

NOTE

**THE INTERNATIONAL LAW REGIME GOVERNING REVOLUTIONARIES:  
STATUS OF THE MNLF, MILF AND ABU SAYYAF  
IN INTERNATIONAL LAW**

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**I. DEVELOPMENT OF INTERNATIONAL LAW WITH REGARD TO LEGAL  
PERSONALITIES**

International Law or the Law of Nations resulted from the proliferation of independent political units throughout the world, necessitating the development of “a body of principles, customs, and rules recognized as effectively binding obligations by sovereign states and such other entities as have been granted international personality”.<sup>1</sup>

Lauterpacht observed that “the orthodox positivist doctrine has been explicit in the affirmation that only states are subjects of international law.”<sup>2</sup> And Article 1 of the Montevideo Convention on Rights and Duties of States (1933) pronounces the most widely accepted formulation of the criteria of statehood in international law - 1) a permanent population, 2) a defined territory, 3) government, and 4) capability to enter into relations with other states.<sup>3</sup>

Other factors, such as self-determination and recognition, have also been considered in the determination of statehood.<sup>4</sup> It must be emphasized that recognition of a state is not the same thing as recognition of its government. Normally, changes in administration do not require recognition.<sup>5</sup>

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<sup>1</sup> I.L.B. (2002), U.P.

<sup>2</sup> G. VON GLAHN, *LAW AMONG NATIONS - AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW* 2 (1996).

<sup>3</sup> M. SHAW, *INTERNATIONAL LAW* 139 (1997).

<sup>4</sup> *Id.* at 140.

<sup>5</sup> *Id.*

<sup>6</sup> L. HENKIN, *et al.*, *INTERNATIONAL LAW CASES AND MATERIALS* 242 (1987).

Recently, international society seems to have added a new requirement - it must adopt the fundamental rules of democracy.<sup>6</sup> However, although the new requirement appears to operate as a bar to the formation of new undemocratic states, it is unlikely that the community will deny the actual statehood already achieved by earlier states, though lacking this. Instead, they may be susceptible to reproachful actions for continued failure to comply.<sup>7</sup>

The growing complexity of interstate relations led to the recognition of personalities other than states. This was brought about by the undeniable fact of the existence of non-state entities whose sheer size, influence, or deeds affected the international scene. Foremost was the creation of the agencies and organizations, both on the regional and international level. The association of the states was broadened from observation of mutual respect to actually consolidating their resources to achieve common objectives.<sup>8</sup> It was believed that they had to be accorded some level of qualified international personality in order to ensure that they would be governed by rules on international relations.<sup>9</sup>

## II. OTHER PERSONALITIES IN CONTEMPORARY INTERNATIONAL LAW

The subjects of international law are created and determined by the states themselves.<sup>10</sup> The attributes of statehood became the bases for criteria in resolving whether or not a particular entity has international personality.<sup>11</sup>

To acquire personality under international law means that an entity can assume rights and obligations under a legal system.<sup>12</sup> Different subjects of international law possess different capacities, so that when one entity possesses certain capacities, it manifests that it has international personality. However, an entity's possession of international personality is no warranty that it possesses particular capacity.<sup>13</sup>

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<sup>6</sup> I. DELUPIS, *THE INTERNATIONAL LEGAL ORDER* 41 (1994).

<sup>7</sup> *Id.*

<sup>8</sup> L. HENKIN, *supra* note 5 at xli.

<sup>9</sup> *Supra* note 3 at 193.

<sup>10</sup> *Supra* note 1 at 3.

<sup>11</sup> *Supra* note 5 at 228.

<sup>12</sup> *Supra* note 6 at 31.

<sup>13</sup> *Supra* note 5 at 272-273.

HOLY SEE AND VATICAN CITY – The designation “Vatican City” is commonly used for agreements which involve application to the territory of the city, whereas the designation “Holy See” is used for international relations.<sup>14</sup>

In 1929, the Lateran Treaty was signed with Italy, recognizing the city as a sovereign and independent State.<sup>15</sup> This put to rest most of the questions regarding the position of Vatican in the international community. Today, it maintains diplomatic relations with more than 100 states.<sup>16</sup>

PUBLIC INTERNATIONAL ORGANIZATIONS - These are agencies established by states through international conventions to achieve certain state objectives.<sup>17</sup> If the entity is given a range of powers and is sufficiently separate from municipal law, an international person may be recognized.<sup>18</sup>

The treaty creating an international organization determines its constitution and attributes.<sup>19</sup> A typical public international organization has a plenary organ consisting of representatives from each member state, an executive committee, and a secretariat.<sup>20</sup>

One example is the United Nations. Provisions of the UN Charter “supply additional evidence that the United Nations is a legal person, by stating its jural powers as well as responsibilities (Arts. 24, 26, 41, and 42), by authorizing it to conclude binding agreements with its members and with specialized international agencies (Arts. 43 and 63).”<sup>21</sup>

NON-GOVERNMENTAL ORGANIZATIONS - Some of these organizations have been accorded consultative status. Some even perform delegated functions. On the whole, however, they are not considered as having international personality, and their rights and obligations are determined by their municipal law.<sup>22</sup>

One of the most popular such entity is the International Committee of the Red Cross.<sup>23</sup>

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<sup>14</sup> *Supra* note 5 at 277.

<sup>15</sup> *Supra* note 1 at 59.

<sup>16</sup> *Id.* at 60.

<sup>17</sup> *Id.* at 63.

<sup>18</sup> *Supra* note 2 at 176.

<sup>19</sup> *Supra* note 1 at 126.

<sup>20</sup> *Supra* note 5 at 319.

<sup>21</sup> *Supra* note 1 at 126-127.

<sup>22</sup> *Supra* note 5 at 320.

<sup>23</sup> *Id.*

TRANSNATIONAL OR MULTINATIONAL ENTERPRISES - They are enterprises with production and/or distribution services set in several countries.<sup>24</sup> Their economic and political clout has earned them considerable attention on the international level. In fact, a Convention on the Settlement of Investment Disputes between States and Nationals of Other States, was adopted in 1965.<sup>25</sup>

It is believed that there must be a set of guidelines to govern the conduct of these entities, ascribing to them certain rights and corresponding obligations. Then they may be regarded as having an international personality. One such proposed measure is the Code of Conduct for Transnational Corporations.<sup>26</sup> However, no such code has come into effect.

NATIONAL LIBERATION MOVEMENTS or NLMs - They have been granted observer status in the United Nations and related organs.<sup>27</sup> Their recognition in the international scene has been made to depend on regional recognition both to ensure a minimum level of effectiveness and to exclude secessionist movements.<sup>28</sup> Their role now allows for occasional voting rights and the right to enter into international agreements.<sup>29</sup>

INSURGENTS AND BELLIGERENTS - International law has recognized that such entities may be given recognition upon their de facto administration of specific territory.<sup>30</sup> Once they have achieved this, they are accorded a limited measure of international personality, allowing them to be bound by the rules of international law with respect to the conduct of hostilities. Prior to the attainment of this, recognition would be premature and would be construed as illegal intervention.<sup>31</sup>

Recognition of *insurgents* has a constitutive effect because it is only then that an insurgent government gains international status.<sup>32</sup> Such recognition may be

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<sup>24</sup> *Supra* note 6 at 140.

<sup>25</sup> *Supra* note 5 at 344-345.

<sup>26</sup> *Id.* at 320.

<sup>27</sup> *Supra* note 2 at 173.

<sup>28</sup> *Id.*

<sup>29</sup> *Supra* note 6 at 134.

<sup>30</sup> *Supra* note 2 at 173.

<sup>31</sup> K. VON SCHUSCHNIGG, INTERNATIONAL LAW: AN INTRODUCTION TO THE LAW OF PEACE 92 (1959).

<sup>32</sup> *Id.* at 166.

bestowed by the de jure government or by the governments of other states.<sup>33</sup> The effect is limited, extending only to acknowledgment of their authority as de facto government and jurisdictional immunity abroad.<sup>34</sup> Sovereign acts of the insurgent, however, are only recognized within the territory under its control.<sup>35</sup>

On the other hand, state practice with respect to *belligerents* indicates specific attributes of their international personality. First, the laws of war are applied to their civil war.<sup>36</sup> Second, they possess belligerent rights against the de jure government, therefore imposing neutrality on foreign states. Third, they are considered to have the capacity to enter into treaties with other governments.<sup>37</sup> This, however, does not accord the right to maintain diplomatic relations nor the right to join international organizations.<sup>38</sup>

It is understood that should these personalities fail to win their civil war, their personality will dissolve.<sup>39</sup>

### III. ISLAMIC SECESSIONIST MOVEMENT IN THE PHILIPPINES

#### A. HISTORY OF THE ISLAMIC SECESSIONIST MOVEMENT

##### 1. The Arrival of Islam

It was 1210 AD when some Arab merchants and Islamic missionaries introduced Islam to the inhabitants of Moroland (Mindanao in the southern Philippines). Islamic Sultanates were founded under the reign of the Moro Sultans.<sup>40</sup>

##### 2. Christianity

In 1521 AD, Ferdinand Magellan arrived and brought with him Christianity. Luzon and the Visayas were first baptized into the faith, while Raja Sulaiman and

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<sup>33</sup> *Id.* at 167.

<sup>34</sup> *Id.* at 93.

<sup>35</sup> *Id.* at 167.

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 5 at 253-254.

<sup>38</sup> *Supra* note 1 at 71.

<sup>39</sup> *Supra* note 6 at 134.

<sup>40</sup> Sheik Abu Zahir, *The Moro Jihad: Continuous Struggle for Islamic Independence in Southern Philippines*, Nida'l Islam Magazine, available at <http://diaskeaus.tripod.com/baird/jihad/political/marginal.html/>, (Visited November 2001).

Lakandula led the resistance movement in the south. Not long thereafter, on December 1898, the "Treaty of Paris" was agreed upon by America and Spain by which the latter ceded the Philippines. There was a strong objection to the inclusion of the Moroland by the Moros. This was the beginning of a long struggle for independence.<sup>41</sup>

### 3. Settlement Programs

In the year 1946, the Philippine government launched settlement programs. The goal was for Christian settlers from Luzon and Visayas to migrate and populate the south. Thereafter, Christian migrants started to take over the political and socio-economic posts of Southern Mindanao. The "settlement program" was viewed by the Muslims of the South as a form of genocide campaign by the Christian-run Luzon government. It was in 1962, when the earliest conception of formal Muslim revolutionary movement can be traced.<sup>42</sup>

### 4. The Moro National Liberation Front

Some Moslem students of the South who were able to study in the Middle East secretly organized themselves and planned for the future launching of an Islamic movement that would aim at the liberation of the Southern Mindanao from the yoke of the Philippine colonialism and foster the revival of the Islamic rule in the area.<sup>43</sup>

Back home, after the infamous "Jabidah Massacre", where the Philippine Military killed several Muslim trainees, there was a call for the formation of an Islamic resistance movement. Datu Udtog Matalam declared his Mindanao Independence Movement (MIM). Under the patronage of the MIM and other Muslim political leaders, the first military training of 90 Moro youths was successfully conducted in Sabah in 1970. Among the trainees was Nur Misuari.<sup>44</sup>

Misuari was a former university professor. Well-educated, Misuari advocated a free and independent state for the Muslim Mindanao. For Misuari,

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> The MILF Webpage, *Origin, Development, Ideology of the MILF (2001)*, at <http://www.morojihad.com/milf.html/> (Visited November 2001).

<sup>44</sup> *Id.*

Filipino Muslims, or the "Moro", constituted a separate nation (Bangsamoro), different from the one that the National government represented. This meant raising the issue for Muslim self-determination and independence in order to gain recognition of their national identity --- even if that meant armed struggle.<sup>45</sup>

Unknown to the MIM and their benefactors, Misuari and six others formed the Moro National Liberation Front central committee. Upon their return to Mindanao, several clashes with the military occurred. In the 1970s, the MNLF claimed responsibility for several encounters.<sup>46</sup>

The Organization of Islamic Conference (OIC), Islamic Conference of Foreign Ministers (ICFM) and President Qadhafi of Libya threw their support behind the MNLF. Hashim Salamat, leader of another revolutionary movement espousing Islamic revivalism joined Misuari in consolidating the ranks of the Islamic resistance movement. They were called the *mujahidin* or "those who struggle against the enemies of Islam". The year was 1976.<sup>47</sup>

In the early years of the Islamic resistance movement, Misuari and Salamat worked closely in mutual trust and support. While it was true that they had differences in their principles and beliefs, they worked hard at making sure that their personal differences will not interfere with the "struggle". However, there was one issue which needed to be confronted for it was vital to the success or failure of the Islamic movement. As a revolutionary '*Alim*' (learned man), one of the main concerns of Salamat was that the struggle attains its proper perspectives, direction, and methods. He wanted every activity and program of the front to be in line with Islamic precepts particularly known as the principle of *Sharia* or Islamic consultation. Misuari, on the other hand, believed in the paramount importance of efficiency. To attain this, he believed that a well-oiled war machine must not be bogged down with much consultation among its members. As a result, Misuari seldom entertained ideas and suggestions from others. This caused a major conflict within their ranks, eventually leading to Salamat's departure from the MNLF.<sup>48</sup>

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<sup>45</sup> JOSEPH F. NACINO, *The Bandits Return*, THE PHILIPPINE STAR, available at <http://www.philstart.com/htmtest/abusayyaf.htm/>, (Visited November 2001).

<sup>46</sup> *Supra*, note 43.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

## 5. The Split

Believing that Misuari's style of leadership would eventually lead to the downfall of the movement, Salamat decided to separate from the MNLF in 1977. In a letter to the Secretary General of the OIC, Salamat outlined his reasons for leaving the group. His reasons were:

- a) The MNLF was veering away from Islamic ideology and objectives and was moving towards a Marxist orientation.
- b) There was lack of consultation. Instead of evolving towards harmonized and collective leadership, the central committee has become the exclusive preserve of Misuari.
- c) This mysterious, exclusive and arrogant nature of the MNLF leadership resulted in confusion, suspicion and disappointment among members and *mujahidin* in the field, resulting in the loss to the cause of a great number of freedom fighters.<sup>49</sup>

There were several attempts to have the two dynamic leaders reconciled. In March 1984, the new group formed by Salamat officially adopted the name "Moro Islamic Liberation Front" (MILF), highlighting the strict adherence of this group to the Islamic way of life.<sup>50</sup>

Misuari's MNLF, on the other hand, retained the support and recognition of OIC as the legitimate representative of the Bangsamoro struggle.<sup>51</sup>

## 6. The Moro Islamic Liberation Front

The ultimate objectives of the MILF were to seek the pleasure of Allah by making His word Supreme; to establish a true Muslim community, a genuine Islamic system of government, and application of the real Islamic way of life.<sup>52</sup> Salamat's concept of self-determination is complete independence, not just autonomy because

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*



the law of God which the Moro people adhere to function under a man-made system, like the system of the Philippine government.<sup>53</sup>

Thus, the MILF, like other Islamic movements in the world, also aspired for the establishment of an independent Islamic state in the Moroland. This is one of the reasons why it is a part and parcel of the global Islamic movement that works for the revival of the leadership of the Muslim *ummah* through *kalifa*.<sup>54</sup> For the MILF, the ultimate means to achieve its objectives are through the use of systematic *da'wah* and pragmatic *jihad*. These two, according to Salamat Hashim, cannot be separated and should be pursued at the same time.<sup>55</sup>

## 7. The Abu Sayyaf

As the peace agreement, which called for the establishment of a "Muslim Autonomous Region" in the southern Philippines was never genuinely implemented by then President Marcos, fighting broke out once more before the end of 1977.<sup>56</sup>

The fall of the Marcos regime in 1986 led the movement leaders to adopt the practices of popular politics. These included organized mass demonstration and the formation of a political party to participate in local and national elections. In 1991, a radical group, which disagreed with the peace initiative broke from the MNLF and was later called the Abu Sayyaf group which means "Bearer of the Word".<sup>57</sup>

The Abu Sayyaf reportedly broke from the MNLF because of its rejection of the practice of complementary non-violent mobilization (*dawa*), preferring violent struggle (*jihad*) as its ideological strategy. The Abu Sayyaf saw the MNLF's moderation of the struggle as part of the MNLF's "concessions" to the State. The founder of the group was Abdurajak Janjalani.<sup>58</sup> In 1987, Janjalani, by then in his mid-20's, went to Tripoli, Libya for religious studies where he met many other Filipino Muslims his age. That time, through a supporter of the MNLF cause, he had become a vocal critic of Misuari.<sup>59</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Supra*, note 45.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

Back in Basilan, Janjalani attracted droves of followers, especially college students, through his impassioned preachings. The same followers he eventually formed into the Abu Sayyaf.<sup>60</sup> The recruitment of Abdul Asmad, then one of the most promising student leaders of the Western Mindanao State University in Zamboanga Cit, paved the way for the international character of Abu Sayyaf. It was Asmad who brought Janjalani into the network of Jamal Mohammad Khalifa, “an Arab known for his philanthropy in Western Mindanao, but who was later identified as a supporter of International terrorists,” Asmad himself worked for Khalifa under the International Islamic Relief Organization, an NGO that has helped Muslim refugees in conflict-ridden areas.<sup>61</sup>

The Abu Sayyaf, though based in the South, has worldwide ties to a number of Islamic fundamentalist organizations around the world, including Osama Bin Laden’s al-Qaida and Ramzi Yousef. Yousef was convicted of organizing the 1993 bombing of the World Trade Center in New York while Osama Bin Laden is the prime suspect of several bombings of US institutions including the collapse of the World Trade Center on September 11, 2001.<sup>62</sup>

## **B. PERSONALITY OF THE PHILIPPINE ISLAMIC SECESSIONIST MOVEMENTS IN INTERNATIONAL LAW**

### **1. Factors for Consideration**

While Moslems in the Philippines constitute only five percent of the population,<sup>63</sup> the impact of their struggle reaches not just Malacanang, but even across the seas. Many rebel groups would have been easily quashed by the military, but the Islamic rebellion withstood the test of time. The durability of the Islamic rebellion is traced not only in its well-entrenched historical roots colored with oppression and violence, but more so with three other factors, namely: its ideology, its acts, and international support.

These three aspects of their struggle though varying from one group to another, are woven into tapestry of passion, betrayal and religious loyalty.

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Supra*, note 45.

<sup>63</sup> CHRISTOS IACOVOU, *The Radicalization of Islam in the Philippines*, at <http://www.ict.org.il/>, (Visited November 2001).

a) *Ideology*

The conceptualization of the Moro struggle had its roots in the Koran and the way of life of Islam. Believing that the full identity of the Moslem can only be expressed in a purely Islamic state, the Moslems of the Southern Philippines sought an independent Moro nation. Convincing the ordinary Moslem in this struggle was not a difficult task considering the many perceived unjust and oppressive ways of the Christian national government. Most Filipino-Moslems believed that the vindication sought by their religion cannot be achieved within the context of an oppressive discriminating and neglectful society construed under the aegis of the Philippine national government.

Years of economic neglect and political discrimination have reduced them to the lowest national literacy and economic levels. Unemployment was endemic while law and order had deteriorated in some areas. That Filipino national leaders in Manila viewed Muslims and their lands in much the same way as Spanish and American colonial authorities had done before them was met with deep suspicion and fierce resentment.

Significantly, government programs to integrate Muslims into the body politic were paralleled by growth of Islamic revivalism.

Nur Misuari and the MNLF argued that only in a free and independent state could the Muslims free themselves from corrupt leaders and fully implement Islamic institutions. To Misuari, the Moros constituted a separate people - the *Bangsamoro* people. His concept had a nationalistic connotation such that non-Muslims who cast their lot with Muslims were also to be called "Moros" and therefore as members of the future Bangsamoro Republic. Ever since the nationalist movement took concrete form, it has been a movement directed toward self-determination and independence, defined as a pre-requisite for the unhindered implementation and enhancement of Islamic institutions among the Muslims in the Philippines.<sup>64</sup>

Hashim Salamat's breakaway from the MNLF highlighted the conflict within the movement. Establishing the Moro Islamic Liberation Front (MILF), Salamat emphasized the importance of a purely Islamic struggle in both basis and means. Charging the Misuari-led MNLF with abandoning the Islamic way of struggling in favor of Marxist means, Salamat began a journey towards a return to the essentials of the Muslim faith. The ideology of the MILF, according to Salamat, is belief in the *kalimah al-tawhid* (declaration on the oneness of God). For Salamat, this

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<sup>64</sup> *Id.*

meant that there was no God worthy to be worshipped but Allah and that worship of God must be in accordance with the teachings and examples set by the Prophet Muhammad. These principles imply that all MILF activities, programs, and objectives are assured or presumed to be in conformity with the meaning and implications of the declaration, there is no god worthy of worship other than Allah and that Muhammad is his messenger.<sup>65</sup> The MILF adopts the Islamic ideology and way of life. Furthermore, the Islamic front believes in the Islamic concept of state and government. In contrast to this, the Moro National Liberation Front is more inclined to secularism.<sup>66</sup>

The move of both the MNLF and the MILF to explore non-violent means of solving the Muslim crisis paved the way for the birth of a more radical, misdirected Islam-based group called Abu Sayyaf. Although the Abu Sayyaf's emergence can be traced to its dissatisfaction with the move of the MNLF to engage in peace talks and concessions with the Philippine government, its present existence *vis a vis* their activities envelopes a shroud of mystery over the main ideology and primary objectives of Abu Sayyaf. Other than short TV interviews and periodical quotations, little is known of their ideology. It would seem than they avoid talking about this topic. The Abu Sayyaf insists that it is based on the teachings of Muhammad. Their activities, however, say otherwise.

The Abu Sayyaf was initially accepted by many in the Muslim Community mainly because it seemed to promise a return to the "pristine" definition and practice of Islam. But in time, "it became obvious that Janjalani interpreted Islam the wrong way, at least to most Muslims."<sup>67</sup>

#### *b) Acts*

The acts of the MNLF and the MILF can be traced to "jihad" or armed struggle. The term, "jihad" from the Arabic verb, jhd (abstract noun juhud), which means "exerted; its judicial-theological meaning is exertion of one's power in Allah's path, that is the spread of the belief in Allah and in making His word supreme over this world."<sup>68</sup>

Hence, a man who exerts himself physically or mentally or spends his wealth in the way Allah intended is indeed engaged in *Jihad*. But in *shariah*

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<sup>65</sup> *Id.*

<sup>66</sup> *MILF Leader to Nida'ul Islam*, NIDA'UL ISLAM MAGAZINE (April-May 1998), available at <http://www.islam.org.au/> (Visited November 2001).

<sup>67</sup> *Supra*, note 59.

<sup>68</sup> *Supra*, note 43.

terminology, *jihad* particularly denotes war that is waged solely in the name of Allah against those who practice oppression, or against enemies of Islam.<sup>69</sup>

The Moro Jihad consists of three phases:

- (1) The Moro Jihad against the Spanish Invasion (1521-1898)
- (2) The Moro Jihad against the American colonisers (1898-1946)
- (3) The Moro Jihad against the Philippine crusade (1070 – present).<sup>70</sup>

The activities of the MNLF and the MILF do not differ much from each other. Both are armies composed of Muslims. Both engage in ambushes and regular clashes with the military. Both recruit women to comprise an intelligence network and a constant source of medicine and food. Both are also fighting for a separate Islamic state over the same geographical territory. Perhaps the main difference lies in the approach taken by both camps as regards the peace process. Salamat's stance is one of "all or nothing" while that of Misuari is one of compromise. Both approaches have their merits. Salamat believes that peace talks ought to be conducted. However, the talks must delve only on issues of how to establish their ultimate objective which is a separate Islamic state. Misuari, on the other hand, was willing to venture on all sorts of mid-way deals with the government in order for the Muslims to conduct their affairs free from the interference of the national government without necessarily separating from the Philippines.

For these reasons the MNLF was able to forge a peace treaty with the Philippine government in 1976. The Tripoli Agreement, entered by the MNLF and the Philippine government in December 1976, called for a ceasefire and the granting of autonomy to thirteen provinces where the majority of Muslims lived. This peace agreement, however, was not honestly implemented by the Marcos administration. During the time of President Corazon Aquino, another form of autonomy was concocted, in the hopes of ending the long-standing Moro struggle.

The program by the Aquino government called the "Autonomous Region for Muslim Mindanao" was nevertheless rejected by the MNLF, claiming that it was not a faithful implementation of the Tripoli Agreement. However, in 1996, during the President Ramos' administration, the formal peace agreement was signed. The agreement resulted in the appointment of Nur Misuari as the Chairman of the newly created Southern Philippines Council for Peace and Development (SPCPD) tasked

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<sup>69</sup> *Id.*

<sup>70</sup> *Supra* note 40.

to oversee government development projects in the 14 provinces in Mindanao. It also resulted in the integration of some of Misuari's forces with the Philippine armed forces, as well as the election of Misuari as the Governor of the Autonomous Region for Muslim Mindanao (ARMM).

The MILF, the largest and the most powerful movement, was not involved in the said peace accord. It rejected the peace agreement and continues the Moro *jihad* against the Philippine government. The following reasons were given:

- (1) The Agreement considered only side issues and never touched the core of the Bangsamoro problem - the illegal and immoral usurpation of their ancestral homeland, and the usurpation of their legitimate rights to freedom and self determination.
- (2) The agreement is devoid of justice and freedom for the Bangsamoro people, and peace without justice and freedom for the aggrieved party is another form of colonial oppression.
- (3) The agreement is a solution to the problem of the government of the Republic of the Philippines (GRP) only, not the Bangsamoro problem.
- (4) The GRP-MNLF agreement is a violation of the Tripoli Agreement which is now sidelined due to that agreement. The MILF expected that the GRP- MNLF agreement will be a total failure and that expectation is now a reality. In fact, a top MNLF officer stated that: "the outcome of the GRP-MNLF agreement is a double zero" because it did not solve the Bangsamoro problem and caused the abandonment and total failure of the Tripoli Agreement.<sup>71</sup>

If the MILF enters into a peace agreement with the Philippine government, there will be three major points where they will differ with the MNLF:

- (a) Difference in approach: Under the MNLF peace agreement, Misuari gave much emphasis to foreign participation, i.e. the involvement of the OIC. In the MILF's case, though they welcome the OIC and other Muslim states, they believe they can pursue peace talks on their own because they emphasize internal factors.

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<sup>71</sup> *Supra* note 69.

- (b) Different political approach: MNLF asked for 14 provinces and 10 cities. The MILF does not give so much emphasis on autonomy. It seeks to establish an independent Islamic government in areas where Muslims are predominant.
- (c) With regard to plans to develop and uplift the living conditions of the Muslims: projects for the development of Muslims, highlanders and Christians were conceptualised only after the signing of the agreement. Under the MILF, they are involved with livelihood and development projects in order to uplift their living conditions even before entering into an agreement with the GRP. This is because the MILF gives more importance to self-reliance and internal factors rather than external ones, especially aid.<sup>72</sup>

At present, the most distinct difference between the MNLF and MILF is that the former recognizes the Philippine Constitution while the latter does not.<sup>73</sup>

The Abu Sayyaf is a different matter. Although they side the MILF in their dissatisfaction with the seemingly weak stance taken by the MNLF, the latter must not be classified together with the former. According to Senator Aquilino Pimentel in his privilege statement at the Senate on May 8, 2000, the MILF pursues a political agenda while the Abu Sayyaf adopts one criminal in nature. According to him, the MILF fights to retain its own culture, religion, and identity. The Abu Sayyaf fights to convert crime into an industry for their group's profit.<sup>74</sup>

Little is known of the objectives of the Abu Sayyaf other than the accumulation of material and influential wealth. In 1993, however, in the kidnapping of Luis Biel, five years old, and his grandfather, owner of a bus company in Basilan, the Abu Sayyaf conducted a press conference where they announced their demands in exchange for the release of the hostages. Their demands were the following:

- (a) Remove all Catholic symbols in Muslim communities;
- (b) Ban all foreign fishing vessels in the Sulu and Basilan areas, and;

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<sup>72</sup> Conciliation Sources, *A View from the MILF, Interview with Mohagher Iqbal*, at [http://www.c-r.org/acc\\_min/iqbal.htm/](http://www.c-r.org/acc_min/iqbal.htm/), (Visited November 2001).

<sup>73</sup> *Supra*, note 69.

<sup>74</sup> SENATOR AQUILINO PIMENTEL, *Stop Hostilities for People's Sake* (May 8, 2000), at <http://www.codewan.com.ph/hrnow/monitor/m2000-0526-02/>, (Visited November 2001).

- (c) Bring the Ulama into the negotiations.<sup>75</sup>

In August 2000, the Abu Sayyaf showed some signs of links with international objectives when it demanded the release of Ramzi Youssef, Sheik Adel Omar Rahman and Abu Haidel from the American jails in exchange for the release of hostage Jeffrey Craig Schilling.<sup>76</sup>

The group is now the government's biggest enemy following its kidnappings of foreigners in the Sipadan dive resort in Malaysia last, and recently, of tourists in the Dos Palmas Resort in Palawan.<sup>77</sup>

Its goal was stated plainly: to establish an Islamic state in Mindanao. However, it seeks to achieve these goals through terrorist activities contrary to the common Jihad struggle employed by the MNLF and the MILF.

***c) Treatment by the National Government and Other International Personalities***

After identifying the ideologies and the various acts of these different Islamic groups comprising the Islamic secessionist movement, we now try to see how the Philippine Government and the other international personalities treat these groups:

**The Government of the Republic of the Philippines**

The Philippine government has attempted several times to reach a peaceful agreement with both the MNLF and the MILF. In December of 1976, the Tripoli Agreement, which called for the ceasefire and the granting of autonomy to thirteen provinces where a majority of Moslems lived, was entered into by the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF). This was not faithfully implemented by the Government. In 1977, President Marcos issued Presidential Decree 1628 declaring autonomy in regions IV-A, IX and XII. In 1979, Presidential Decree No. 1618 was issued implementing the Sangguniang Pampook and the Lupong Tagapagpaganap ng Pook in Region IX and XII. In 1987, the Jeddah Accord was entered into between the Government of the Republic of the Philippines (GRP) and the MNLF. In 1989, a Statement of

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<sup>75</sup> *Supra* note 70.

<sup>76</sup> *Supra* note 45.

<sup>77</sup> *Supra* note 70.



Understanding was entered into between the GRP and the MNLF in the first round of the GRP-MNLF exploratory talks. In 1993, another Statement of Understanding was entered into on the Second Round of the Exploratory Talks between the GRP and the MNLF. On the same year, Memorandum Order No. 163 was issued defining the functions and responsibilities of the Presidential Adviser on the Peace Process. Executive Order No. 125 which defined the approach and administrative structure for the GRP's comprehensive peace efforts was issued. On November 7, in Jakarta, Indonesia, a Memorandum of Agreement was entered into on the first round of the GRP-MNLF Formal Peace Talks. On the same date, an Interim Ceasefire Agreement was also made. In 1994, in Zamboanga City, the GRP-MNLF Peace Panels signed the Joint Guidelines and Ground Rules for the Implementation of the 1993 Interim GRP-MNLF Ceasefire Agreement. In Jakarta, Indonesia, the second round of the formal peace talks between the GRP and the MNLF was held, and an Interim Agreement was made. In 1995, another Interim Agreement during the third round of formal peace talks between the GRP-MNLF was made. In 1996, the Davao Accord was signed. The accord contained the points of agreement of the 8<sup>th</sup> GRP-MNLF Mixed Committee Meeting with the participation of the OIC Ministerial Committee. On August 2, Senate Resolution No. 50 was enacted, containing the agreement. In the same year, a final Peace Agreement was signed by both the GRP and the MNLF. Executive Order No. 371, proclaiming a Special Zone of Peace and Development in the Southern Philippines (SZOPAD), the establishment of the Southern Philippines Council for Peace and Development (SPCPD), and the Consultative Assembly (CA), was issued.<sup>78</sup>

During all this, the Philippine Government dealt with the MNLF and not with the MILF because it was the MNLF that was recognized by the OIC as the official representative of the Moslem separatist movement of the South. Because of this, the MILF did not adhere to the Peace Accord. Violence continued in the South. The MNLF problem was solved. However, the Moslem problem in the South was not. For this reason, in 1997, the government was compelled to sit down with the MILF. On July 18 of that year, a GRP-MILF General Cessation of Hostilities Agreement was entered into between the GRP and the MILF. On September 3, 1997, a Supplemental Agreement concerning the repositioning of troops and the display of fire arms in Cotabato was discussed. On September 12, the Implementing Administration Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities was drafted and signed. On November 14, the Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities was forged in Marawi City.

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<sup>78</sup> CONCILIATION RESOURCES, *GRP-MNLF and GRP-MILF: Peace Agreements and Enabling Legislation*, at <http://www.dfait-maeci.gc.ca/manila/english/devcorp/cpdfo7.asp/>, (Visited November 2001).

On August 27, 1998, the GRP-MILF General Framework of Agreement of Intent was entered.<sup>79</sup> To this day, despite these preliminary agreements with the MILF, war in Mindanao rages.

According to the MILF, the GRP sees them as an “insurgent group as well as the number one threat to its national security and peace and order in the Mindanao region.” Like other governments, they see the GRP as using socio-political and economic development programs as counter-insurgency measures, not to solve the Moro problem but to serve its own interest.<sup>80</sup>

The MILF sees the GRP’s treatment of the Moro problem as a circumvention of what the real problem really is. They believe that the GRP seeks to present solutions to temporarily appease the Moslem people, hoping that the main issue will be buried beneath the temporal solutions presented.

It cited some examples:

- (a) 1950 - Creation of the Commission of National Integration in order to foster the moral, material, and political advancement of the Non-Christian Filipinos, including the Moros.
- (b) 1965 - Creation of the Mindanao State University at Marawi City in order to promote education among the peoples of the South, particularly the Moros.
- (c) 1978 - Creation of the Philippine Pilgrimage Authority in order to initiate and administer all aspects of programs relevant to the annual pilgrimage to Mecca.
- (d) 1981 - Executive Order No. 697, creation of the Ministry of Muslim Affairs in order to implement policies to endure the unification of the Moros into the mainstream of the Philippine society.
- (e) Creation of “bogus” autonomous governments in Mindanao.<sup>81</sup>

The MILF does not see any of these measures as approximating a solution to the Moro problem for the reason that the main source of discontentment of the

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<sup>79</sup> *Id.*

<sup>80</sup> *Supra* note 43.

<sup>81</sup> *Id.*

Moro people is not addressed - that the Islamic way of life can only be realized in a totally separate Islamic state.

Despite these efforts, lasting peace is still elusive in the south. According to the MILF, autonomy cannot solve the problem. They are firm in their position that they will not accept any offer less than independence from the government. For Salamat, as well as the MILF, "negotiations shall be focused on the territory of the would-be independent state of the native inhabitants which could readily be settled on a possible compromise to cover only areas predominantly occupied by them at present".<sup>82</sup>

To address the Moro problem, the MILF invited the government to conduct a referendum based on the model of East Timor. The Philippine government on the other hand believes that this idea is unconstitutional, and therefore, unacceptable.<sup>83</sup> The MILF knows that this is unconstitutional. That is why it does not negotiate with the government unless it is outside the framework of the Constitution. Therefore, the MILF's last recourse in order to achieve its political goal is war.<sup>84</sup>

Over the years, it has become apparent that although the Philippine government has yet to fully comprehend the depth of the Moro Islamic struggle, it has attained a certain level of acceptance that this perennial Philippine concern is a genuine struggle of an oppressed people striving to retain their identity and traditions as a "nation". It is for this reason that the government has shifted its stance from one of aggression, to one of embracing concern. Sad to say, the years of bias and prejudice still permeate the negotiation atmosphere which derails the opening of the channels of trust and faith which ought to be present if negotiations are to be successful.

As for the Abu Sayyaf, there are some in the government who see the group as a genuine rebel or guerrilla force. Some of them believe that although the acts of the Abu Sayyaf can be classified as those of terrorist, their acts are nonetheless a response to a valid socio-political-cultural sentiment. The MNLF and MILF stand on one side representing the genuine Moro struggle. The Abu Sayyaf stands on the other side, representing the radical side of Islam which has earned for itself an international label: terrorism.

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

### The Organization of Islamic Conference

The international character of the Moro struggle can be traced in the involvement of the Organization of Islamic Conference or the OIC. The OIC, a union of Moslem nations to which the Moros look for support, began exerting pressure on the Philippine government to enter into negotiations with the Muslims of the Southern Philippines even at the onset of the Moro struggle in the early 70's. It was instrumental in several ceasefire agreements between the GRP and the MNLF. Precisely because of the OIC's strong influence in the international sphere, the Filipino-Muslim leaders of the Southern Philippines constantly sought its approval, support and endorsement. That is why during the Misuari-Salamat rift, both leaders courted the OIC for endorsement as the official representative of the Moro struggle. In fact, Salamat Hashim even had to inform the OIC of his reasons for withdrawing his support from the Misuari-lead MNLF. Thus, the OIC, even at the start of the Moro struggle, became a principal player in the Moro struggle of the South.

One of the most important achievements of the OIC in its role as mediator was the signing of the Tripoli Agreement on December 23, 1976 and the Davao Peace Accord in July 23, 1996. The move of the Philippine government to sit down with the MNLF to explore the possible solutions to the Islamic struggle was triggered by the recognition of the OIC of the MNLF as the sole legitimate representative of the Moro struggle. Further evidence of the critical role played by the OIC in the Moro struggle is the fact that the MNLF sought its inclusion several times as a member of the OIC. These moves, however, were blocked by the Philippine government. Had the OIC made the MNLF a member, it would have unilaterally declared the Bangsamoro people a separate state from the Republic of the Philippines. It would have crossed the boundaries of the national sovereignty and would have violated the international law principle of non-intervention. Instead, it chose to grant the MNLF a mere observer status in the OIC, only for the purpose of ensuring the welfare of the Moros in the South.

The latest involvement of the OIC in Philippine affairs concerning the Moro struggle is the "Resolution on the Question of Muslims in the Southern Philippines" drafted on June 25-29, 2001 in the Republic of Mali. In this resolution, it declared the following, among others:

- (a) It renewed its support to the "Peace Agreement" between the Government of the Republic of the Philippines and the Moro National Liberation Front signed in 1996.

- (b) It called the GRP and the MNLF to preserve the gains achieved as a result of the signing of the "peace agreement."
- (c) It lauded the GRP for receiving the fact-finding commission and facilitating its task of evaluating the current situation in Southern Philippines.
- (d) It commended the MNLF and re-affirmed that it is the sole legitimate representative of the Muslims in Southern Philippines.
- (e) It urged member states and subsidiary organs, specialized and affiliated institutions, including the Islamic Development Bank, to increase their economic, financial, technical, and material assistance for the development and rehabilitation of the Southern Philippines through the Autonomous Region of Muslim Mindanao and the Southern Council for Peace and Development under the auspices of the MNLF.
- (f) It further appealed to all Islamic and other charitable organizations in OIC member states to extend medical and other humanitarian assistance to the displaced people who were victims of violence in Mindanao.
- (g) It urged the member states to help mobilize international support for both parties of the Peace Agreement to enable them to achieve peace, development, and prosperity in Southern Philippines.

The OIC clearly exerts great influence in the GRP-MNLF scenario. Thus, the effectivity of a secessionist group in the South depends greatly on the support it is able to elicit from the OIC.

#### South-East Asia

After the MNLF returned to the fold, several international organizations responded by sending assistance to the returning rebels. One of these organizations is the South-East Asia and the Pacific Multi-Disciplinary Advisory Team (SEAPAT). The objective of the aid was:

- (a) To provide assistance to MNLF soldiers, families and their communities through vocational training and enterprise.

- (b) To equip MNLF soldiers with vocational skills for potential immediate employment.
- (c) To provide vocational preparation and technical literacy training.

#### United Nations

The United Nations stepped into the picture through the United Nations Multi-Donor Program, a collaborative effort among other agencies-the Southern Philippines Council for Peace and Development (SPCPD), the National Economic Development Authority and the United Nations Development Program (UNDP). Under the UN-led program, members of the co-op availed of training seminars on bag-making, duck- and goat-raising. They were also provided four sewing machines as well as financial assistance which enabled them to acquire 300 ducks, 12 goats and an initial inventory of ten sacks of rice for retailing, which they have since doubled.

Under the United Nations Development Program, the United Nations provided assistance to the MNLF Soldiers, their families and their communities through vocational training and enterprise development. In support of the 1996 GRP-MNLF Final Peace Agreement, the United Nations program will further strengthen the foundations of lasting peace and development in Southern Philippines particularly the Special Zone of Peace and Development through provisions of basic services and livelihood, and capacity development and confidence building at all levels of government-community, regional and national. The program consists of eight components namely:

- (a) Capacity-building and empowerment;
- (b) Building partnerships and strengthening institutional support mechanisms;
- (c) Special emergency response and relief;
- (d) Improved access to basic services;
- (e) Community enterprise and entrepreneurship development in non-farming sectors;
- (f) Sustainable livelihood (agriculture, forestry and fishery);
- (g) Confidence-building through advocacy and promotion of a culture of peace; and,

(h) Program management and coordination.

The United Nation's treatment of the Moro struggle can be characterized as one of least intervention, post-struggle, and conciliatory. It refused to be involved in the middle of the war. Instead, it only stepped in when peace was already achieved. Its objective was to ensure that the peace that was achieved would be maintained and that the victims of the war be rehabilitated in order for them to start anew.

United States of America

The involvement of the U.S. in the Moro struggle is only apparent as regards the Abu Sayyaf. The Abu Sayyaf, after abducting several Americans as hostages, was declared an enemy of the United States. Aggravating the situation is the recent September 11, 2001 attack in New York where terrorists, suspected to be linked with Osama Bin Laden, crashed two U.S. airlines into the twin towers of the World Trade Center, eventually causing the collapse of the entire building and killing thousands of people.

The U.S. is today spearheading an international war against terrorism. On several occasions, President George Bush has offered President Macapagal Arroyo assistance in her war against the Abu Sayyaf. So far, the most tangible involvement of the U.S. in the battle against the Abu Sayyaf is the sending of a three-man team from the US Federal Bureau of Investigation (FBI) in order to provide technical support for the local investigation. The involvement of the FBI, however, will not include the rescue operation proper. It will only be involved in information and evidence-gathering for the cases to be filed against the Abu Sayyaf members.<sup>85</sup>

Other than its direct involvement with the Abu Sayyaf crisis, the only involvement of the U.S. in relation to the Moro struggle would be simply in the form of financial aid and equipment. The Emergency Livelihood Assistance Program (ELAP) was funded by the United States Agency for International Development (USAID) in order to promote sustainable peace and development in Mindanao by helping former combatants of the MNLF to re-enter the mainstream through livelihood activities in agriculture and aquaculture. It is being implemented by USAID's Growth with Equity in Mindanao (GEM) Program, and is a joint project of

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<sup>85</sup> DAVE VERIDIANO, CARLITO PABLO AND NASH B. MAULANA, *The Nation: FBI Gives Technical Support Against 'Abu'* THE PHILIPPINE DAILY INQUIRER (June 8, 2001), available at <http://www.inq7.net/nat/2001/jun/09/text/nat5-1p.htm/>, (Visited November 2001).

the SPCPD, USAID, the National Economic Development Authority and the Bangsamoro Women Foundation for Peace and Development, Inc.<sup>86</sup>

#### Canada

The Philippines Canada Development Fund sought to create a favourable environment for sustained peace and development initiatives in the SZOPAD areas by creating improved opportunities for improved quality of life of demobilized MNLF regulars through sustainable livelihood and enterprises. The project involved two components, namely:

- (a) Livelihood and Enterprise Development; and,
- (b) Community Organizing and Capability Building.

#### Other Arab and Islamic Countries

The ideas which gave birth to the ideology of the movement and the skills to implement their ideals came from other Islamic countries. Beginning in 1969, scores of Muslim youth were trained abroad in the Malaysian State of Sabah for guerrilla warfare. Hashim Salamat, for one, received his education and training from Cairo, Egypt. Abdurajak Janjalani, the leader and founder of the Abu Sayyaf, was a veteran of the Afghan war. During his participation there, he developed close ties with other Islamic radical groups.

Several negotiations between GRP and the MNLF were conducted in different Islamic countries. Tripoli, Libya was the sight of the Tripoli Agreement signing in 1976. The Jeddah Accord of 1987 was signed in Jeddah, Saudi Arabia. A statement of Understanding in 1992 was signed also in Tripoli, Libya. Another Statement of Understanding was made in Cipanas, Indonesia in 1993. A Memorandum of Agreement was signed in Jakarta, Indonesia also in 1993. Two interim agreements, one in 1994 and 1995 were signed in Jakarta, Indonesia.

There were some moments when Arab and Islamic countries ventured in direct intervention of domestic affairs although under the cloak of international obligations. The most famous was the Iranian Oil Embargo. It was the first international Muslim intervention in Philippine domestic politics. This was in response to the failure of the Philippine government to implement the Tripoli Agreement in 1976. The embargo provided the MNLF with greater confidence and

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<sup>86</sup> *Id.*



led Misuari to revert to his original demand, as set forth in the Tripoli Agreement, for secession instead of autonomy.<sup>87</sup>

More acts of intervention were seen in the year 2000. Afghan guerrillas were spotted training MILF rebels in the south. The Afghans were reported to be in an MILF camp training Muslim fighters in Lanao del Sur. Several Egyptians were also seen conferring with MILF leaders inside the MILF Camp Omar in Maguindanao.<sup>88</sup> In January 1995, several foreign terrorists allegedly cooperating with the Abu Sayyaf were rounded up in a wave of arrests in Metro Manila. The foreign terrorists bolstered military suspicions that a bigger group was controlling the Abu Sayyaf. Military reports traced the links to a low-key Muslim businessman named Mustafa Jammal Khalifa, who is married to the sister of Osama Bin Laden. The military said Bin Laden funded the Abu Sayyaf through a foundation set up by Khalifa.<sup>89</sup>

Today, the Islamic secessionist movement has taken a different turn. Recently, Misuari was ousted by the MNLF from his position both as Chairman of the MNLF and as the head of the SPDGP on charges of incompetence and lack of trust and confidence. Reacting to these moves, Misuari launched a mutiny along with some loyal followers. Having failed, Misuari went on exile and was arrested by the Malaysian authorities. He is now jailed in the Philippines.

The Salamat-led MILF continues its dialogue with the government. Just as before, while talks are being conducted and ceasefires agreed upon, several clashes between the military and the MNLF occur on the side. The MILF demands remain firm as ever. The government, on the other hand, remains adamant in its stand to negotiate only within the confines of the Constitution.

The Abu Sayyaf remains at large. Although its leaders are said to have perished on the recent encounters with the military, it continues to hold fort in the jungles of Mindanao and continues to elude its pursuers while holding on to some of its last remaining hostages.

In the international scene, the United States of America has declared war against all forms of terrorism and has identified the Abu Sayyaf as one of those groups which need to be destroyed. It has succeeded in getting President Gloria Macapagal-Arroyo's support in this war.

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<sup>87</sup> *Supra*, note 65.

<sup>88</sup> *Afghan Guerillas Training MILF Fighters*, ASIAN JOURNAL, available at <http://www.asianjournal.com/pages/011000/news/23.milf.html/>, (Visited November 2001).

<sup>89</sup> *Supra*, note 70.

The Moro struggle has been hit with several internal struggles. While several factions remain loyal to the historic cause fought by the Moro people decades ago, several factions have seen the importance of remaining loyal to the government of the Philippines in order to benefit economically from its annual budget.

Muddled by the Abu Sayyaf escapades, the Moro struggle is slowly losing its identity. The recent rise of Islamic-Jihad consciousness in the international scene served to fortify the MILF struggle. However, the difference in opinion as to the means of attaining its goals weighs the movement down.

International law remains an over-arching cloak which covers the entire Moslem struggle. Yet, while domestic law seems to identify with clarity the difference in personality of the Islamic secessionist groups, the question of whether or not these groups have personality is unclear in international law. Such issues shall be discussed in the succeeding section.

## 2. Legal Analysis

### *a) Legal Framework for Characterization with regard to belligerency and insurgency*

Before we can make a proper determination as to the international legal personality of the Philippine Islamic secessionist movements, we must discuss the legal framework governing its characterization.

#### Belligerents

Opinions with regard to recognition of belligerency roughly fall into two groups corresponding to the constitutive and declaratory schools in the question of State recognition (concession and declaratory theories).<sup>90</sup> The first views an act of recognition as a concession of rights, privileges or legal status; the other considers it as merely a declaration or acknowledgement of certain facts.<sup>91</sup>

To the former, insurgents enjoy no right and are subject to no duty under international law until recognized.<sup>92</sup> To the latter, recognition is "an acknowledgement by a State of the existence of a civil war and an expression of the

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<sup>90</sup> T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 333 (1951).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

intention to assume the rights and duties under the laws of war and neutrality.”<sup>93</sup> The existence of a civil war is a fact from which flow the rights and duties of belligerents and neutrals, and recognition or non-recognition neither adds nor diminishes the efficacy of the right-duty correlative.<sup>94</sup> It merely indicates that the parent or foreign State concerned acknowledges the existence of belligerency and its intent to accept the consequences.<sup>95</sup>

Commentators of international law state that “any act which clearly indicates intention” may be regarded as recognition.<sup>96</sup> The mode by which it is accomplished is of no special significance.<sup>97</sup> However, it is essential that the act constituting recognition shall give clear indication of an intention, in the case of insurgents, that they are entitled to belligerent rights.<sup>98</sup> A clear indication of intention is required due to the legal significance of recognition which is “too far reaching to permit it to become a prey of ingenious deductions and an object of uncertainty and controversy.”<sup>99</sup>

It must also be noted that a State cannot be allowed to “cause confusion and to disappoint legitimate expectations by blowing hot and cold at the same time - by acting in a manner implying recognition and by denying any intention to that effect.”<sup>100</sup>

In order that an act may sufficiently indicate the intention to recognize, there must be something inherent in the act itself which warrants this inference.<sup>101</sup> Once an act of this nature has been done, it would not be necessary to inquire whether or not recognition had been intended since this would amount to a negation of the concept of implied recognition.<sup>102</sup>

What then are these acts which imply recognition? These acts may be broadly classified into those committed by the parent state and those committed by

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<sup>93</sup> *Id.* at 369.

<sup>94</sup> *Id.* at 333.

<sup>95</sup> *Id.*

<sup>96</sup> T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 189 (1951); I HYDE, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 198 (1947).

<sup>97</sup> G. HACKWORTH, *Digest of International Law*, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE - THE PUBLIC ORDER OF THE WORLD COMMUNITY* 306 (1981).

<sup>98</sup> *Id.*

<sup>99</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 407-408 (1947).

<sup>100</sup> *Id.*

<sup>101</sup> *Supra* note 109 at 189.

<sup>102</sup> *Id.*

foreign states. When a parent state, in acting to repress an insurrection, treats the same as though it were productive of a state of war (e.g. by proclaiming a blockade of port held by insurgents), it may give rise to a implied recognition of belligerency.<sup>103</sup> It would thereby forfeit the right to claim that any subsequent act of external recognition is premature or inequitable.<sup>104</sup> The express recognition by the parent state of the belligerency of insurgents is believed to deprive that state of a cause of complaint should foreign governments decide to take like action.<sup>105</sup> *Commercii belli* between the contesting parties may also imply recognition when done in series and with the approval of the parent government except when done for humanitarian reasons.<sup>106</sup> These acts, according to the declaratory theory, "estop the parent government from denying that a true war exists."<sup>107</sup>

On the other hand, the following acts of a foreign state may be regarded as recognition of belligerency:

- 1) A proclamation of the recognition of belligerency;<sup>108</sup>
- 2) A proclamation of neutrality;<sup>109</sup>
- 3) A proclamation of blockade;<sup>110</sup>
- 4) The proclamation of the enforcement of neutrality legislation that applied to a case where both of the contesting parties are States or recognized belligerents, and;<sup>111</sup>
- 5) Other acts of foreign States implying the existence of the personality of the belligerent community<sup>112</sup>

It has been noted that, apart from express declarations, other modes of recognition contain elements of uncertainty.<sup>113</sup>

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<sup>103</sup> MCNAIR AND WATTS, THE LEGAL EFFECTS OF WAR 32 (1966).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Supra* note 109 at 392.

<sup>107</sup> *Id.* at 344.

<sup>108</sup> *Id.* at 383.

<sup>109</sup> *Id.* at 190, 383.

<sup>110</sup> *Id.* at 384.

<sup>111</sup> *Id.* at 388.

<sup>112</sup> *Id.* at 391-392.

According to the concession theory, a group of insurgents cannot declare that a war exists by its own acts.<sup>114</sup> An unrecognized insurgent body is legally non-existent and cannot perform acts that are productive of legal results.<sup>115</sup> It cannot create its own existence from an act which has no legal effect.<sup>116</sup> Needless to say, it is of no use to discuss the same issue under the declaratory theory where an armed group ipso facto attains the status of belligerency upon satisfaction of the factual elements required.

Officials authorized to accord recognition on behalf of a State are determined by a state's internal constitutional provisions.<sup>117</sup> It is necessary that such an act originate from organs which are in a position to bind the state.<sup>118</sup> With regard to recognition of belligerency or insurgency, there are two possible views. Chen posits that, "Recognition, being an act of initiating or maintaining relations with other countries, naturally falls within the conduct of foreign relations."<sup>119</sup> *Ergo*, the power to recognize belligerency should belong to the sphere of political departments responsible for the conduct of foreign relations.<sup>120</sup> The other view is that recognition of belligerency is not an act falling exclusively within the purview of the conduct of foreign relations but more properly belongs to the political department vested with the authority under its municipal law to conduct war.<sup>121</sup> In the United States, recognition has usually been accomplished by the President acting on his own.<sup>122</sup> However, the acts of the subordinates of the Chief Executive under the latter's instructions may be considered authoritative.<sup>123</sup> The power may also be delegated by the Chief Executive to his foreign minister, diplomatic representatives, consuls, and military or naval commanders subject to repudiation.<sup>124</sup> The last cited situation occurs more often in cases of recognition of belligerency.<sup>125</sup> Where discretionary authority is given in advance the delegation is considered absolute in nature.<sup>126</sup>

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<sup>113</sup> *Id.* at 393.

<sup>114</sup> *Supra* note 109 at 32.

<sup>115</sup> *Id.* at 370.

<sup>116</sup> *Id.*

<sup>117</sup> MCDUGAL AND REISMAN, INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE – THE PUBLIC ORDER OF THE WORLD COMMUNITY 305 (1981).

<sup>118</sup> *Supra* note 109 at 394.

<sup>119</sup> *Id.* at 224.

<sup>120</sup> *Id.* at 225.

<sup>121</sup> *Id.* at 394.

<sup>122</sup> *Id.* at 226.

<sup>123</sup> *Id.* at 229.

<sup>124</sup> *Id.* at 229-230.

<sup>125</sup> *Id.* at 230.

<sup>126</sup> *Id.*

Before insurgents may be legally recognized as belligerents, certain elements must be present. Commentators have said that:

- 1) There must exist within the state an armed conflict of a general character (as distinguished from a purely local);
- 2) The insurgents must occupy and administer a substantial portion of national territory;
- 3) They must conduct hostilities according to the laws of war and through organized armed forces acting under a responsible authority, and;
- 4) There must exist circumstances which make it necessary for outside states to define their attitude by means of belligerency.<sup>127</sup>

The level of organization must be such purporting to have the characteristics of a state, though not recognized as such, and the armed insurgents must act under this organized civil authority.<sup>128</sup> All these acts must take place within the territorial limits recognized by foreign states as part of the parent state.<sup>129</sup> Another writer has stated that the criteria may be separated into objective and subjective conditions.<sup>130</sup> In his opinion, the objective conditions are: 1) "the existence of a *de facto* political organization of the insurgents, sufficient in character, population and resources to constitute it, if left to itself, a state among the nations, reasonably capable of discharging the duties of a state, and"; 2) "the actual employment of military forces on each side acting in accordance with the rules and customs of war."<sup>131</sup>

To accord recognition to a group which has not attained the requisite elements for belligerency or insurgency status constitutes interference in the domestic affairs of a state rather than catering to the legitimate needs of a foreign government.<sup>132</sup> This act would be violative of the doctrine of non-intervention.<sup>133</sup> In

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<sup>127</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 176 (1948); II L. OPPENHEIM, *INTERNATIONAL LAW - A TREATISE* 198 (1994); P. JESSUP, *A MODERN LAW OF NATIONS* 53 (1952).

<sup>128</sup> I Hyde, *supra* note 122 at 201.

<sup>129</sup> *Id.*

<sup>130</sup> *Supra*, note 109 at 364.

<sup>131</sup> *Id.*

<sup>132</sup> *Supra* note 122 at 201-202.

<sup>133</sup> U.N. Charter, Art. 2 (7); H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 276-277 (1948); T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 335, 349 (1951); II L. OPPENHEIM,

addition, the lawful government is entitled to recognition *de jure* while a civil war is in progress.<sup>134</sup> So long as the lawful government offers resistance which is not merely in nature, the *de jure* recognition of the revolutionary party as a government constitutes premature recognition which constitutes an act of intervention contrary to international law.<sup>135</sup> However, it is not contrary to international law to recognize insurgents as a government exercising *de facto* authority over the territory under its control.<sup>136</sup>

A number of the proponents of the concession theory deny that there is a duty of recognition since an armed group prior to recognition has no international legal personality and as such, cannot claim any right under international law.<sup>137</sup> However, Professor Lauterpacht, an advocate of this theory, has argued that recognition is both constitutive and obligatory.<sup>138</sup> He maintains that the failure to accord recognition to insurgents when all factual elements are present amounts to an act of intervention in the affairs of the state since the lawful government may be given support which would otherwise be unlawful had recognition been accorded.<sup>139</sup> He reasons that in the long term this would prevent the population from determining the outcome of the struggle and the political fate of the state.<sup>140</sup> Professor Chen, who advocates the declaratory view of recognition, is of the opinion that the recognition of belligerents is obligatory in nature owing to the legal duty to treat an entity according to international law, which in turn is productive of the legal effects of implied recognition.<sup>141</sup> Professor Chen also points out that Professor Lauterpacht's view amounts to an abandonment of the consultative theory since the assertion that armed groups have the right to recognition of belligerency amounts to an admission that these groups have international legal personality even without recognition.<sup>142</sup>

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INTERNATIONAL LAW - A TREATISE 198 (1944); G. VON GLAHN, LAW AMONG NATIONS - AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 72 (1996).

<sup>134</sup> H. LAUTERPACHT, *Recognition of Governments: I, ESSAYS ON INTERNATIONAL LAW FROM THE COLUMBIA LAW REVIEW* 243 (1965).

<sup>135</sup> H. LAUTERPACHT, *RECOGNITION OF GOVERNMENTS: I, ESSAYS ON INTERNATIONAL LAW FROM THE COLUMBIA LAW REVIEW* 243-244 (1965); T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 106 (1951).

<sup>136</sup> *Supra* note 118 at 294.

<sup>137</sup> T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 352 (1951); H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 240-241 (1948).

<sup>138</sup> *Supra* note 118 at 175-176.

<sup>139</sup> *Supra* note 118 at 229.

<sup>140</sup> *Id.*

<sup>141</sup> *Supra* note 109 at 352.

<sup>142</sup> *Supra* note 109 at 356-357.

With regard to effects of recognition, Professor Lauterpacht asserts that recognition by the parent or foreign State has no compelling effect upon other states.<sup>143</sup> He contends, however, that recognition by a considerable number of states is persuasive evidence as to the required conditions for recognition.<sup>144</sup> He also argues that foreign states cannot disregard, without good reason, the express or implied recognition of belligerency by the parent state.<sup>145</sup> Professors Chen and McNair advocate a different view. According to them, the existence of war, as evidenced by the recognition of belligerency by the parent state has binding legal effect upon third states, creating obligations of neutrality between them and the parent state and with the belligerents.<sup>146</sup> As between the parent state and belligerents, the laws of war between independent states would become applicable.<sup>147</sup>

With regard to the effects of recognition by foreign states, proponents of the concession theory believe that the act of recognition only creates a belligerent-neutral relationship between the recognizing state and the insurgents.<sup>148</sup> Professor Chen believes, however, that as between the belligerent parties, recognition by a foreign state brings about the application of the laws of war.<sup>149</sup> However, the relations of other foreign states with the belligerents would be unaffected by the recognition of a foreign state.<sup>150</sup>

Only the termination of a war terminates the status of belligerency.<sup>151</sup> Legal problems result from hypothetical situations where the recognizing State withdraws its recognition of belligerency before the conclusion of war. From the standpoint of the concession theory, revocation of recognition should be legally possible since rights granted by the recognition of belligerency are a mere "concession of pure grace and an act of unfettered discretion."<sup>152</sup> However, two objections may be interposed to this theory: 1) the revocation of recognition does not *ipso facto* terminate all the consequences of recognition; and 2) the theory is impracticable (a parent state cannot compel other states to revoke their act or recognition; a foreign state would unnecessarily burden itself should it decide not to take sides after

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<sup>143</sup> *Supra* note 118 at 246-247.

<sup>144</sup> *Id.*

<sup>145</sup> *Supra* note 118 at 247.

<sup>146</sup> T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 377-378 (1951); MCNAIR AND WATTS, THE LEGAL EFFECTS OF WAR 9 (1966).

<sup>147</sup> *Supra* note 109 at 379.

<sup>148</sup> *Supra* note 109 at 381.

<sup>149</sup> *Id.*

<sup>150</sup> *Supra* note 109 at 381-382.

<sup>151</sup> *Supra* note 109 at 395.

<sup>152</sup> *Id.*



revocation as it would still be "neutral" but without the rights attendant to a status of neutrality).<sup>153</sup> From the standpoint of the declaratory theory, revocation is impossible since the act of recognition is merely a declaration of fact.<sup>154</sup>

### Insurgency

Insurgency is the condition of political revolt in a State where the rebellious party has not attained the status of a belligerent.<sup>155</sup> The existence of armed conflict is the same as that in civil war, but, for lack of one or more elements, of insurgency is a condition falling short of a state civil war.<sup>156</sup> According to writers who favor the concession theory, the difference between belligerency and insurgency is purely a matter of recognition.<sup>157</sup> The recognition of insurgency, with regard to foreign states, would involve a declaration that certain rights are granted to the rebels. Lauterpacht has even suggested that such declaration may vary from case to case in the amount of rights granted in accord with the wishes of the recognizing state.<sup>158</sup> In contrast, according to the declaratory theory of recognition, the difference between belligerency and insurgency is one of fact.<sup>159</sup> The question would not be the existence of the status but the most appropriate way of dealing with such a fact.<sup>160</sup>

Recognition of insurgency normally entails issuing a proclamation calling public attention to the existence of an insurgent group in a foreign country and cautioning the public to exercise due caution regarding travel, business relations, and other dealings with and in the area in question.<sup>161</sup> Recognition of insurgency is in essence a domestic proclamation, drawing the attention of the public to a state of facts within a foreign State which call for special caution.<sup>162</sup>

When a state of insurgency is recognized, a foreign State would usually take precautionary measures to prevent its territory from being used as a base for hostile activities against the established government.<sup>163</sup> Such acts would be based upon the principle of non-intervention than on the existence of any status or grant

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<sup>153</sup> *Id.* at 396.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 398.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 276-277 (1948).

<sup>159</sup> *Supra* note 109 at 398.

<sup>160</sup> *Id.* at 399.

<sup>161</sup> *Supra* note 1 at 72.

<sup>162</sup> *Supra* note 109 at 400.

<sup>163</sup> *Id.* at 401.

of the rights attached to belligerency.<sup>164</sup> A foreign state may also conduct limited interaction with the insurgents for the purpose of protecting their nationals and other purposes connected with the hostilities.<sup>165</sup> Such interaction must only be informal, temporary, and matter-of-fact.<sup>166</sup> Other legal effects of the recognition of insurgency would be the presumption of non-piratical character of insurgent ships,<sup>167</sup> and the non-responsibility of the established government for the acts of the insurgents.<sup>168</sup>

Unsuccessful insurgents are not deemed to be the agents of the parent State whose authorities are able to suppress them.<sup>169</sup> A parent state however, may be subject to tortious liability on the theory that: 1) "it has failed to use promptly and with appropriate force its constituted authority"; 2) it has condoned by some process their internationally illegal acts, or; 3) it has entered into a relationship whereby it has become the legal successor to those whose conduct it previously opposed.<sup>170</sup> Amnesty which embraces essentially lawless conduct on the part of unsuccessful insurgents and which are not normal incidents of an attempt to attain their ends by force would be an indication of condonation under the second of the enumeration.<sup>171</sup> An agreement by the *de jure* government with the revolutionaries to cooperate in establishing a new government as the representative of the two forces may fall under the purview of the third of the enumeration.<sup>172</sup> The state, however, is responsible for the acts of successful revolutionists, their acts being regarded as those of the government which they have established or over which they have attained control.<sup>173</sup>

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<sup>164</sup> T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 407 (1951); MCNAIR AND WATTS, THE LEGAL EFFECTS OF WAR 31 (1966).

<sup>165</sup> T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 407 (1951); P. JESSUP, A MODERN LAW OF NATIONS 53 (1952).

<sup>166</sup> *Supra* note 109 at 407.

<sup>167</sup> T. CHEN, THE INTERNATIONAL OF RECOGNITION 404 (1951); P. JESSUP, A MODERN LAW OF NATIONS 53 (1952).

<sup>168</sup> *Supra* note 109 at 406.

<sup>169</sup> H. HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 980 (1947).

<sup>170</sup> *Id.* at 981-982.

<sup>171</sup> *Id.* at 984.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 987-988.

- (b) Different political approach: MNLF asked for 14 provinces and 10 cities. The MILF does not give so much emphasis on autonomy. It seeks to establish an independent Islamic government in areas where Muslims are predominant.
- (c) With regard to plans to develop and uplift the living conditions of the Muslims: projects for the development of Muslims, highlanders and Christians were conceptualised only after the signing of the agreement. Under the MILF, they are involved with livelihood and development projects in order to uplift their living conditions even before entering into an agreement with the GRP. This is because the MILF gives more importance to self-reliance and internal factors rather than external ones, especially aid.<sup>72</sup>

At present, the most distinct difference between the MNLF and MILF is that the former recognizes the Philippine Constitution while the latter does not.<sup>73</sup>

The Abu Sayyaf is a different matter. Although they side the MILF in their dissatisfaction with the seemingly weak stance taken by the MNLF, the latter must not be classified together with the former. According to Senator Aquilino Pimentel in his privilege statement at the Senate on May 8, 2000, the MILF pursues a political agenda while the Abu Sayyaf adopts one criminal in nature. According to him, the MILF fights to retain its own culture, religion, and identity. The Abu Sayyaf fights to convert crime into an industry for their group's profit.<sup>74</sup>

Little is known of the objectives of the Abu Sayyaf other than the accumulation of material and influential wealth. In 1993, however, in the kidnapping of Luis Biel, five years old, and his grandfather, owner of a bus company in Basilan, the Abu Sayyaf conducted a press conference where they announced their demands in exchange for the release of the hostages. Their demands were the following:

- (a) Remove all Catholic symbols in Muslim communities;
- (b) Ban all foreign fishing vessels in the Sulu and Basilan areas, and;

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<sup>72</sup> Conciliation Sources, *A View from the MILF, Interview with Mohagher Iqbal*, at [http://www.c-r.org/acc\\_min/iqbal.htm/](http://www.c-r.org/acc_min/iqbal.htm/), (Visited November 2001).

<sup>73</sup> *Supra*, note 69.

<sup>74</sup> SENATOR AQUILINO PIMENTEL, *Stop Hostilities for People's Sake* (May 8, 2000), at <http://www.codewan.com.ph/hmow/monitor/m2000-0526-02/>, (Visited November 2001).

(c) Bring the Ulama into the negotiations.<sup>75</sup>

In August 2000, the Abu Sayyaf showed some signs of links with international objectives when it demanded the release of Ramzi Youssef, Sheik Adel Omar Rahman and Abu Haidel from the American jails in exchange for the release of hostage Jeffrey Craig Schilling.<sup>76</sup>

The group is now the government's biggest enemy following its kidnappings of foreigners in the Sipadan dive resort in Malaysia last, and recently, of tourists in the Dos Palmas Resort in Palawan.<sup>77</sup>

Its goal was stated plainly: to establish an Islamic state in Mindanao. However, it seeks to achieve these goals through terrorist activities contrary to the common Jihad struggle employed by the MNLF and the MILF.

***c) Treatment by the National Government and Other International Personalities***

After identifying the ideologies and the various acts of these different Islamic groups comprising the Islamic secessionist movement, we now try to see how the Philippine Government and the other international personalities treat these groups:

**The Government of the Republic of the Philippines**

The Philippine government has attempted several times to reach a peaceful agreement with both the MNLF and the MILF. In December of 1976, the Tripoli Agreement, which called for the ceasefire and the granting of autonomy to thirteen provinces where a majority of Moslems lived, was entered into by the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF). This was not faithfully implemented by the Government. In 1977, President Marcos issued Presidential Decree 1628 declaring autonomy in regions IV-A, IX and XII. In 1979, Presidential Decree No. 1618 was issued implementing the Sangguniang Pampook and the Lupong Tagapagpaganap ng Pook in Region IX and XII. In 1987, the Jeddah Accord was entered into between the Government of the Republic of the Philippines (GRP) and the MNLF. In 1989, a Statement of

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<sup>75</sup> *Supra* note 70.

<sup>76</sup> *Supra* note 45.

<sup>77</sup> *Supra* note 70.

According to her, "peoples" refers to all the *peoples* of a given territory.<sup>187</sup> Members of minorities only possess the right of self-determination as individuals being part of "peoples" of the territory.<sup>188</sup>

Professor Chen argues that self-determination, as regards the extent of the right, is not merely limited to "political self-determination", but the "freedom of participation in different value processes (e.g. power, wealth, well-being, respect, enlightenment).<sup>189</sup> With regard to the right to secede, he claims that the test on whether to grant the demand for the same would be, "whether separation or unification would best promote security and facilitate effective sharing of power for the majority."<sup>190</sup> He adds that, "a proper balance between freedom of choice and the viability of communities must be maintained," and that the following factors must be taken into consideration:

- 1) The degree to which the demanding group can form a viable entity;
- 2) The probable consequences of independence for the remaining people in the entity of which it has been a part; and,
- 3) The consequences of demanded independence for unity for the aggregate pattern of value shaping and sharing for the peoples of the surrounding community and the world at large.<sup>191</sup>

Professor Mullerson, on the other hand, claims that the extent of the right varies with respect to the subject populace.<sup>192</sup> He argues that self-determination in the colonial context refers to claims of accession to independence while this merely refers to an entitlement to democracy in a non-colonial context, or the right of participation in a democratic process.<sup>193</sup> Professor Higgins espouses the view that self-determination means the free choice of "peoples."<sup>194</sup> She states that the right of self-determination does not authorize secession for minorities and for colonies

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<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> J. PAUST, *Self-Determination: A Definitional Focus*, SELF-DETERMINATION: NATIONAL, REGIONAL, AND GLOBAL DIMENSIONS 6, 11-13 (1980).

<sup>190</sup> R. MULLERSON, INTERNATIONAL LAW, RIGHTS, AND POLITICS - DEVELOPMENTS IN EASTERN EUROPE, AND THE CIS 86 (1994).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 91.

<sup>193</sup> *Id.*

<sup>194</sup> *Supra* note 205 at 113-114 (1994).

where there is a representative government,<sup>195</sup> but also mentions that there is no principle in international law which prohibits secession or the formation of new States.<sup>196</sup>

In international law, national liberation movements are the representatives of peoples not yet constituted as states.<sup>197</sup> "Peoples" refer to groups entitled to the right of self-determination.<sup>198</sup> There are two preconditions for the recognition of national liberation movements: 1) the existence of liberated areas; and 2) recognition by regional organizations.<sup>199</sup>

The rights attached to the status of national liberation movements flow from recognition of the legitimacy of the liberation struggle.<sup>200</sup> These rights relate to the legal capacity of the movement and the status of its combatant members.<sup>201</sup> The legal capacity of liberation movements is reflected in: 1) its right to participate in the proceedings of the United Nations as observers; and 2) their eligibility for aid.<sup>202</sup> Assistance to national liberation movements cannot be considered a violation of the doctrine of non-intervention.<sup>203</sup> If combatant members of national liberation movements fall into the hands of colonial powers, they must be treated as prisoners of war.<sup>204</sup>

It is clear then that a "peoples" may have the right of self-determination, yet may not be represented concurrently by a "National Liberation Movement" in the context of international law.

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<sup>195</sup> *Id.* at 117, 124.

<sup>196</sup> *Id.* at 125.

<sup>197</sup> R. RANJEVA, *Peoples and National Liberation Movements*, INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 107 (1991).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 108.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 108-109.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

c) *Characterization of the Philippine Islamic Secessionist Movements from the legal perspective of the concession and declaratory theories of the recognition of belligerency and insurgency*

Concession Theory

According to the factual data we have gathered regarding the Islamic secessionist movements, none would qualify as belligerents under the concession theory. No express recognition has been made to date of a status of belligerency by the Republic of the Philippines through the President or his/her agents. Neither has the GRP claimed and enforced rights which would imply a status of belligerency (such as blockade, neutrality, etc.). However, acts of *commencia belli* raise a more delicate question. It is true that the GRP has entered into peace agreements with the MNLF and MILF. However, it must be noted that this is not inconsistent with the theory that these armed groups have attained nothing more than a status of insurgency. As to livelihood programs conducted by the GRP, no one can argue that these acts have even remote probative value as to the recognition of belligerency.

As to third States, no express recognition has been made of a status of belligerency with regard to the Philippine Islamic secessionist movements. It may be argued that the facilitation of peace accords by the OIC and the distribution of humanitarian aid by the U.S., U.N., Canada, and other international persons may fall under the category of "semi-official intercourse with insurgents" placing it within the pale of implied recognition.<sup>205</sup> However, in the absence of more categorical acts of recognition, such a conclusion is dangerous and unwarranted. Also, belligerency is a status possessed only in so far as states recognize it to be so,<sup>206</sup> and only the persons vested with authority under the constitutional framework of the State may accord recognition.<sup>207</sup> The acts of the U.N. and O.I.C., therefore, are relevant only in so far as they are evidence of state acts in according recognition. In addition, acts of state representatives to the U.N. and O.I.C. must be run through a sieve to sift the acts of authorized representatives under the State's municipal law from irrelevant chaff.

However, it is legally arguable that the Islamic secessionist movements have attained the status of insurgents. A writer has suggested that the mere issuance of travel advisories warning their nationals against visiting areas wherein armed conflict occurs is an act of recognition of insurgency.

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<sup>205</sup> *Supra* note 109 at 391-392.

<sup>206</sup> MCNAIR AND WATTS, *THE LEGAL EFFECTS OF WAR* 32 (1996).

<sup>207</sup> McDUGAL AND REISMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE - THE PUBLIC ORDER OF THE WORLD COMMUNITY* 305 (1981); T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 394 (1951).

### Declaratory Theory

As with the concession theory, the legal status of belligerency cannot be attributed to the Philippine Islamic secessionist movements under the declaratory theory. According to this theory, before the status of belligerency may exist "the state of thing between the parent state and the insurgents must amount, in fact, to a war, in the sense of international law, that is, powers and rights of war must be in actual exercise."<sup>208</sup> Where there exists within a state: 1) an armed conflict of a general character (as distinguished from purely local); 2) where the insurgents occupy and administer a substantial portion of national territory and; 3) where they conduct hostilities according to the laws of war and through organized armed forces acting under a responsible authority, it can be said that, "the situation has gone beyond one of insurgency and deserves to be called one of belligerency."<sup>209</sup> The armed conflict must be said to have transcended the level of mere local revolt. A condition of warfare equivalent to conflicts between states must have developed.<sup>210</sup> The armed conflicts of the GRP with the Philippine Islamic secessionist movements have never transcended the level of a purely local character since only a part of the Mindanao area has been affected. The same can be said of the area over which the secessionist movements exercise control. Occasional armed skirmishes in an area are not indicative of the existence of the control over an area with regard to belligerency.<sup>211</sup>

The status of insurgency, however, may be attributed to the Islamic secessionist movements. An insurgency exists when, within a State, an armed conflict has reached proportions necessitating outside States taking cognizance of it, but not yet fulfilling the conditions for the recognition of state of belligerency.<sup>212</sup> It is easily arguable that the armed conflict of the GRP with these Islamic secessionist movements has reached such proportions. Evidence of this can be seen from travel advisories issued by the governments of the U.S. and Japan as well as GRP troop movements and deployment to the Mindanao area of operation.

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<sup>208</sup> *Supra* note 109 at 336.

<sup>209</sup> *Supra* note 227 at 32.

<sup>210</sup> T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 336 (1951); G. VON GLAHN, LAW AMONG NATIONS - AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 71-72 (1996).

<sup>211</sup> *Supra* note 118 at 271, 274.

<sup>212</sup> *Supra* note 227 at 30.



**d) *Characterization of the Philippine Islamic Secessionist Movements from the legal perspective of the right of self-determination and National Liberation Movements***

The members of Islamic secessionist movements may or may not be regarded as having the right of self-determination depending on the theory applied. Under the theory that only overseas colonies and possessions are entitled to the right of self-determination, the members of these movements could have no claim to the right.<sup>213</sup> If we adhere to the more logically defensible theory that self-determination is a right of all peoples "regardless of the status of the territory",<sup>214</sup> then the right of self-determination is vested in each of the members of these movements. It must be noted that the right of self-determination is given them by their status as a "people" not because of their membership in the secessionist movement. "People" would not just refer to a group of persons but to "each member of the society".<sup>215</sup>

However, the secessionist movements cannot be considered National Liberation Movements (NLMs) under the present international law framework. No U.N.G.A. declaration has been made giving the O.I.C. the authority to recognize and grant observer status to the secessionist movements<sup>216</sup> or giving the secessionist movements observer status directly as was done with the PLO.<sup>217</sup>

**e) *Legal Implications of Characterization***

**Legal Implications of the characterization as insurgents**

As insurgents, the secessionist movements enjoy the presumption of non-piratical character of insurgent ships.<sup>218</sup> The principle of non-responsibility of the established government for the acts of the insurgents will also apply.<sup>219</sup> The recognition of insurgency, with regard to foreign states, may involve a declaration that certain rights are granted to the rebels in so far as the conduct of hostilities may

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<sup>213</sup> *Supra* note 5 at 282.

<sup>214</sup> L. HENKIN, *et. al.*, INTERNATIONAL LAW CASES AND MATERIALS 283 (1987); R. MULLERSON, INTERNATIONAL LAW, RIGHTS, AND POLITICS - DEVELOPMENTS IN EASTERN EUROPE, AND THE CIS 64 (1994).

<sup>215</sup> *Supra* note 209 at 10.

<sup>216</sup> See U.N.G.A. Resolution 3247 (XXIX).

<sup>217</sup> *Supra* note 2 at 174.

<sup>218</sup> T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 404 (1951); P. JESSUP, A MODERN LAW OF NATIONS 53 (1952); MCNAIR AND WATTS, THE LEGAL EFFECTS OF WAR 31 (1966).

<sup>219</sup> T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 406 (1951); H. HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 980 (1947).

affect its interests.<sup>220</sup> Such declaration may vary from case to case in the amount of rights granted, in accord with the wishes of the recognizing state.<sup>221</sup> However, the status of insurgency does not entitle the insurgents or the parent state to exercise belligerent rights against foreign States, nor does it impose on foreign states the obligations attendant to neutrality.<sup>222</sup> Foreign states are prohibited from furnishing aid to the insurgents not because of the obligation of neutrality but due to the principle of non-intervention in the domestic affairs of a state.<sup>223</sup> Also, it is universally admitted that it is contrary to grant to an insurgent community full recognition as a government or a state.<sup>224</sup> Such an act would also amount to an act of intervention.<sup>225</sup> With regard to aid to the parent state, opinions are divided. Some writers posit the view that foreign States have the unimpaired right to grant aid or deal in other matters with the parent state.<sup>226</sup> Others argue that aid cannot be given even to the parent state on the theory that a unilateral and extended grant of privileges to it would impair the right of the nation to choose the nature and form of its government and would consequently amount to an act of intervention.<sup>227</sup>

Professor McNair is of the opinion that Article 3 of the four 1949 Geneva Conventions relating to the conduct of hostilities applies to insurgents.<sup>228</sup> This is of great legal significance. Article 3 enumerates four prohibitions that must be observed at all times and places:

- 1) Violence to life and person, and in particular, murder of all kinds, mutilation, cruel treatment, and torture;
- 2) Taking of hostages;

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<sup>220</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 270, 276-278, 289-281 (1948); MC NAIR AND WATTS, *THE LEGAL EFFECTS OF WAR* 31 (1966).

<sup>221</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 276-277 (1948); J. M. RUDA, *Recognition of States and Governments*, *INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS* 462 (1991).

<sup>222</sup> MCNAIR AND WATTS, *supra* note 216 at 31.

<sup>223</sup> MCNAIR AND WATTS, *THE LEGAL EFFECTS OF WAR* 31 (1966); T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 407 (1951).

<sup>224</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 283 (1948); T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 54, 106 (1951).

<sup>225</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 283 (1948); T. CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* 54 (1951).

<sup>226</sup> H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 232 (1948); MCNAIR AND WATTS, *THE LEGAL EFFECTS OF WAR* 31 (1966).

<sup>227</sup> *Supra* note 118 at 233.

<sup>228</sup> MCNAIR AND WATTS, *supra* note 227 at 31.

- 3) Outrages upon personal dignity, in particular humiliating and degrading treatment; and,
- 4) 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.<sup>229</sup>

It must also be noted that Article 3 applies to “each Party of the conflict” in case of “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.”<sup>230</sup> Therefore, even insurgents must follow the prohibitions stated in Article 3. This would prohibit the secessionist movements from resorting to attacks on non-combatants, an example of which would be the recent September 11 attack on the World Trade Center. Violations by the secessionist groups would make them amenable to prosecution not only under municipal law, but for violation of international humanitarian law under Article 8(2)(c) or (e) of the Rome Statute of the International Criminal Court.<sup>231</sup> This Court has jurisdiction over international and non-international armed conflicts and such jurisdiction does not affect the obligations of state parties to prosecute war criminals in courts constitute by their own municipal law.<sup>232</sup> Even non-signatory states may accept and be subject to the jurisdiction of the court under the Rome Statute.<sup>233</sup>

#### Legal Implications of the entitlement to the right of self-determination

As individuals entitled to the right of self-determination, which is a recognized right under international law,<sup>234</sup> members of the secessionist movements are considered to have international legal personality. This is based on Professor Bin Cheng’s view that international legal personality exists when the group is in possession of any rights or duties under international law.<sup>235</sup>

The members of the secessionist movements and the Muslim minority which they purport to represent are not entitled to secede under the right of self-determination based on the theories advanced by Professors Lung-Chu Chen,

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<sup>229</sup> J. DUY-TAN, *The Law Applicable to Non-International Armed Conflicts*, INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 802-803 (1991).

<sup>230</sup> *Id.*, at 795.

<sup>231</sup> Rome Statute of the International Criminal Court – U.N. Doc. A/CONF.183/9 (1198).

<sup>232</sup> Article 80 of the Rome Statute of the International Criminal Court.

<sup>233</sup> Article 12 (2) and 13 (b) and (c) of the Rome Statute of the International Criminal Court.

<sup>234</sup> R. MULLERSON, *supra* note 210 at 61.

<sup>235</sup> B. CHENG, *supra* note 194 at 38.

Thomas Franck, Rosalyn Higgins, and Rein Mullerson. Professor Chen reasons that the alternative consequences of granting or rejecting claims of the right to secession must be taken into account. This has been interpreted to mean that several factors must be considered:

- 1) The character of the state from which secession is sought (democratic and representative or otherwise);
- 2) The character of the secessionist movement;
- 3) Status of the ethnic group seeking secession in the society as a whole;
- 4) The potential viability of a new state, if formed;
- 5) The consequences of the secession for neighboring states and regional stability; and,
- 6) The possibility of meeting the demands of the group within the existing state.<sup>236</sup>

Professor Franck advocates the adoption of similar criteria to Professor Chen in evaluating claims of self-determination. He believes that these must be counterbalanced with: 1) the interests of the claiming majority; 2) interests of the other groups directly affected (the majority and/or other minorities), and; 3) the interests of the international community.<sup>237</sup> He also believes that one instance when secession may be permitted is, "where a minority within a sovereign state is persistently denied political and social equality and the opportunity to retain its social identity."<sup>238</sup> Under these formulae, any claims to secession by the movements must fall. First, the secessionist movements do not represent the bulk of the Muslim minority which they allegedly represent. The ARMM polls show ample evidence of this fact. Only a fraction of the area included under the recently concluded plebiscite voted for inclusion under the Autonomous Region of Muslim Mindanao. Secondly, the GRP is a democratic government under which any Muslim candidate may be elected or appointed into public office. Lastly, the GRP has enacted laws such as the

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<sup>236</sup> R. MULLERSON, *supra* note 210 at 86 (1994).

<sup>237</sup> T. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS 156 (1995).

<sup>238</sup> *Id.* at 160.

Code of Muslim Personal Laws<sup>239</sup> which allow Muslims to retain their cultural identity.

Professor Mullerson, on the other hand, claims that the extent of the right varies with respect to the subject populace.<sup>240</sup> He argues that self-determination in the colonial context refers to claims of accession to independence while this merely refers to an entitlement to democracy in a non-colonial context, or the right of participation in a democratic process.<sup>241</sup> This theory clearly excludes secession as an option since the groups which the Islamic secessionist movements represent are not colonies.

Lastly, Professor Higgins asserts that the right of self-determination does not authorize secession for minorities because they are not entitled to the right *per se* but merely as individuals being part of the *entire* body of peoples in a given territory.<sup>242</sup> The view of Professor Higgins forecloses any possibility of secession for the Islamic secessionist movements which claim to represent the Muslim minority.

What then is the extent of their right of self-determination? All three writers are of the opinion that right of self-determination includes the right of free choice, of participation within the constitutionally delineated political processes of the State.<sup>243</sup> Professor Chen would even add that the right includes "freedom of participation in different value processes (e.g. power, wealth, well-being, respect, enlightenment)."<sup>244</sup>

Under the Optional Protocol to the International Covenant on Civil and Political Rights individuals may bring complaints against state parties to the covenant for the violation of rights set forth in the covenant.<sup>245</sup> Self-determination is undoubtedly included as one of these rights.<sup>246</sup>

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<sup>239</sup> Pres. Decree No. 1083 (1977).

<sup>240</sup> R. MULLERSON, *supra* note 210 at 91 (1994).

<sup>241</sup> *Id.*

<sup>242</sup> R. HIGGINS, *supra* note 205 at 124.

<sup>243</sup> J. PAUST, *Self-Determination: A Definitional Focus*, SELF-DETERMINATION: NATIONAL, REGIONAL, AND GLOBAL DIMENSIONS 6, 11-13 (1980); R. MULLERSON, INTERNATIONAL LAW, RIGHTS, AND POLITICS – DEVELOPMENTS IN EASTERN EUROPE, AND THE CIS 91 (1994); R. HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT! 113-114, 199 (1994).

<sup>244</sup> *Id.* at 12.

<sup>245</sup> R. HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT! 126 (1994).

<sup>246</sup> *Id.*

Professors Pangalangan and Aguilang-Pangalangan espouse the view that the four Geneva Conventions relating to the conduct of hostilities apply to some forms of conflict of "peoples" fighting for self-determination.<sup>247</sup> It specifically provides 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" are international conflicts within the purview of Article 1 of the Geneva Conventions.<sup>248</sup> They also believe that foreign states may give aid to struggling peoples asserting their right to self-determination. In doing so, they do not commit acts of intervention but merely uphold the Charter of the United Nations and international law.<sup>249</sup>

Professor Duy-Tan adheres to the view of the Professors Pangalangan with regard to the Geneva Conventions. He, however, points out the inherent vagueness in the words "colonial domination" and "racist regime."<sup>250</sup> Despite this uncertainty, it is clear that the Philippine state of affairs cannot fall within the purview of "colonial domination", nor can the Philippine government be characterized as a "racist regime."

However, the secessionist movements, as earlier stated, may fall within the scope of Article 3 of the Geneva Conventions. The legal implications of the applicability of the Conventions which were earlier stated would likewise apply. We likewise believe that the assertion of the Professors Pangalangan regarding the non-interventional character of aid to "peoples" cannot apply to the local Islamic secessionist movements.

The authors have demonstrated earlier that the extent of the right of self-determination of these movements does not extend to the right to secede from the Philippine State. Since the non-interventional character of aid extends only to "peoples" asserting rights of self-determination, *ergo*, any aid to "peoples" claiming rights outside the scope of the right of self-determination may constitute acts of intervention, barring consideration of other fields of international law. It logically follows, therefore, that aid given to the Philippine Islamic secessionist movements may constitute acts of intervention in the domestic affairs of the Philippine State for the reason that secession is not within the scope of their right of self-determination. It is obvious that if the right to secede is not within the scope of the right of self-determination, aid given by foreign states to the Philippines to combat these

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<sup>247</sup> R. PANGALANGAN AND E. AGUILING, *The Privileged Status of National Liberation Movements Under International Law*, 58 PHIL. L. J. 60 (1983) citing Judge Abi-saab in note 44.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.* at 64.

<sup>250</sup> J. DUY-TAN, *supra* note 250 at 799.

secessionist movements cannot be considered violative of their right of self-determination. As to whether such aid would constitute acts of intervention, this issue was passed upon earlier in relation to international law issues with regard to the characterization of the secessionist movements as insurgents.

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