at international level, this calls, first of all, for the adoption by the United Nations of the World Anti-terrorism Convention[2] and the Convention on the Elimination

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1 See latest update of the Road Map, considered by the General Affairs Council of 22 July 2002 (doc. 10773/2/2002).

2 Points 8, 9 and 10 of the Road Map.

of all Forms of Terrorism[1]; that adoption is vital if the principles laid down in the dozen or so specific international agreements and in the resolutions of the General Assembly[2] and the Security Council, in particular Resolution 1269/99 and, above all, Resolution 1373/2001, are to be consolidated; in these negotiations the EU will have to defend with a single voice the European model based on the protection of fundamental rights, by seeking to secure a strengthening of those rights in the context of the measures to be taken by the Security Council[3] and the principles of fundamental rights as reflected in the relevant legislative and operational measures[4];

6. Recalls that the principles of the collective security system as embodied in the UN Charter are:

   – a general prohibition on the threat or use of force in international relations, and the peaceful resolution of disputes (according to Article 2(3) and (4) of the UN Charter and the jurisprudence of the International Court of Justice (ICJ)),

   – in the event of an armed attack, as was the case on 11 September 2001, the restoration and maintenance of international peace and security is primarily the responsibility of the UN Security Council,

   – the right of self-defence of an attacked state can only be legitimate if it is authorised by the UNSC or otherwise complies with international law and if it is proportionate, necessary and effective (see Article 51 of the UN Charter),

   – the humanitarian law principles which distinguish between civilian and military targets and between combatants and non-combatants are also applicable when conducting duly authorised and proportionate military operations under Chapter VII (Articles 39-42) of the UN Charter[5] and, furthermore, at UN level the Security Council and its own member states must respect the non-derogable fundamental rights protected by Article 4(2) of the ICCPR (International Covenant on Civil and Political Rights);

7. Confirms the constructive role being played by the European Union and its Member States in international cooperation to combat terrorism consistent with their legal responsibilities in the context of the United Nations, NATO and other international organisations and conventions;

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1 Points 8 and 9 of the Road Map.

2 See the Declaration of the General Assembly of 9 December 1994 on measures to suppress international terrorism.

3 In particular when that body acts pursuant to Chapter VII of the UN Charter and implements preventive measures in connection with the freezing of the assets of terrorist organisations.

4 In particular in connection with the follow-up to Resolutions 1373/01 and 1390/02 (points 6 and 7 of the Road Map).

5 See the 1949 Geneva Red Cross Conventions and the additional Protocols of 1977, the ICJ 1966 Advisory Opinion, in which the Court stated : ‘States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets’, and the USA Department on Defense Report to Congress on the Conduct of the Persian Gulf War, 31 ILM 612(1992)).

8. Affirms the principle that the response to terrorism must not be disproportionate, bearing in mind that the diplomatic, social and economic turbulence caused by heavy-handed intervention risks causing reactions that may hamper future efforts to secure the peaceful resolution of conflicts;

9. Considers that, although efforts for the peaceful resolution of conflicts and management of crises must have a high priority, it is necessary to be firm in denying terrorists any reward for their crimes, especially in the interests of victims and their families and in squeezing out serious organised crime from globalised trade; reiterates that the EU rejects any attempt to justify, excuse, tolerate or condone acts of terrorism by any act or declaration that does not reject those terrorist activities; underlines that any attempt to pay tribute to members of terrorist groups or to misuse democratic institutions for the benefit of terrorist groups must be condemned;

10. Does not believe that a strategy of pre-emptive strikes is the most effective approach in the fight against terrorism, but rather that it diverts attention and effort away from that priority;

11. Reiterates its concern at rising unilateralism in US foreign policy; emphasises, nevertheless, the need to develop within the transatlantic framework a common and comprehensive approach to security and the risks to security; emphasises as well that such an approach should be established in a balanced way in which both the EU and the USA contribute on an equal footing;

12. Is concerned by the growing distortion of the transatlantic link, and calls on the Council and the Member States to focus their attention on enhancing European unity and cooperating with the US within the new Atlantic Alliance framework; reaffirms that NATO remains a fundamental guarantee for Euro-Atlantic stability;

13. Reiterates the EU's support for India's proposal to draw up in the framework of the UN a Comprehensive Convention against International Terrorism;

14. Recognises the reform efforts of NATO to respond to new global challenges such as the fight against terrorism, and that in this respect the reform of its political and military structures is shifting from collective defence to collective security; underlines that the concept of collective security is based primarily on non-military approaches to conflict prevention aimed at taking away the roots of conflict instead of trying to combat the resulting phenomena;

15. Underlines in this regard that for the EU multilateralism should continue to be the leading approach in external crisis intervention, particularly within the framework of the United Nations;

16. Recalls that with the increased and conscious deployment of its traditional instruments such as aid, development of democracy, trade and diplomacy, the EU stands for a comprehensive notion of security, and is increasingly making conflict prevention the guiding principle of its foreign policy action, thereby tackling not only the symptoms of terrorism, but also its root causes, such as poverty, human rights infringements, oppression and forcible relocation of persons, and lack of education;

17. Recalls that in the post-11 September world the fight against terrorism has become a major objective of the ESDP, which, however, cannot be carried out by military means alone, and that the prevention and repression of terrorism requires a whole range of non-military measures such as intelligence-sharing and police and judicial cooperation, and trade and industry, for which full interinstitutional and inter-pillar cooperation to ensure democratic accountability and respect for civil liberties will be needed, or the building or rebuilding of democratic institutions, infrastructure and civil society in failed or failing states;

18. Considers it essential that the EU give more priority to reducing the phenomenon of failed or failing states, since they often function as states of origin for terrorism and international crime;

19. Asks the European Council and the Member States to continue to denounce infringements of human rights throughout the world, even in countries that are allies in the fight against terrorism;

20. Considers that Member States and candidate countries should share a common definition of terrorism, in accordance with the aforementioned Council framework decision on combating terrorism, which should be part of the acquis;

21. Recalls that the fight against terrorism should not impinge on the political, social and human rights of citizens, and should not be a pretext for supporting massive repressive acts by governments against their citizens; also stresses that the EU's greatest contribution to preventing terrorism will be its capacity to be effective in the building or rebuilding of democratic institutions, social and economic infrastructure, good governance and civil society, and in combating poverty, alienation and the risk of a 'clash of civilisations';

22. Points out that governments must safeguard legal certainty under all circumstances, even for persons suspected of terrorism-related crimes;

23. Welcomes the activities and initiatives undertaken at the national and regional level by the candidate countries and other partners in Europe, showing their strong commitment to combating terrorism and their readiness to contribute by concrete means (enhanced exchange of information and intelligence, better cooperation between border, immigration and police services, elimination of terrorist financing sources, etc.) to strengthening European security;

24. Stresses the need to steadily improve the functioning of the judiciary in candidate countries, including the training of judges, prosecutors and investigators in all questions related to judicial cooperation in criminal matters; calls on the Commission to develop further the method of 'twinning', which has proved to be efficient in strengthening the capacities required;

25. Considers it important that the European countries which are not part of the present enlargement process should be fully integrated in effective pan-European mechanisms of judicial cooperation;

26. Considers it essential to promote economic and political stability at the external borders of the enlarged Union by making the best possible use of the PHARE, TACIS and INTERREG programmes and developing cross-border cooperation;

27. Emphasises that the solving of the Middle-East conflict in accordance with UN resolutions is an essential element in the fight against terrorism;

28. Believes that the agreements the European Union signs with its partner and associated countries should specify the obligations that bind the parties to those agreements in the field of the fight against terrorism by including an anti-terrorist clause that could be drafted on the basis of the content of the exchange of letters between the EU and the Republic of Lebanon concerning cooperation in the fight against terrorism;

29. Believes that the key role being played by the quartet of the USA, the EU, the Russian Federation and the UN in solving the Middle-East conflict should also carry over into international efforts to combat terrorism in general;

30. Urges that the political dialogue should focus more sharply on particular countries having key regional roles, such as India, Pakistan, Iran and the Arab states, and that relations with these countries be strengthened through appropriate instruments of cooperation and assistance;

31. Agrees with the conclusions of the Foreign Affairs Council meeting of 22 July 2002 that the development of the ESDP must take further account of capabilities that may be required to combat terrorism, whether for the protection of forces deployed in EU crisis management operations or as regards the protection of civilian populations against the effects of terrorist attacks;

32. Welcomes the agreement in the Council of 25 and 26 March 2002 on implementing the Galileo global satellite navigation and positioning system, and wishes this autonomous European capability success;

33. Believes that the European Union is especially well placed to deploy non-military tools in tasks of social and economic reconstruction, and that such actions help in the long run to reduce the influence of extremist groups liable to promote terrorist crimes;

34. Recalls the appeal of the Euro-Mediterranean Parliamentary Forum of 24-26 June 2002 to give unconditional backing to the convening of an International Conference on Terrorism under the auspices of the United Nations and to adopt a joint approach to the drafting of a general convention on terrorism;

Inside the Union

Strengthening the principle of the rule of law

35. Considers that, given that one of the fundamental aims of terrorism is to destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, we must ensure a democratic dialogue between institutions and citizens, thus acting to strengthen the institutional and legal framework guaranteeing peaceful coexistence between peoples and citizens of all communities,

whether at international, European, national or local level, and to support all the efforts undertaken through the effective use of all the necessary instruments within the limits defined by the rule of law and in full respect of human rights;

36. Doubts that effective coordination of a European anti-terrorism policy is possible under the present structure of the Union and recognises that the new dimensions of the fight against terrorism demand major changes to the Treaties; to this end, urges the Convention on the Future of Europe to study the proper ways to modify them, notably by exploring how to avoid the present EU three-pillar division and by creating 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 terrorist acts and included in the EU list;

37. Considers that, at the future European level, it is essential to create one single and comprehensible structure for the European Union, including the Charter of Fundamental Rights, and to underline how important it is for civil liberties to be made an intrinsic part of all Community matters; that in order to secure European democratic scrutiny and judicial control, the importance of which was shown not least in the action that followed 11 September, we need to make sure that a new single structure embraces all European JHA areas that have a direct effect on citizens; that with the Treaties as they currently are, it is essential, at European Union level, that the legal provisions already in place should be strengthened by means, in an external perspective, of the inclusion of anti-terrorist clauses as part of the EU agreements with its partner and associated countries and, in an internal one, of the adoption by the Council of a framework decision on the execution in the European Union of orders freezing assets or evidence[1]; Member States should also step up their efforts to prevent and detect the financing of terrorism; and that in addition to any enhanced cooperation between police and judicial authorities, we must ensure that in parallel there are safeguards for the individual; therefore calls on the Commission to present as soon as possible:

– legislative measures dealing with the protection of the rights of persons facing prosecution based on the Consultation Paper 'Procedural safeguards for suspects and defendants in criminal proceedings';

– an assessment of the feasibility of mutual recognition of evidence obtained in connection with trials;

– an EU third-pillar instrument for the protection of personal data specifically in the context of law enforcement, thereby ensuring that there is a balance between data protection and the imperatives of judicial and police cooperation and;

– appropriate guidelines regarding compensation for victims of terrorist acts;

38. Considers that the fight against terrorism demands more institutional flexibility; recommends, therefore, introducing the rule of enhanced cooperation, including in matters of security and defence policy, and, in particular, with regard to military operations in the fight against terrorism that go beyond the Petersberg tasks;

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[1] OJ C 75, 7.3.2001, p. 3.

39. Considers that any decision to restrict the free movement of persons by the reintroduction of internal border checks and the integrated management of visa and border control policies must be justified by exceptional circumstances such as threats to the security of Member States and the European Union as a whole;

40. Considers that at Member State level, there is a very pressing need to ratify the Union conventions governing extradition and judicial cooperation on criminal matters and the protocols thereto[1], and to prepare the implementation of the framework decisions on terrorism and the European arrest warrant[2]; in that connection, underlines its concern in the delays in ratifying the Union acts revealed in the Road Map;

Strengthening citizens' motivation and democratic scrutiny

41. Considers that whilst an important line of defence against terrorism is the mobilisation of public opinion against those who pose a threat to the rule of law and fundamental democratic principles, it must be ensured that any measures to counteract this threat do not engender xenophobia or prejudice, and underlines that it is essential that the European Union and the Member States should inform and involve all citizens regarding the implications of current and proposed counter-terrorism measures, so that they are in a better position to endorse these steps;

42. Emphasises the indescribable damage and great suffering that terrorism causes to its victims and to their families; welcomes, therefore, the adoption of measures which take account of the special circumstances that surround them, particularly the approximation of national legislation concerning the compensation of victims of terrorist acts;

43. Emphasises that terrorism constitutes an attack on democratic society and the rule of law as a whole and causes indescribable damage to its victims and great suffering to their families; prevention and the fight against terrorism are, therefore, one of the obligations that are owed to the victims and their families;

44. Welcomes the adoption of the Commission 'Green Paper: compensation to crime victims' (COM (2001)536) and urges that the appropriate legal instruments for the approximation of national legislation concerning the compensation of victims of terrorist crimes should be proposed and rapidly adopted, bearing in mind the special circumstances that surround them;

45. Considers that the requirement to inform citizens likewise applies to representative institutions, such as the European Parliament and the national parliaments; it is highly regrettable that, thus far, those parliaments should have been informed only in part about the measures taken by the Council in the context of United Nations and international agreements (common positions and anti-terrorism clauses in international agreements)[3] and that the European Parliament should have been unable to debate them;

Strengthening the prevention and punishment of terrorist crimes

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1 Points 18, 19 and 20 of the Road Map.
2 Points 15 and 16 of the Road Map.
3 Points 6a, 7, 11 and 13a of the Road Map.

46. Considers that the existence of a clear legislative framework and democratic support is not enough if the measures adopted are not implemented and if the bodies responsible for their implementation are not effective; in that connection, the picture which emerges from the most recent version of the Road Map cannot but prompt concerns in the EP regarding, in particular:

– the problems encountered by Europol in obtaining data from the Member States,

– the fact that Eurojust is not yet fully operational and the lack of a stable framework for cooperation among all the bodies/individuals in the European institutions involved in the fight against terrorism,

– the wide array of computer networks set up to process terrorism-related information and the differing levels of data protection the various systems offer,

– the lack of effective mechanisms to allow democratic scrutiny of the bodies involved (Europol, Eurojust, the Task Force of Police Chiefs, etc.) and the decisions taken by them in the realm of the area of freedom, justice and security;

Future action

47. Takes the view that the fight against terrorism also offers the EU an opportunity to show that it is capable of achieving its ambition of becoming an area of freedom, security and justice; takes the view that the mixed results achieved in the wake of the 11 September tragedy have highlighted the changes needed to the Treaties; in this sense, urges the Convention on the Future of Europe to study the proper ways to modify them, notably by exploring how to avoid the present EU three-pillar division and by creating the necessary legal basis to allow the EU to freeze assets and cut off funds of EU persons, groups and entities involved in terrorist acts and featuring on the EU terrorist list;

48. States, in this connection, its conviction that the terrorist threat represents a problem for EU-wide security and that the new Treaty should therefore prepare for future situations by stipulating that:

– the Union, acting on the basis of proposals from the Member States and the Commission, should draw up a strategy which is credible at both EU and international level,

– this should be defended as a European strategy by the Member States in the Security Council, pursuant to Article 19 of the Treaty on European Union,

– provided that there are suitable legal safeguards for the individual, the principle of the mutual recognition of acts adopted at Member State level should become the norm,

– any measure taken by the Union or its Member States should be consistent with the Charter of Fundamental Rights proclaimed in Nice in December 2000;

49. Asks the Council and the Commission to forward periodically to Parliament a report on the progress that has been made by the EU in the fight against terrorism and in the

implementation of the European Plan of Action, which will allow a global and unitary follow-up by the European Parliament;

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50. Instructs its President to forward this resolution to the Council, the Commission, the national parliaments and the President of the Convention on the Future of Europe.

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DESPITE EURO COURT JUDGMENT

(UPDATE 2) Joma Sison still on EU terror list--Dutch embassy

CPP founder: 'Decision covers new list, too'

By Veronica Uy
INQUIRER.net

Posted date: July 13, 2007

MANILA, Philippines -- Communist Party of the Philippines (CPP) founder Jose Maria Sison is still on the European Union's (EU) terrorism list and his assets remain frozen, the Royal Netherlands Embassy here said Friday.

In a one-page statement sent to media outfits, the embassy said the July 11 decision of the European Court of First Instance (ECFI) annulled only Council Decision 2006/379/EC issued May 29, 2006 that included Sison in the EU's list of foreign terrorists.

In the judgment, the EFCI said the council decision violated Sison's rights to defend himself and to effective judicial protection, as well as the EU's obligation to state its reasons for blacklisting him.

"The judgment of July 11 of the ECFI bears upon an old decision which had already been withdrawn by the council. The judgment does not concern the latest review process of the EU terrorism list by the council, which culminated in a new list adopted on June 29, 2007," the Dutch embassy said.

"This new decision, covering all persons and organizations on the EU terrorism list, includes Mr. Sison, the CPP, and the NPA (New People's Army) on the list and maintains the freeze on their assets," the statement added.

The embassy statement said the Council of the EU, one of the two legislative bodies of the EU, has been periodically coming out with the terror list since 2002.

"The Council periodically reviews the EU terrorism list," it said.

But Sison, in an e-mailed reaction to the statement, while acknowledging that the EDCFI decision covered only "the period from October 2002 to May 2006," said that "by its implications and consequences, the judgment extends to the 11 July 2007 decision of the Council of the EU still blacklisting me because the same issues resolved by the ECFI are involved: [the] same false allegations and basically same procedure violative of my rights."

The Dutch embassy acknowledged that on December 2006, in a different case, the ECFI had criticized the procedures of the review process of the EU terrorism list.

Thus, "the Council subsequently changed the review procedures in order to meet the shortcomings which were pointed out by the Court."

"The new decision taken on June 29, 2007 follows the new procedures, which better safeguard the legal protection of persons and entities involved," it said.

But Sison said the only change in the procedure "was the Council sending me a one-page sheet of the same lies."

The CPP founder said his "counsel and I will write a letter of demand to the Council of the EU to comply with the letter and spirit of the ECFI judgment."

"It is up to the council to respond positively and take me out of the list or ignore our demand; and either the council makes an appeal on a question of law within two months or, after two months of the council ignoring the ECFI judgment and our demand, we take the initiative of bringing the council again to court," he said.

He added that "we are prepared to make a new application."

The ECFI also ordered the council of the EU to bear the legal costs of Sison and the National Democratic Front (NDF), which was an intervenor in the case.

The judgment did not, however, include compensation to Sison for the termination of his social benefits such as his living allowance, health insurance and old age pension, or for moral and material damage.

Earlier, Luis Jalandoni, chief peace negotiator of the National Democratic Front, which was an itnervenor in the case Sison filed against the Council of the EU, quoted the CPP founder's lead lawyer, Jan Fermon, as calling the new list a "scandalous attack against the rule of law."

Jalandoni also said the new EU list "distorts the decision of the Dutch Council of State of 1992 and 1995, falsely claiming that this council of state said that [Sison] is to be considered a terrorist, which the Dutch Council of State actually denied."

What the Dutch Council of State stated, said Jalandoni, was that Sison "is a political refugee."

Full text

Following is the full text of the Dutch embassy's statement:

Press statement by the Royal Netherlands Embassy

Jose Maria Sison still part of EU terrorism list

In its judgment issued on Wednesday July 11, 2007 regarding the case of Jose Maria Sison versus the Council of the European Union, The European Court of First Instance (ECFI) annulled Council Decision 2006/379/EC of June 26, 2006 in so far as it concerns Mr. Sison. The judgment bears upon the decision initially taken by the Council in 2002 to place Mr. Sison on the EU terrorism list and subsequent Council decisions to keep him on the list after a review process.

The judgment of July 11 of the ECFI bears upon an old Decision which had already been withdrawn by the Council. The judgment does not concern the latest review process of the EU terrorism list by the Council, which culminated in a new list adopted on June 29, 2007.

The Council periodically reviews the EU terrorism list. The ECFI had in an earlier judgment in a different case (in December 2006) criticized the procedures of the review process of the EU terrorism list. The Council subsequently changed the review procedures in order to meet the shortcomings which were pointed out by the Court. The new Decision taken on June 29, 2007 follows the new procedures, which better safeguard the legal protection of persons and entities involved.

This new Decision, covering all persons and organizations on the EU terrorism list, includes Mr. Sison, the CPP and the NPA on the list and maintains the freeze on their assets.

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