

# Facilitating dialogue with armed insurgents in the Philippines

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Peace negotiations between the Government of the Republic of the Philippines (GRP) and communist insurgents would be even more difficult than they are if not for a facilitating mechanism called the *Joint Agreement on Safety and Immunity Guarantees* (JASIG). The JASIG was adopted by the two parties to promote peace negotiations, create an atmosphere conducive to free discussion and free movement during negotiations, and avert any incident that may jeopardize them.

## Historical background

The longest running communist insurgency in Asia is the one being waged by the National Democratic Front of the Philippines (NDFP), which was founded in 1973. The NDFP is an alliance of seventeen organizations led by the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA). The NDFP has been fighting what it calls a "people's democratic war" against the GRP for more than three decades.

Peace talks between the GRP and the NDFP started in 1986 during the administration of President Corazon C. Aquino. A discreet meeting in May between the GRP and the CPP/NPA/NDF and the appointment of panel members from both sides set the peace process in motion. In November, after four months of contentious discussions, the panels signed a *Memorandum of Agreement for a Preliminary Ceasefire (60 days)*, which started on 10 December. Thereafter, a National Ceasefire Committee was formed to oversee implementation. However, progress was slow as the two sides differed on the framework and agenda for peace talks, and negotiations ended abruptly on 22 January 1987 when peasant demonstrators were killed – allegedly by presidential security forces – in a rally held in Mendiola Bridge near Malacanang Palace. No substantive issue had been discussed and there were no commitments on future talks. Armed hostilities resumed shortly afterwards. The breakdown of the



peace talks and the experience of putting a ceasefire ahead of formal talks had taught the CPP/NPA/NDF that the proper place for a nationwide ceasefire agreement is toward the end of the talks after the signing of the substantive agreements.

When President Fidel V. Ramos succeeded President Aquino in 1992, he stressed that the advancement of peace would be among his priorities because, “without political stability, social reform and economic progress could not move forward”. Within his first two months of office, he issued Amnesty Proclamations 10 and 10-A, endorsed the de-criminalization of the CPP through the repeal of Republic Act No. 1700 (the Anti-Subversion Law), created a committee to review alleged political offenders’ cases and dispatched a special mission led by Congressman Jose V. Yap to the Netherlands, where the CPP/NPA/NDF leadership is based, to explore their openness to peace talks.

### **Difficult exploratory talks**

The participation of CPP/NPA/NDF in formal peace talks with the GRP from June 1995 onwards did not come about instantaneously, nor did it come in neat stages. Their participation was the fruit of difficult and tortuous preliminary and exploratory talks covering a period of more than two years. Both parties agreed on the Netherlands as the venue, with the CPP/NPA/NDF expressing its preference for talks held in a neutral

venue on the grounds of its safety. Moreover, the CPP/NPA/NDF claimed that third-party facilitation by a foreign government raised the level of seriousness of the GRP-NDFP negotiations. The Dutch government facilitated the peace talks from 1992 to 2001.

Out of four rounds of exploratory talks came the *Hague Joint Declaration* of 1 September 1992 (an agreement to hold formal peace negotiations to resolve armed conflict) and a number of procedural agreements including the JASIG that paved the way for formal peace talks. Chairman of the NDFP Panel Luis Jalandoni calls the JASIG, “the most important document after the Hague Joint Declaration of 1992 ... because aside from providing safety and immunity guarantees for all participants in the GRP-NDF negotiations, it vividly expresses the equal terms under which the GRP and the NDF enter into peace negotiations”. NDFP Political Consultant Jose Ma. Sison considers the JASIG as, “formulated in accordance with the framework of mutually acceptable principles and no capitulation” provided in the *Hague Declaration*.

### **JASIG – the toughest to negotiate**

Of the three agreements signed by the two panels during the exploratory talks, the JASIG was the toughest to negotiate because of the contentious issues of political authority and belligerency. The NDFP, claiming equal status with the GRP in the peace

negotiations, asserted that it was a nationwide alliance of patriotic and progressive forces in control of considerable portions of the Philippine population and territory, carrying out a national democratic revolution with political organs and a well-disciplined People's Army. It argued that the armed conflict between the GRP and the NDFP was a civil war between the belligerent forces and not a mere insurgency. The GRP, on the other hand, referred to the NDFP as an insurgent force criminally liable for rebellion under the Revised Penal Code. The GRP upheld its sovereignty over the whole country, denying NDFP control or influence over any portion of the Philippine territory.

Thus, the negotiations on JASIG were shot through with difficulties. The initial peace talks at De Bilt, scheduled for 10-14 October 1994, were a big letdown. They collapsed on the first day because the NDFP asserted full equality with the GRP. Through its proposal to grant safety and immunity guarantees to the members and personnel of the GRP Peace Panel, the NDFP had asked the GRP to accept the premise of two sovereignties, two constitutions, two systems of law and two armies existing in Philippine territory. The NDFP demanded nothing less than the authority to issue GRP negotiators and personnel safe conduct passes which would require the GRP to accept the NDFP's sovereignty over Philippine territory. The GRP Panel did not accept this untenable position and contended that the constitution recognizes only one sovereign, the Filipino people, united under the banner of the Republic. It further pointed out that the NDFP sought to obtain through the negotiating table what it could not achieve through force of arms, seeking only an agreement confirming its status of belligerency, poisoning the peace talks by not approaching them as a forum for compromise. In his final statement, however, Chairman of the GRP Peace Panel Ambassador Howard Dee vowed, "to keep all channels open for the resumption of talks in the future" and invited the NDFP, "to join the people ... in the pursuit of social reform which should usher in an era of social justice, of equality, human dignity, plurality and rule of law".

Amid all the difficulties in the negotiation of the JASIG, the GRP persisted in pursuing the peace talks because it was morally right to do so and because President Ramos wisely wanted a peaceful climate that would be attractive to investors, one of the main tracks of his administration's centrepiece programme, 'Philippines 2000'.

Indeed, the two panels kept open all the channels of communication and negotiated JASIG by phone and fax to and from the Netherlands and by internal consultations over the next three and a half months. After the exchange of seventeen drafts and counter-

drafts with corresponding corrections and revisions – and much creative language engineering to protect GRP sovereignty and territorial integrity while respecting NDFP's organizational dignity – agreement on the final JASIG draft was reached on 24 February 1995 at Nieuwegein. The mutual acceptability of the JASIG was made possible by employing neutral language that made no explicit reference either to the GRP as the guarantor of safety and immunity or to the NDFP as the beneficiary of guarantees, and no specific reference as to which party would avail of the safety and immunity guarantees or which party would recognize the documents of identification as safe conduct passes. Some of these features are demonstrated in the following excerpts:

1. Each party has the inherent right to issue documents of identification to its negotiators, consultants, staffers, security and other personnel and such documents shall be duly recognized as safe conduct passes as provided in this Joint Agreement (I, para. 2);
2. The GRP and the NDFP shall agree through their respective panel chairmen on the number of documents of identification each party will issue based on the different categories of functions which the parties will designate from time to time (I, para. 3);
3. In addition to or in lieu of the aforesaid documents of identification, the party concerned may request the other to issue safe conduct passes to the holders of such documents of identification or to other persons involved in the peace negotiation as provided in this Joint Agreement (I, para. 3).

Such avoidance of the problem of competing claims of sovereignty has certainly contributed to the protraction of the peace negotiations. It has not, however, scuttled the process. The process has continued and has even resulted in one substantive agreement, the *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law* (CARHRIHL) in 1998. The use of neutral language can continue until the discussion on the third substantive agenda, Political and Constitutional Reforms, when the period of 'dribbling the ball' or 'suspension of disbelief' has to stop and the issue of political authority be resolved once and for all.

## The meaning of safety and immunity guarantees

Under the JASIG, duly accredited persons in possession of documents of identification or safe conduct passes are guaranteed free and unhindered passage in all areas in the Philippines, and in travelling to and from

the Philippines in connection with the performance of their duties in the peace negotiations. All accredited persons are provided with immunity from surveillance, harassment, search, arrest, detention, prosecution and interrogations or any other similar punitive actions due to any involvement or participation in the peace negotiations. The immunity guarantees cover all acts and utterances made in the course of the peace negotiations and likewise cover all materials, information and data submitted to or produced pursuant to these peace negotiations.

Such mechanisms to facilitate the peace negotiations between the GRP and the NDFP are acceptable to the GRP because they help create and sustain an environment conducive to peace talks. With peace talks made possible through the JASIG, political stability in the Philippines is enhanced and the GRP's peaceful approach towards local insurgency is made known to the global community. The peace talks have even drawn the Royal Norwegian Government, known for its peacemaking efforts in many parts of the world, into a facilitation role, thereby increasing the legitimacy of the GRP's efforts in peace talks. The JASIG has also allowed the GRP a window of opportunity to better understand the logic and dynamics of the NDFP and to better know its leaders and supporters.

To express their mutual satisfaction in successfully completing the JASIG, the two panels issued a Joint Statement describing the JASIG as highly significant because it paved the way for the resumption of the exploratory talks and provided for the opening of formal talks on 1 June 1995 in Brussels, Belgium.

Chairman Luis Jalandoni stated that by working for and signing the JASIG, the NDFP showed its seriousness in dialoguing with the GRP. After the signing of the JASIG on 24 February 1995 the two panels engaged in formal and informal peace negotiations resulting in the completion of five more agreements. These include the CARHRIHL, though it remains only partially implemented because the sides have yet to agree on the contentious and nagging issue of political authority vis-à-vis arrest, prosecution, trial and punishment of human rights violators and offenders.

## Assessment of the JASIG

Although the JASIG has helped paved the way for the holding of informal and formal peace negotiations and the entry of the Royal Norwegian Government as third-party facilitator, it has not contributed immensely to pushing the peace negotiations forwards. Of the four substantive agreements to be completed and signed under the *Hague Joint Declaration*, the CARHRIHL is the

only substantive agreement signed so far. Despite the JASIG, peace negotiations remain tumultuous – a tumult spanning twelve long years and three presidencies.

Like the peace negotiations, the JASIG has not been spared from issues and controversies, and it has been terminated and reinstated several times. On 1 August 1995 the GRP called for a suspension of the talks and the termination of JASIG due to the NDFP's unreasonable demand to bring their imprisoned Political Consultant Sotero Llamas to Brussels before they would attend the first substantive session (he was subsequently released pursuant to the agreement called *Joint Efforts to Seek Release of Sotero Llamas in Accordance with Judicial Processes*). In February 1999 the GRP called for an indefinite suspension of the talks and the JASIG due to the abduction of police and armed forces officials. In June the same year the GRP issued notice of the termination of the JASIG in response to the NDFP's termination of peace talks in May.

While there are those who claim that the JASIG has allowed the NDFP greater movement for propaganda and recruitment and to intensify its other activities, this claim has not affected the GRP's commitment to the JASIG and its belief that peace through talks is imperative to economic growth and investment. While undertaking legitimate military action, the GRP is committed to the just completion of the peace process, which is item 9 of President Gloria Macapagal-Arroyo's Ten-Point Legacy Agenda. The GRP continues to vigorously pursue the *Six Paths To Peace* espoused under Executive Order No. 3, Defining Policy and Administrative Structure for Government's Comprehensive Peace Efforts (2001).

## Conclusion

The resolve and intensity demonstrated by the two Panels in reaching agreement on the JASIG are worth telling and retelling. Indeed, a revival of the same spirit in the negotiation of the three remaining substantive agreements (on social and political reforms, political and constitutional reforms and the end of hostilities and disposition of forces) is vital for a political settlement in the Philippines. Enough of brother fighting against brother, sister against sister!