

The Legal Dimensions of the Peace Process

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UNIVERSITY OF THE PHILIPPINES
CENTER FOR INTEGRATIVE AND DEVELOPMENT STUDIES
AND THE U.P. PRESS

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HUMAN RIGHTS OCCASIONAL PAPERS**
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FOREWORD

Although Executive Order 125 was the operational frame of the entire peace process, in fact the legal questions differed in each instance. In the case of the GRP-NDF talks, the government's reference to the Constitution posed a problem which did not happen in the GRP-RAM/SFP/YOU/ALTAS negotiations. Despite the legal implications of the Tripoli Agreement and the existence of the Autonomous Region of Muslim Mindanao through the Southern Philippines Council for Peace and Development (SPCPD).

Prof. Albert Muyot's professorial chair lecture takes us through this entire legal wrangle but his lecture actually tells us more than its title promises, for he demonstrates that the legal dimensions of the peace process, significant as they are, do not spell the success of the process. The success, rather, lies in the delivery of long overdue reforms and societal changes that address the causes of the conflict. Coming from a lawyer, this assertion is welcome relief.

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THE LEGAL DIMENSIONS OF THE PEACE PROCESS*

Introduction

The road to peace is long and winding, and often strewn with obstacles that make for a tortuous travel. It is certainly not a road for the weak-hearted; it is a road for the brave, for it will mean facing the enemy that one had fought so fiercely against and accepting him with open arms. Traversing the road to peace will also mean surmounting the causes that had given rise to bloodshed — an even greater act of courage.

The Filipino people, who have seen so much bloodshed in their short history as a nation, have embarked on that road. There is a chance that they may find the obstacles too great and just abandon the journey to peace; but many more dream that peace is finally at hand, a dream whose fulfillment had long been too elusive.

But as in any journey, it helps to have a map that will give directions to the destination. On the issue of peace, unknown to many, such a map has been drawn to guide the Filipino people toward a just, comprehensive and lasting peace. The map is in the form of a legal framework for the conduct of the government's peace process. No one can really tell whether this legal framework can help bring about peace. But it is useful to study it at this time as it may explain why peace seems to be at hand as far as some conflicts are concerned, while it appears so remote for others.

This paper focuses on the legal framework of the ongoing peace process of the Philippine government with the various rebel groups, i.e., the Communist Party of the Philippines/New People's Army/National Democratic Front (CPP/NPA/NDF), the Moro National Liberation Front (MNLF), and the Rebolusyonaryong Alyansang Makabayan-Soldiers of the Filipino People-Young Officers' Union/Alyansang Tapat sa Sambayanan (RAM-SFP-YOU/ALTAS), with a view to understanding the direction in which the negotiations with these groups are headed. It does not dwell on ideology and personalities — matters that contribute significantly to the progress of the peace efforts but are beyond the author's academic competence. As such, its scope is quite limited.

* Professorial Chair Lecture, *Class of 1957 Professorial Chair in Government*

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This paper is divided into three parts. Part one looks into the general framework of the government's peace efforts as outlined in Executive Order No. 125. Part two examines the basic agreements between the government and each of the groups that set the tone for the conduct of negotiations. The final section focuses on the directions that the negotiations have taken in view of the legal framework.

The Government's Peace Plan

Executive Order No. 125

The general framework for the government's peace efforts is outlined in Executive Order (EO) No. 125, dated September 15, 1993, entitled "Defining the Approach and Administrative Structure for Government's Comprehensive Peace Efforts."

Philosophy of the Peace Process

The underlying assumptions for the government's peace efforts are stated in two of the Whereas Clauses of EO 125, which provide that:

a primary objective of the Government is the attainment of a just, comprehensive and lasting peace under the Rule of Law and in accordance with Constitutional processes, which is the basic foundation for economic development and national prosperity; and

a comprehensive peace process demands a holistic approach that will require the cooperative efforts of all sectors of society.

Although not explicitly referred to in EO 125, the Preamble of the Constitution can be considered as having influenced the principles laid out in the said Whereas Clauses. The Preamble reads:

*We, the sovereign Filipino people, imploring the aid of Almighty God, in order to **build a just and humane society** and establish a*

*Government that shall embody our ideals and aspirations, **promote the common good**, conserve and develop our patrimony, and secure [for] ourselves and our posterity the blessings of **independence and democracy under the rule of law** and a regime of truth, justice, freedom, love, equality, and **peace**, do ordain and promulgate this Constitution. (Emphasis supplied.)*

At the outset, these Whereas Clauses imply three basic theoretical assumptions: (1) that a just, comprehensive and lasting peace is best achieved under the rule of law in accordance with constitutional processes and not through a contest of arms; (2) that a “holistic” approach is necessary for the attainment of peace; and (3) that in achieving a just, comprehensive and lasting peace the active participation of all sectors of society, and not just the contending factions, is necessary.

These are further elaborated in Section 2 of EO 125, to wit:

Section 2. Principles Underlying the Comprehensive Peace Process. The comprehensive peace process shall be governed by the following underlying principles:

(a) A comprehensive peace process should be community based, reflecting the sentiments, values and principles important to all Filipinos. Thus, it shall be defined not by government alone, nor by the different contending groups only, but by all Filipinos as one community.

(b) A comprehensive peace process aims to forge a new social compact for a just, equitable, humane and pluralistic society. It seeks to establish a genuinely pluralistic political society, where all individuals and groups are free to engage in peaceful competition for predominance of their political programs without fear, through

the exercise of rights and liberties guaranteed by the Constitution, and where they may compete for political power through an electoral system that is free, fair and honest.

(c) A comprehensive peace process seeks a principled and peaceful resolution of the internal armed conflicts, with neither blame nor surrender, but with dignity for all concerned.

The Six Paths to Peace

What constitutes the components of the government's "holistic" approach are described in Section 3 of EO 125:

Section 3. Components of the Comprehensive Peace Process. A comprehensive peace process shall henceforth include, but shall not be limited to, the following components:

(a) PURSUIT OF SOCIAL, ECONOMIC AND POLITICAL REFORMS. This component shall involve the vigorous [enforcement] of various policies, reforms, programs and projects aimed at addressing the root causes of internal armed conflicts and social unrest. This may require administrative action, new legislation, or even constitutional amendments.

(b) CONSENSUS-BUILDING AND EMPOWERMENT FOR PEACE. This component shall include continuing consultations on both national and local levels to build consensus for a peace agenda and process, and the mobilization and facilitation of people's participation in the peace process.

(c) PEACEFUL, NEGOTIATED SETTLEMENT WITH THE DIFFERENT REBEL GROUPS. This component involves the conduct of face-to-face negotiations to reach peaceful settlement with the different rebel groups.

(d) PROGRAMS FOR RECONCILIATION, REINTEGRATION INTO MAINSTREAM SOCIETY, AND REHABILITATION. This component shall include programs to address the legal status and security of former rebels, as well as community-based assistance programs to address the economic, social and psychological rehabilitation needs of former rebels, demobilized combatants, and civilian victims of the internal armed conflicts.

(e) ADDRESSING CONCERNS ARISING FROM THE CONTINUING ARMED HOSTILITIES. This component involves the strict [enforcement] of laws and policy guidelines, and the institution of programs to ensure the protection of noncombatants and reduce the impact of the armed conflict on communities found in conflict areas.

(f) BUILDING AND NURTURING A CLIMATE CONDUCTIVE TO PEACE. This component shall include peace advocacy and peace education programs, and the [enforcement] of various confidence-building measures.

What is provided for in Section 3 has come to be known as the government's "Six Paths to Peace." This formulation stipulates that the key to the attainment of a just and lasting peace is the enforcement of reforms; negotiations constitute but one of the modes. Thus while it may be the most visible attempt at achieving peace and mistaken by many as "the" peace process, **negotiation** is not the sole means to peace nor is it necessarily the primary or the most effective one. Under the Six Paths to Peace, the **institution of reforms** is actually the component deemed to have the most significant impact. Thus Section 3 introduces the philosophy that the root causes of the armed conflict must be addressed, and that the way to peace is through socioeconomic and political reforms. Hence, unless the needed reforms are instituted, there will never be any peace.

This reform-oriented perspective is consistent with the Constitution, Article II, Sections 9 and 10 which provide that:

Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Sec. 10. The State shall promote social justice in all phases of national development.

This philosophy has paved the way for the formulation of the government's Social Reform Agenda, an ambitious plan designed to alleviate the plight of the poor and to involve the people in carrying out programs to address their needs.

Administrative Structure

The administrative structure for carrying out the government's peace efforts is outlined in Section 4 of EO 125, which provides for the following players from the government:

(a) THE PRESIDENCY. The President shall provide the active leadership for the pursuit of the comprehensive peace process.

(b) PRESIDENTIAL ADVISER ON THE PEACE PROCESS. The Presidential Adviser on the Peace Process (PAPP) shall be charged with the management and supervision of the comprehensive peace process. He shall be appointed by the President and shall have the rank and remuneration of a Cabinet member. He shall perform the functions and discharge the duties and responsibilities enumerated in Memorandum Order No. 163 dated 25 August 1993.

(c) *NATIONAL RECONCILIATION AND DEVELOPMENT COUNCIL.* The National Reconciliation and Development Council (NRDC) shall perform the functions and responsibilities relative to the [enforcement] of the reconciliation program for surfacing rebels. [Note: The NRDC was abolished and in its stead was created the National Program for Unification and Development Council (NPUDC) under Executive Order No. 152 dated January 21, 1994]

(d) *GOVERNMENT PEACE NEGOTIATING PANELS.* There shall be a Government Peace Negotiating Panel (GPNP) for each of the three rebel groups, to be composed of a Chairman and four (4) members who shall be appointed/designated by the President as his official emissary to conduct negotiations, dialogues and face-to-face discussions with rebel groups. They shall report directly to the President on the conduct and progress of their negotiations.

(e) *PANEL OF ADVISERS.* There shall be a panel of advisers for each of the GPNPs, composed of a member from the Senate, from the House of Representatives and from the Cabinet to be designated by the President, which shall function as an advisory body to their respective GPNPs on the conduct of their negotiations leading to the achievement of a comprehensive, just and lasting peace.

In this enumeration of players on the government side of the peace process, the government agencies closest to the people — the local governments — are surprisingly absent. This could have been an oversight, and indeed, such lapse manifests a preference for centralization and exclusivity, such that the responsibility for peace is made an exclusive concern of the national government. This casts doubt on the modality of consensus-building and empowerment as the second path to peace (EO 125, Sec. 3[b]).

Negotiations with the Rebel Groups

As explained earlier, negotiations with the rebel groups constitute just one of the Six Paths to Peace, and it is not even the most important one. However, it has the most immediate political impact, what with the media coverage it commands: the progress of the negotiations with the rebel groups has been viewed as the barometer of the country's political stability. The impression is that the political situation is more stable if the rebels are negotiating with the government instead of fighting.

From a completely different perspective, the modality of negotiations is also the one that has been most directly affected — for ill or for good, depending on one's point of view — by the legal framework provided under EO 125.

The government is currently engaged in negotiations with three rebel groups: (1) the Communist Party of the Philippines/New People's Army/National Democratic Front (CPP/NPA/NDF) headed by Jose Ma. Sison and based in Utrecht, the Netherlands; (2) the Moro National Liberation Front headed by Nur Misuari; and, (3) the Rebolusyonaryong Alyansang Makabansa-Soldiers of the Filipino People-Young Officers' Union (RAM-SFP-YOU) headed by Edgardo Abenina and the Alyansang Tapat sa Sambayanan (ALTAS) headed by Jose Ma. Zumel. The chairmen of the government negotiating panels are Howard Dee, (CPP/NPA/NDF); Manuel Yan, (MNLF); and Fortunato Abat, (RAM-SFP-YOU and ALTAS).

Other armed groups not involved in the peace talks, but are nevertheless closely following their progress, are the Moro Islamic Liberation Front (MILF) and two major factions of the Communist Party that had repudiated Jose Ma. Sison's leadership.

Negotiations with the CPP/NPA/NDF

The communist insurgency in the Philippines led by the CPP/NPA/NDF has been going on since 1969. Earlier, in the 1950s, the government quelled an agrarian-based insurgency led by the Partido Komunista ng Pilipinas/Hukbong Mapagpalaya ng Bayan (PKP/HMB).

One of the first acts of President Corazon C. Aquino when she assumed power in 1986 after the EDSA revolt was to order the release of communist leaders imprisoned by former President Ferdinand E. Marcos. This was followed by peace negotiations with the Communist Party of the Philippines. Preliminary talks were held from May to November 1986, and formal talks from December 1986 to January 1987. The talks collapsed after farmers protesting in front of Malacañang were shot at and killed allegedly by government security forces. But even before the talks collapsed, these had already proceeded at a very slow pace, bogged down as it was by a problematic framework.

After the failed talks of 1986-87, there were some unsuccessful initiatives to revive the negotiations, but the breakthrough came only in 1992. In a historic meeting in the Hague, the Netherlands, the government (GRP), represented by Representative Jose V. Yap, and the NDF, represented by Luis Jalandoni, entered into a five-point agreement on September 1, 1992. The agreement was based on a draft prepared by the NDF and, despite some last-minute modifications, closely followed the terms of an agreement outlined by Jose Ma. Sison in a paper prepared more than a year before the meeting (see "The NDF Framework in Contrast with the GRP Framework," 1991, in *PEACE: A RESOURCE BOOK ON PEACE AND THE PEACE PROCESS IN THE PHILIPPINES*, Vol. I, pp. 125 *et seq.* [1992]).

The Hague Joint Declaration, as the agreement came to be known, provided that:

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 agreement 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, [the parties] 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, socioeconomic reforms, political and constitutional reforms, end of hostilities and disposition of forces.*

The National Unification Commission (NUC) recommended some “refinements” to the substantive issues enumerated in the Hague Declaration, through an agenda composed of the following issues:

- 1. Electoral reforms*
- 2. Political principles for the operation of political parties and organizations*
- 3. Broader and more effective enforcement of human rights principles*
- 4. Dismantling of all private armies and strict enforcement of relevant laws*
- 5. Improvements in the administration of justice*

6. *Protection of the environment*
7. *Socioeconomic reforms*
8. *Provisions for victims of the internal armed conflicts*
9. *Economic components of unification*
10. *Disposition of forces and armaments*

President Fidel V. Ramos approved the NUC recommendations, but after the government negotiating panel was formally constituted the declaration's substantive agenda was maintained and the refinements were all but forgotten. The four-point substantive agenda in the Hague Declaration was reaffirmed in the agreement on reciprocal working committees signed during the opening of the formal talks in Brussels, Belgium, on June 26, 1995.

The Role of the Constitution

The NDF had repeatedly objected to EO 125, which was promulgated after the Hague Declaration, claiming that it amounts to the government imposing the Philippine Constitution as the framework for the peace talks, in violation of the Hague Joint Declaration. More particularly, the NDF claimed that the first Whereas Clause in EO 125, which states —

WHEREAS, a primary objective of Government is the attainment of a just, comprehensive and lasting peace under the Rule of Law and in accordance with constitutional processes, which is the basic foundation for economic development and national prosperity...

contradicts the provision of the Joint Declaration, which states that

The holding of the 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.

The NDF holds the view that imposing the Philippine Constitution as a framework for the peace talks negates the inherent character of the negotiations, i.e., negotiations between equal sovereigns who have rights and obligations under international law. This objection goes back to the 1986-87 peace talks when the NDF objected to the use of the draft 1987 Constitution as framework for the negotiations, and was carried over to preliminary talks to revive the peace negotiations. Said Jose Ma. Sison:

In demanding that the NDF submit itself to the GRP Constitution as the legal and political frame of negotiations, the GRP instantly kills the very idea of bilateral peace negotiations with the NDF and prevents them from starting. The demand has been made by the GRP in preliminary talks about peace talks between the GRP and NDF representatives.

The NDF has objected to the unreasonable character of the demand but has not retaliated by demanding that the GRP submit itself to the Constitution and Program of the NDF.

Instead, with utmost reasonableness, the NDF has proposed that the legal and political frame be one of adherence to mutually acceptable principles such as Philippine national sovereignty, democratization, respect for human rights, social justice and the like; and an open-mindedness toward agreements that are still to be made in the peace process.

If the GRP is insistent on a reference to the GRP Constitution, then an equal reference must also be made to the NDF Constitution and Program in the preamble of any agreement made. The key point is to refer to the mutually acceptable principles and provisions in the basic documents of the GRP and NDF.

"The NDF Framework in Contrast with the GRP Framework," 1991, in PEACE: A RESOURCE BOOK ON PEACE AND THE PEACE PROCESS IN THE PHILIPPINES, Vol. I, p. 125 [1992].

Thus the NDF demanded the revocation, withdrawal or repeal of EO 125.

The government panel, on the other hand, found the NDF objection unfounded. In the Joint Statement issued by the GRP and NDF negotiating panels in Breukelen, the Netherlands, on June 14, 1994, the government panel reaffirmed its position that

. . . the GRP 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 GRP 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.

The position taken by the government panel was a verbatim statement of the opinion rendered by the Secretary of Justice on October 21, 1993. It may be added that this position finds support in EO 125 itself, which provides among the components of the comprehensive peace process in Section 3:

(a) PURSUIT OF SOCIAL, ECONOMIC AND POLITICAL REFORMS. This component shall involve the vigorous enforcement of various policies, reforms, programs and projects aimed at addressing the root causes of internal armed

conflicts and social unrest. This may require administrative action, new legislation, or even constitutional amendments. (Under-scoring supplied.)

Although the parties have refused to budge on this issue, the NDF has not of late expressly reiterated the demand for the revocation of EO 125.

The government's adherence to the rule of law was tested in the case of captured NPA leader Sotero Llamas, whom the NDF wanted released as a condition to the opening of the formal talks in Brussels, Belgium, in June 1995. Prior to the formal opening, the government panel adopted the position that if Llamas could only be released following normal court processes, meaning, that since several criminal cases had already been filed against him, the courts having jurisdiction over Llamas's cases should order his release. When Llamas was not released in time for the opening of the formal talks — a judge in one case had denied his motion for release on recognizance — the talks were suspended the day after the opening ceremonies.

Belligerency and Other Issues

Along with the NDF's objection to EO 125 was its insistence that it be treated by the government with parity as a belligerent under international law, on the assumption that the armed conflict is of a general character; that the NDF occupy a substantial portion of the national territory; and that the NDF's armed forces conduct hostilities in accordance with the rules of war through organized groups acting pursuant to responsible authority. The government naturally rejected the NDF's claim, since it deemed the conflict under control: it cited figures claiming that the NPA was down to less than 7,000 regulars and the infiltrated *barangays* to 600 by the end of 1994 from highs of more than 25,000 regulars and 8,500 *barangays*.

The government's rejection of the claim of belligerency, particularly in connection with the issuance of safety and immunity guarantees by the NDF to government negotiators, led to a suspension of the talks in De Bilt, the Netherlands, in October 1994. It was only

after the exchange of many drafts that an agreement on safety and immunity guarantees was hammered out in Neuwegein, the Netherlands, in February 1995. But the matter was brought up again when the NDF objected to the implementing guidelines promulgated by the government which, of course, provided only for the government issuing safe conduct to NDF negotiators and not for the NDF issuing the same to GRP negotiators.

Incidentally, the NDF also objected to EO 125's reference to a "community-based" peace process, which "shall be defined not by the Government alone, nor by the different contending groups only, but by all Filipinos as one community." The NDF saw this as an insidious attempt to subject the output of the talks to a plebiscite and thus situate the talks within the Constitution. (Capulong, *The Ramos Peace Program: Toward a Just and Lasting Peace or a Mere Pacification Campaign?*, Philippine Peace Center, 1994.)

Also, the NDF objected to the government's unilateral grant of amnesty to rebels, arguing that any amnesty granted by the government should be pursuant to a final political settlement. The NDF considers any amnesty during the pendency of the peace negotiations as an underhanded move to diminish or divide their ranks and thus weaken their bargaining position. Under EO 125, the grant of amnesty is included in one of the paths to peace under the rubric "programs to address the legal status and security of former rebels." Despite the expiration of the amnesty period under Proclamation No. 347, many former rebels continue to apply for amnesty and the National Amnesty Commission has recommended that another amnesty be declared to accommodate the late applicants. NDF objection should be expected if a new amnesty is proclaimed.

Divergence and Concurrence

These disagreements on the framework of the negotiations, among other reasons, have considerably slowed down the negotiations. To be sure, these will not be completely resolved in the near future. On the other hand, it can be reasonably expected that these will be manifested through various issues that will emerge in the course of the negotiations.

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While the objections of the NDF to EO 125 have been highlighted, not much has been said about the ostensible compatibility of the Hague Declaration and EO 125 on the following points:

1. The philosophy that the root causes of the armed conflict have to be effectively addressed if there is to be peace; and,
2. The theoretical assumption that the solution to the conflict is not through a contest of arms but through the implementation of socioeconomic and political reforms.

Note that under the Hague Declaration the substantive agenda of the negotiations focuses on reforms, and that the goal of these negotiations on reform measures is the attainment of a just and lasting peace.

There being an apparent agreement between the Hague Declaration and EO 125 on the basic assumptions of the peace process, one wonders why under EO 125, constitutional processes and the rule of law have even turned out to be obstacles in the negotiations between the government and the NDF. We shall explore this point further and explain how irreconcilable the differences in framework are when we assess the future of the talks.

Irreconcilable Frameworks

At present, the negotiations are proceeding at a very slow pace and many sectors have become impatient, imputing insincerity to either or both parties. But what does sincerity in the negotiations really mean? Does it mean religiously adhering to the Hague Declaration, which is the basic agreement between the parties on the conduct of the negotiations?

Unfortunately, the answer to this is not so simple. The Hague Declaration, as clearly worded as it may appear to be, actually has a completely different meaning as far as the NDF is concerned. It is not, as understood by the government, a simple contractual agreement of clearly defined rights and obligations for the parties.

The basic problem stems from the fact that the two parties are negotiating under irreconcilable frameworks. The “common goal” of “attainment of a just and lasting peace” referred to in the Hague Declaration does not have an interpretation common to both parties. It is, in fact, interpreted by the parties from divergent perspectives.

The context and import of the peace negotiations, which the Hague Declaration is supposed to reflect, is understood by Jose Ma. Sison and the NDF as follows:

It is clear to the NDF as a matter of principle that the protracted people's war is the principal thing and that it goes into peace negotiations as a secondary thing in order to carry forward the unwavering line of struggle for national liberation and democracy. The peace negotiations are one more form of struggle that has arisen between the revolutionary and counterrevolutionary governments in the Philippines.

The NDF has made clear to everyone that even as it wisely and properly conducts peace negotiations through its duly authorized negotiating panel these are secondary not only to the revolutionary armed struggle, which is now the principal form of struggle, but also to the legal mass movement of the patriotic and progressive forces. The overriding principle over all forms of struggle is to fight for national liberation and democracy. Otherwise, peace negotiations become a mode of capitulation.

The peace negotiations as conducted by the NDF is one more form of legal struggle [that] is not superior to the local mass struggles but which is superior only in one respect, that these negotiations allow the NDF to face the GRP as an equal under international law. . . .

The formal peace negotiations between the NDF and the GRP signify a high level of national and international recognition for the strength already achieved by the revolutionary forces in the Philippines. . . .

In the course of peace negotiations with the GRP, it is perfectly the legitimate right and interest of the NDF to assert its status of belligerency under the laws of war and to seek international or diplomatic recognition of this status of belligerency.

Protracted People's War and Diplomacy, 1996.

Value of the Negotiations

Here, the strategic value of the peace negotiations to the NDF is very apparent. Here also, the sincerity and seriousness of the NDF in pursuing the negotiations as part of its "revolutionary struggle" cannot be doubted.

For the government, under EO 125, the objective of the peace negotiations is to get the rebels to abandon the armed struggle and join the so-called mainstream of society under the rule of law. Should they want to continue espousing their causes, they should do it through parliamentary means. The "just and lasting peace" from the government's perspective is a political environment in which those who oppose the government do not resort to arms but to the electoral and parliamentary processes.

On the other hand, as far as the NDF is concerned, the peace negotiations are just supportive of the revolutionary armed struggle. From its perspective, there will be a "just and lasting peace" when the revolution has succeeded, i.e., when the proletariat has taken over the structures of power from the capitalists and the *compradores*.

The Hague Declaration is understood by the respective parties in these opposing contexts and either party cannot be expected to abandon its framework. In fact, they cannot, even if they wanted to.

If the government abandons its framework, it will run afoul of the constitutional parameters of governance and its acts will be *ultra vires*; if the NDF abandons the armed struggle, it will cease to be revolutionary.

The Hague Declaration seems to provide an alternative framework. It provides for negotiations “in accordance with mutually acceptable principles, including national sovereignty, democracy and social justice” as a common framework for negotiations. But this does not help any since the parties also interpret these principles differently. The government understands these principles in the constitutional context, as it has to, and of course the NDF uses these terms in the Marxist-Leninist, antiimperialist and proproletariat context. There is no mutuality as to the interpretation of these principles. A framework based on “mutually acceptable principles” is thus actually an illusion.

The Negotiations and the People

For the Filipino people, who are supposed to be the ultimate beneficiaries of peace negotiations, the real value of the Hague Declaration is the inclusion of socioeconomic, political and constitutional reforms in the substantive agenda of the negotiations, as this provides the forum for what is hoped to be a thorough discussion of meaningful reforms. But two things may actually frustrate its realization.

First is the slow pace of the negotiations. The talks have been hit by so many snags — the most celebrated being the capture of NPA leader Sotero Llamas and the consequent suspension of formal talks in June 1995 — such that it is improbable that the negotiations will even reach the stage of discussing reforms within President Ramos’s term. Formal talks were resumed a year later in June 1996 but at this late stage, the substantive discussions on human rights — the first item in the substantive agenda — are still in the preliminary stages. After a week-long meeting in the Netherlands, the parties agreed only on the text of the preamble of a human-rights agreement. As soon as the meeting adjourned, the parties started to give conflicting interpretations of the statements they had just agreed upon. In mid-1996 another impasse lay in wait as the government

objected to the NDF's designation of the renegade retired army general, Raymundo Jarque as one of its consultants in the negotiations. There is no such thing, therefore, as smooth sailing in forging an agreement on human rights.

It may thus be that the only substantive agreement that can be entered into, even tentatively, during the Ramos administration will be one on human rights. If so, then it will fit in perfectly with the output projected by former NDF spokesman Satur Ocampo, who said that the most that could be reasonably expected from the negotiations is an agreement on human rights.

Second, the people have been excluded from the negotiations. Although the NDF has proposed the inclusion of a third party to the negotiations, its proposal is for a foreign third party, preferably another state or an international organization, obviously for the purpose of lending the talks an international character and bolstering the NDF's bid for the status of belligerency. On the other hand, there have been proposals from local peace groups for a Philippine third party, but nothing has come out of this so far. The NDF earlier expressed its apprehensions about Philippine peace organizations. Sison asserted that:

The NDF is opposed to the scheme of any particular organization or institution, posing as third force morally superior to the contending parties in the civil war and claiming the people for itself, to focus on areas where the NDF and its member-organizations [especially the New People's Army] as well as people's organs of political power exist; seek to push out or paralyze these popular entities; picture the NPA as a force unwanted by the people as the AFP; but in fact to uphold the political power of the GRP. Proposals for "localized peace dialogues," "localized cease-fires," "community-based peace" and "zones of peace, zones of life" are calculated to undermine and fragment the revolutionary movement and run counter to the proposal for the GRP-NDF bilateral peace talks at the national level.

"History and Circumstances Relevant to the Peace Question," 1991, in PEACE: A RESOURCE BOOK ON PEACE AND THE PEACE PROCESS IN THE PHILIPPINES, Vol. I, p. 96 [1992].

Similarly, the NDF has objected to the government going directly to the people and holding consultations with them. From the NDF perspective, the peace negotiations are between the people, represented by the NDF, and an oppressive government. From the NDF's perspective, the people's aspirations cannot possibly be articulated by the government. That is why the provincial consultations conducted by the NUC to determine the root causes of the conflict were viewed by the NDF as attempts to undermine its influence.

Negotiating as a Matter of Strategy

From what has transpired so far in the negotiations between the government and the NDF, we can see that the negotiations have proved to be of strategic value to both parties.

For the government, negotiating with the rebels has helped bring down the violence, providing the necessary respite from the fighting that allowed more than 4,000 rebels to come down from the hills and apply for amnesty. These have been perceived as indicators of political stability, a condition that meant more foreign investments in the Philippines.

For the NDF, the talks have given them the exclusive franchise they seek as "the" communist party in the Philippines *vis-à-vis* at least two other factions. It has also, to the minds of the NDF's leaders, given them the status in international law. The lull in the insurgency war has also allowed it to launch its "rectification" or back-to-basics campaign to consolidate its forces in the rural areas through indoctrination and organization building in the aftermath of the split in the communist movement.

The strategic value of the negotiations to the parties has been realized by just talking and keeping the negotiations alive, even without really discussing the root causes of the conflict and jointly formulating solutions to address them.

But the slow pace of the negotiations also has disadvantages for the NDF. Already other communist factions, like the one in Negros Island, have manifested their desire to negotiate with the government, even at the local level. Although the government has so far turned a deaf ear to such overtures for fear of disrupting the talks with the NDF, if no substantial results are produced in the near future in the negotiations with the NDF, it will be difficult to justify exclusive talks with the Front.

Moreover, some factions, like the one active in the Metro Manila and Rizal areas have already started to participate in the electoral process and even succeeded in having elected some candidates it openly supported. An underground organization like the NDF may find it difficult to compete for popular support against above-ground "progressive" organizations that have people in elected offices.

In the meantime, the government peace panel has come out in the open with its Alternative Peace Plan, which calls for the grant of a general and unconditional amnesty and the acceleration of the rebel returnee program if the talks with the NDF do not bear fruit in the short term.

For the government, the slow progress in the negotiations threatens to derail President Ramos's avowed objective of bringing a formal end to the two and a half decades-long conflict during his term as president. But, considering the weakening of the communist movement in the country, a negotiated conclusion of the conflict may be a mere formality.

Negotiations with the MNLF

The Tripoli Agreement

The Tripoli Agreement signed on December 23, 1976, between the government and the Moro National Liberation Front (MNLF), with the participation of the Organization of Islamic Conference (OIC), provides for:

1. The establishment of autonomy in Southern Philippines within the realm of the sovereignty and territorial integrity of the Republic of the Philippines;
2. The area of autonomy for the Muslims in Southern Philippines shall be comprised of the following: Basilan, Sulu, Tawi-Tawi, Zamboanga del Sur, Zamboanga del Norte, North Cotabato, Maguindanao, Sultan Kudarat, Lanao del Norte, Lanao del Sur, Davao del Sur, South Cotabato, Palawan, and all cities and villages in the above-mentioned areas;
3. The terms of the grant of autonomy, whereby
 - foreign policy will be under the national government
 - national defense shall be the concern of the national government, but arrangements shall be made for the integration of the forces of the MNLF into the Armed Forces of the Philippines (AFP)
 - Shari'a courts shall be established
 - the autonomous government shall set up schools, colleges and universities
 - the Muslims shall have their own administrative system
 - the autonomous government shall have its own economic and financial system
 - the autonomous government shall be represented in the national government
 - special regional security forces shall be set up in the autonomous region

- the autonomous government shall have a legislative assembly and an executive council
- mines and mineral resources shall be under the national government but a percentage of the revenues shall be for the benefit of the autonomous region; and

4. Transitory measures that include

- a mixed committee to study the details of implementation
- a cease-fire
- the drafting of a final agreement
- the establishment of a provisional government in the areas of autonomy
- the enforcement of the Agreement by the Philippine government by taking "all the necessary constitutional processes."

Subsequent negotiations were held from February 9, 1977, to March 3, 1977, but the parties failed to agree on certain vital issues of autonomy. Mrs. Imelda R. Marcos met with Colonel Moammar Khaddafy of Libya in an effort to break the impasse, and the latter suggested that President Marcos declare autonomy in the 13 provinces after holding a referendum "concerning the manner in which the inhabitants within the areas of autonomy may wish to organize themselves administratively in accordance with the Constitution of the Philippines." (See Proclamation No. 1628.) President Marcos agreed and, in Presidential Decree (PD) Nos. 1092 and 1104, provided for the conduct of the referendum.

In Proclamation No. 1628, dated March 25, 1977, President Marcos declared autonomy in the 13 provinces. He also created a Provisional Regional Government that would prepare for a referendum in April 1977 and the election of the regional legislative assembly. On May 7, 1977, Proclamation No. 1628-A was issued proclaiming the results of the referendum. Autonomy for the 13 provinces under the control of the MNLF was overwhelmingly rejected; what was approved was an administrative structure under the control and supervision of the national government with a regional assembly and an executive council, proposed by the Batasang Bayan in its Resolution No. 11.

On March 23, 1979, Batas Pambansa Blg. 20 was enacted providing for the organization of the Regional Assemblies for Regions 9 and 12. On May 7, 1979, elections for representatives to the Regional Assemblies were held, and the winning candidates were subsequently proclaimed. On July 25, 1979, PD 1618 was promulgated, providing for autonomy in Region 9 comprising the provinces of Basilan, Sulu, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur, and in Region 12 comprising the provinces of Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato and Sultan Kudarat. But what was granted by President Marcos was only administrative autonomy, and not the political autonomy demanded by the MNLF, as PD 1618 merely provided that "[t]he Autonomous Regions shall undertake all internal administrative matters for the respective regions."

Initiatives During the Aquino Administration

When Mrs. Aquino became president in 1986, a new Constitution was ratified which provided for the creation of autonomous regions in Muslim Mindanao and the Cordilleras, "within the framework of [the] Constitution and the national sovereignty and territorial integrity of the Republic of the Philippines." (Article X, Section 15.) The Constitution also provided for the enactment of organic acts for said regions. (Article X, Section 18.) Inclusion of provinces in the autonomous regions shall be determined by plebiscites held for that purpose. Only provinces, cities and geographic areas voting favorably in the plebiscite shall be included in the autonomous region.

Meanwhile, attempts to resume negotiations between the government and the MNLF were made, but, despite the signing of the Jeddah Accord on January 3, 1987, negotiations did not prosper.

Preparatory to the enactment of the organic act provided in the Constitution, the Regional Consultative Commission for Muslim Mindanao was created under Republic Act (RA) No. 6649 to conduct public consultations, to report its findings and to make recommendations for the organic act to be enacted by Congress. However, Congress was free to modify or reject any part or all of the report and recommendations of the Commission.

An organic act for the Autonomous Region of Muslim Mindanao (RA 6734) was enacted but, after the plebiscite, only four provinces — Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi — chose to join the autonomous region.

Negotiations Under the Ramos Administration

After Fidel Ramos was elected President, negotiations between the government and the MNLF were revived under the auspices of the Organization of Islamic Conference (OIC) and talks were held in Indonesia and in the Philippines. Thereafter, Exploratory Talks were held in Tripoli, Libya, in October 1992, and Cipanas, Indonesia, in April 1993. Formal peace talks commenced in Jakarta, Indonesia, in October 1993, where the following substantive items for negotiation (culled from the Tripoli Agreement) were agreed upon: national defense; education; administrative system; economic and financial system; regional security force; representation in national government; legislative assembly and executive council; mines and minerals; and judiciary and introduction of Shari'a law. To study the substantive items in depth, five support committees were created, whose recommendations shall be submitted to a mixed committee (to be reactivated in accordance with the Article III, paragraph 11 of the Tripoli Agreement). An Ad Hoc Working Group on the Setting Up of the Transitional Implementing Structure and Mechanism was also created. The parties also entered into an Interim Cease-fire Agreement, to be supervised by representatives of the OIC through a joint committee. The cease-fire covered the 13 provinces enumerated in the Tripoli Agreement.

The second round of Formal Peace talks was held in Jakarta in September 1994, during which the parties came to an agreement on the following areas: education; economic and financial system and mines and minerals; the administrative system, representation in the national government, legislative assembly and executive council; and enforcement of the cease-fire.

The third round of Formal Peace Talks was held in Jakarta in late November 1995. On December 1, 1995, an Interim Agreement was signed, which was said to have resulted in the resolution of more than 90 percent of the issues for negotiation. The parties came

to an agreement on the following areas: national defense and regional security force; education; economic and financial system and mines and minerals; administrative system, representation in the national government, legislative assembly and executive council; Shari'a and judiciary; and the setting up of the transitional implementing structure and mechanism (the provisional government). Among the few remaining issues for negotiation was the most important one — the territorial coverage of the provisional government and the autonomous region — such that until this issue is resolved, the Interim Agreement cannot be enforced.

Impasse

The government's adherence to constitutional processes posed a problem in relation to the issue of the territorial coverage of the autonomous region. The government's position drew strength from the fact that the Tripoli Agreement explicitly recognized the sovereignty and territorial integrity of the Republic of the Philippines (Article I) and provided for adherence to constitutional processes in the implementation of the Agreement (Article III, paragraph 16). Citing Article X, Section 18 of the 1987 Constitution, which provides that:

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

The government panel interpreted adherence to constitutional processes to mean that a plebiscite is a requisite to fixing the territory of the autonomous region. The MNLF rejected this and claimed that the territory was already fixed in the Tripoli Agreement as all 13 provinces, hence no plebiscite was necessary. The OIC took the position that if a plebiscite would be held to determine the territorial coverage of the autonomous region, it should be held after the provisional government has been set up. In March 1996 the negotiations reached a deadlock on this issue and the MNLF threatened war if the issue was not resolved in their favor.

The respected constitutionalist Joaquin Bernas commented on this issue:

There are those who want that the prescribed plebiscite for Mindanao be dispensed with in order that the 13 provinces covered by the defunct Tripoli Agreement be included. It is argued that the Tripoli Agreement does not speak of a plebiscite but only of a constitutional process. But the constitutional process of which the agreement speaks can only be that which is prescribed by the present Constitution. It is the only Constitution we have today. The present Constitution, which was overwhelmingly ratified even by the voters of the 13 provinces mentioned in the Tripoli Agreement, has superseded the terms of that earlier document which, in the hierarchy of laws, is vastly inferior.

Obviously, the opposition to a plebiscite in Mindanao is born of the realization that the vast majority of the people inhabiting the 13 provinces do not wish to come under the Autonomous Region of Muslim Mindanao. Those who oppose a plebiscite therefore simply wish to herd millions of unwilling inhabitants under leaders eager to rule. In this light, the conflict in Mindanao is not just about the formality of a plebiscite. It is about the fundamental choice between democracy and authoritarianism.

The Tripoli Agreement was possible only under authoritarian rule. Although the document is called an agreement, in reality it came into being as a unilateral declaration imposed by Mr. Marcos on 13 provinces.

Today, 17 March 1996, p. 10.

Attempts at Breaking the Deadlock

Among the talks with the three rebel groups, the negotiations with the MNLF was the most problematic, its collapse and the consequent resumption of hostilities posed the biggest threat to Philippine national security. As such, any step taken by the government, after the government and MNLF panels have exhausted all possible points of agreement, had to be studied very carefully and very cautiously.

The government was in a bind for some time. If it stood pat on the requirement for a plebiscite and the MNLF maintained its position that there was no need for one, the fighting threatened to resume or escalate. On the other hand, if it gave in to the MNLF position and initiated the amendment of the Constitution so that the requirement of a plebiscite is dispensed with, the Christian population constituting the majority in most of the provinces enumerated in the Agreement could resort to arms. It was a problem that called for truly creative solutions. That is why the government was reported to have proposed measures like supporting Nur Misuari for governor in the elections for the existing Autonomous Region of Muslim Mindanao (ARMM).

To break the impasse and prevent full-scale fighting, it was proposed by some sectors that the provisional government start with the current territory of the ARMM (composed of the four provinces of Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi) without prejudice to eventually including other provinces that through a plebiscite will decide later on to join the autonomous region. This will not need an amendment of the Constitution but only the Organic Act of the ARMM. However, the proposal still calls for a plebiscite in the other provinces. The MNLF was not expected to readily agree to this because it was unlikely that, except for Basilan, the other provinces will vote to join the autonomous region.

Another proposal would provide for the plebiscite, but only after the provisional government has been formed and only for the purpose of determining which provinces will finally constitute the autonomous region. The proponent, Soliman Santos of the Gaston Z. Ortigas Peace Institute, wrote:

There are, therefore, a number of representative and direct mechanisms to choose from in establishing the provisional government. Stated otherwise, there is room for flexibility and creativity because the Constitution has no specific provision on establishing the provisional government (the term is not found in the Constitution, not even under the sections on Autonomous Regions). Flexibility and creativity would be pursuant to the Constitution's policy on peace.

*But the Tripoli Agreement does have a specific provision on it: "[A] Provisional Government shall be established in the areas of the autonomy to be appointed by the President of the Philippines; and be charged with the task of preparing for the elections of the Legislative Assembly in the territories of the Autonomy; and administer the areas in accordance with the provisions of this agreement until a Government is formed by the elected Legislative Assembly." Such a body (the provisional government), I submit, is an administrative body or unit (like the Cordillera Administrative Region) the creation of which is within the executive power of the President, as established in several Supreme Court decisions: **Abbas vs. Comelec, Chiongbian vs. Orbos, and Cordillera Broad Coalition vs. COA.***

It is when the provisional government is regularized and becomes a political unit with political autonomy (as distinguished from administrative autonomy during the provisional period) that a plebiscite may be unavoidable. But first, give the provisional government a chance to be tested in the spirit of giving peace a chance.

Philippine Daily Inquirer,
16 April 1996, p. 8.

The proposal, however, does not do away with the plebiscite, which the MNLF vehemently opposes, but merely delays it indefinitely. Under this proposal, a plebiscite is still inevitable.

From a legal perspective, Santos's proposal stood on shaky grounds. Thus Bernas said:

It has also been argued that, since the President is authorized to create or rearrange administrative regions without need of a plebiscite, he can rearrange the administrative region of Mindanao and place it under a provisional government without need of a plebiscite. But such an argument misconstrues the nature of administrative regions. Administrative regions are not corporate political subdivisions but are merely part of the structure of the executive department intended to assist the President in his supervisory powers over local governments. They do not replace local governments or encroach on the powers of local governments. The restructuring of administrative regions can be done by the President through a delegating law. And since administrative regions do not affect the structure or powers of local governments, the delegated authority can be exercised by the President without a plebiscite. But if what is envisioned is the dismantling of the existing political subdivision created by law and its replacement with a provisional government, clearly this cannot be done without prior legislative action followed by a plebiscite.

Today, 17 April 1996, p. 8.

On the Constitution's silence on the matter of a provisional government, a circumstance that is key to Santos's proposal, Bernas posited:

Finally, the argument has also been proposed that since the Constitution does not mention "provisional government," such a provisional

government can be created to take the place of the existing autonomous government until a permanent one is created. But there already is a permanent government within the autonomous region, and there are permanent governments outside the autonomous region. It does not make sense to say that these can be replaced by a provisional government simply because the Constitution says nothing about a provisional government. Under the rule of law, the government has only so much power as is granted to it. Silence does not grant power. It is dangerous to assume that the government has all the powers about which the Constitution is silent. (ibid.)

Bernas concluded that “[u]nder our present structure, the only way the territorial scope of the Autonomous Region in Mindanao can be expanded is through an amendment of the Organic Act and the submission of such amendment to a plebiscite” (*ibid.*).

The Government’s Compromise Formula

In May 1996, in an attempt to break the deadlock, the government presented to the MNLF a proposal for the creation of a Southern Philippines Commission on Peace and Development, as an alternative to the problematic provisional government. Under the proposal, the Commission shall be an executive body that shall plan for, coordinate, oversee, and cause the implementation of peace and development projects and programs in the area mentioned in the Tripoli Agreement. More particularly, the functions of the commission are the following:

1. to coordinate the improvement of peace and order in the area;
2. to consolidate the preparation of economic development plans for the area, and carry out economic projects;
3. to provide the administrative support to the local government units in the area; and

4. to render assistance, as Deputy of the Commission on Elections, in the preparation of the holding of elections, referendum or plebiscite in the area.

A Consultative Assembly, with a two-year life-span and composed of governors, city mayors and representatives of nongovernment organizations (including the MNLF), shall serve as a forum for consultations or ventilation of issues and concerns, and recommendation of appropriate policies and programs. Within two years the area shall be prepared for the establishment of a new autonomous government. In connection therewith, the organic act of the ARMM will be amended and a new plebiscite will be held.

The talks between the government and the MNLF scheduled for the end of May 1996 were postponed to give the MNLF time to study the proposal. The media reported that if the proposal is accepted and the commission is created, its chairmanship would be offered to Nur Misuari, MNLF Chairman. The government did not deny the report.

The proposal however, did not do away with the plebiscite but only postponed it to a later date. Thus, an MNLF acceptance of the proposal would mean a very significant shift in its position, implying acquiescence to the eventual holding of a plebiscite to determine the areas of autonomy and an abandonment of its insistence on the formation of a provisional government.

Unless the MNLF accepted the reality that a plebiscite would have to be conducted in accordance with the Constitution or unless the Constitution was amended to do away with the requirement of a plebiscite in the creation of an autonomous region, the negotiations between the government and the MNLF would remain in a deadlock.

The MNLF Gives In

And so the MNLF, bowing to pressure from the OIC and Indonesia, agreed to the government's compromise solution. The 8th GRP-MNLF Mixed Committee Meeting, held in Davao City on June 21-23, 1996, produced an agreement that provided for the establishment of the Southern Philippines Council for Peace and Development (SPCPD) for Phase 1 of the Tripoli Agreement. The 1996 agreement's provisions on the Council are:

1. *There shall be established a Special Zone of Peace and Development in the Southern Philippines in the 14 provinces and all the cities therein covered by the Tripoli Agreement. Within the next three (3) years, these areas shall be the focus of intensive peace and development efforts. Public and private investments shall be channelled to these areas to spur economic activities and uplift the conditions of the people therein.*

2. *There shall be established a Southern Philippines Council for Peace and Development (SPCPD), composed of one (1) Chairman, one (1) Vice Chairman and three (3) Deputies, one each representing the Muslims, the Christians, and the Lumads. They shall be appointed by the President upon recommendations of the MNLF and after due consultations with the various leaders and sectors in the Southern Philippines.*

3. *The SPCPD shall be assisted by the Darul Iftah (religious advisory council) which shall be created by the Chairman of the SPCPD.*

4. *The local government units in the area including the ARMM, shall continue to exist and exercise their functions in accordance with the existing laws.*

5. *Appropriate agencies of the government ... engaged in peace and development activities in the area, such as but not limited to the Southern Philippines Development Agency (SPDA), shall be placed under the control and supervision of the Council as its implementing agencies to ensure that peace and development projects and programs are effectively accomplished.*

6. *The Council, in consultation with the Consultative Assembly, utilizing the funds from the National Government, shall orchestrate the development efforts in the area, including the attraction of foreign investments, especially from OIC countries and the ASEAN.*

7. The powers and functions of the SPCPD and the Consultative Assembly are derivative and extensions of the powers of the President.

8. The provisions of the 1994 and 1995 Interim Agreements and subsequent agreements entered into by the GRP and the MNLF that would not require legislative action shall be implemented during Phase 1.

9. There shall be established a Consultative Assembly with 81 members composed of the following:

1) The Chairman of the Council shall be the head and presiding officer of the Assembly;

2) The Governor and the Vice Governor of the ARMM, the 14 Governors of the provinces and the 10 City Mayors therein in the area;

3) 44 members from the MNLF; and

4) 10 members from various sectors recommended by NGOs and POs after due consultation with the MNLF.

10. The Consultative Assembly shall exercise the following functions and powers:

1) To serve as forum for consultation and ventilation of concerns;

2) To conduct public hearings as may be necessary and to provide appropriate advice to the SPCPD; and

3) To formulate and recommend policies to the President through the Chairman of the Council and make rules and regulations to the extent necessary for the efficient and effective administration of the affairs of the area.

11. The OIC shall be requested to continue to monitor and oversee the full enforcement of this agreement during the transitional period until the regular autonomous government is firmly established as stipulated by the Tripoli Agreement of 23 December 1976 and the participation would, inter alia, generate broad international support for the area of Peace and Development.

An oversight committee, composed of members coming from the GRP, the MNLF and the OIC shall continue to meet to review and identify agreements that can be immediately implemented.

12. The funds for the operation of the Council and the Assembly shall be initially sourced from the funds of the Office of the President. Funding for development programs and projects shall come from the appropriations of Congress as may be drawn from the General Appropriations Act. Supplementary budget for the year 1996 will be recommended to Congress for the purpose.

13. The tenure of the Executive Council and the Consultative Assembly shall be for a period of three years and extendable by the President upon recommendation of the Council.

14. The term of office of the Council and the Assembly shall coincide with the three-year term of office of the [newly elected] ARMM as determined by law.

15. The powers and functions of the Council shall be as follows:

- 1) To take charge in promoting, monitoring and coordinating the improvement of peace and order in the area;*

2) To focus on peace and development efforts more particularly in the depressed areas and cause the implementation of peace and development projects;

3) To provide support to local government units as necessary;

4) To exercise such other powers and functions necessary for the effective implementation of its mandate as may be delegated by the President;

5) To assist in the holding of elections, referenda or plebiscite and people's initiative in the area when duly deputized by the Commission on Elections upon recommendation by the President;

6) To cause the creation of such offices or instrumentalities as shall be necessary for the effective and efficient administration of the affairs of the areas. There shall be approval from the Office of the President for budgetary purposes.

16. Phase 2 shall involve an amendment to or repeal of the ARMM Law through congressional action, after which the amendatory law shall be submitted to the people of the concerned areas in a plebiscite to determine the establishment of a new autonomous government and the specific area of autonomy thereof.

Indicated below are the scenarios for Phase 2:

(a) While peace and development programs are being enforced in the area, an amendment or repeal of the ARMM Organic Act shall be initiated within Phase 1 (1996-1997). The amendment shall include the pertinent provisions of the Peace Talks Agreements and the expansion of the present ARMM area of autonomy.

The Act of Congress amending the ARMM Law shall be submitted to the people for approval in a plebiscite in the affected area, within two (2) years from the establishment of the Council (1998).

(b) The new area of autonomy shall then be determined by the provinces and cities that will vote/choose to join the said autonomy (1998). It may be provided by Congress in a law that clusters of Muslim-dominated municipalities voting in favor of autonomy be created into a new province(s) which shall become part of the new Autonomous Region.

The last provision is particularly significant as it envisions the very real possibility that provincial boundaries may have to be redrawn to prevent the eruption of ethnic violence between a majority Christians who vote against autonomy and the minority Muslims.

Opposition to the SPCPD

This early, opposition to the creation of the SPCPD and the inclusion therein of Christian-dominated areas has snowballed. The President, who was usually well-received in Mindanao because he has pushed for its development, has now become the object of hatred and the bewildered target of tomato-throwing rallyists. To many, the SPCPD is a sellout to appease Nur Misuari and the MNLF for the time being.

It is not only from a political perspective, but also from a legal point of view, that the agreement with the MNLF is being questioned. The Presidential Legal Adviser is however quick to point to Article X, Section 14 of the 1987 Constitution, which provides:

The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization

*to strengthen the autonomy of the units therein
and to accelerate the economic and social growth
and development of the units in the region.*

Such is the legal basis for the creation of the SPCPD. But the SPCPD cannot be considered as a mere regional development council (RDC) because its powers and functions go way beyond the administrative. It is a transitional body that is supposed to pave the way for the impending autonomy.

Thus Bernas referred to three points that have to be considered in assessing the argument that the creation of the SPCPD is justified under the above-mentioned provision:

1. Under the constitutional provision, it is the President who is authorized to create regional development councils;
2. The President is not completely free to determine the composition of the regional development council, since the Constitution provides for its composition; and
3. The regional development councils are created for the dual purpose of: (a) administrative decentralization and the strengthening of local autonomy; and (b) acceleration of the economic and social growth and development of the units in the region (*Today*, July 7, 1996, p. 7.).

If one considers these three points, one will readily conclude that the SPCPD is not the regional development council contemplated in the Constitution.

In the haste to come up with a compromise formula that will satisfy the MNLF, it seems that one of the six paths to peace outlined in EO 125 has been disregarded, i.e., consensus-building through continuing consultations at both the national and local levels. This is perhaps why, after the agreement on the SPCPD was announced, many of the non-Muslims in Mindanao were convinced that the government has sold out to the MNLF. They felt that the government has kept the SPCPD a secret from the people who will be most affected by it.

It has also become apparent that the government has chosen to emphasize a negotiated settlement with the MNLF as the primary road to peace in Mindanao. The government has taken a big gamble, placing its bets on the SPCPD as the vehicle that will usher in socioeconomic development in Mindanao. The whole Philippines is holding its breath, keenly awaiting to find out whether the SPCPD will finally bring peace or incite renewed conflict in Mindanao.

A Political Masterstroke

In a world where developments come at a dizzying speed, the Mindanao compromise formula became even more interesting when Nur Misuari, in the second week of July 1996, accepted the offer of the Lakas-NUCD-UMDP, the administration party, to run as Governor of the ARMM. Running unopposed and with the backing of the Ramos administration, Misuari's election as governor was virtually assured.

The plan, it turned out, was for Misuari to become both SPCPD Chairman and ARMM Governor, thus consolidating the MNLF's control over Muslim Mindanao. [*Note*: Misuari was indeed elected governor of the ARMM. Weeks after his election, he was appointed Chairman of the SPCPD.] A legal obstacle, however, has to be overcome. Article IX(B), Section 7 of the 1987 Constitution, which prohibits dual or multiple positions in government, provides:

No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

One way out is to amend the June 23 Agreement to make the ARMM governor an exofficio chairman of the SPCPD, instead of being a mere member of the Consultative Assembly. Such an amendment

will be tailor-fit for Misuari and will have no application to a subsequent ARMM governor (i.e., one who will be elected in 1999 or later) since the SPCPD, under the agreement, shall have only a three-year lifetime that is synchronized with the three-year term of the ARMM's elective officials.

Misuari's filing of his certificate of candidacy for ARMM governor was politically and legally significant since it marked the end of the MNLF's rebellion and signalled its entry into the fold of the law. With Misuari and the MNLF operating under the constitutional framework, the tensions have somehow eased. The charge that the SPCPD constituted a sellout by the government to the MNLF has, to an extent, lost its appeal, and the fear that Mindanao will be administered outside the bounds of the law has been eased. Indeed, from a purely political perspective, the compromise plan was a masterstroke. Here we see, in a literal sense, a political solution to the conflict in Mindanao. Vest Misuari and the MNLF with the power and clothe them with the legitimacy to govern and there will be peace because they will stop fighting, or so goes the theory. The theory is very simple, so simple that only persons who have a deep understanding for man's ambitions of power could have formulated it. Of course, whether the theory will be validated by actual experience has yet to be seen.

Negotiations with the RAM-SFP-YOU and ALTAS

Negotiations Between Soldiers

No great legal issue ties up the framework for the negotiations with the RAM-SFP-YOU and the ALTAS, as both groups subscribe to the supremacy of the Constitution and the rule of law. This is not surprising, since the negotiations were conducted by and between soldiers and former soldiers to whom a highly structured legal order is an integral part of life.

In the Preliminary Agreement, dated December 23, 1992, between the government and the RAM-SFP-YOU, the military rebels agreed to "operate consistently with and within the framework of the Constitution and the laws of the Republic of the Philippines." In the

General Agreement for Peace dated October 13, 1995, the RAM/SFP/YOU recognized EO 125 and the “continuing need for a broad-based social compact in which all sectors of society are represented and heard in the active pursuit of social, economic and political reforms for genuine national renewal and transformation” (Whereas Clause). Further, they “recognize the importance of the comprehensive recommendations of the NUC resulting from its broad national consultations and subscribe to those being [enforced] through the Office of the Presidential Adviser on the Peace Process created under Executive Order No. 125, Series of 1993” (Whereas Clause). Thus the government “commits to **[enforce] within the bounds of legal processes**, mutually agreed reforms in the areas of Electoral Reforms, Good Government, Nationalist Economic Development, Social Justice, and National Defense and Security” (Article II, Section 1). Under the agreement, the reforms agreed upon shall be transmitted to the Executive, the Congress or the Supreme Court for “appropriate action;” if no action is taken within 90 days, the reasons for the agencies’ inability or failure to take action shall be reported “as a matter of public record and public accountability” (Article II, Section 2). To make clear that the negotiations are within the constitutional framework, it is provided that “nothing in this Agreement and any other subsequent agreements and resolutions between the Parties shall be construed to diminish the powers of the Executive, the Legislative and the Judicial branches of Government as provided by the Constitution” (Article VII, Section 5). These are in consonance with Section 3(a) of EO 125.

In furtherance of the process outlined in EO 125, the General Agreement, in addition to national reforms (Article II), provides for cessation of hostilities (Article I), disposition of weapons and other materiel in the possession of RAM-SFP-YOU (Article III), amnesty for members and supporters of RAM-SFP-YOU (Article IV), livelihood, material and technical assistance to those granted amnesty (Article VI), and disposition of military, police and civilian government personnel who are members or supporters of RAM-SFP-YOU (Article V). These are in accordance with Section 3(d) of EO 125.

The agreement between the government and ALTAS, dated May 29, 1995, likewise affirms “the supremacy of the Constitution and the rule of law,” as reflected in the Agreement of May 29, 1995. It has so far dwelt on the following points: cessation of hostilities;

equipment and weapons retrieval; amnesty; disposition of police and military personnel; and government assistance. There is, however, a provision for the continuation of talks on "issues of grave concern."

Negotiating an End to a Nonconflict

The relative ease with which the government negotiated is also explained by the peculiar characteristics of the conflict.

This area is where the government has been most successful in realizing the objectives of EO 125, particularly because of the limited nature of the conflict between the government and the military rebels and the latter's minimal demands.

The contest of arms between the government and the rebel soldiers, although intense during the series of coup attempts, has long ceased. In fact, the fighting ceased even before the conduct of formal negotiations, although the RAM-SFP-YOU has still to return to the government several of the arms taken during the past coup attempts. It is only in this very limited sense that the group still poses a threat.

Then, for all intents and purposes, the conflict has become a nonconflict and the negotiations have focused on the reintegration of the rebellious soldiers and policemen.

The members of these groups have already rejoined the mainstream of society; many of them have run in local and national elections, their leader even winning a seat in the Senate. The aspect of reintegration that is still not settled is that of those who wish to return to active military service. As far as those who come from the former Philippine Constabulary-Integrated National Police, many of them have been reinstated in the Philippine National Police.

To formalize their reentry into the mainstream, President Ramos signed Proclamation No. 723 on May 17, 1996, which provided for an amnesty for members and supporters of the RAM-SFP-YOU. The proclamation was made pursuant to the General Agreement of October 13, 1995, which provided for, among others, amnesty as an integral part of a negotiated settlement.

As far as the substance of the negotiations is concerned, there have been agreements between the negotiating panels on proposals for reforms that will be submitted to the appropriate branches of government for consideration. It may thus be said that the negotiations closely adhered to the objective of EO 125 of coming up with proposals for reforms that deal with the root causes of the conflict. In other words, the groups negotiating with the government have become willing partners of the government in pushing for reforms. This fits perfectly within the RAM-SFP-YOU's framework since one of the causes of the coup attempts launched by this group was dissatisfaction with how the Aquino government was running the country. Unlike the communist insurgency, the coup attempts were not launched against the state; they were launched against those holding power in the government.

Conclusion

The peace process has been impressed by high and low points and, as far as the negotiations with the NDF are concerned, the process is at a low point. But it is expected that the government will continue to pursue negotiations as a primary path because of the peace dividends. The apparent success in the negotiations with the MNLF and the RAM-SFP-YOU has convinced the Ramos administration that negotiations make out the main path to peace.

However, the fact that the government is limited in its options by constitutional processes and the rule of law has made the negotiations more difficult, especially with the NDF. On the government's part, the negotiations subsist within a framework that does not even have to be expressly referred to in EO 125—adherence to constitutional processes and the rule of law is an inherent requisite for all actions of the government and its agents under our Constitution.

In effect, the legal framework in the context of the negotiations has proved to be a disruptive, rather than an encouraging, issue. Thus, unless the NDF accepts the constitutional limitations on the government and works with the government in arriving at a political

settlement within the parameters of the Constitution, as have the MNLF and the RAM-SFP-YOU, a lasting peace will remain a distant dream.

Considering the difficulties currently plaguing the talks with the NDF, perhaps it is time to shift gears and go back to the basic assumption of the peace process, i.e., that true peace will only come about when the root causes of the conflict have been adequately dealt with. In this perspective, focus will have to revert to the institution of reforms that will tackle the root causes, as the principal thrust of the government and the people's peace efforts. Otherwise, any agreement on a political settlement of the conflict will not usher in the much-awaited peace but will only provide a respite until the outbreak of the next rebellion stemming from the same root causes. Even a military victory of the government over the rebel group, in the event that talks are forsaken in favor of war, will produce the same results, as our historical experience has shown.

The NUC has identified the root causes of the conflict, culling their listing from what the people reported in nationwide consultations. Following the recommendations of the NUC, EO 125 was promulgated, outlining a reform-oriented peace process. It is therefore perplexing why inordinate attention is given by the government to the modality of negotiations with the NDF, at the expense of real reforms. It is understandable why rebel groups seeking peace would give primacy to negotiations, as their being outside the limits of lawful governance leaves them with few options; but as to the government, a fixation on negotiations can only mean that it cannot deliver on the promised reforms, and thus has to content itself with short-term arrangements that pander to personal ambition and immediate concerns but do not guarantee a just and lasting peace.

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About the UP Center for Integrative and Development Studies

The Center for Integrative and Development Studies of the University of the Philippines (UP-CIDS) was created in 1985 as a University-wide research unit with the mandate of mobilizing the multidisciplinary expertise of the UP in search of new paradigms, policies, strategies and programs that will help the nation overcome constraints to its development.

The Center is the University System's institution for integrative and collaborative research. It aims to nurture communities of scholars engaged in research on areas of national concern. As an integral part of an academic institution, the UP-CIDS also aims to feed back to the University's scholarly work new paradigms developed in the process of doing basic and policy-oriented multidisciplinary research.

The initial thrusts of the Center's research agenda revolve around specific social and political problems affecting the nation, such as those on human rights and peace studies, and the fields of foreign policy and international relations and development. In early 1989, the UP Assessments on the State of the Nation Project was launched and made the key project of the Center for the next three years.

Following the Center's reorganization in May 1993, four programs were formalized: the State of the Nation Assessment Program (SONAP); the Peace, Conflict Resolution and Human Rights Program (PCRHRP); the Education Research Program (ERP); and Special Programs.

The Special Programs initiated in the last three years include Marine Affairs, Biodiversity Conservation (with the National Academy of Science and Technology), Mindanao Studies, Pinatubo Studies/Disaster Management, European Studies, Urban Concerns, Solid Waste Management, and the Emerging World Environment.

The Center also established a network of Local Regional Studies in different UP units and is administering Special Projects. Among them are: the UP Centennial Discussion Series; Studies on Overseas Filipino Workers; Filipino Well-Being Index Project; Studies on the Elderly; and the Mega Issues Project (with the National Academy of Science and Technology).

For further information, contact: The Executive Director; UP-CIDS, UP Diliman, Quezon City. Tel. Nos. 929-35-40 and 928-96-91 (fax).

UP-CIDS Peace, Conflict Resolution and Human Rights Program

The Program on Peace, Conflict Resolution and Human Rights is the UP Center for Integrative and Development Studies's contribution to the University's efforts to help the country grapple with its critical problems regarding peace.

The Program has been able to support several studies by faculty members dealing with peace, conflict resolution and human rights concerns. Most studies have notably dealt with the impact of armed conflict on Philippine communities, and the various initiatives to build peace and find peaceful solutions to the major armed conflicts besetting the country.

The Program has also sponsored several consultations, a regional training on domestic conflict resolution, workshops and public fora. These were aimed at building knowledge and generating interest on peace and human rights issues, enhancing human resources capability in peace and conflict studies, and developing strategies for creating the national environment for a lasting peace.

Another component of the Program is the set of researches on psychosocial trauma. This subprogram is specifically concerned with generating a database and studies on the psychosocial impact of armed conflict.

The Program is envisioned to further facilitate and broaden the participation of the University in the task of national and global peace-building.