

Governmental Capacity and Statehood in the Autonomous Region in Muslim Mindanao

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Introduction

During the process of achievement of autonomy through peaceful negotiation, started in the 1970s, such political formation as the Autonomous Region in Muslim Mindanao (ARMM) was established. Nevertheless, this process was accompanied by inner disturbances: clashes, popular unrest and terrorist attacks. The politically active part of the Moro people was divided into groups consisted of supporters of various measures - from moderately liberal to extremely radical. Although nowadays the Moro National Liberation Front (MNLF)¹ and Abu Sayyaf² represent diametrically opposed positions, since MNLF is a Philippine government's ally, while Abu Sayyaf is a terroristic group, they originated from common source and share the discontent around the existing order towards the Moro people in the Philippines.

In spite of the fact that autonomy of ARMM was extended, the significant part of its Moro population is still seeking for an ultimate separation from the Philippines. On the one hand, decentralization

¹ MNLF is a political organization, which promotes Bangsamoro self-determination egalitarianism

² Abu Sayyaf is a Jihadist militant group that follows the Wahhabi doctrine of Sunni Islam based in and around Jolo and Basilan islands in the southwestern part of the Philippines

and autonomy includes a number of benefits, e.g., “increased public sector efficiency, accountability, and effectiveness, increased citizen participation, local ownership, and durable peace”³. On the other hand, an abrupt separation can lead to institutional disarray, economic decline, deterioration of social problems, and even anarchy, unless the separated territory is prepared to the self-government. In that context “being prepared” implies conforming the criteria of the state (or approaching to them) and having corresponding own institutions to manage the political formation self-sufficiently. Depending on the approach of understanding of the state, the last condition can be included in its criteria.

The goal of the article is to investigate how close the conditions of ARMM to the criteria of the state and in which institutions it embodies its present autonomy. That will allow giving answer to the bigger question: are ARMM's separatists realistic or, that is to say, is Muslim Mindanao ready for the complete autonomy?

The further article consists of 1.) theoretical part; 2.) historical description; 3.) analyses; and 4.) conclusion. The material for the article includes such sources as academic researches, legislations, statements from representation sites, encyclopedic data, media outlets, and main secondary publications concerning formulated questions⁴.

How to define the state?

In order to observe the ARMM as a potential autonomous state, it is necessary to give definition to this term and determine its basic traits. Some difficulties can rise in that stage, because neither science nor international law has a single and universally recognized definition of the concept of the state. Besides, a search for a suitable definition is complicated by the factor, that “not all the entities that claim to be, or are recognized as, states are the same kinds of entity,

³ Benedict S. Jimenez, *Anatomy of Autonomy*. Asian Politics & Policy—Volume 1, Number 2—Pages 282–306

⁴ Among the authors are Kukathas; Jimenez; Banlaoi; Atnashev; Bale; and some others.

since they vary in size, longevity, power, political organization and legitimacy”⁵

In science a definition of the state faces the largest pluralism of opinions. The definition often depends on historical framework, ideology and subjective attitudes towards the state. While Max Weber describes the state as a compulsory political organization with a centralized government that maintains a monopoly of the legitimate use of force within a certain territory⁶, Lenin defines it as a tool of a ruling class, aimed to oppress other classes and keep them into obedience⁷. According to Concise Oxford English Dictionary, state is any politically organized community living under a single system of government, which may or may not be sovereign⁸.

Nevertheless, argumentation line of the article is to adhere mainly to the concept of the state which is proposed by one of the branches of international law, namely, the Montevideo Convention, which mostly reflects main points of various scholars' definitions.

The convention, signed at Montevideo, Uruguay, in 1933, was to determine the definition, rights and duties of the state. Its first article sets out that “the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; (d) capacity to enter into relations with the other states⁹”.

However, these criteria set out no direct prescriptions about an important issue in international law – the recognition. The UN as the largest international organization does not have the authority to determine whether a formation is a state. On the other hand, the UN claims: “the recognition of a new state or government is an act that only states and governments can commit or refuse to commit. Usually

⁵ Chandran Kukathas, A definition of the state. University of Queensland Law Journal – Volume 33(2) – Pages 357-366

⁶ John C. Donovan. People, Power, and Politics: An Introduction to Political Science. Rowman and Littlefield Publishers, Inc., 1993

⁷ Nikolay Ternavsky,. Lenin and the State, trans. Proza.ru, 2011

⁸ Wikipedia , s.v. “State (polity)”, last modified on 6 February 2018, [https://en.wikipedia.org/wiki/State_\(polity\)#cite_note-oxford-state-1](https://en.wikipedia.org/wiki/State_(polity)#cite_note-oxford-state-1)

⁹ Montevideo Convention on the Rights and Duties of States, 1933

it means readiness to establish diplomatic relations. The United Nations is not a state or a government, and therefore it does not have any authority to recognize a particular state or government¹⁰”.

The argumentation line of the article follows the declarative theory of statehood, proposed by the Montevideo Convention. According to declarative theory, “the political existence of the state is independent from recognition by the other states¹¹”.

At the same time the line of argumentation cannot be considered as acquiescent, since the last criterion – (d) capacity to enter into relations with the other states – is extremely close to the UN’s criterion of recognition. Although it postulates admissibility of any kind of relations, the establishment of diplomatic relations is the main start point for cooperation between two states. But the problem is the establishment of diplomatic relations is usually preceded by the legal recognition of the state and its government by another state¹². Conclusively, these two acts can be consolidated, which reveals quite formal essence of liberalism of the Montevideo Convention.

The same thought is obliquely reflected in Article 3 of the Montevideo Convention: “the political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no limitation, until it contradicts the exercise of the rights of other states according to international law”¹³. Although this statement has a direct bearing on the topic of the legal effects of recognizing statehood, it also implies that the very existence of the state depends on both the relations with other states and its own foreign policy potential.

¹⁰ “The UN archives”, last accessed 8 February 2018,
<https://archive.is/20120913170722/www.un.org/russian/question/faq/fs2.htm>

¹¹ Montevideo Convention on the Rights and Duties of States, 1933

¹² Vienna Convention on Diplomatic Relations, 1961

¹³ Montevideo Convention on the Rights and Duties of States, 1933

For that reason “the availability of the last feature (d) of the Montevideo Convention, proposed by the Latin American concept, is often cited in the literature, but is not universally recognized as a mandatory. For example, Guinea-Bissau was recognized by the state in the 1970s by the US and Germany on the basis of only the first three signs¹⁴”.

Nevertheless, this dilemma can be replaced by a moderate resolution, proposed by the American Law Institute's Restatement of Law (Third), stating that “the subject is not a state if it has no competence, according to its constitutional system, to establish international relations with other states, as well as political, technical and financial opportunities for their implementation”¹⁵. The statement is focused on the “capacity” of the state to implement a potential act of establishment of the relations, rather than the readiness of other states to respond to this act; it ultimately suits the d-criterion and allows overcoming the contradiction with the mandatory recognition.

Another duplicity, which must be resolve, arises, since “some authors require an open introduction of a factor of sovereignty as an additional criterion of statehood”¹⁶. But “if sovereignty means ‘supreme authority within a territory’, it is not clear that sovereignty captures the nature of all states”¹⁷ and an absence of the criteria of "independence" and "sovereignty" in Article 1 of the Montevideo Convention appears to be logical.

The problem is closely connected with the third criterion of Article 1 – the existence of a capable government that manages the territory and the population; this is the key element that, in combination with the two previous ones, characterizes the state from the standpoint of international law. But the concept of a “capable government is closely linked to the idea of independence, which reflects the a commonly used expression "state sovereignty", in the sense that the

¹⁴ Kolosov, Kuznetsov, International law. Textbook, trans. Chapters XXI and XXII. Moscow, 1994

¹⁵ “The UN archives”, last accessed 8 February 2018,

<https://archive.is/20120913170722/www.un.org/russian/question/faq/fs2.htm>

¹⁶ Kolosov, Kuznetsov, International law. Textbook, trans. Chapters XXI and XXII. Moscow, 1994

¹⁷ Chandran Kukathas, A definition of the state. University of Queensland Law Journal – Volume 33(2) – Pages 357-366

government is recognized as the government, if it does not act under direct instructions and is not controlled by the government of another state”¹⁸. In other words, “one state is distinguished from another by having its own independent structure of political authority”¹⁹.

In international law, however, the distinction between independent and dependent states is based on external manifestations, rather than on basic political realities. From the perspective of international law, the state is considered independent, even if it is under the external management of another state, as long as it performs functions peculiar to independent states: sending and receiving ambassadors, signing treaties, responding to international claims, etc.²⁰

To summarize the problem, the Montevideo Convention sets out the (c)-criterion of availability of the government without any further refinements, hence, arise disputes whether the government must be “sovereign” or being “capable” is sufficient to allow a formation to be considered as a state. In this article the preference is given to the sufficiency of the “capacity” in accordance with chosen approach towards the last (d)-criterion.

Another criteria and the rest of the Articles of the Montevideo Convention are less disputable and can be taken as basic assumptions in the article to characterize the state. Although the Montevideo Convention on the Rights and Duties of States was mainly aimed to colonial and post-colonial states with limited sovereignty in order to make gaining of international recognition easier for them, the criteria have not lost their actual weight and can be applied to modern political formations seeking for the status of the state, especially, in the case of the third-world.

To sum up, this chapter takes the Montevideo Convention as a base to define a state with a number of liberal reservations to its criteria.

¹⁸ Kolosov, Kuznetsov, International law. Textbook, trans. Chapters XXI and XXII. Moscow, 1994

¹⁹ Chandran Kukathas, A definition of the state. University of Queensland Law Journal – Volume 33(2) – Pages 357-366

²⁰ Kolosov, Kuznetsov, International law. Textbook, trans. Chapters XXI and XXII. Moscow, 1994

The Moro conflict and the establishment of ARMM

The root of the conflict originates in the Spanish and American wars against the Moros²¹. All Muslim radical groups in the Philippines, regardless of political persuasion and theological inclination, believe in the Bangsamoro²² struggle. Though the use of the term Bangsamoro describing the “national identity” of Muslims in the Philippines is being contested, Muslim leaders regard the Bangsamoro struggle as the longest “national liberation movement” in the country covering almost 400 years of the resistance against Spanish, American, Japanese and even Filipino rule. But socio-political problems, which are exacerbated by the economic weakness of the Philippine state, today remain the main reasons for the unstable situation in the south of the country²³. Banlaoi describes six key elements of the Moro problem, which arise from that situation: 1. Economic marginalization and destitution; 2. Political domination and inferiorization; 3. Physical insecurity; 4. Threatened Moro and Islamic identity; 5. Perception that government is the principal party to blame; and, 6. Perception of hopelessness under the present set-up²⁴.

However, the actual establishment of the Autonomous Region in Muslim Mindanao was partially able to shift armed confrontation into negotiation form, reduce the number of supporters of radical measures and give some chance for a gradual peaceful resolution of the conflict. The Philippine government has relied on two approaches in handling the issue of separatism in Muslim Mindanao. “On the one hand, various administrations have resorted to military action to quell armed Muslim secessionist groups in the Southern Philippines. On the other hand, government has also utilized the mechanism of autonomy as a political and administrative solution to the conflict” [Jimenez]

²¹ Jeffrey M. Bale, *The Abu Sayyaf Group in its Philippine and International Contexts*, 2013

²² Bangsamoro is a collective self-identification name for a group of Muslim people within the ethnic indigenous tribes in Southeast Asia. The term “Bangsa: comes from the Malay word, which means nation. Spanish colonizers introduced the term Moro when they confused the Muslim people of Mindanao with the “moors” of North of Africa. “The Moro people” can be referred to the same term

²³ Vadim Atnashev, *Autonomization as a Means of the Resolution of Ethnopolitical Conflicts in the Modern World*. North-West Institute of Management. Saint-Petersburg, 2013

²⁴ Jeffrey M. Bale, *The Abu Sayyaf Group in its Philippine and International Contexts*, 2013

The establishment was preceded by another key moment in the modern history of the Moro conflict. On December 23, 1976, the Government of the Republic of the Philippines and the Moro National Liberation Front (MNLF), which aspired after the separation of a part of the southern provinces from the Philippines, signed the Tripoli Agreement under the auspices of the Islamic Conference. The Moro National Liberation Front renounced its claim for independence from the Philippines and agreed to autonomy, which was provided for 13 of the 23 provinces of Mindanao. However, Philippine President Marcos soon established two separate regional governments, calling it "a constitutional process." As a result, the peace agreement was disrupted and military actions were resumed²⁵.

Autonomy, as a legitimate option to be utilized by the central government, was enshrined only in 1986, in the Constitution of the Republic of the Philippines. Article 10, Section 15 of the Constitution mandates the creation of an autonomous region in Muslim Mindanao, subject to a plebiscite, consisting of provinces, cities, municipalities, and geographical areas sharing a common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of the Constitution and the national sovereignty as well as the territorial integrity of the Republic of the Philippines. Further, Article 10, Section 18 requires the enactment by the Philippine Congress of an organic act that defines the basic structure of government for the region consisting of the executive department, legislative assembly, and special courts with personal, family, and property law jurisdiction consistent with the provisions of the Constitution and national laws²⁶.

The Autonomous Region of Muslim Mindanao region was first created on August 1, 1989, when The Republic Act No. 6734, also known as Organic Act for the Autonomous Region in Muslim

²⁵ Vadim Atnashev, *Autonomization as a Means of the Resolution of Ethnopolitical Conflicts in the Modern World*. North-West Institute of Management. Saint-Petersburg, 2013

²⁶ Benedict S. Jimenez, *Anatomy of Autonomy*. *Asian Politics & Policy*—Volume 1, Number 2—Pages 282–306

Mindanao, was signed into law on by President Cory C. Aquino²⁷. It was composed of the four provinces of Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi²⁸. Seven years later the leadership of the National Liberation Front signed a new peace agreement with the government of the Philippines in response for the establishment of an autonomous region of Muslim Mindanao. A positive trend was the connection to Malaysia's peace process, which acted as an intermediary²⁹. Only Moro Islamic Liberation Front (nowadays also has shifted into negotiating form) and the Abu Sayyaf group continued their armed struggle after signing an agreement; in our century new terrorist groups, aspiring after the ultimate independence from in the Philippines, were created with the penetration of radical Islam ideas from the Middle East. However, there are opposite opinions that “like the Marcos-inspired autonomous structures, the ARMM failed as a policy response. Autonomy came to mean concession for rebellious Muslims, not processes for democratic participation for the benefit of all. The ARMM became another bureaucratic layer providing little except position and privilege for self-interested Muslim politicians”³⁰. Moreover, there is conception, saying that decentralization and autonomy may actually deepen rather than reduce conflict in ethnically diverse societies as they amplify ethnic identification, intergroup differences, and interethnic competition for scarce resources³¹. Nevertheless, in our case the observers can hardly deny a contribution of the establishment of the ARMM to peaceful process.

The situation remained relatively peaceful until 2013, when ARMM under the leadership of Nur Misuari, chairman of the MLNF, made an attempt to create the Bangsamoro Republik – officially, the United Federated States of Bangsamoro Republik (UFSBR) – and enter this formation with the status of one of it states. According to Misuari,

²⁷ Maria Corazon "Cory" Cojuangco Aquino was a Filipina politician who served as the 11th President of the Philippines (in office February 25, 1986 – June 30, 1992) and the first woman to hold that office.

She is widely accredited as the Mother of Asian Democracy.

²⁸ “The ARMM official website” <https://armm.gov.ph/>

²⁹ Vadim Atnashev, *Autonomization as a Means of the Resolution of Ethnopolitical Conflicts in the Modern World*. North-West Institute of Management. Saint-Petersburg, 2013

³⁰ Carmen A. Abubakar, *Review of the Mindanao Peace Processes*. Inter-Asia Cultural Studies, Volume 5, Number 3, 2004

³¹ Barry R. Posen, *The Security Dilemma and Ethnic Conflict*. *Survival*, vol 35. no 1. (1993): pp. 27-47

the republic's territory encompasses the islands of Basilan, Mindanao, Palawan, Sulu and Tawi-Taw³². Although the MNLF has not renounced its bid for the independence of the Bangsamoro Republik, the unrecognized formal state cannot be the subject of the article, since its very existence has no sufficient evidences: there is no actual MNLF's control of named territories and the majority of the population do not refer themselves to the Bangsamoro people. According to the official data, on September 28, 2013, with the defeat in Zamboanga City by the Philippine government, the Bangsamoro Republic has been unnihiated³³.

Due to the failure to establish the Bangsamoro entity³⁴ and introduce the Bangsamoro Basic Law³⁵ in 2012-2014 under the administration of then President Benigno Aquino III, the Mayor Rodrigo Duterte in his campaign speeches announced his intent to establish a federal form of government which would replace the unitary form. In his plan, ARMM will become part of a federal state.

The present ARMM set-up with additional provisions from the Comprehensive Agreement on the Bangsamoro and the proposed Bangsamoro Basic Law can become ingredients to push for federalism in the region, what may eventually promote peace, accelerate economic growth in the region and prepare the conditions for the further autonomization³⁶.

³² "Gulf News - Philippines", accessed 8 February 2018, <http://gulfnews.com/news/asia/philippines/misuari-declares-independence-of-mindanao-southern-philippines-1.1220970>

³³ "The Philippine Star", accessed 8 February 2018 <http://www.philstar.com/headlines/2013/08/16/1097101/mnlf-returns-rebellion>

³⁴ Bangsamoro entity is a proposed autonomous region within the Philippines. The proposal is part of the Framework Agreement on the Bangsamoro, a preliminary peace agreement signed between the Moro Islamic Liberation Front and the government.

³⁵ The Bangsamoro Basic Law was a bill deliberated upon by the 16th Congress of the Philippines which sought to establish a proposed new autonomous political entity known as the Bangsamoro Autonomous Region, replacing the current ARMM. As an organic act, the Basic Law would have provided for the basic structure of government for the Bangsamoro Autonomous Region, and enacted the agreements set forth in the Comprehensive Agreement on the Bangsamoro, which is the peace agreement signed between the Government of the Philippines and the Moro Islamic Liberation Front in 2014.

³⁶ "The ARMM official website" <https://armm.gov.ph/>

The measure of autonomy and governmental capacity in the ARMM

National independence in a form of sovereign state or states has been an objective of the Moro people since the beginning of European colonization³⁷. The task of the chapter is to analyze, how closely the ARMM approaches to the criteria of the state and which institutions would lack in a case of abrupt and uncoordinated with the Philippine government separation. In the case of close compliance with the criteria of the state, separation can proceed with the consent of both parties successfully and painlessly. Otherwise, the region can enter the stage of an institutional disarray and economic decline, naturally followed by the deepening of social problems and ethno-religious contradictions.

1.) Population. The sign of the permanent population is connected with the same factor as the territory – a material factor of the existence of the state. Number of inhabitants, as well as the size of the territory, generally has no limitations. From that point the problem of microstates rises, but in our case the numbers have no blunders. There are 10 major Muslim ethno-linguistic groups that populate the provinces of Lanao del Sur, Tawi-Tawi, Sulu, Maguindanao, and Basilan, and in the city of Marawi, constituting the overwhelming majority of the ARMM. Although the Moro people only make up 5% of the total Philippine population, they consist more than 90% among the population of the ARMM – 3.7 million of people, according to the local census of the Philippine Statistics Authority in 2015³⁸. The majority of the population perceive themselves as the citizens of ARMM and sometimes Bangsamoro (as a political entity)³⁹.

2.) Territory. The control of the territory is the essence of the state and the cornerstone of territorial sovereignty, which establishes the

³⁷ Rommel C. Banlaoi, *Al-Harakatul Al-Islamiyyah: Essays on the Abu Sayyaf Group*. Philippine Institute for Peace, Violence and Terrorism Research (PIPVTR), Third Edition, 2012

³⁸ "Philippine Statistic Authority", accessed 8 February 2018, <http://psa.gov.ph/>

³⁹ Benedict S. Jimenez, *Anatomy of Autonomy*. *Asian Politics & Policy*—Volume 1, Number 2—Pages 282–306

exclusive competence of the state to establish or authorize rules protected from violations through coercive measures, and to prevent foreign governments from taking any action within its borders without obtaining permission. In 1989 the territory of the Autonomous Region in Muslim Mindanao was fixed as the unitary of the provinces of Maguindanao, Lanao del Sur, Sulu and Tawi-Tawi by virtue of the Republic Act No. 6734 and extended through of Republic Act No. 6734 by the inclusion of the province of Basilan and the City of Marawi in 2001. The whole territory consists of 12,535.79 km². The local government gained legitimacy for formulating and implementing the tasks over the territory through competitive elections; that is, citizens officially constitute a government by the act of selecting representatives and manage the territory of the region.

3.) Government. This is the basic part of the research which must show an extent of capacity of the ARMM's government by contemplation of its available jurisdictions and institutions basic for modern statehood. The main task is to observe which institutions are situated under the control of the Philippine central government; which are to be found under the control of the government of the ARMM; and if there is a strong power of illegitimate institutions which can probably become a substitution of the Philippine governmental institutions around ARMM, if the dangerous tendency towards separation progresses.

The first powerful factor is currency and in that point the regional economy is in complete dependence from the Philippines, since Philippine peso is the only valid currency in Muslim Mindanao⁴⁰.

Secondly, the Autonomous Region shall have the power to create its own sources of revenues and to levy taxes, fees and charges, subject to such guidelines and limitations as the Constitution and this Organic Act may provide, consistent with the basic policy of local autonomy, but at the same time the regional government has to put up with the following distribution of taxes: "30% to the province or city;

⁴⁰ "The ARMM official website" <https://armm.gov.ph/>

30% to the Regional Government; and 40% to the National Government”⁴¹.

Finally, strategic minerals such as uranium, coal, petroleum, and other fossil fuels, mineral oils, all sources of potential energy, as well as national reserves and aquatic parks, forest and watershed reservations are delimited by national law⁴², that is to say, are controlled and supervised by the Philippine government. Although there is no precise open statistical data concerning the ARMM mineral resources, there is information that the region attractive not only for the Philippine government due to its reach deposits. One of the reasons of penetration radical Islam from the Middle East in the region is rich deposits in Mindanao, Jolo and Sulu⁴³, hence, the Philippine government naturally tries to hold that mighty source of income under its own control.

4.) Capacity to enter relations with other states. Considering the fact that corresponding institutions can be build up with less difficulties and comparatively fast as derivatives from other institutions after the separation, we need to admit that in the present moment the ARMM has no international official connections of its own, neither an opportunity to acquire them, since the whole set of action on international relations is under the Philippine jurisdiction, including “customs and tariff; naturalization, immigration and deportation; foreign trade; maritime, land and air transportation and communications that affect areas outside the Autonomous Region; foreign affairs; national defense and security; coinage, and fiscal and monetary policies; and even postal service”⁴⁴.

Unformal connections between radical groups of Muslim Mindanao and the Middle East political figures are not taken into account, as the MNLF and regional government officially define struggle with Islamic extremism as one of their objectives.

⁴¹ Republic Act No. 6734, August 1, 1989

⁴² Republic Act No. 6734, August 1, 1989

⁴³ Rommel C. Banlaoi, *Al-Harakatul Al-Islamiyyah: Essays on the Abu Sayyaf Group*. Philippine Institute for Peace, Violence and Terrorism Research (PIPVTR), Third Edition, 2012

⁴⁴ Republic Act No. 6734, August 1, 1989

Conclusion

The rebuilding of the ARMM's institutions will be a complex process. The research shows that the Philippine shift to the federal state government is the most realistic way of achieving stable national independence for the Moro people, since the expansion of the autonomy needs to be gradual and consequent. By the present moment the ARMM does not fulfil two of four criteria of the state. An absence of official international connections would not ease the difficulties, which can arise from institutional insufficiency.

The case of an abrupt separation can be doubly dangerous for the population of Muslim Mindanao, since the rests of the world terrorist organizations were recently pushed from their strongholds in the Middle East and are looking for new bastions presently.

The ARMM has no formal relations of its own with recognized states. However, it is likely that after the potential separation, some countries, including Muslim neighbors - Malaysia and Indonesia, - will be ready to establish connections.

These reforms are impossible without the decision of the central Philippine government to initiate them, since it holds the monopoly on actual power over the region. A gradual implementation of some of these reforms in a future perspective appears to be a plausible step of the Philippines, which is interested in the security of its own borders, as well as in maintaining of domestic peace.

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