

allegations of illegal use of force, the proceedings at the UN Security Council and the Organization of American States should have priority. Nevertheless, the Court made an order for provisional measures without answering the various issues raised by the United States.

The Court may therefore wish to consider what its predecessor, the PCIJ, said in the *Free Zones Case*:

The judicial settlement of international disputes with a view to which the Court has been established, is simply an alternative to the direct and friendly settlement of such disputes between the Parties; as consequently it is for the Court to facilitate, so far as is compatible with its Statute, such direct and friendly settlement.

The question of interim protection should thus be viewed from the viewpoint of promoting a diplomatic solution to the matter at bench. As such, it takes on more relevance if treated as more of a confidence building measure than a small procedural victory for the party requesting it.

As the Court moves from the 20th to the 21st century, it remains to be told by the story of humanity whether the Court will leave a lasting imprint on history by way of clearly 'shaping and reshaping international law.' Its legacy will not be measured by the interim protection orders that come out of The Hague; rather, the Court shall be judged for its contributions to its already rich history. This power of the judgment on the merits is better appreciated in light of its predecessor's timeless ruling in the *Legal Status of the South-Eastern Territory of Greenland*.¹⁴⁴

Whereas, having regard to the character of the alleged rights in question, considered in relation to the natural characteristics of the territory in issue, even measures calculated to change the legal status of the territory could not, according to the information now at the Court's disposal, affect the value of such alleged rights, once the Court in its judgment on the merits had recognized them as appertaining to one or other of the Parties....

Articulating what he called the 'judicial perspective of The Hague,' Judge Schwebel described the twentieth century as one of "great achievement and profound loss."¹⁴⁵ The rich contributions of the Court and its predecessor tribunals to the jurisprudence of international law are clearly integral to the century's great achievements. At the same time, the Court may have had something to do with the 'profound losses' during those times when it was bound by jurisdictional shackles.

On the whole, indeed, it may be said that the jurisprudence of the Court was, and continues to be, intertwined with the destiny of humanity.

¹⁴⁴ PCIJ, (Ser. A/B) , No. 48, at 288.

¹⁴⁵ Schwebel, Address before the UNGA.

ISLAM AND THE 1987 PHILIPPINE CONSTITUTION: AN ISSUE ON THE PRACTICE OF RELIGION*

EDILWASIF T. BADDIRI *

ABSTRACT

Islam was in the Philippines long before the inception of the Republic of the Philippines. It has been an unrecognized integral part of Philippine culture and history for over ten centuries. Today, more than ten percent of the Philippine population embrace the Islamic faith. The Muslim People, however, have never felt they were part of it and have always aspired for independence despite their long union with the Philippines. This isolation of the Muslim People is the result of the non-recognition of the Islamic concept of practice of religion. Essentially, the Muslim People's aspiration of their right to self-determination is but an assertion of their right to practice their religion. Moreover, this aspiration has been communicated in the most prominent form of expression – armed struggle.

The existence of movements seeking a separate State for the Muslim People of the Philippines must be recognized and studied. These movements began the moment foreign colonizers attacked the Muslim People and their Islamic faith, and they continue to persist today. The problem is there, but where is the answer? The history of the Philippines is besieged with the so-called Muslim problem. Yet, no administration has brought an effective solution to the problem.

The root of this problem is the government's lack of sensitivity to the Islamic concept of practice of religion and the perceived attack on the Islamic way of life. The previous Philippine Governments under Marcos, Aquino, and Ramos tried to provide for solutions but were hampered by well-entrenched Constitutional principles. Thus, the Muslim struggle continues.

In order to bring forth an effective solution, the distinct Islamic principles on practice of religion must be recognized. The most important principle is that of *Din wa Dawla* or unity of Religion and State which is the contraposition of separation of Church and State principle as well as the Non-Establishment Clause. These Constitutional principles constitute a bar to the present Administration's task of effectively responding to Muslim People's aspirations. It is, therefore, necessary that there be a constitutional accommodation of the Islamic concept of practice of religion.

* Cite as 45 ATENEO L.J. 163 (2001).

* *Juris Doctor* 2000, Ateneo de Manila School of Law.

I. INTRODUCTION

The Republic of the Philippines has been beset by the Moro Struggle for self-determination from the time of its inception. It has pursued policies of attraction, integration and assimilation to remedy the situation. As embodied in the 1987 Philippine Constitution, the Republic of the Philippines has posited a policy of separation of Church and State or State neutrality towards religion in Article II, Section six and Article III, Section five. However, these provisions fail to understand the Muslim's concept of religion and the practice of Islam, and, in fact, contravene the Islamic concept. Therefore, there must be a constitutional accommodation of the Islamic concept for an effective resolution to the Bangsa Moro Struggle for self-determination.

A. The Muslim People in the Philippines and Their Struggle for Self-Determination

On the very eve of the presidential approval of the Tydings-McDuffie Act granting Philippine independence after a ten-year transition period, a mass meeting of Muslim Datus sent the United States President and Congress a declaration which read as follows:

Because we have learned that the United States is going to give the Philippines independence, we want to tell you that the Philippines is populated by two different peoples with different religious practices and traditions. The Christian Filipinos occupy the islands of Luzon and the Visayas. The Moros (Muslims) predominate the islands of Mindanao and Sulu. With regard to the forthcoming independence, we foresee what condition we and our children who shall come after us will be in. This condition will be characterized by unrest, suffering and misery.

....
Should the American people grant the Philippines independence, the islands of Mindanao and Sulu must not be included in such grant.

....
Our practices, laws and decisions of our Moro leaders should be respected... Our religion should not be curtailed in any way. All our practices which are incidents to our religion of Islam should be respected because these things are what a Muslim desires to live for...Once our religion is no more, our lives are no more.¹

¹ PHILIPPINE MUSLIM NEWS, July 1968, at 7 - 21. (emphasis supplied)

These were the sentiments of the Muslim People² then. These are the sentiments of the Muslim People now.

The ratification of the 1935 Philippine Constitution on 14 May 1935 finally sealed the fate of the Muslim People of Sulu and Mindanao with that of the emerging Republic of the Philippines. On that day, the Muslim People's struggle for self-determination against the Philippines and the Philippines' policies of attraction, integration, and assimilation with the Muslim People were brought forth. They persist to this day.

The Philippines' policies of attraction, integration, and assimilation rest on the mistaken premise that the Muslim People of the Philippines and the Christian Filipinos are one and the same people. This premise fails to recognize the significant differences in history and religion of the two peoples. Moreover, the Philippines' policies are largely interpreted according to "Christian eyes," bolstering the fears of an estimated seven million Muslim People that drove them to war with Spain for 333 years³ - the fear of "Christianization and the loss of their tradition."⁴ The fear is real and happening. This fear has firmly intensified the Muslim People's aspiration for self-determination. This aspiration has been

² There are now approximately 7 million Muslim Filipinos constituting ten percent of the 71 million Philippine population. In his book *THE MORO ARMED STRUGGLE IN THE PHILIPPINES: THE NONVIOLENT AUTONOMY ALTERNATIVE*, Dr. Macapado Muslim states that the Muslims comprise some 13 ethnolinguistic groups, namely: 1. *Kalagans* of the Davao Provinces; 2. *Sanguils* of South Cotabato and Davao del Sur; 3. *Maguindanaons* of the Cotabato provinces (Maguindanao, North Cotabato, South Cotabato and Sultan Kudarat); 4. *Iranuns* of the coastal areas of Cotabato, Lanao del Sur, and Zamboanga del Sur provinces; 5. *Maranaos* of the Lanao Provinces (Lanao del Sur and Lanao del Norte); 6. *Kalibugans* of the Zamboanga Provinces (Zamboanga del Sur and Zamboanga del Norte); 7. *Yakans* of Basilan province; 8. *Tausugs*, 9. *Samals*, and 10. *Badjaos* in the Sulu Archipelago, the coastal areas of Zamboanga, South Palawan, and Davao; 11. *Jama Mapuns* of Cagayan de Sulu and South Palawan; and 12. *Palawanons* and 13. *Molbogs* of Southern Palawan.

An "Islamic Resurgence or Revivalism" presently takes place among the Muslims in the Philippines. This resurgence coincides with the one taking place in the world. Currently, there are more than 10,000 mosques, 92,000 converts, and 1,000 Moro students and/or graduates of Middle East universities in the Philippines.

³ In his book, *STILL CHASING THE RAINBOW*, Justice Jainal Rasul states, "Dr. Cesar Adib Majul calls this Muslim period as *Moro wars*, covering 333 years from 1565 to 1898. Vicente Barrantes and Jose Montero Y Vidal call it *guerras piraticas*. Father Horacio de la Costa justifies the war by saying Spain was to put an end to piracy. Dr. Najeeb Saleeby said Spain came to the Philippines not to suppress piracy but to uproot Islam. Dr. Gregorio Zaide maintains correctly that the Moro raids were the result of Spanish invasion. If the Spaniards did not come, there would have been no Moro raids."

⁴ Interview with Nur Misuari, MNLF Chairman and ARMM Governor, Manila (November 20, 1999).

resoundingly communicated in the most prominent form of expression – armed struggle. Thus, the so-called Muslim Problem⁵ of the Philippines and the so-called Christian problem of the Muslim People.

The Republic of the Philippines has changed its fundamental law twice, and twice it has failed to provide an effective response or working solution to the Muslim People's aspiration. While the 1987 Philippine Constitution has provisions that address the Muslim People's aspiration for self-determination and their distinct historical and cultural heritage, the same is negated and undermined by the same Constitution and the national laws. This limitation has prevented the Government of the Republic of the Philippines (GRP) from making a truly effective response that the Muslim People have been aspiring and fighting for.

There are two significant provisions of the 1987 Philippine Constitution that hamper an effective response from the GRP. These are:

Article II, Section 6. The separation of Church and State shall be inviolable.

Article III, Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

These two constitutional provisions restate American and Christian principles that are totally foreign and contradictory to the Muslim People's Islamic principles. Islam espouses unity of Church and State (*Din wa Dawla*)

⁵ In a paper written for the *Journal: Institute of Muslim Minority Affairs*, Dr. Peter Gowing states that the 'problem' is now, as it always has been, the integration of the Moros into the Philippine state and nation. The Moros are a problem to the Republic of the Philippines (as the Republic is a problem to them!) for much the same reason that they were a problem to the Spanish and American colonial regimes: they resist today, as they have always resisted, policies and structures which threaten their Islamic identity and selfhood. But certainly an important part of the fuel for the present conflagration is the deep-seated resentment Moros have against government policies aimed at 'cultural homogeneity' and hence the cultural 'genocide' of the Muslims – all in the name of national integration. For the Moros, the problem is how to bring about a restructuring of their political relationship with the Republic of the Philippines so as to mitigate threats of cultural assimilation by the Christian population, assure the patrimony of their homeland and resources for their descendants, and exercise control over those aspects of their political and social lives which most impinge on their selfhood as Muslims.

⁶ 1987 PHIL. CONST.

and, consequently, requires laws that effectively establish religion. These constitutional provisions limit and unduly hamper the Muslim People's right to practice Islam as individuals and as a community. The Muslim People's aspiration for self-determination is but an assertion of their right to practice their religion. In fully upholding the right of the Muslim People to practice their religion, there must be an amendment of the Constitution.

B. The Issue

The 1987 Philippine Constitution recognizes and grants the right to practice religion. For the Muslim People, religion is a way of life that governs each and every aspect of human life, including self-determination. However, the Muslim People's right to practice their religion is affected by the provisions in the Constitution providing for the inviolability of the separation of Church and State and the Non-Establishment Clause. The Muslim People are, therefore, unduly hampered from exercising their right to practice their religion and the situation calls for a Constitutional amendment.

C. Scope of the Study

This study presents constitutional provisions affecting the Muslim People's right to practice their religion. It aims to provide a rational basis for the amendment of the Constitution to accommodate and give full recognition to this particular right of the Muslim Filipino People.

It reviews the history of the Muslim People in the Philippines in Chapter II. The historical background provides for a better understanding of their struggle for self-determination and the failure of the Republic of the Philippines to accommodate and give full recognition to their aspiration for full practice of their religion – an integral part of which is self-determination. Chapter II also shows the extent to which Islam has deeply permeated the lives of the Muslim People in the Philippines. Chapter III discusses the Islamic concept of practice of religion. It shows the interrelation between state and religion and the important Islamic principles that govern the Muslim People's way of life. Chapter IV states the Philippine Constitution's concept of practice of religion and the intricacies of its operation.

Chapter V presents a comparative analysis of the two concepts of practice of religion. It shows the irreconcilable principles and the instances when the Muslim People's practice of religion is affected. In its second subsection, it draws on two important principles that provide common grounds between the two systems of law.

This study concludes with a summation that reflects the need for a constitutional accommodation of the Muslim People's right to practice of religion. It shows the need to amend the Constitution in order to create space for the adequate practice of Islam which is hampered by certain constitutional provisions.

It also includes a chapter on recommendations for constitutional amendments. In closing, the ultimate aim of this study is to make a contribution to the ongoing peace process by proposing constitutional accommodation to remove constitutional obstacles and to recognize the Muslim People's right to practice their religion.

D. Limitation of the Study

This study shall deal only with the separation of church and state provision and the non-establishment principle in relation to the right to practice religion. The two provisions were chosen due to the fact that they controvert Islamic principles that are adhered to by the Muslim people of the Philippines.

Other constitutional provisions and related laws pertinent to practice of religion will only be discussed in relation to the two particular constitutional provisions.

E. Definition of Terms

For purposes of this study, the following terms shall mean:

1. *Allah* - God
2. *Bangsamoro* - Moro Nation
3. *Dar ul-Islam* - world or abode of Islam
4. *Dar ul-Harb* - world or abode of war
5. *datu* - traditional leader of a Moro community
6. *Din wa Dawla* - unity of religion and politics; unity of church and state
7. *hadj* - one of the five pillars of Islam. It is the yearly pilgrimage to Mecca conducted by Muslims.
8. *Ibadah* - worship or practice of religion
9. *Indios* - Christianized natives of the Philippines during Spanish rule
10. *jihād* - to strive to the utmost for self-reform (*jihād akbar* or greater *jihād*) and defense of Islam (*jihād asghar* or lesser *jihād*)
11. *khalifah* - representative or vicegerent of God
12. *Khilafah* - concept of vicegerency of man
13. *Luwaran* - Islamic law encoded by the Sultanate of Sulu and Sultanate of Maguindanao
14. *Makkah* - present-day Mecca
15. *Maguindanaon* - the biggest group of Muslim Filipinos and the inhabitants of the undivided Cotabato
16. *Maranao* - the second biggest group of Muslim Filipinos and the inhabitants of the Lanao region
17. *Moros* - Muslim Filipinos
18. *Muhammad, Prophet (S.A.W.)* - the last of the prophets to whom God revealed the *Qur'an*
19. *Panditas* - religious teachers
20. *Qur'an* - the Holy Book of Islam, the Eternal Word of Allah as revealed to the Prophet Muhammad

21. *Ramadan* - the Islamic month of fasting and the month wherein the *Qur'an* was revealed
22. *Salam* - peace
23. *Shari'ah* - Islamic law, Allah's law
24. *Shayyid* - martyr
25. *Shura* - consultation
26. *Sultan* - the ruler of a Sultanate; the sovereign authority
27. *Sultanate* - traditionally, the State of the Moro people
28. *Sunnah* - the way of the Prophet Muhammad (S.A.W.), his practice or behavior, or custom based on his example as recorded in the *hadith* including his consent to certain actions
29. *Tausug* - the third biggest group of Muslim Filipinos and the inhabitants of the Sulu Archipelago
30. *Tawhid* - absolute oneness of God, Unity of God, absolute monotheism. It is the affirmation that only Allah is to be worshipped. It is the foundation and essence of Islam. All Islamic doctrines, beliefs, and principles spring from this concept.
31. *Ummah* - one Muslim world community. It is the community of Muslims bound by Islam and transcends geographical boundaries, race, nationality, language and other forms of group consciousness.

II. ISLAM IN THE PHILIPPINES

A. Advent of Islam

The geographical location of the Philippines caused it to be drawn gradually into the international maritime trade that extended from the Red Sea to the China Sea. In the present territory of the Philippines, Islam first arrived in the islands of Sulu.⁷ Historical accounts reveal that during the 9th century, or possibly earlier, Sulu was already a participant in the international trade - a trade practically controlled by Muslim merchants. By the last quarter of the thirteenth century, if not earlier, there existed a Muslim settlement or community in Sulu.⁸

In the history of Sulu, the period from around 1380 to 1450 witnessed the arrival of learned men in Islam and the rise of a centralized political bureaucracy - the Sultanate. This period was highlighted by the coming of Karim ul-Makhdum, a missionary scholar from Arabia, who reached Sulu at around 1380. About ten years after, Raja Baginda, a Sumatran prince, with some learned men in Islam, arrived in Sulu. He settled in Buansa which later on became the Sultanate's first capital. Sayyid Al-Hashim Abu Bakr followed Raja Baginda and at around 1450, he established the Sultanate of Sulu.⁹

⁷ It included present day provinces of Sulu and Bongao-Tawi Tawi.

⁸ CESAR ADIB MAJUL, *THE CONTEMPORARY MUSLIM MOVEMENT IN THE PHILIPPINES* 15 (1985) [hereinafter MAJUL].

⁹ CESAR ADIB MAJUL, *MUSLIMS IN THE PHILIPPINES* 58 - 61 (1973).

In Mindanao, Islamization started around 1460 with the arrival of a missionary scholar, Sharif Awliya. At around 1515, Sharif Mohammad Kabungsuwan arrived on the shores of Maguindanao.¹⁰ He was said to have had a high degree of Muslim consciousness and a great proselytizing zeal. Most of Maguindanao *tarsilas* give the impression that the work of conversion was mainly his. He is also credited for establishing the Sultanate of Maguindanao. However, it was only during the reign of Sultan Mohammad Dipatuan Qudarat, that a leader of Maguindanao was invested with the real powers of a Sultan. At the height of the Sultanate's power, it ruled over more than three-fourths of Mindanao.¹¹

The existence of the Sultanates signifies that Islam had already established a very strong political and social foundation in Sulu and Mindanao.

The early start of Islam in Sulu and Mindanao and the absence of other major religions allowed it to spread to Visayas and Luzon. At the time the Spaniards reached Manila in 1571, it was already a Muslim principality with a long line of Muslim rulers of Brunei ancestry.¹²

B. The Sultanates

These were two notable sovereign powers - the Sultanate of Sulu and the Sultanate of Maguindanao. The Sultanates were a multi-ethnic state. At the height of their power, their territorial domains included the entire Sulu Archipelago (including Tawi-Tawi), Basilan, Palawan, North Borneo (now Sabah), most of Mindanao, and principalities in Visayas,¹³ Mindoro and Manila. They lasted for almost five centuries, i.e., from around 1450 to 1915.¹⁴

Throughout their existence, the Sultanates observed and implemented Islamic law and traditions. Islamic law was even encoded and called the *Luwaran*. The Sultan was the highest official of the state and he exercised both civil and religious functions. He was, however, not an absolute ruler. The *Ruma Bichara* (State Council), composed of the *Raja Muda* (heir apparent) and some powerful royal datus, was charged with the function of formulating laws and policies of

¹⁰ *Id.* at 69.

¹¹ Asiri J. Abubakar, *Muslim Philippines: With Reference to the Sulus, Muslim-Christian Contradictions, and the Mindanao Crisis*, 11 *ASIAN STUDIES* 115 [hereinafter Abubakar].

¹² MAJUL, *supra* note 8, at 79.

¹³ MNLF Chairman Nur Misuari, Speech before students of the Institute of Islamic Studies at the University of the Philippines (13 October 1999). MNLF Chairman Nur Misuari said that during the period of the Sultanates and before the arrival of Spain, there was already the 12 Rajahs of Panay and that Lapu-Lapu was a Balanguingui Warrior sent by the Sultan of Sulu to give protection to the inhabitants of Mactan.

¹⁴ Abubakar, *supra* note 11, at 115.

the State.¹⁵ In his governance of the state, the Sultan was assisted by officers of the state like the *Amilbahar* (admiral), *Rajalawut* (minister of marine affairs), *Bandahara* (treasurer) and *Rajamuda* (heir apparent).¹⁶ On local affairs such as the administration of outlying provinces of island territories, the Sultan was represented by other lesser officials like the *Panglima*, *Maharaja*, and *Ulangkaya*. On religious affairs, he consulted the *Qadi* (Judge) and the *Ulama* (Islamic Scholars) of various parts of his domain.

In analysis, the legal status of the Sultanates then was that of nation-states. As defined in international law, a state is a 'community of persons more or less numerous, permanently occupying a definite portion of territory, having a government of their own to which the great body of inhabitants render obedience, and enjoying freedom from external control'.¹⁸ The definition provides for four requisites, namely: people, territory, government and sovereignty - internal and external and the Sultanates complied with all the requisites.

As to its external sovereignty, the status of the Sultanates as sovereign and independent states were even recognized by Spain, their chief colonial adversary, as well as by the United Kingdom, France, Germany, Netherlands and the United States.¹⁹ This is evident in the Kiram-Bates Treaty between the Sultanate of Sulu and the United States of America.

C. Spain

The Moros fought for home and country, for freedom to pursue their religion and way of life...

Peter Gowing
Mandate in Moroland

¹⁵ MELVIN MEDNICK, *THE MUSLIM FILIPINO* 18-19 (1974).

¹⁶ Najeeb M. Saleeby, *The Moro Problem* (1913), reprinted in 5 *DANSALAN QUARTERLY* 37 (No. 1, 1983).

¹⁷ Abubakar, *supra* note 11, at 115.

¹⁸ JOAQUIN G. BERNAS, *THE 1987 PHILIPPINE CONSTITUTION A REVIEWER - PRIMER* 14 (1997) [hereinafter BERNAS].

¹⁹ Abubakar, *supra* note 11, at 115. In his book *Muslim Filipino Experience, A Collection of Essays*, Michael Mastura listed 30 Moro treaties with foreign powers (12 with the Sulu Sultanate and 18 with the Maguindanao Sultanate). The list, however, failed to include the Rajah Sulayman-deGoite Treaty of Friendship of 1570 and the Kiram-Bates Treaty of 1898. According to Atty. Soliman Santos in his thesis *Constitutional Accommodation of a Moro Islamic System in the Philippines*, "[a]mong the more significant of these treaties were the Qudarat-Lopez Treaty of 1645 defining territorial boundaries between Maguindanao Sultanate and Spanish Philippines and the Bongsu-Lopez Treaty of 1646 for perpetual friendship and a military alliance, recognizing the jurisdiction of the Sulu Sultanate and for withdrawal of Spanish garrisons in Jolo."

1. The Beginnings

"We give you permission to make such Moros slaves, and seize their property... You shall endeavor to persuade or convert them to our Holy Catholic faith..."

Felipe II, King of Spain²⁰

The coming of Spain to the Philippines was an accident. Ferdinand Magellan was on his way to the Moluccas²¹ where the coveted spices were grown and he ventured a westward route for his voyage. In the course of the voyage, he and his crew stumbled upon a group of islands at the southern tip of Samar that they never thought existed. Thus began Spain's history in the Philippines.²²

In 1564, another expedition was launched by Spain under the command of Miguel Lopez de Legazpi with the express objectives of colonization and Christianization. Six years later, the Moros²³ of Manila under the leadership of Raja Sulaiman Bin Mahmud came under attack from the Spaniards headed by Legazpi after the former refused to accept Spanish dominion. At the time of Legazpi's death in 1572, Spain had conquered one half of the Philippines.²⁴

Spain's conquest of Manila and its 1578 successful invasion of Borneo extinguished the northern expansion of Islam. According to Antonio de Morga, a Spanish official who lived in the Philippines from 1595 to 1603, "(H)ad the Spaniards' coming been delayed, that religion (Islam), would have spread throughout the islands (Luzon), and even through others, and it would have been difficult to extirpate it."²⁵ It also emboldened the Spaniards to pursue its expansion to Mindanao and Sulu.²⁶ Corollarily, it inflamed the Moros to resolute resistance.

²⁰ MAJUL, *supra* note 8, at 91.

²¹ It is the present-day Maluku province and a part of Indonesia.

²² MIGUEL A. BERNAD, *THE CHRISTIANIZATION OF THE PHILIPPINES* 3 (1972).

²³ According to Justice Jainal Rasul in his book *Still Chasing the Rainbow*, the term Moro refers to the word "moor," "moriscos" or Muslim. Moor is a derivation of the Latin word *mauri* used by the ancient Romans to describe the inhabitants of Western Algeria and Northeastern Morocco constituting the Roman Province of Mauritiana. Spain was under the Moors for 781 years from 19 July 711 to 2 January 1492 when Granada fell. The Spaniards used the term Moro to refer to the Muslim People of the Philippines. The term acquired a negative connotation because of the continued Muslim resistance to colonialism and subjugation as well as to Christianization. Among the non-Muslim population in the country, the term Moro came to refer to the Muslim population whom they regarded as treacherous, slavers, polygamous, pirates, ignorant and uncivilized. Due to the negative connotations of the term, the Muslims became displeased of being called Moro until the MNLF popularized it to show their distinctiveness from the Christian population.

²⁴ GEORGE VICTOR HURLEY, *SWISH OF THE KRIS* 50-51 (1936) [hereinafter HURLEY].

²⁵ MAJUL, *supra* note 8, at 82.

²⁶ HURLEY, *supra* note 24, at 51.

The Spanish threat spurred an acceleration of proselytizing by the Moros. The Sultanates set about reinforcing their Islamic institutions and political hegemony in the southern islands. In the words of one eminent scholar:

Spain came to the Philippines to extend the domain of Spain and to introduce Christianity. The Moros, realizing that this meant they would become vassals of a foreign king and eventually lose both their faith and their freedom as an independent people, responded to the threat with greater loyalty to their sultans and datus, a greater respect for their panditas, and intensification of their Islamic consciousness, and determined efforts to resist the military incursions of the enemy in their lands. Thus was patriotism and Islam wielded into a force to preserve a long enjoyed freedom. In the end, 333 years of bitter warfare left the Moros a united community with a common determination for self-preservation of their identity and their homeland – Sulu and Mindanao.²⁷

2. The Adverse Consequence

In the 333 years of Spanish-Moro wars, Spain used the *Indios*²⁸, the Christianized natives, in their campaign for Moro extermination. This participation of the *Indios* led the Moros to view them in the same way as they viewed the Spaniards. As described by Muslim scholar Dr. Cesar Majul:

The Spaniards made full utilization of native troops, principally Visayans, Pampangos, and Christianized natives of Northern Mindanao, to fight their wars against the Muslims of Sulu

²⁷ PETER G. GOWING & ROBERT McAMIS, *THE MUSLIM FILIPINO* 6-7 (1974).

²⁸ There were 4 types of people during the Spanish period in the present Philippines: 1. *Indios* – the Christianized natives; 2. *Infieles* – the pagan people of the mountainous regions of North Luzon; 3. Filipinos – the *insulares* or full-blooded Spaniards born in the Philippines; 4. Moros – the Muslims in the Philippines.

How Indio became Filipino? Indio students in Spain, after being exposed to liberal ideas current in Europe, began to conceive themselves also as Filipino. The *new* Filipinos then engaged in a movement demanding reforms which included, among others, freedom of the press, speech and assembly, participation in the affairs of the government, and a stop to friar and *guardia civil* abuses in the colony. But despite its liberal rhetoric the movement's goal was still assimilation, that is, incorporation of the colony as a province of Spain with representation in the Spanish Cortes. Since the term Filipino cut across racial barriers between Spaniards, *Creoles*, and *Indios*, it gained prominence as a liberating concept, and when more radical elements back home founded a secret society, *Katipunan*, with a program of separation and independence from Spain, the term was readily embraced as a symbol of national identity.

and Mindanao... *Indios* were made to row the boats of the Spaniards, serve as spearmen or shock troops, act as spies, and perform other mercenary tasks for their conquerors... As a response to all these, the Muslims began to hate and despise natives who not only failed to preserve their freedom but who were also used to deprive others of freedom for the sake of aliens. In the vocabulary of the Muslims, the word "Visayan" became synonymous to "slave"; while the words "Filipino" and "Christian" became identified with each other. In brief, the Moro was, to his own mind, neither a slave nor a Filipino.²⁹

Apart from using the *Indios* in their wars against the Moros, the Spaniards and the Catholic Church conditioned the *Indios* to fear, dislike, and hate the Moros through educational and cultural performances such as the Moro-Moro plays. These continue to be part of community festivals and school celebrations in some Christian areas in the Philippines. These plays helped sustain the still perceptible degree of Christian prejudice against the Moros in the Philippines. Fr. Pedro Salgado pointed out:

The Church also saw to it that the ordinary faithful share (the) low, despicable view of the Moro-Moro plays which became an integral part of all folk and religious festivals, the Filipino Christians were taught how vile the Moros were. The plays centered on one theme: the fight between good (the Christians) and evil (the Muslims), leading always to the same shattering climax - the victory of the Christians against the Moros and their faith. There was nothing so wicked or treacherous that was not tried by the Moros;³⁰ nothing so good and noble that was not done by the Christians.

This, in Muslim-Christian relations in the Philippines, is what Gowing has termed "the Moro image" and which he has called "the single most serious obstacle to Moro-Christian harmony in the Philippines."³¹ Due to the centuries of warring and raiding, "there existed in the minds of many Christian Filipinos the image of the Muslim as a treacherous savage, a pirate, a raider, and a slaver."³² The image persists to this day among many, if not all, Christians, perpetuated from generation to generation by word of mouth, by pejorative accounts in school history books and by popular dramas. It is an image reinforced by Philippine

²⁹ CESAR ADIB MAJUL, *MUSLIMS IN THE PHILIPPINES: PAST, PRESENT AND FUTURE PROSPECTS* 14 (1971).

³⁰ Fr. Pedro Salgado O.P., *The Rise of Mindanao - Sulu*, 1 EPISCOPAL COMMISSION ON TRIBAL FILIPINO RESEARCH SERIES 12 (Third Quarter, 1981).

³¹ Peter G. Gowing, *Christian and the Moros: The Confrontation of Christianity and Islam in the Philippines*, 10 SOUTH EAST JOURNAL OF THEOLOGY 93 (1968). [hereinafter Peter Gowing, *Christian and the Moros*].

³² Peter G. Gowing, *Muslim Filipinos Between Integration and Succession*, 14 SOUTH EAST JOURNAL OF THEOLOGY 64-77 (1973).

media in its news reports that imply that the commission of a crime is somehow connected to the Muslim faith. Muslims are portrayed - primarily because of their religion - as ignorant and backward, as having low-grade civilization, and as tricky, violent, lawless, oversensitive and ultra-conservative. They are pictured,³³ in short, as people who deserve to be second-class citizens in a Christian country.

The adverse consequence of Spain's policies was a 'heritage of suspicion, if not hatred',³⁴ between the Moros and the *Indios* that remains one of the abominable vestiges of Spanish colonization.

3. In Retrospect

The coming of Spain has been understood in the context of 'Gospel, Gold and Glory'³⁵. These policies, however, did not arise from a vacuum but were products of events that took place in the Iberian Peninsula. Spain came to the Philippines with a fanatical hatred of Islam, due to a long and bloody struggle to win Spain back to Christianity from the Moors. The fall of Granada, marking the end of Muslim rule in Spanish territory, had taken place only seventy years before Legazpi's arrival in the Philippines, and by that time the last of the Moors had yet to be driven out from the Iberian Peninsula.³⁶

These events strengthened Spain's determination to pursue similar policies against the Moros in the Southeast Asian/Philippine area, which they had automatically linked to the Moors in Spain. A kind of thought transference seems to have transpired: the enemy in Spain had suddenly appeared in this part of the world and must be treated in the same way.³⁷

For three centuries, Spain tried to conquer and Christianize the Moros but the latter resisted with awesome ferocity. Spain repeatedly launched military expeditions against the Moros only to be repulsed. In the end, Spain's intransigence only left a united Moro community intensely devoted to the preservation of their faith and identity, and a seething hatred between a people of the same race but of different faiths - the Moros and the Christian *Indios*.

³³ *Id.*

³⁴ Cesar Adib Majul, Speech delivered for the Cultural Center, Spanish Embassy (August 16, 1975).

³⁵ Carmen A. Abubakar, *Muslim - Christian Relations: A Moro Perception*, 110 SOLIDARITY 130 (1987).

³⁶ *Id.*

³⁷ *Id.* at 31.

C. Interlude – The Filipino Nationalists

The notions of the first generation of nationalists of a liberated Philippines included Sulu and Mindanao, although these areas had never really become part of Spanish domain. Andres Bonifacio had a vision that encompassed the whole archipelago which was sustained by an appreciation of its pre-colonial civilization. His clandestine newspaper *Kalayaan* declared: "We have wasted our wealth and blood and even given our lives in the Spaniards defence; we have fought our compatriots who would not willingly submit to their yoke."³⁸

This admiration for the Moros was shared by those who took up the banner from Bonifacio. Emilio Aguinaldo, who in turn broke up with Bonifacio, was particular about respecting Muslim steadfastness to Islam. At the Republican Congress in 1899, Aguinaldo proposed that the Government be empowered to 'negotiate with the Moros for purposes of establishing national solidarity upon the basis of a real federation with absolute respect for their beliefs and traditions'. He wrote to the Sultan of Sulu, calling him 'a great and powerful brother', offering greetings and friendship and announcing the resolve of the Republic government to 'respect absolutely the beliefs and traditions of each island'.³⁹

The Moros' response to Aguinaldo and the idea of the Republic was marked by indifference and derision. Given their disposition towards the Christian *Indios*, the Moros naturally rejected the call for an alliance.⁴⁰

E. America

A tribe of Moros, dark-skinned savages, had fortified themselves in the bowl of an extinct crater not many miles from Jolo; and as they were hostile, and bitter against us because we have been trying for eight years to take their liberties away from them... General Wood's order had been to 'kill or capture those savages'... The enemy numbered six hundred – including women and children – and we abolished them utterly, leaving not even a baby alive to cry for his dead mother.

Mark Twain,
"Grief and Mourning for the Night"⁴¹

³⁸ T.J.S. GEORGE, REVOLT IN MINDANAO: THE RISE OF ISLAM IN THE PHILIPPINE POLITICS 71 (1980).

³⁹ *Id.* See also MAJUL, *supra* note 8, at 370-372.

⁴⁰ *Id.* at 72 – 73. According to Majul in his book, *Muslims in the Philippines*, "[w]hen the (Sulu) Sultan was apprised by the Americans regarding the struggle between the Spaniards and Filipinos, the Sultan simply remarked that what happened in Luzon had ever since been happening in Sulu between Spaniards and Sulus."

⁴¹ MARK TWAIN, A PEN WARMED-UP IN HELL, MARK TWAIN IN PROTEST 97 (1910).

The Treaty of Paris of 1898 sealed the Moros' fate with America. The treaty included the Sulu Archipelago among those islands to be ceded to the United States despite the fact that the issue of Sulu and Mindanao's sovereignty was far from settled. Although the Sultanates were on the decline due to the effective campaign of the Spaniards, they were still independent and exercised their rule over the people and the territory. Spain had failed to conquer the Moros and held sovereignty only by proclamation.⁴²

The Treaty of Paris provided that "[t]he inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion."⁴³ This was, however, betrayed by the attitude of the Americans toward the Moros and their beliefs which were revealed by two quotes from the period of early American rule. General Samuel Summer, a United States military commander in the South, wrote:

[I]t will be necessary to eradicate about all (their) customs... their religion⁴⁴ will be a serious bar to any efforts towards Christian civilization.

General Leonard Wood, the first governor of the Moro province, made this observation:

[T]he Moros and other savage peoples have no laws – simply a few customs, which are nowhere general... nothing has been found worthy of codification or imitation, and little or nothing which does not exist in better form wherever humane, decent and civilized laws are in force.⁴⁵

1. The Bates Treaty

The Americans, however, knew that the Moros were in command of a territory fairly earned by more than 300 years of warfare. They found the Moros ill-disposed to give up this territory. In August of 1899, Brigadier General J.C. Bates was sent to Jolo to negotiate a treaty with the leading Muslim power, the Sulu Sultanate. In due time, an agreement was drawn up between General Bates, representing the United States, and his Highness, the Sultan of Sulu. This agreement, known as the Bates Treaty, was duly signed and approved by United States President William McKinley on 27 October 1899.⁴⁶

⁴² PETER G. GOWING, MANDATE IN MOROLAND 26-34 (1977) [hereinafter GOWING].

⁴³ Treaty of Paris, Dec. 10, 1898, U.S.-Spain.

⁴⁴ GOWING, *supra* note 42, at 45.

⁴⁵ *Id.*

⁴⁶ GOWING, *supra* note 42, at 31 - 35.

The Treaty was essentially a promise of American non-interference in the internal affairs of the Sultanate as well as the Moros' religion in exchange for a renunciation of Sulu sovereignty to the United States in matters involving foreign affairs. Thus, the treaty provides:

Article Three. The rights and dignities of the Sultan and his Datus shall be fully respected; the Moros shall not be interfered with on account of their religion; all of their religious customs shall be respected, and no one shall be persecuted on account of his religion.

Article Nine. When crimes and offenses are committed by Moros against Moros, the government of the Sultan will bring to trial and punishment the criminals and offenders, who will be delivered to the government of the Sultan by the United States authorities if in their possession. In all other cases, persons charged with crimes or offenses will be delivered to the United States authorities for trial and punishment.⁴⁷

No sooner did the agreement take effect than it began to lose its relevance. Before the year 1899 was out, sporadic clashes broke out between Americans and local chiefs. By the middle of 1900 the treaty was all but dead. In 2 March 1904, United States President Theodore Roosevelt officially abrogated it.⁴⁸

2. Integration of the Moros

After some four years of military government, the Americans realized that their problem with the Moros was far different from that with the Christian Filipinos. The Moros were segregated by differences of religion, customs and mannerisms, and the problem was intensified by the Moros' hatred for the Christian Filipinos of Luzon and Visayas. Realizing the necessity for a separate form of government for the Moros, the Moro Province was created on June 1, 1903, to provide a form of civil government.⁴⁹

An Organic Act of the Insular Government authorized the formation of the Moro Province and defined the geographical limits of the territory affected.⁵⁰ It stated:

1. The Moro Province was designed as including all of the territory of the Philippines lying south of the eighth parallel of latitude, excepting the island of Palawan and the eastern portion of the northwest peninsula of Mindanao.

⁴⁷ Bates Treaty, Aug. 20, 1899, U.S.-Sultanate of Sulu.

⁴⁸ GOWING, *supra* note 42, at 77 - 78.

⁴⁹ HURLEY, *supra* note 24, at 64.

⁵⁰ Act No. 787 (1903), amended by Act No. 1283 (1905).

2. The enactment of laws for the local government of the Moros and other non-Christian tribes, conforming as nearly as possible to the lawful customs of such tribes, and vesting in their local or tribal rulers as nearly as practicable, the same authority over their people as had hitherto obtained.⁵¹

In December 1913, Frank W. Carpenter succeeded General Pershing as the first civilian governor of the Moro Province. After two years of negotiation with the Sultan, Carpenter was successful in reaching an agreement that transferred full control of the Sulu Archipelago to the United States.⁵²

The Carpenter Agreement provided that the Sultan, specifically and without reservation, recognize the sovereignty of the United States in the Sulu Archipelago with "all the attributes of sovereign government that are exercised elsewhere in American territories and dependencies...."⁵³ This meant that the Sultan unequivocally abdicated all his temporal powers, including his prerogatives associated with the court and the collection of taxes. The Government, in turn, recognized the Sultan of Sulu as "the titular spiritual head of the Mohammedan Church in the Sulu Archipelago."⁵⁴ He and his adherents were guaranteed that they "shall have the same religious freedom had by the adherents of all the religious creeds, the practice of which is not in violation of the basic principles of the laws of the United States."⁵⁵

In 1920, the Moro Province was abolished and the Bureau of Non-Christian Tribes was established to deal with the Moros and other "non-Christians." It set forth as one of its goals the "complete fusion of these groups of Filipinos and the majority segment of Filipino Christians."⁵⁶

3. In Retrospect

This process of integration to make the Moros more "humane, decent, and civilized" was not seen by the Americans as a religious matter. In fact, the American government repeatedly expressed its position as one of complete tolerance of Muslim religion and customs.⁵⁷ America saw their political regime

⁵¹ *Id.* at 165.

⁵² GOWING, *supra* note 42, at 250.

⁵³ Agreement between the Colonial Government of the Philippines and the Sultanate of Sulu, 1915, para. 2.

⁵⁴ *Id.* at para. 1.

⁵⁵ *Id.* at para. 2.(emphasis supplied)

⁵⁶ Mamintal Tamano, *Problems of the Muslims: A National Concern*, 4 SOLIDARITY 13-23 (1969).

⁵⁷ Stuart A. Schlegel, *Muslim - Christian Conflict in the Philippine South*, in THE SOUTHERN PHILIPPINE ISSUE: READINGS ON MINDANAO PROBLEM, TWELFTH ANNUAL SEMINAR ON MINDANAO-SULU CULTURE 6 (Alfred Tiamson and Rosalinda Caneda eds., 1986).

in the Philippine colony as one in which Church and State were firmly and traditionally separate matters. This was, after all, a central and key concept in the political culture and heritage of the United States which was to be taught to the Filipinos under the "American mandate."⁵⁸

Accordingly, in the eyes of the government, the major programs of the American rule in the Muslim South were all entirely secular. Slavery was outlawed, American laws and notions of justice were imposed, taxes in support of the government were introduced, land ownership laws were enacted, public schools and other homesteaders were encouraged to migrate from overpopulated northern areas and settle on open lands in Mindanao. In all of this, the practice of Islam was freely allowed as long as it did not conflict with American programs or with American laws.⁵⁹

From the point of view of the Muslims, however, these activities, and the whole associated notion of integration with the Christian Filipinos, were far from secular. In their understanding, the American program was a fundamental assault on the Islamic Faith, and American rule struck not only at the political authority of Muslim leaders but at the very substance of *dar ul-Islam*, 'the abode of Islam'.⁶⁰

F. Philippines

1. Filipinization

We have been independent for 500 years. Even Spain failed to conquer us. If the U.S. quits the Philippines and the Filipinos attempt to govern us, we will fight.

Petition to the President of
the United States of America
from the People of the Sulu
Archipelago, 9 June 1921

It was the avowed intent of the Americans to grant political independence to the Philippines as soon as the Filipinos learned the "science of self-government." The Moros, however, did not want to be part of an independent Philippine republic. By 1920, the Americans had turned over day-to-day governance of Sulu and Mindanao to Filipino civil servants in the Insular

⁵⁸ *Id.*

⁵⁹ *Id.*, at 7.

⁶⁰ *Id.*

Government. Most of them were Christians, and the Moros harbored many grievances and deep resentment against these officials, whom they felt despised Islamic sensibilities.⁶¹

All through the period of American rule, the Moros continually asked the United States to be kept separate from the government of Christian Filipinos. They wanted America to grant them separate independence or at least to retain their territory within American rule.

On 24 March 1934, the Tydings-McDuffie Law was signed into law by United States President Theodore Roosevelt, authorizing the Filipinos to draft a constitution for the Philippines. After the approval of the constitution, the Filipinos were to elect officials for the Commonwealth government. It also provided for a ten-year transition period during which the Philippine government would operate and at the expiration of said period, the independence of the Philippines would be proclaimed.⁶²

The approved 1935 Philippine Constitution failed miserably to specify or imply due consideration for the Moro traditions, customs and laws, which in Islam still fell within the ambit of religion. In fact, Tomas Cabili, a Christian delegate from Lanao, refused to sign the Constitution, characterizing it as grossly discriminatory against the Moro people. The Moros campaigned against the ratification of the Constitution, denouncing it as an abridgment of their religion, rights and customs.⁶³ By sheer tyranny of numbers of the Christian Filipino populace, the Constitution was ratified.

In 1935, the Commonwealth government was established. One of its important policies was the integration of the Moros into Philippine society. Under the leadership of Manuel L. Quezon, it ended the official recognition of the civil title held by the Moros based on their traditional social system. It also abolished the Administrative Code for Mindanao, which exempted the Moros from some national laws that were in deference to their belief system, and the Moro Board, which was tasked to settle Moro disputes according to Islamic and traditional laws.⁶⁴ Apparently,

[h]e (Quezon) was unaware that the Muslims had their own cherished code of ethics and system of laws that governed virtually every aspect of their lives. He failed to realize that the national laws,

⁶¹ Peter G. Gowing, *Muslim - American Relations in the Philippines*, 6 *ASIAN STUDIES* 372 - 382 (1963).

⁶² SALAH JUBAIR, *A NATION UNDER ENDLESS TYRANNY* 79 (1997) [hereinafter JUBAIR].

⁶³ *Id.*, at 80.

⁶⁴ W.K. CHE MAN, *MUSLIM SEPARATISM: THE MOROS OF THE PHILIPPINES AND THE MALAYS OF SOUTHERN THAILAND* 55 (1990) [hereinafter CHE MAN].

which were enacted without representation of the Muslim constituency, upheld standards from Christian ethics and Western social history.

Integration was also carried out through resettlement of Christian Filipinos from Visayas and Luzon. On February 12, 1935, the government enacted the "Quirino-Recto Colonization⁶⁵ Act," which marked the beginning of a vigorous effort to open and colonize Mindanao. The following year, Quezon signed into law Commonwealth Act No. 141 which declared all Moro ancestral lands as public lands. By a simple piece of legislation, the Moros became landless. Under this Act, a Moro would only apply for a piece of land not exceeding 4 hectares while a Christian was entitled to own as much as 24 hectares, and a corporation wholly owned by non-Moros was permitted to own 1,024 hectares. In 1939, Commonwealth Act No. 441 creating the National Land Settlement Administration was signed into law. This Act further opened the Moro areas to Christians from Luzon.⁶⁷ The Commonwealth government's policy was, in essence, exploitation of Moroland⁶⁸ for the benefit of Christian settlers and business.⁶⁹ Clearly, the colonized were now acting as colonizers.

2. The Philippine Republic

"The Christian Filipinos have no right... to determine the government of the Moro people nor to shape the solution of the Moro problem according to their particular interests. This right was not given to them by the Treaty of Paris, is in violation of the conditions whereby the Moro leaders gave... obedience to American authority, and should never be conceded by the Congress of the United States. If a reversionary right of these southern islands...exists in anyone, it is the Moro and not the...Christian Filipino who is entitled hereto."⁷⁰
U.S. Congressman Bacon

⁶⁵ MAJUL, *supra* note 8, at 25.

⁶⁶ The terminology of the law clearly indicated how the Christian Filipinos viewed themselves in relation to the Moros and how they viewed the Moros in turn.

⁶⁷ JUBAIR, *supra* note 62, at 82 - 84.

⁶⁸ A term coined by Dr. Peter Gowing in his book *Mandate in Moroland* to refer to the Sulu Archipelago and a large part of Mindanao occupied by the Moros.

⁶⁹ CHE MAN, *supra* note 64, at 55.

⁷⁰ ABDURASAD ASANI, MOROS NOT FILIPINOS 10 (1992).

With the declaration of Philippine independence on 4 July 1946⁷¹, the United States officially annexed Mindanao and Sulu into the territory of the Philippines. The Moros were never given the right to national self-determination nor to vote on the issue through a referendum. The integration policies of the previous colonizers were continued such that in 1957 the Philippine government created the Commission on National Integration. It continued to enact laws that failed to take into consideration the legal system of the Moros.⁷²

The Philippine government was not only imposing new laws and a new culture but was also continually occupying Moro lands with such rapidity that by 1960, 77 percent of the population of Mindanao were non-Moros.⁷³ In its policy of resettlement, the Philippine government failed to consider the Moro sentiments. For the Moros, land was a communal property given in trust (*amanah*) by Allah. They could not understand why a piece of land that had been with the community for many generations had suddenly become the property of a Christian settler. As a result, many Moros were dispossessed of their land and this gave the community a pervading persecution complex. According to Dr. T.J.S. George, this 'was the single most important factor behind the Muslim unrest which was to spawn an insurrectionary movement in the Marcos era.'⁷⁴

In 1961, the call for Muslim independence was heard again when Congressman Ombra Amilbangsa of Sulu introduced a bill to the Philippine Congress asking for the independence of Muslim Mindanao and Sulu. Nothing came of the bill, but the yearning for independence was clearly still alive.⁷⁵ It would surface again a few years later, and Christians and Muslims would once more take up arms against each other in Mindanao and Sulu.⁷⁶

⁷¹ President Diosdado Macapagal, in a gesture of protest to the refusal of the United States to extend much-needed foreign aid, decided in the middle of the 1960s to revert to the original Declaration of Philippine Independence by Gen. Emilio Aguinaldo on June 12, 1898 at Kawit, Cavite.

⁷² JUBAIR, *supra* note 62, at 95 - 103.

⁷³ According to MNLF Chairman Nur Misuari, "[w]hat cannot be denied is the fact that through the decades, Filipino Christian domination, after having arbitrarily annexed the Bangsa Moro people's homeland as part of the Philippines and inheriting the evils of its Spanish and American predecessors, has systematically but subtly pursued craftily devised policies of dispersal through the settlers, of assimilation under the cloak of integration, and conversion through the proliferation of cultural, educational and religious institutions with evangelization motives. These policies have become the unwritten code of laws of Filipino colonialism *vis-à-vis* the Bangsa Moro people.

⁷⁴ T.J.S. GEORGE, REVOLT IN MINDANAO: THE RISE OF ISLAM IN THE PHILIPPINE POLITICS 107 (1980) [hereinafter GEORGE].

⁷⁵ Nur Misuari, *The Rise and Fall of Moro Statehood*, 6 PHILIPPINE DEVELOPMENT FORUM 1, 14 (1992) [hereinafter Misuari, *The Rise*].

⁷⁶ JUBAIR, *supra* note 62, at 102.

In March 1968, newspaper headlines screamed of a massacre by Philippine Army men of between 28 to 64 Moro youths who were part of 180 alleged trainees of the Jabidah Forces. The trainees were supposedly part of a secret Marcos scheme to split Islamic ranks and provoke a war between Sulu and Sabah, allowing the government to invade and reclaim Sabah. The lone survivor of the killing explained that the trainees were shot because they refused to attack Sabah and the army feared a leakage of the plan.⁷⁷ The massacre roused the Moros into fiercer opposition of the Philippine government and aroused the attention of the international Islamic community.⁷⁸

The Jabidah Massacre⁷⁹ gave birth to the contemporary movements that brought forth a re-emerging sense of Islamic identity to the Muslims of Mindanao and Sulu. In May 1968, Datu Udtug Matalam announced the formation of the Muslim Independence Movement, later renamed Mindanao Independence Movement, whose original goal was the creation of an Islamic State in Mindanao and Sulu.⁸⁰ Later, the Moro National Liberation Front (MNLF) was organized under the leadership of Nur Misuari, a Tausug, Abul Khayr Alonto, a Maranao, and Hashim Salamat, a Maguindanaon representing the three major Muslim groups in the Philippines. The purpose of the MNLF was the creation of an independent *Bangsamoro* State. This demand was later softened to autonomy upon the insistence of the Organization of Islamic Conference (OIC).⁸¹ With the support of Islamic states, the MNLF started its armed struggle in 1972 and eventually came to be recognized as the representative of the Moro people, with observer status in the 64 countries of the OIC.⁸²

⁷⁷ Misuari, *The Rise*, *supra* note 75, at 16.

⁷⁸ GEORGE, *supra* note 74, at 122 – 128.

⁷⁹ Until the establishment of the MNLF, the Jabidah Massacre was followed by 23 other incidents of killings perpetrated by the Christian *Ilagas* with the assistance and cooperation of the Armed Forces of the Philippines. Among the worst of these massacres were the Manili Massacre, where 70 Muslims were killed and 17 wounded while inside the mosque, and the Tacub Massacre, where Philippine Army soldiers led by a certain Lt. Marquez massacred a convoy of 200 Muslims. See Misuari, *The Rise*, *supra* note 75, at 16.

⁸⁰ Misuari, *The Rise*, *supra* note 75, at 133.

⁸¹ In May 1974, the Fifth Islamic Foreign Ministers' Conference, meeting in Kuala Lumpur, urged the Philippine government and the MNLF to begin negotiations in order to arrive at a "just solution to the plight of the Filipino Muslims within the framework of the national sovereignty and territorial integrity of the Philippines." This stance of the OIC compromised the MNLF stance for independence. In the words of Chairman Nur Misuari, "We cannot avoid listening to the advice of our Muslim brothers in the world. The OIC went to the extent of passing a resolution in 1974 in Kuala Lumpur and we had to face a very serious dilemma – to accept or not to accept the resolution. Had we decided to turn down the resolution, they would not have allowed us to become an observer."

⁸² Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 20, 1999).

The success of the MNLF in the war front coupled with the threat of an oil embargo from the Muslim countries forced Marcos to the negotiating table. By December 1976, the Tripoli Agreement⁸³ was signed setting forth principles (subject to negotiations on details) for a genuine autonomy for the Muslims in 13 provinces of Mindanao and Sulu. Marcos, however, unilaterally implemented his own version of autonomy, effectively renegeing on his commitment.⁸⁴ In order to soothe the Moros' disenchantment, the Marcos government paid attention to the Islamic sensibilities of the Muslims by such actions as officially recognizing Muslim holidays, promulgating a code of Muslim personal laws (Presidential Decree No. 1083)⁸⁵, and creating the Philippine Amanah Bank to meet the special banking needs of Muslims. Other actions include a setting up institutes of Islamic studies at two state universities, constructing a mosque in the heart of downtown Manila, appointing Muslims to government posts at all levels, regularizing the *hajj* (the annual pilgrimage to Mecca), and establishing the Ministry of Muslims Affairs.⁸⁶ Even so, many Moros regarded all this as "aspirin for the Moro headache." They said nothing substantial was done to restructure the relationship of the Muslim population with the Philippine body politic; that the regional governments were a farce; and that the development projects were insufficient and far behind those in the Christian areas of Mindanao.⁸⁷

⁸³ Agreement between the Government of the Republic of the Philippines and Moro National Liberation Front with the Participation of the Quadripartite Ministerial Commission Members of the Islamic Conference and the Secretary General of the Organization of Islamic Conference, 23 December 1976 ('Tripoli Agreement').

⁸⁴ Peter G. Gowing, *Religion and Regional Cooperation: The Mindanao Problem and ASEAN*, 4 JOURNAL INSTITUTE OF MUSLIM MINORITY AFFAIRS 17 (No. 1 & 2, 1982) [hereinafter Gowing, *Religion*].

According to Gowing, "by the time negotiations on the details of implementing the Tripoli Agreement were begun on February 1977, it was obvious that the Philippine government was having second thoughts about some of the provisions as different sectors of the national society roundly criticized the agreement when parts of it were made public. The government then undertook to circumvent the spirit of the agreement by insisting on interpretations of its provisions in ways the MNLF could only repudiate. For example, while insisting that it was implementing the agreement, the government in March 1977 unilaterally established two so-called "autonomous regions" in the South and the following month conducted a "referendum-plebiscite" on the organization of those regions which was mainly programmed to be rejected by the large Christian population and many Muslims in the 13 provinces concerned." The MNLF boycotted the referendum, arguing that the exercise was not mandated in the Tripoli Agreement.

⁸⁵ Some provisions of this law have been criticized as being 'un-Islamic.' See Haron A. Pangcoga, *Some Un-Islamic Provisions of the Code of Muslim Personal Laws of the Philippines: A Critique*, MINDANAO ISLAMIC JOURNAL 130-46 (1991).

⁸⁶ Gowing, *Religion*, *supra* note 84, at 17.

⁸⁷ *Id.*

During the negotiations of the Tripoli Agreement, the MNLF was wracked with dissension. The larger faction stuck to the leadership of Nur Misuari, while a smaller faction followed Salamat Hashim, and an even smaller group, calling itself the *Bangsa Moro* Liberation Organization (BMLO), rallied around former Congressman Rashid Lucman.⁸⁸ In March 1984, the Salamat Hashim faction formally declared the establishment of the separate organization called the Moro Islamic Liberation Front (MILF) while the BMLO went into oblivion.

After the overthrow of Marcos, the Philippine government under Corazon Aquino again sought to fulfill its commitment to the Tripoli Agreement and grant autonomy to the Moros.⁸⁹ After a hopeful start in the negotiations, the Aquino government wanted to do it in accordance with its unilateral resolution. Under the principle of national integrity, the government pushed for the ratification of a new Philippine Constitution - which provided for the creation of an autonomous region in Muslim Mindanao. This was contrary to the MNLF's demand for full implementation of the Tripoli Agreement. Later, Congress enacted Republic Act No. 6734, the Organic Act for Muslim Mindanao. This was submitted for ratification to the people of the thirteen provinces and nine cities. As the campaign raged, the MNLF and the MILF were noncommittal but watched silently in the background.⁹⁰

⁸⁸ Gowing, *Religion*, *supra* note 84, at 17.

⁸⁹ The expectations of many Muslims was that Corazon Aquino would follow her husband's general principles regarding the Muslims. Benigno 'Ninoy' Aquino had been one of those responsible for exposing the Jabidah massacre. According to Dr. Majul, Aquino, on his own initiative, went to Damascus, Syria in July 1980 to convince Misuari to resume talks with the government on the Tripoli Agreement, but without success. In May 1981, he went to Jeddah to try and convince the MNLF once again to resume talks. Realizing that friction between Misuari and Lucman prevented the Muslims from presenting a coordinated stand before the government, Aquino tried to effect some understanding between them. He even wanted to get Hashim Salamat into the picture but Salamat was not available. In a talk before the faculty and students at *Abdul Aziz University* in Jeddah, Aquino outlined his programs for Muslims: a genuine autonomy under the Tripoli Agreement, implementation of Islamic law and education, a security force under the region's control, a massive economic program with a well-considered budgetary allocation to reduce the income gap between the Muslims and the rest of the population by the year 2000. The following July he returned to Saudi Arabia and had an audience with King Khaled from whom he requested greater Saudi involvement in getting the MNLF to resume talks with the Philippine government. In spite of what he considered to be Misuari's rigidity, Aquino had many fine words for him. They kept occasional contact up to a few weeks before Aquino's assassination in Manila on 21 August 1983. These contacts were later renewed by Agapito 'Butz' Aquino, a brother of the late Senator.

According to MNLF Chairman Nur Misuari, Ninoy came to see him in the Middle East on several occasions and initially offered autonomy but later recognized the Moros' right to self-determination and independence.

⁹⁰ ROSALITA TOLIBAS-NUNEZ, *ROOTS OF CONFLICT: MUSLIMS, CHRISTIANS, AND THE MINDANAO STRUGGLE 24-25* (1997) [hereinafter NUNEZ].

Only four provinces ratified the Organic Act.⁹¹ The MNLF and MILF rejected the result of the plebiscite and declared to continue the armed struggle. For them, it failed to conform with the provisions stipulated in the Tripoli Agreement, notably the coverage of 13 provinces instead of only four.⁹²

The administration of Fidel Ramos started with a move to resolve the problem in Mindanao. In his inaugural address, he called for the peaceful resolution of conflicts within the Philippines. Consequently, talks with the MNLF began anew. The MNLF stated that the framework for negotiation would be the 1976 Tripoli Agreement. On September 2, 1996, the talks finally came to a close with the signing of the Final Peace Agreement⁹³ in Malacanang Palace. The agreement formally ended MNLF armed struggle in Mindanao and Sulu that had lasted for 30 years.⁹⁴

The agreement was supposed to be a transitional mechanism for the full implementation of the Tripoli Agreement. It did not take long, however, before the Moros' optimism for peace and autonomy was doused. The Philippine government was, and still is, unable, to comply with its commitments.⁹⁵ History repeated itself. *And the fight goes on...*

3. Analysis

We [Moros and Filipinos] are two different peoples adhering to different ideologies, having different cultures, and nurtured by different historical experiences.

The Political Thought of
Salamat Hashim⁹⁶

⁹¹ The four provinces are Sulu, Lanao del Sur, Tawi-Tawi and Maguindanao.

⁹² Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 20, 1999).

⁹³ The Final Agreement on the Implementation of the 1976 Tripoli Agreement between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF) with the Participation of the Organization of Islamic Conference Ministerial Committee of the Six and the Secretary General of the Organization of the Islamic Conference, Manila, 2 September 1996.

⁹⁴ NUNEZ, *supra* note 90, at 26 -27.

⁹⁵ Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 20, 1999).

⁹⁶ Abhoud Syed Mansur Lingga, *The Political Thought of Salamat Hashim* (1995) (unpublished thesis, University of the Philippines) (on file with Institute of Islamic Studies) [hereinafter Lingga].

Understandably, the Moros have responded in different ways to having to live within a "foreign" Philippine political structure. A few have accepted the situation and found roles in the Philippine community, some even holding government positions. Most, however, are still averse to what they view as Christian political power over their land.

As they opposed initial integration sponsored by Spain and the United States, the Muslims now resist the integration policy of the Philippine Republic. This policy is obviously based not only on the premise that the Muslim South is part of the Philippine territory, a notion refuted by historical facts, but on the premise that the chief distinction between the Muslim and Christian Filipinos is that the former are relatively backwards and, due to historical misfortune, bereft of the cultural enlightenment enjoyed by the Christian North. It does not help that the Philippine government, from their Christian Filipino point of view, continues to make laws and policies based on its erroneous assumptions of what the Muslim community "needs", utterly neglecting to give more than a superficial look at the Muslim culture to see the complex religious and cultural differences between Islam and Christianity. If it did, it would see that its integration of Muslim Mindanao, which is tantamount to assimilation, is something completely unacceptable to the majority of Muslims. Secular though it may seem to the Philippine government, the Muslim mind obviously cannot view integration in such a simplistic manner.

Admittedly, a number of Muslims have begun to see themselves as part of the larger Filipino nation. However, a greater majority of the Moros, principally in the rural areas, still do not see themselves as citizens of the Philippines the way Filipinos in the North do. They view themselves, first and foremost, as members of their local Muslim communities and, consequently, citizens of the larger Islamic world. The Philippines, to them, has taken the image of a foreign power that seeks to take Muslim lands and draw the Muslims away from their faith.⁹⁷

The Muslim Filipinos and Christian Filipinos are divided not only by origins but by culture, orientation, aspirations, beliefs and language. Christians are oriented toward the West and the English-speaking countries while the Muslims are rooted in the Islamic civilizations and the Arabic tongue. Even as the Philippine government prioritizes trade, militarization, technological advancement and the like, Muslims strive to deepen their Islamic consciousness by building more Islamic schools and public places of worship, inviting more religious teachers into their communities and making the *hajj* to Mecca. It is easy to see why the Moros view themselves as belonging to a completely different world from that of the rest of the Philippines.⁹⁸

⁹⁷ Peter Gowing, *Christian and the Moros*, *supra* note 31, at 80 - 98. The same was emphatically expressed by MNLF Chairman Nur Misuari.

⁹⁸ *Id.* at 95.

III. ISLAM AND THE PRACTICE OF RELIGION

This day have I perfected your religion for you; completed my favour upon you, and chosen for you Islam as a religion.

Holy Qur'an 3:5

The word Islam is derived from the Arabic root *sa-la-ma*, which means peace. In the religious sense of the word, Islam means complete submission and obedience to the Will of God or *Allah* (Arabic for The God, *Ilah* for God) through obedience of His Law.⁹⁹ Sovereignty belongs to Allah and no law is worthy of obedience except that which conforms to His Law.¹⁰⁰

A Muslim, therefore, is one who submits to the Will of God. With this submission, the Muslim is able to make peace between himself and his fellow men on one hand, and between the human community and God on the other.¹⁰¹ This submission is an ideal for every Muslim. It is a submission that is defined by *Allah* through the two primary sources of *Shari'ah* or Islamic Law - the *Qur'an* and the *Sunnah* or the Way of the Prophet Muhammad (S.A.W.).¹⁰² According to Islam, all aspects of man's life is governed by *Shari'ah* which is described as the embodiment of Allah's Will. The *Shari'ah* provides for regulations regarding ritual prayers, moral behavior, beliefs, and for dealings covering the organization of the relations of individuals among themselves whether as individuals or as a community.¹⁰³ Thus, a Muslim's practice of religion encompasses all aspects of his life.

Consequently, the injunctions of *Shari'ah* also cover the Muslim community which is instrumental in ensuring the individual's right to practice religion. The community bears the responsibility of implementing the regulations of the *Shari'ah* and ensuring that it conducts its affairs in accordance with Allah's Will.¹⁰⁴ In Islam, the purpose of the individual and the community is the same - the execution and enforcement of Allah's Will.¹⁰⁵

⁹⁹ HAMMIDULLAH ABDALATI, *ISLAM IN FOCUS* 7 (1977) [hereinafter ABDALATI].

¹⁰⁰ ABU'ALA MAUDUDI, *ISLAMIC LAW AND CONSTITUTION* 145 (1986) [hereinafter MAUDUDI]. See also the HOLY QUR'AN 3:26; 3:154; 3:189; 5:44; 5:120; 12:40; 16:116; 57:2; and 64:1.

¹⁰¹ ABDALATI, *supra* note 99, at 9.

¹⁰² ABDUR RAHMAN I. DOI, *SHARI'AH: THE ISLAMIC LAW* 21-58 (1984) [hereinafter DOI].

¹⁰³ ABDUL KARIM ZAIDAN, *INDIVIDUAL AND THE STATE*, 1 (1982) [hereinafter ZAIDAN]

¹⁰⁴ *Id.* at 19 - 20.

¹⁰⁵ MAUDUDI, *supra* note 100, at 161.

Islam is not merely a religion but a total and unified way of life¹⁰⁶, hence, there is no distinction between the religious and the secular. It is a way of life that binds the individual and the community. As such, it has been said that, "it is a way of worship, a vast and integrated system of law; it is a culture and a civilization; it is an economic system and a way of doing business; it is a policy and a method of government. It is a spiritual and human totality, this-worldly and other-worldly."¹⁰⁷ Thus, there can be no separation of Church and State, religion and politics. In the same manner that Prophet Muhammad (S.A.W.) was not only a prophet but also a ruler. The true practice of religion in Islam, therefore, is not confined to ritual but encompasses all aspects of life.

For the minority Muslim Filipinos, however, practice of religion becomes merely a ritual. Although the 1987 Constitution has provided for an Autonomous Region in Muslim Mindanao in recognition of their "distinctive historical and cultural heritage," the same is subject to the provisions of the constitution and national laws.¹⁰⁸ Thus, the Muslims are bound by the constitutional proscription of separation of the religious from the secular, and forced to recognize that sovereignty is with the people. Some of their ritual practices are even constrained. A good example is that of the Muslim student or employee who is unable to fulfill the Islamic injunction of praying five times a day and observing the prescribed prayer and rest on Fridays¹⁰⁹. If he is not within the predominantly Muslim areas, he is unable to enjoy the holy days of Islam without presidential

¹⁰⁶ MNLF Chairman Nur Misuari describes Islam as a total system of existence.

¹⁰⁷ WILLIAM JANSEN, *MILITANT ISLAM* 17 (1979).

¹⁰⁸ 1987 PHIL. CONST., art. 10, §§ 15 and 20.

¹⁰⁹ According to Professor Yoram Dinstein, "Legislation in an overwhelmingly Christian country pertaining to a weekly day of rest must take into account the religious practices of Jewish and Muslim minorities. Otherwise, it would amount to *de facto* discrimination," in YORAM DINSTEIN, *THE PROTECTION OF MINORITIES AND HUMAN RIGHTS* (1992)

proclamation.¹¹⁰ The banking practices of financial institutions in the country contradict the principles of Islamic banking. Muslims working or studying in establishments such as government and private institution are put in a predicament in the observance of their five times a day prayer and having to practice *Ramadan*¹¹¹, as these institutions do not have policies that ensure full liberty for their practice, especially in non-Muslim areas. The minority Muslim Filipinos are subjected to laws that do not conform or are contrary to the laws of their religion, the most notable of which is the constitutional doctrine that declares the people's sovereignty when his religion teaches him that sovereignty belongs to Allah alone.

¹¹⁰ Presidential Decree No. 1083(Code of Muslim Personal Laws of the Philippines)

Book Five

Title 1. Muslim Holidays

Art. 169. Official Muslim Holidays.

The following are hereby recognized as legal Muslim holidays: a. *'Amun Jadid* (New Year), which falls on the first day of the first lunar month of *Muharram*; b. *Maulud-un-Nabi* (Birthday of the Prophet Muhammad), which falls on the twelfth day of the third lunar month of *Rabi-ul-Awwal*; c. *Lailatul Isra Wal Mi'raj* (Nocturnal Journey and Ascension of the Prophet Muhammad), which falls on the twenty-seventh day of the seventh lunar month of *Rajab* d. *Id-ul-Fitr* (Hari Raya Puasa), which falls on the first day of the tenth lunar month of *Shawwal* commemorating the end of the fasting season; and e. *Id-ul-Adha* (Hari Raya Haji), which falls on the tenth day of the twelfth lunar month of *Dhu'l-Hijja*.

Art. 170. Provinces and Cities Where Officially Observed.

(1) Muslim holidays shall be officially observed in the Provinces of Basilan, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur, and in the cities of Cotabato, Iligan, Marawi, Pagadian, and Zamboanga and in such other Muslim provinces and cities as may hereafter created.

(2) Upon proclamation by the President of the Philippines, Muslim holidays may also be officially observed in other provinces and cities.

Art. 171. Dates of Observance. ¶ The dates of Muslim holidays shall be determined by the Office of the President of the Philippines in accordance with the Muslim Lunar Calendar (*Hijra*).

Art. 172. Observance by Muslim Employees.

(1) All Muslim government officials and employees in places other than those enumerated under Article 170 shall be excused from reporting to office in order that they may be able to observe Muslim holidays.

(2) The President of the Philippines may, by proclamation, require private offices, agencies or establishments to excuse their Muslim employees from reporting for work during a Muslim holiday without reduction of their usual compensation.

¹¹¹ The five times a day prayer is the second pillar of Islam while fasting during Ramadan is the fourth pillar.

For a better understanding of the practice of religion in Islam, some fundamental concepts must be explained. These concepts are interrelated in such a way that one cannot stand without the other.

A. Concept of Tawhid

Your God is One God: There is no God but He, Most Gracious,
Most Merciful.

Holy Qur'an 2:163

He is Allah, the One. Allah, the Eternal, the Absolute, He
begetteth not nor is He begotten. And there is none like unto Him.

Holy Qur'an 112:1-4

The quintessence and foundation of Islam is *Tawhid*.¹¹² The word *Tawhid* is rooted in the word *wahada* or *wahid*, which in Arabic means one. *Tawhid* itself denotes the unity of Allah or his Oneness. It is the affirmation of the first pillar of Islam, the *shahada* – *La illaha illa Allah* –, which means that Allah alone is to be worshipped.¹¹³ Islam is strictly monotheistic; divinity is ascribed neither to man nor to the universe and worship is accorded to none other than Allah. *Tawhid* refers to the existence, oneness, and uniqueness of Allah, the Creator; the unity and equality of man; and the concept that man, as the vicegerent and custodian (*khalifah*) of Allah on earth, should rule in conformity to Allah's will.¹¹⁴ It is the unity and equality that culminates in Allah.

Tawhid is the visualization of human life as a direct relationship between the transcendent Creator and His creation, in which life is seen as a test of excellence and worth. This puts the final responsibility and initiative on the human individual of society. It leaves no room for man-made divisions based on distinctions of color, language, or wealth in determining the quality of human relationships or the worthiness of an individual. *Tawhid* lays the foundation for a human society built on the responsibility of each human being as Allah's *khalifah* or vicegerent, where superiority and eminence is reserved exclusively for Allah. Differences in human life and society pertain to function and performance, not to quality. The concept of *Tawhid* gives society as well as individuals the freedom of destiny and self-determination. It is also the basis for Muslim tolerance towards non-Muslims.¹¹⁵

¹¹² ISMAIL RAJI al FARUQI, *TAWHID: ITS RELEVANCE FOR THOUGHT AND LIFE* 18 (1983).

¹¹³ ABU AMEENAH BILAL PHILIP, *THE FUNDAMENTALS OF TAWHID (ISLAMIC MONOTHEISM)* 1 (1990) [hereinafter PHILIP]. See also SHAYKH MUHAMMAD IBN 'ABD AL WAHHAB, *KITAB AL TAWHID: ESSAY ON THE UNICITY OF ALLAH' OR WHAT IS DUE TO ALLAH FROM HIS CREATURES* (1979).

¹¹⁴ ABDULHAMID A. ABUSULAYMAN, *TOWARDS AN ISLAMIC THEORY OF INTERNATIONAL RELATIONS: NEW METHODOLOGY AND THOUGHT* 128 – 129 (1993).

¹¹⁵ *Id.* at 129.

Tawhid was the object of the prophethood of Muhammad (S.A.W.). In the worship of Allah, he sought to establish the fundamental unity of mankind on the basis of equality and liberty. It was a message of human equality in social status and legal rights.¹¹⁶

Allah's oneness or *Tawhid* is crucial to the self-perception of the Muslim as a servant of Allah. Oneness allows the Muslim to comprehend his God without defying logic. The concept of God as one is unambiguous; no partners are bestowed to Allah. This strict monotheism disallows the Muslim to worship any one other than Allah, whether they are prophets, deities of other religions, political leaders, money, or a nation-state.¹¹⁷ *Tawhid* is thus the unification of the three basic elements of Islamic metaphysics: the unity of purpose of God, humankind, and the universe. The universe was created for the service of mankind, and mankind was created for the service of God and the ends Allah has ordained in the *Qur'an*.

It is through *Tawhid* that Muslims commit to and practice their worship of and obedience to Allah. It bestows unto itself the principles that govern all aspects of human life and the basis for conducting the individual and collective affairs of the Muslims. To further clarify such a statement, it is important to note that worship in Islam is not confined to rituals like prayer or the pilgrimage to *Makkah*. Worship or *Ibadah* is what ideally constitutes the Muslim life. Everything should be a form of worship, whether it be an academic undertaking, banking or governance.

According to Moro Islamic leader Salamat Hashim, Allah has provided the system for the affairs of men:

"[T]hat through the Prophet (peace be upon him) Allah sent complete guidance for mankind and the *Shari'ah* (law); that he was ordained by God to apply such guidance and laws in his daily life as an example and pattern for Muslims to follow, and that we accept without reservation all the teachings and guidance of Prophet Muhammad (peace be upon him)."¹¹⁸

He asserts further that *Tawhid* means recognition of Allah as the absolute Law-Giver. "No authority on earth can pass laws contrary to the laws handed down by Allah through His Prophet (peace be upon him)."¹¹⁹

In Islamic political thought, the belief in *Tawhid* and the sovereignty of Allah is the foundation of the social and moral system of the Islamic community.

¹¹⁶ DR. M. AZIZ AHMAD, *IQBAL AS A THINKER* 233 (1990) [hereinafter AHMAD].

¹¹⁷ PHILIP, *supra* note 113, at 284.

¹¹⁸ SALAMAT HASHIM, *THE BANGSAMORO MUJAHID* 53 (1985).

¹¹⁹ *Id.*, at 52. See also ABU'ALA MAUDUDI, *ISLAMIC LAW AND CONSTITUTION* 184 (1986).

The basic principle in Islam is that the Muslim individual and community must surrender all rights of legislation and exercise of authority over others. No one is allowed to pass laws and make commands in his own right; and no one must obey such laws or commands.¹²⁰

The concept of *Tawhid* has numerous implications on Muslim life. First, it allows man a direct relationship with God without mediation. This is by virtue of the equality that naturally follows from the oneness of God as explained in the second implication. Second, it allows true brotherhood among mankind because of the existence of only one creator – nobody was created by beings other than Allah who might claim superiority or inferiority, whether they be of different religion or not. This allows Muslims to identify with the rest of humanity as the creation of Allah and not to appoint themselves as chosen ones. Third, it affects the conduct of man's affairs by disallowing the abuse of the environment and man-made institutions, including man himself and his government, not for the sake of economic gain but mastery of nature or *Istikhlaf* in order to serve Allah. Fourth, by virtue of the above reasons, harmony naturally results between God and his creation, and between His creatures themselves, *salama*, the root word of Islam, or peace being an appropriate name to the order that it creates.¹²¹ Thus, Muslim life is one of jihad (meaning, "to strive") for peace by living out the straight path of the Islamic way of life and not any other way.

B. Concept of Din and Ibadah

And now We have set thee in the Right Way of Religion (*Din*);
So follow thou that Way, and follow not the whims of those who
know not.

Holy Qur'an, 45:18

That is Allah, your Lord! There is no god but He, the Creator of
all things. Then worship (*Ibadah*) ye Him: And He hath power to
dispose of all affairs.

Holy Qur'an, 6:102

In Islam, the word "religion" does not have the same connotation as the word "religion" has for other faiths. The Islamic term for "religion" is *Din*, originally Arabic but adopted in all the many languages of Islam. The cognate word in other Semitic languages, notably Hebrew and Aramaic, means law. *Din* is more accurately defined by the phrase 'way of life'. *Din* is the way of life prescribed by Allah in the *Qur'an* and *Sunnah*. It sets the boundaries within which one may maintain one's humanity; within the very purpose God had

¹²⁰ MAUDUDI, *supra* note 100, at 145.

¹²¹ Interview with Walid Abubakar, Ustadz from Damascus University, in Zamboanga (2 June 1999).

¹²² BERNARD LEWIS, *ISLAM AND THE WEST* 3 (1993) [hereinafter LEWIS].

created humankind. *Din* is the regulator of the relationship of man with Allah and his relationship with the universe; it is the application of *Tawhid* as a concept in man's life.

Worship or *Ibadah* is what ideally constitutes the Muslims' life. It is the way he lives out *Din*. It is

the innermost purpose of the creation of all rational beings is their cognition of the existence of God and, hence, their conscious willingness to conform their own existence to whatever they perceive of His will and plan; and it is this two-fold concept of cognition and willingness that gives the deepest meaning to what the *Qur'an* describes as "Worship" (*Ibadah*).¹²³

In Islam, everything is a form of worship, whether it is an academic undertaking, banking or governance. *Ibadah* does not merely mean ritual or any special form of prayer. It means a life of continuous service and rendering obedience like the life of a slave in relation to his Lord.¹²⁴ One eminent Islamic philosopher described its implications as:

To wait upon a person in service, to fold one's hand in reverence to him, to bow down one's head in acknowledgment of his elevated position, to exert oneself in obedience to his commands, to carry out his orders and cheerfully submit to all the toil and discipline involved therein and humble oneself in the presence of the master, to offer what he demands, to obey what he commands, to set one's faith steadily against the causes of his displeasure, and sacrifice even one's life when such is his pleasure.¹²⁵

It is not limited to the performance of prayer, fasting, pilgrimage or giving of *zakat*, although these are the basic requirements of Islam, but includes man's political affairs, business transactions, social relations, education, culture and all the other aspects of life. All these have to be pursued in accordance with the system provided by Allah. A Muslim may be able to perform his prayer perfectly and observe the rules of fasting, but if the political authority to which he owes obedience and allegiance does not recognize the supremacy of *Shari'ah*, he has not perfected his *Ibadah*.¹²⁶

The perfection of *Ibadah*, in a general sense, demands that a person fashion his life, all his utterances, actions, dispositions, and his relations with the people

¹²³ KAMAL HASAN, *VALUES EDUCATION FOR MUSLIM MINDANAO* 41 (1989).

¹²⁴ MAUDUDI, *supra* note 100, at 136.

¹²⁵ *Id.*

¹²⁶ Lingga, *supra* note 96, at 36.

in accordance with *Shari'ah*.¹²⁷ According to the *Shari'ah*, it is the primary duty of the Muslim to command good and forbid evil. It is not enough to do good and refrain from evil as a personal choice. It is incumbent upon Muslims also to command and forbid – that is, to exercise authority. The same principle is applied in general to the *Shari'ah*, which must be not only obeyed but also enforced.¹²⁸ Only in the exercise of authority and the enforcement of the *Shari'ah* can the Muslim organize the society in a way that facilitates perfection of his *Ibadah*.

In Islam, the principle of unity as embodied in *Tawhid* permeates the life of the individual and the community. As stressed in the above discussion, there is no compartmentalization of religious and secular in Islam. Religion or *Din* is a way of life that covers all its aspects and is manifested in the *Ibadah* of both the individual and the community. As such, in Islam, there is the concept of *Din wa Dawla* or unity of religion and politics. This, again, is the antithesis of the principle of separation of church and state.

C. The Concept of Al-Shari'ah

To thee (Muhammad S.A.W.) We sent the Book (this *Qur'an*) in truth, confirming the Scripture that came before it, and guarding it in safety. So judge among them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. To you, We have prescribed a law and a clear Way.

Holy Qur'an, 5:48

Al-Shari'ah literally means "the Way to a watering place."¹²⁹ It is the path not only leading to Allah but the path believed by all Muslims to be the one shown by Allah through Prophet Muhammad (S.A.W.).¹³⁰ In its technical sense, *Shari'ah* is Islamic law and the embodiment of the Divine Will.¹³¹ It is the totality of God's commands that regulates every aspect of each Muslim's life.¹³² One Islamic scholar provides a simple account of the roots of *Shari'ah*:

Shari'ah law was historically developed by Muslim jurists by applying human reasoning to revealed texts with the aim to develop a normative system capable of regulating individual actions and social interaction. Early jurists relied primarily on the *Qur'an* and the practices of the Prophet to elaborate the rules of *Shari'ah*, and

¹²⁷ ZAIDAN, *supra* note 103, at 3-4.

¹²⁸ LEWIS, *supra* note 122, at 53.

¹²⁹ ABDUR RAHMAN I. DOI, *SHARI'AH: THE ISLAMIC LAW* 2 (1984) [hereinafter DOI].

¹³⁰ *Id.*

¹³¹ DOI, *supra* note 129, at 2.

¹³² Jainal Rasul Jr., *Muslim Personal Law and Its Incorporation into the Philippine Legal System: A Constitutional Perspective* 49, PHIL. L. J. 391 (1984).

referred to the process through which *Shari'ah* rules were elaborated by the term *ijtihad* (creative reasoning effort).¹³³

Shari'ah is the revealed Will of God, "a divinely ordered system preceding and not preceded by the Muslim state, controlling and not controlled by Muslim society."¹³⁴ It has the character of a religious obligation to be fulfilled by the Muslim.¹³⁵ The law primarily takes into consideration the interests of the community; the personal interests of the individual are protected only in so far as they conform to the common interest of Islam.¹³⁶

Shari'ah is what regulates the relationship among human beings themselves and between human beings and the environment.¹³⁷ The main objective of *Shari'ah* is to construct human life on the basis of *Marufat* (virtues) and to cleanse it of the *Munkarat* (vices).¹³⁸ It provides the standards of right conduct and guidance not only in establishing a well-ordered society, but also in distinguishing between "good" and "evil."¹³⁹ It safeguards the rights of everyone and ensures the welfare of humanity. It is eternal and immutable yet contains principles broad enough to meet the growing needs of society.¹⁴⁰ It is an organic whole, parts of which cannot be treated in isolation from one another. Consequently, to function successfully, *Shari'ah* must be put into application in its complete character. Its worth cannot be judged by adopting only a part of it or some injunctions to the exclusions of others.¹⁴¹

¹³³ LOUAY SAFI, *ISLAM AND HUMAN RIGHTS: THE IMPERATIVE OF LEGAL REFORM*, 34 (1992) [hereinafter SAFI].

¹³⁴ N.J. COULSON, *A HISTORY OF ISLAMIC LAW* 1 (1964).

¹³⁵ S.V. FITZGERALD, *NATURE AND SOURCES OF SHARIA*, IN *LAW IN THE MIDDLE EAST* 85 (1955).

¹³⁶ M. KHADDURI, *WAR AND PEACE IN LAW OF ISLAM* 26 (1960).

¹³⁷ SAFI, *supra* note 133, at 34.

¹³⁸ BENSAUDI I. ARABANI, *COMMENTARIES ON THE CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES WITH JURISPRUDENCE AND SPECIAL PROCEDURE* 81 (1990) [hereinafter ARABANI].

¹³⁹ *Id.*

¹⁴⁰ DR. MOHAMMAD MUSLEHUDDIN, *ISLAM AND ITS POLITICAL SYSTEM* 25 (1988) [hereinafter MUSLEHUDDIN].

¹⁴¹ *Id.* at 167. According to Dr Muslehuddin, "It is here that there is a failure to appreciate the intrinsic value of *Shari'ah*. For example, 'As to the thief, male or female, cut off his or her hand' is the Qur'anic verse, which appears to be brutal, but will be considered most justified if looked at against the background of Islamic society where the rich pay the poor due or *zakat*, where necessities of life are provided by the State, where citizens enjoy equal privileges and opportunities, where hoarding is prohibited and usury forbidden, where monopolistic tendencies are curbed, and where peace and prosperity reign supreme. Similar is the case of punishment meted out for adultery and fornication. *Shari'ah* prescribes a hundred stripes for the unmarried and stoning to death for the married parties to the crime. But, of course, it is applicable to a society where marriage has become easy, where promiscuity is prohibited, nude pictures and indecent literature are disallowed, and where virtue prevails and vice is condemned."

It has five sources, namely: the *Qur'an*, *Sunnah* or the Way of the Prophet, *Ijma*, *Qiyas*, and *Ijtihad*.¹⁴² The first and primary source is the *Qur'an* as it contains all the fundamental directives and instructions of Allah. The second source is the *Sunnah* as it shows the way in which Prophet Muhammad (S.A.W.) translated the ideology of Islam in the light of Qur'anic guidance into practical form, developed it into a positive social order and finally elevated it to an Islamic State. *Sunnah* is the practical application of the Qur'anic principles to the various affairs of man.¹⁴³ The third source is *Ijma*. It is the consensus of opinion of the Companions of the Prophet (*Sahabah*) and the agreement reached on the decisions made by the learned jurists on various Islamic matters.¹⁴⁴ The fourth source is *Qiyas*. It is a process of analogical deduction by which the law of a text is applied to cases that, though not covered by the language, are governed by the reason of the text. In exercising this, however, it must be based on the *Qur'an*, *Sunnah*, and *Ijma*.¹⁴⁵ The last source is *Ijtihad*. It literally means an effort or an exercise to arrive at one's own judgment.¹⁴⁶ It is a creative reasoning effort.

In most systems of law, actions are divided into two categories, permitted and forbidden, or, in religious matters, commanded and forbidden. *Shari'ah*, while dealing with both religious and worldly matters, divides action into five categories, namely: 1. *Fardhu (Wajib)* or Obligatory; 2. *Sunnah* or Desirable; 3. *Mubah* or Permissible; 4. *Haram* or Forbidden; and 5. *Makruh* or Undesirable.¹⁴⁷

The notion of law in Islam is different from the prevailing Philippine conception of law. The basic distinction between Philippine law and *Shari'ah* is that the former is essentially secular whereas the latter is essentially religious. It is so because *Shari'ah* is an integral part of religion. As such, there is no separation

¹⁴² ARABANI, *supra* note 138, at 92-145.

Arabani identifies seven subsidiary sources of *Shari'ah*, namely: *Istihsan*, *Istislah*, *Istidlal*, *Istishab*, Legal Maxim, Customs, and Legislation.

In the Organic Act of the Autonomous Region of Muslim Mindanao, Section 18 of Article IX recognizes the four sources of Islamic law, namely: *Qur'an*, *Sunnah*, *Qiyas* and *Ijma*.

In his book *Islam and its Political System*, Dr Mohammad Muslehuddin considered the Doctrine of Necessity or *Darura* as a source of law. He gave the following as examples: a mounted soldier awaiting battle is allowed to say his prayers in the saddle instead of dismounting; fasting during the month of Ramadan is obligatory but its postponement is permitted while a Muslim is travelling; and a starving Muslim may eat pork to save his life. Bernard Lewis in *Islam and the West* gave the example, a seafarer may throw another seafarer's goods into the sea if their boat is overladen and about to sink.

¹⁴³ MAUDUDI, *supra* note 100, at 218.

¹⁴⁴ DOI, *supra* note 102, at 64.

¹⁴⁵ *Id.* at 70.

¹⁴⁶ *Id.* at 78.

¹⁴⁷ LEWIS, *supra* note 122, at 46.

of religion and politics unlike the Philippine constitutional principle of separation of Church and State. Another difference is that *Shari'ah* is enormously wider in scope than Philippine law. It covers the whole field of human conduct.

Shari'ah pervades all areas of Muslim life – it provides laws in the social, political and economic spheres; private and public domains of life; individual and community matters. It includes personal laws, such as those concerning the family and the individual, and public laws, like ownership laws and criminal statutes. Accordingly, comprehensiveness is its special characteristic.¹⁴⁸ Its jurisdiction is, in principle, universal, since God's revelation is for all mankind, but it is in practice personal and communal, since its enforcement is limited to those who accept it and submit to its authority. For Muslims, its authority is absolute and applies to every aspect of human life and activity.¹⁴⁹

The practice of *Shari'ah* in the Philippines poses many difficulties to the minority Muslim Filipinos. For instance, while *Shari'ah* prescribes prayer five times a day, the regular class hours and work hours make it impossible for the Muslim to fulfill this obligation. Muslim holy days, which are days for worship, are observed only in predominantly Muslim areas, because this is what Philippine law allows.¹⁵⁰ Muslims in other areas are therefore effectively denied or affected in their right to worship. Furthermore, Muslims believe in an economic system that puts no one at an advantage over another, or deprive the majority of society of their wealth through usurious transactions. It is because of this that *Shari'ah* mandates a banking system that operates without *riba* or interest but thrives mainly on profit-sharing.¹⁵¹ The present system of banks and pawnshops in the Philippines, even in predominantly Muslim areas, is contrary to the *Shari'ah*.

Consequently, the *Shari'ah* has little influence in the lives of Muslim Filipinos except in the limited personal sphere. They can practice their beliefs and rituals to a limited extent, but cannot implement laws that affect Muslim public life. This seems a satisfactory condition in the Philippine Constitution's viewpoint; however, the Constitution is shaped by Western and Christian experiences and therefore conceptualizes "religion" differently. For the Muslims, however, it presents a situation of persecution and injustice. Furthermore, this reality becomes more relevant when viewed in light of the clear Qur'anic injunction that just as one may not permit what Allah forbids, so one may not forbid what Allah permits.¹⁵² More importantly, it provides a situation for the Muslims to declare *jihad asghar* or the defense of Islam.

¹⁴⁸ ZAIDAN, *supra* note 103, at 1.

¹⁴⁹ LEWIS, *supra* note 122, at 43-44.

¹⁵⁰ Refer to footnote 110 on PD 1083.

¹⁵¹ MUSLEHUDDIN, *supra* note 139, at 33.

¹⁵² THE HOLY QUR'AN 5:87.

According to the *Shari'ah*, there are only two grounds for waging jihad *asghar*: in self-defense and for the establishment of conditions of universal peace or to enforce the regime of law in human society.¹⁵³ The situation of the Muslim Filipinos can be placed in either grounds. The *Qur'an*, thus, enjoins them, "And fight them on until there is no more persecution and there prevail justice and religion becomes Allah in its entirety."¹⁵⁴ At the same time, however, the *Qur'an* suggests for Muslims to have patience and to seek God's help with perseverance and prayer.¹⁵⁵ The question that remains: Until when must there be patience?

For a better understanding of *Shari'ah* as the guide of the Muslim individual and the community in their practice of Islam, and its political operation on the affairs of the community, the concepts of *amanah*, *khilafat*, and *shura* must be discussed.

1. *Amanah* (trust)

O you who believe! Betray not Allah and His Messenger, nor betray knowingly your *Amanah* (things entrusted to you), and all the duties Which Allah has ordained to you.

Holy Qur'an 8:27

Allah doth commands you to render back your *Amanah* to those to whom they are due.

Holy Qur'an 4:58

The word *Amanah* is an Arabic word which means "trust." In Islam, human life and the environment are entrusted to humankind by God; absolute ownership belongs to the Creator alone. The Muslim's life, his possessions, and his environment are mere trusts, making man a trustee individually and collectively. *Amanah*, therefore, is a trust relationship and it is governed by *Shari'ah*.¹⁵⁶

In his relation with fellowmen and the environment, the Muslim is bound by this trust relationship with Allah. Inasmuch as he is given the privilege to rule his environment in the service of his needs, he must not abuse it nor use it contrary to the trust as governed by the *Shari'ah*. *Amanah* is thus a concept that creates in the Muslim psyche a sense of responsibility or accountability for individual and state action.¹⁵⁷

¹⁵³ AHMAD, *supra* note 116, at 243.

¹⁵⁴ The HOLY QUR'AN 8:39.

¹⁵⁵ The HOLY QUR'AN 8:45.

¹⁵⁶ Interview with Walid Abubakar, Ustadz from Damascus University, in Zamboanga (June 2, 1999).

¹⁵⁷ Cesar Adib Majul, *The Qur'anic Concept of Power and Conflict in Human Life and Society*, 10 MUSLIM EDUCATION QUARTERLY 90 (1993).

The Muslim's trust relationship with Allah also enjoins the individual to respect the authority entrusted with administering the affairs of the community. Allah commands him to render the trust to whom they are due. Corollarily, this injunction also applies to the people in authority.¹⁵⁸ The moment the people in authority violate the trust relationship, the Muslim individuals are no longer bound to render obedience to them. Instead, they are enjoined to seek the establishment of an authority that works for the worship and service of Allah.¹⁵⁹

In this trust relationship, the Muslim is ultimately intended to worship and serve only Allah.¹⁶⁰ This service is not found only in ritual, but in the way one conducts his life in a manner that would serve the ends of Allah. It is a way that must be true to the Islamic metaphysical structure wherein the environment and the conduct of the affairs of men are for the mastery of mankind to enable him to serve Allah.¹⁶¹

Inherent in this concept of *Amanah* is the recognition of the sovereignty of Allah. It is a relationship governed by laws with Allah as its source. The exercise of authority by man is a delegated power. It is a power that is ultimately accountable to its giver. In the fulfillment of the trust, man acts as a trustee. God has given creation to man as a divine trust (*amanah*)¹⁶²; and it is how man carries out his vicegerency that becomes basis of whether he is to be either rewarded or punished.¹⁶³

2. *Khilafat* (vicegerency of man)

Thy Lord said unto the angels: Lo! I am about to place A vicegerent on earth."

Holy Qur'an 2:30

Allah has promised to those among you who believe and do righteous deeds that He will assuredly make them succeed (the present rulers) and grant them Vicegerency in the land just as He made those before them succeed others.

Holy Qur'an 5:55

Khilafat is the concept of vicegerency of man. Its root word is the Arabic word *Khalifah* which means one who takes the place of another in his absence or a successor. In the *Qur'an*, *Khalifah* is used in the sense of a vicegerent of God, i.e.,

¹⁵⁸ MUSLEHUDDIN, *supra* note 140, at 71-72.

¹⁵⁹ The HOLY QUR'AN 8:39.

¹⁶⁰ The HOLY QUR'AN 2:21; 6:102; 36:60-61; 51:56.

¹⁶¹ Interview with Walid Abubakar, Ustadz from Damascus University, in Zamboanga (2 June 1999).

¹⁶² The HOLY QUR'AN 33:72; 31:20-29.

¹⁶³ The HOLY QUR'AN 17:14.

the holder of a delegated power on earth to enforce *Shari'ah*.¹⁶⁴ Moreover, it is mankind, as a whole, who is entitled to the authority of vicegerency.¹⁶⁵

Corollary to vicegerency of man is the concept of sovereignty¹⁶⁶ of Allah. This implies that man is but a representative of Allah, and therefore cannot be considered a sovereign in the real sense of the word.¹⁶⁷ This power, which entitles the *khalifah* to enforce the Law of God, is a limited power. It is a power under and not above the Sovereign – Allah.¹⁶⁸ As God's vicegerent or representative (*khalifat*), man exercises authority within limits prescribed by God himself. Moreover, vicegerency is an *amanah* which imposes duties upon the trustee. Ultimately, the *khalifah* is accountable to Allah as a result of the trust relationship.

In the conduct of man's affairs, it is necessary that a leader or leaders be chosen and vested with the authority to act for the community in the fulfillment of Allah's Will. It is in this sense that one Islamic scholar has said,

The authority over the affairs of the people is the greatest religious duty. In fact, religion cannot be established at all without this authority because Allah has prescribed as a duty the enjoining of the good, the prohibition of the evil and the support of the oppressed. In the same way all that He has prescribed in terms of fighting for His sake, the establishment of justice and the enforcement of the penal code cannot be implemented without power and authority.¹⁶⁹

¹⁶⁴ MUSLEHUDDIN, *supra* note 139, at 103 – 104.

¹⁶⁵ ABUL'ALA MAUDUDI, *ISLAMIC WAY OF LIFE* 42 – 52 (1968).

¹⁶⁶ *Id.* at 229. Maududi provides for the root of the word sovereignty: Sovereignty is derived from the Latin word *supernuus* which means supreme. The definition of terms are varied but "it always signifies a highest governmental and legal authority of some sort. (Francos W. Coker, "Sovereignty" *Encyclopedia of Social Sciences*, Vol. 14, p. 256). Jean Bodin, who first developed the concept in modern political thought defined it as "*Summa in civis ac sabditus legibusque soluto potestes*", i.e., the supreme power of the state over citizens and subjects, unrestrained by law. Grotis defined it as "the supreme political power in him whose acts are not subject to any other and whose will cannot be overridden." Blackstone conceives it to be "the supreme, irresistible, absolute, uncontrolled authority in which the *jura summi imperi* reside." Jullinck defines it as that "characteristic by virtue of which it cannot be legally bound except by its own will, or limited by any other power than itself." He calls it "the undivided and independent power to command and to compel obedience." The attributes and characteristics of sovereignty are said to be permanence, exclusiveness, all-comprehensiveness, indivisibility and absoluteness.

¹⁶⁷ Atty. Oga Mangarun Mapupuno, *Islamic Political Concept of Sovereignty and Vicegerency*, MINDANAO LAW JOURNAL 63 (March 1989).

¹⁶⁸ MUSLEHUDDIN, *supra* note 140, at 104.

¹⁶⁹ ZAIDAN, *supra* note 103, at 3.

Similarly called *khalifah*, the leader or leaders are granted the authority by Allah to administer the affairs of the community in accordance with the *Shari'ah*. For as long as they act in accordance with Allah's Will, the people are commanded to render allegiance and obedience to those invested with political authority. The Qur'an states, "O believers, obey God and obey the Messenger and obey those entrusted with authority from among you."¹⁷⁰ The moment, however, obedience to those in authority is disobedience to Allah, *Shari'ah* enjoins the people to defy the authority and establish one that conforms to Allah's Will.¹⁷¹ There are, therefore, two requisites in the exercise of political authority – the consent of the community or the people and the allegiance¹⁷² to live and enforce the *Shari'ah*.

There are four conditions essential to the doctrine of vicegerency assuming an important role on leadership or the political authority in the Muslim lives. First, real authority belongs to God; second, man merely administers the law; third, the administration of the law must conform to and remain within the limits prescribed by Him; and fourth, in the administration of His law, the Will of God shall be executed and His purpose shall be fulfilled.¹⁷³ The present situation of the Muslim Filipinos in the Philippines is wanting in all the conditions.

In addition to the four conditions, man's fulfillment of this vicegerency must fully adhere to the *Shari'ah*. There must be obedience to His Will. In the conduct of man's affairs, *Shari'ah* requires the political authority to apply the concept of *shura* or consultation.

3. *Shura (consultation)*

Those who respond to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation.

Holy Qur'an 42:38

It is part of the Mercy of Allah that thou dost deal gently with them. Wert thou severe or harsh-hearted, they would have broken away from about thee. So pass over (their faults), and ask for Allah's forgiveness for them; and consult them in the affairs. Then, when thou hast taken a decision, put thy trust in Allah. For Allah loves those who put there in trust in Him.

Holy Qur'an 3:159

¹⁷⁰ The HOLY QUR'AN 20:19.

¹⁷¹ The HOLY QUR'AN 8:39.

¹⁷² See MAUDUDI, *supra* note 100, at 145. According to Maududi, the general proclamation of the Head of an Islamic State must be: "Assist me when I act rightly; but if I go wrong put me on the right path. Obey me as long as I remain loyal to Allah and His Prophet; but if I disobey Allah and His Prophet then none is under obligation to accord obedience to me."

¹⁷³ *Id.* at 42 – 52.

In the affairs of the Muslim community, an important concept is *shura* or consultation. According to Prophet Muhammad (S.A.W.), it means "taking counsel" and acting upon it.¹⁷⁴ This consultation is to be part of how men conduct their affairs, as commanded by Allah: "consult with them upon the conduct of affairs."¹⁷⁵ It is the process prescribed by *Shari'ah* for the exercise of political authority in a state of mutual trust and unity. Consultation, therefore, is not only recommendatory but obligatory.¹⁷⁶ Its obligatory nature is such that its abandonment by the chosen leaders of the community merits their removal from such authority.¹⁷⁷

In accordance with the guidance of the *Qur'an*, Prophet Muhammad (S.A.W.) developed a culture of consultation among his companions. In spite of being a Prophet (S.A.W.), he had the penchant for consulting his followers on community affairs. There are three oft-cited examples of the conduct of consultation by the Prophet (S.A.W.). One is the Battle of *Badr* where the Prophet (S.A.W.) selected a certain position for his army. When asked whether his decision was guidance from Allah or of his own will, he replied that it was his own decision. He was then advised by the experienced among the community to change position – which he followed. The two other examples are the Battle of *Uhud* where the Prophet (S.A.W.) asked the opinion of the community and acted favorably upon it and the *Huddaybiyyah* Agreement between the *Quraysh* of Mecca and the Prophet (S.A.W.) where the community was adequately consulted.¹⁷⁸

The process of *shura* means that decision-making belongs to the community as a whole.¹⁷⁹ An analysis of the Qur'anic verses leads to the conclusion that "the *Ummah* is being honored to be consulted...notwithstanding their absolute subservience to Divine laws and plans" in order to help fill in the legislation for the community. With this, the view of the people "would appear to be binding."¹⁸⁰

It is not prescribed in the *Qur'an*, however, what institutional form by which *shura* is to be carried out. It gives the community the freedom to decide the best way to hold consultation, based on the community's situation at the time. It

¹⁷⁴ Khalid M. Ishaque, *State and Constitution in Islam*, 4 ISLAMIC & COMPARATIVE LAW QUARTERLY 9 (1984).

¹⁷⁵ THE HOLY QUR'AN 3: 159.

¹⁷⁶ MUSLEHUDIN, *supra* note 140, at 151.

¹⁷⁷ ZAIDAN, *supra* note 103, at 34-35.

¹⁷⁸ H. MUNAWIR SJADZALI, ISLAM AND GOVERNMENTAL SYSTEM: TEACHINGS, HISTORY, AND REFLECTIONS 12 – 14 (1991). See also MUSLEHUDDIN, *supra* note 140, 137 – 139.

¹⁷⁹ Bernard Lewis, *Islam and Liberal Democracy, A Historical Overview*, 52 JOURNAL OF DEMOCRACY 73 - 74 (1996).

¹⁸⁰ Khalid M. Ishaque, *People's Authority, Representation and Election Under the Islamic Legal Theory: Some Observations*, 8(2) ISLAMIC & COMPARATIVE LAW QUARTERLY 88-101 (1988).

insists, however, that all people must be consulted, either directly or through their designated representatives. Furthermore, this consultation should be completely free and impartial. This rule of consultation applies in the very first instance in choosing the head of state.¹⁸¹

There are four essential conditions for *shura* to be an effective mechanism. One, the political authority and the people must be prepared and willing to listen to each other's conflicting views and differences. Two, the participants in the mutual consultation must be tolerant and open towards each other. It does not only involve one party out-arguing the other but that due consideration must be given to the merits of the other's opinion. Three, there must be steadfastness, righteousness and piety in the consultation. Lastly, the consultation must be grounded in commonly accepted rational principles such as the commitment to follow through the best judgment.¹⁸²

It is worth noting that both leaders of the MNLF and MILF actively practice this concept. MNLF Chairman Nur Misuari even declared, "I am obliged to observe one rule: consultation. I cannot impose my will on our people."¹⁸³

A present-day example of consultation among the Muslim People is that practiced by the MILF. In 1993, Salamat Hashim constituted the *Bangsamoro Majlis as-Shura* or Consultative Assembly. Its basic functions are to legislate laws on matters not specifically mentioned in the *Qur'an* and *Hadith*, to formulate policies of the *jihad* and to assist in the selection of leaders. It is also an institution through which the government can hold consultation with the citizens.¹⁸⁴

The same was also envisioned by the 1996 Final Peace Agreement which called for the creation of the *Darul Iftah* (religious advisory council) in order to assist the Southern Philippines Council for Peace and Development (SPCPD). However, this was not included in the Executive Order implementing the SPCPD due to strong objections from various sectors of Philippine society and the fear of the GRP that the same would be struck down as unconstitutional for violation of the Non-Establishment Clause.¹⁸⁵

¹⁸¹ Charles J. Adams, *Mawdudi and the Islamic State*, VOICES OF RESURGENT ISLAM 117 (John Esposito ed., 1983).

¹⁸² Yusuf Waghid, *Shura or Dialogue: A Procedure Towards Addressing the Problems in Madrasah Education in South Africa*, 12(2) MUSLIM EDUCATION QUARTERLY 40-46, (1995).

¹⁸³ Ed Lingao, *Girding for War to Secure Peace*, POLITIK MAGAZINE (August 1999).

¹⁸⁴ Lingga, *supra* note 96, at 56 - 57.

¹⁸⁵ Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 20, 1999).

D. Religious Liberty – Essential in Practice of Islam

Unto you your religion, and unto me, mine.
Holy Qur'an 109:99

Islam envisions a pluralistic society that is acknowledged as part of God's plan. The *Qur'an* provides:

O mankind! We created you from a single soul (pair) of a male and a female, and made you into nations and tribes,¹⁸⁶ that ye may know each other not that ye may despise (each other).

Equality among men is an important belief in Islam. This doctrine stems from the conviction that all of mankind share a single origin and substance. As such, it is likewise asserted that all men are blessed with the same dignity and sacredness, and therefore entitled to the same right to self-determination here on Earth and in the Hereafter.¹⁸⁷

The implications here are two-fold: one, that man is free to choose his faith and to practice it; and two, that all men, Muslim or otherwise, are equal and share the same dignity. These beliefs are in accordance with the idea that man proceeds from Allah with a mission to fulfill and his destiny is to ultimately return to Allah. These beliefs constitute religious freedom in Islam.¹⁸⁸

Among all religious revealed texts, only the *Qur'an* emphasizes religious freedom in a definite and unequivocal way, thus:

Let there be no compulsion in religion: Truth stands out clear from error. Whoever rejects evil and believes in Allah hath grasped the most trustworthy handhold that never breaks.¹⁸⁹

Faith, therefore, needs to be voluntary if it is to be true. The above text was, in fact, aimed at reproving and condemning the attitude of some Jews and Christians who, after being converted to Islam in Al-Mahdina wanted to convert their children to their new faith. Islam does not condone coercion to accept a certain faith, whether it be Christianity, Judaism or Islam itself. It views faith as a voluntary act born out of nothing less than conviction and freedom.¹⁹⁰

¹⁸⁶ The HOLY QUR'AN 49:13.

¹⁸⁷ MOHAMED TALBI, *Religious Liberty: A Muslim Perspective*, RELIGIOUS LIBERTY AND HUMAN RIGHTS IN NATIONS AND IN RELIGIONS 176 (Leonard Swidler ed., 1986) [hereinafter TALBI].

¹⁸⁸ *Id.*

¹⁸⁹ The HOLY QUR'AN 2:256.

¹⁹⁰ TALBI, *supra* note 187, at 178.

Even the Prophet Muhammad (SAW), who was tasked to spread Allah's message, was helpless against those who would not convert to Islam because he was firmly ordered to respect human freedom.¹⁹¹ "If it had been thy Lord's Will, all who are on earth would have believed, all of them. Wilt thou then compel mankind, against their will, to believe!"¹⁹² Abdullah Yusuf Ali, in his translation of the *Qur'an*, comments on that verse in this way:

...men of faith must not be impatient or angry if they have to contend against Unfaith, and most important of all, they must guard against the temptation of forcing Faith, i.e., imposing on others by physical compulsion, or any other forms of compulsion such as social pressure, or inducements held out by wealth or position, or other adventitious advantages. Forced Faith is no faith.¹⁹³

It is important to note that religious freedom does not mean that the Muslims need to remain indifferent to issues of faith. The correct behavior is not to interfere in others' personal lives and not to be careless about people of different faiths. This is what it means to be created as one community of different faiths.¹⁹⁴

Religious freedom in Islam manifests itself in the case of the religious minorities found in Islamic states. History reveals that these minorities, called *dhimmis*¹⁹⁵, have always enjoyed protection against the most awesome form of religious intolerance. They have never been persecuted because of their beliefs nor prevented from practicing their own religion.¹⁹⁶

A future *Bangsamoro* Republic, within or without Philippine sovereignty, under the rule of the Muslim Filipinos is enjoined by the teachings of Islam. Therefore, the religious minorities in such a republic would be secure in their practice of religion.¹⁹⁷

¹⁹¹ TALBI, *supra* note 187, at 179.

¹⁹² The HOLY QUR'AN 10:99.

¹⁹³ ABDULLAH YUSUF ALI, *The HOLY QUR'AN* 510 (1976).

¹⁹⁴ TALBI, *supra* note 187, at 180.

¹⁹⁵ For rights and obligations of *dhimmis*, see Maududi, at 293-321. See also ABDUR RAHMAN DOI, *NON-MUSLIM UNDER SHARI'AH [ISLAMIC LAW]*.

¹⁹⁶ Carmen A. Abubakar, *Is Islam Compatible With Democracy?*, 12 *KASARINLAN* 31-32 (3rd Quarter 1996).

¹⁹⁷ Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 2, 1999). According to Atty. Michael Mastura, MILF Chairman Salamat Hashim is committed to the same position given the clear injunction of the *Qur'an* on matter of religion.

IV. THE PHILIPPINE CONSTITUTION'S CONCEPT OF PRACTICE OF RELIGION: AN AMERICAN AND CHRISTIAN PERSPECTIVE

The 1987 Philippine Constitution concept of practice of religion is enshrined in two provisions, namely:

Article II, Section 6. The separation of Church and State shall be inviolable.

Article III, Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

The first provision is included in the Declaration of Principles and State Policies which is a statement of the basic ideological principles and policies that underlie the Constitution.¹⁹⁸ As such, the provisions contained therein shed light on the meaning of the other provisions of the Constitution and they are a guide for all branches of the government in the implementation of the Constitution.¹⁹⁹ Its importance is such that it is included as one of the six principles. As a state principle, it is a binding rule that must be observed in the conduct of government.²⁰⁰

The second provision is included in Article III, the Bill of Rights. The Bill of Rights is a guarantee that there are certain areas of a person's life, liberty, and property which governmental power cannot touch. It is basically a protection of individual rights from the great powers of government.²⁰¹ As such, Section 5 is actually a protection of religious freedom from government interference by insulating it from the powers of government.

In addition, it is important to discuss the ARMM provisions as well as other pertinent laws related to the Islamic practice of religion

A. Definition of Religion

The word "religion" is derived from the Middle English *religioun*, from Old French *religion*, from Latin *religio*, and vaguely refers to a 'bond between

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ BERNAS, *supra* note 18, at 14.

²⁰¹ *Id.* at 30.

man and the gods.²⁰² This pre-Christian term for the cult and rituals of pagan Rome was first Christianized by Saint Jerome in his Latin translation of the Bible.²⁰³ It was first defined by the United States Supreme Court in the 1890 landmark case *Davis vs. Beason*.²⁰⁴ Samuel Davis, a member of the Mormon Church, believed in and practiced polygamy which was a criminal offense and constituted a disqualification of a voter under election laws. The Court herein upheld the lower court decision disqualifying Davis as a voter.²⁰⁵ In its decision, the Court gave a theistic definition of religion, as follows:

The term 'religion' has reference to one's view of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and obedience to his will. It is often confounded with the cults or form of worship of a particular sect, but is distinguishable from the latter... With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and morals of its people are not interfered with.²⁰⁶

In addition to the presence of a "Creator," the Court also required certain conformity between the teachings of the group in question and the prevailing morality of "all civilized and Christian countries."²⁰⁷ Indeed, at least part of the reason the Court rejected Davis' establishment claim was that the latter deemed polygamy too outrageous a practice to be "a tenet of religion."²⁰⁸

According to one constitutional scholar, "Adherence to this narrow definition was facilitated by the relative religious homogeneity of the United States (at least as perceived by the Court)."²⁰⁹ This narrow conception of religion was made explicit in *United States v. Macintosh*,²¹⁰ a case that reaffirmed the theistic definition, where the Court said, "We are a Christian people, according to one

²⁰² SYED MUHAMMAD AL-NAQUIB AL-ATTAS, *ISLAM AND SECULARISM* 46 (1978).

²⁰³ LEWIS, *supra* note 122, at 3.

²⁰⁴ *Davis v. Beason*, 133 U.S. 333 (1890).

²⁰⁵ *Id.*

²⁰⁶ 133 U.S. 333, at 342 (1890).

²⁰⁷ *Id.*

²⁰⁸ 133 U.S. 333, at 341-42 (1890). ("To call their advocacy [of polygamy] a tenet of religion is to offend the common sense of all mankind.")

²⁰⁹ J. Gordon Melton, *The Development of American Religion: An Interpretive View*, 1 *ENCYCLOPEDIA OF AMERICAN RELIGIONS* 14 - 15 (1996).

²¹⁰ 283 U.S. 605 (1931).

another the equal protection of religious freedom, and acknowledging with reverence the duty of obedience to the will of God."²¹¹

This theistic definition, however, was to be challenged as society evolved. In 1944, the United States Supreme Court declared in *United States v. Ballard*²¹² that freedom of religion

embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths... Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.²¹³

Ballard makes clear that the classification of a belief as religion does not depend upon the tenets of its creed. It need not be bound by reason and logic nor by orthodox non-rationality. Therefore, "the characterization of a belief as religious would seem to be beyond the competence of anyone other than the adherent."²¹⁴

In 1961, the United States Supreme Court expressly repudiated Davis' definition of religion in the case of *Torcaso v. Watkins*.²¹⁵ In this case, the Court struck down a provision of the Maryland Constitution requiring officeholders of public office to declare belief in God. The Court reasoned that such provision was in violation of the Establishment Clause as it favored one category of religions (theistic) over another (non-theistic).²¹⁶ The Court thus expanded the term "religion" to include non-theistic religions, or those which do not teach belief in the existence of God, such as Buddhism, Taoism, Ethical Culture and Secular Humanism.²¹⁷

The Court later confirmed the Torcaso ruling in the 1965 *United States v. Seeger*.²¹⁸ In construing the Universal Military Training and Service Act's requirement of belief "in relation to a Supreme Being,"²¹⁹ the Court stated that "whether a given belief that is sincere and meaningful occupies a place in the

²¹¹ *Id.* at 625.

²¹² 322 U.S. 78 (1944).

²¹³ *Id.*

²¹⁴ *Id.* at 84.

²¹⁵ 367 U.S. 488 (1961).

²¹⁶ *Id.* at 489 - 490, 495.

²¹⁷ *Id.*

²¹⁸ 380 U.S. 163 (1965).

²¹⁹ *Id.*

life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is 'in relation to a Supreme Being' and the other is not."²²⁰

The Court, however, appears to have shifted back to a narrower conception of religion in *Wisconsin v. Yoder*.²²¹ The Yoder Court made a strong distinction between "secular considerations," which were not considered valid bases for challenging state regulation under the First Amendment, and "claims...rooted in religious belief," which were.²²²

In the Philippines, the Supreme Court first defined religion in the 1937 case *Aglipay v. Ruiz*²²³ where Justice Laurel stated that it is:

A profession of faith to an active power that binds and elevates man to his Creator. And in so far as it instills into the minds of men the purest of morality, its influences is deeply felt and highly appreciated.²²⁴

In 1957, the definition of religion in the Aglipay case was reiterated in the case *American Bible Society v. Manila*.²²⁵ In addition, it cited the 1890 Davis definition of religion, as one which "has reference to one's views of his relations to His creator and to the obligations they impose of reverence to His being and character, and obedience to His Will."²²⁶ It is evident, therefore, that Philippine jurisprudence has lagged behind in developing an expansive definition of religion.

The definition of religion in American and Philippine jurisprudence connotes a limited application. It limits itself to a personal relationship with the Creator and that which gives life and meaning. Moreover, it is important to note that the determination of whether a certain act or ritual falls within the

²²⁰ According to Fr. Joaquin Bernas, this definition is theoretically founded on that branch of religious thought influenced by Paul Tillich which views religion as encompassing beliefs and views which illuminate the "very ground of one's being and which give life and meaning." In fact, the Court explicitly claims that its understanding of "religion" was shared by modern theologians like Paul Tillich.

²²¹ 406 U.S. 205 (1972).

²²² *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972).

²²³ 64 Phil 201 (1937).

²²⁴ *Id.* at 205 - 306.

²²⁵ 101 Phil. 386 (1957).

²²⁶ *Id.*

ambit of religion rests with the courts.²²⁷ Thus, there is the danger of bias. As pointed out by one American scholar, "[n]o Jewish, Muslim, or Native American plaintiff has ever prevailed on a free exercise claim before the Supreme Court."²²⁸ There is reason to be concerned that bias might operate in judicial efforts to define religion²²⁹ and in the determination of what constitute religious acts. This is a major concern of the Muslim People in the Philippines.

B. The Principle of Separation of Church and State

"Is it lawful to pay tribute to Caesar or not?

But he, considering their guile, said to them; Why tempt me? Show me a penny. Whose image and inscription hath it? They, answering said to him: Caesar's.

And he said to them: Render, therefore, to Caesar the things that are Caesar's and to God the things that are God's."

Holy Bible, Luke, 20:19-25

The idea of separation of Church and State²³⁰ in the Philippines was encountered as early as the Propaganda days when the prevailing principle was Spain's union of Church and State. In an article written by Marcelo H. del Pilar on 15 September 1892, he questioned the decree deporting Rizal to Dapitan. He claimed that it is absurd to punish a man politically for religious reasons. He argued that to challenge the friars and the Church was not an act of disloyalty to Spain. Clearly, the article was essentially an appeal for the separation of Church and State.

²²⁷ *Gerona v. Secretary of Education* 106 Phil 2, 16 (1959).

²²⁸ FREDERICK MARK GEDICKS, *THE RHETORIC OF CHURCH AND STATE* 116 (1995).

²²⁹ ARLIN M. ADAMS & CHARLES J. EMMERICK, *A NATION DEDICATED TO RELIGIOUS LIBERTY* 92 (1990).

²³⁰ In his book *ISLAM AND THE WEST*, Bernard Lewis asserts that the notion of separation of Church and State seems to have emerged in the Protestant countries of northern Europe and was first given legal and constitutional force in the United States of America. In John Locke's *Letter Concerning Toleration*, published in 1689, he concludes that "neither Pagan nor Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth because of his religion."

Lewis also relates that in the 16th and 17th centuries, the agonizing problem for Christians was not that of co-existence with followers of other religions, but of co-existence with fellow Christians of other churches. It was from these bitter conflicts, which devastated so much of Europe, that the modern doctrine that has come to be known as secularism emerged. The notion that religion and political authority, church and state, are different and that they can or should be separated is, in a profound sense, Christian. Its origin may be traced to the teaching of Christ, "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." This notion was confirmed by the experience of the first Christians; its later developments was shaped and in a sense even imposed by the subsequent history of Christendom.

²³¹ CESAR ADIB MAJUL, *THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION* 162 - 163 (1996).

The early thoughts of separation took a wider stage in the drafting of the 1899 Malolos Constitution. All the sections of the proposed Constitution were approved as originally drafted with little opposition except on the provision concerning religion. The original section provided that the Catholic religion would be the official religion of the State, allowing non-Catholics, however, the freedom to practice their own religion.²³² This was, however, opposed with a proposal that there be recognition of the freedom and equality of all forms of religious worship as well as the separation of Church and State. As a manifestation of the prevailing influence of the Catholic religion, the opposing position won by a margin of only one vote.²³³ The provision thus read:

"The State recognizes the freedom and equality of religious worship as well as the separation of the Church and of the State."²³⁴

Evidently, the adoption of the above provision was a result of the Filipino experience with the friars during Spain's hegemony.²³⁵ This provision, however, was never brought into effect in order not to alienate the Filipino clergy who likewise performed an important role in the revolution.²³⁶

Although the Malolos Constitution lost its significance when the Americans started to assert their authority in the Philippines, American hegemony only reinforced the policy of separation of Church and State. In fact, the 1898 Treaty of Paris provided that "[t]he inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion."²³⁷ This was followed by United States President William McKinley's Instruction to the Taft Commission expressly stating that "the separation between State and Church shall be real, entire and absolute."²³⁸ In subsequent acts of the United States, such as the Philippine Bill of 1902 and Jones Law of 1916, it was clear that the spirit of separation was intended as each embodied the non-establishment clause and the free exercise clause.²³⁹ However, there was no such explicit provision that asserted the inviolability of the separation of Church and State until those found in both 1973 and 1987 Constitutions.

²³² *Id.* at 153.

²³³ F. C. Borlongan, *Church and State Separation Gets Nod By One Vote*, *PHILIPPINE JOURNAL* (October 29, 1995) [hereinafter Borlongan].

²³⁴ MALOLOS CONSTITUTION, art. 5, Title 3.

²³⁵ Borlongan, *supra* note 232, at 162.

²³⁶ Rosa Michelle C. Bagtas, *Separation of Church and State: A Search for Standards to Keep Its Inviolability* (1998) (unpublished J.D. thesis, Ateneo de Manila School of Law) (on file with the Ateneo Professionals Library) [hereinafter Bagtas].

²³⁷ Treaty of Paris, December 10, 1898, US - Spain, art. X.

²³⁸ Taft Commission was formed on April 7, 1900.

²³⁹ *US v. Balcorta*, 25 Phil 273, 276 (1913).

1. Rationale and Concept

The historical experience of the Filipinos with the union of Church and State is a tragic and painful one. As observed by historian Fr. Horacio de la Costa, "[u]nion ordinarily implies harmony; yet it is curious to note that during the three centuries of its existence, this particular union was characterized by an almost continuous series of conflicts between the elements that composed it."²⁴⁰ In the 1937 case *Aglipay v. Ruiz*,²⁴¹ the Court said:

Our history, not to speak of the history of mankind has taught us that the union of Church and State is prejudicial to both, for occasions might arise when the State will use the Church and the Church the State, as a weapon in the furtherance of their respective ends and aims.²⁴²

This sentiment was shared by Fr. Joaquin Bernas during the deliberation of the Constitutional Commission when he opposed the proposed amendment on the separation principle by Fr. Bacani. He said:

There is always the danger that the Church will try to impose itself on the State or else there may also be the danger that the State will try to impose itself on the Church.²⁴³

According to Justice Isagani Cruz, "the rationale of the rule is summed up in the familiar saying, 'strong fences makes good neighbors.'" He adds that the idea is to have a delineation of the boundaries between the two institutions. As such, encroachment by one on the exclusive jurisdiction of another is avoided. He further asserts, "[T]he demarcation line calls on the entities to 'render unto Caesar the things that are Caesar's and unto God the things that are God's'."²⁴⁴ It allows the Church and the State to accomplish their objectives by leaving each unfettered from the other.²⁴⁵

The separation principle was designed to prevent two things: the use of religion by the state to reinforce and extend its authority and the use of the state power by the clergy to impose their doctrines and rules on others.²⁴⁶ The principle, therefore, cuts both ways.²⁴⁷ The State is constitutionally prohibited from

²⁴⁰ HORACIO DELA COSTA, *ASIA AND THE PHILIPPINES* 39 (1967).

²⁴¹ 64 Phil 201 (1937).

²⁴² *Id.* at 205 - 206.

²⁴³ 4 RECORD OF THE CONSTITUTIONAL COMMISSION 971 (1986).

²⁴⁴ ISAGANI CRUZ, *PHILIPPINE POLITICAL LAW* 62 (1987) [hereinafter CRUZ].

²⁴⁵ Miriam Defensor-Santiago, *The Clergy and the Political Agora*, TODAY, March 24, 1994, at 8.

²⁴⁶ LEWIS, *supra* note 122, at 186.

²⁴⁷ CRUZ, *supra* note 244, at 64.

interfering in purely ecclesiastical affairs. The Church is likewise barred from intruding in purely governmental matters.²⁴⁸ This principle essentially separates institutions - the Church and the State. For a complete understanding of the principle, there is a need to elaborate on the two institutions.

In Philippine jurisprudence, there is no legal definition for the term "Church" and it is often simply related with religion. Justice Jorge Coquia defined "Church" as an indefinite number of persons who have made a public confession of religion, and who are associated together by a covenant of fellowship, for the purpose of celebrating the sacrament and watching over the spiritual welfare of each other. It does not refer to a physical structure or building nor is it identical with religion.²⁴⁹

In this definition, "Church" refers to no particular religion. Thus, there may be different churches depending on what religion is professed by a group of persons. Church, a collective term, may pertain to all community of believers, whether Christian, Muslim or Buddhist, among others, although it is often used by Christians alone. The separation principle seeks to separate all these "Churches" from the State. However, despite this separation, the individuals who collectively make up the Church remain to be part of the State.²⁵⁰ In Islam, there is no Church, as an autonomous institution, to speak of. Church and State are one and the same.²⁵¹

A State, on the other hand, is "a community of persons more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience."²⁵² It is through the government that the State manifests itself to the population and the rest of the world. Acts of government are often referred to as acts of the State.²⁵³ The people who administer and benefit from the acts of government are most probably the same people who embody the Church.

It is, therefore, inevitable that there is interaction between Church and State.

²⁴⁸ *Id.*

²⁴⁹ JORGE R. COQUIA, *CHURCH AND STATE LAW AND RELATIONS* 3 (1989) *citing* Declaration on Non-Christian Religions.

²⁵⁰ *Davis v. Beason*, 133 U.S. 333 (1890).

²⁵¹ LEWIS, *supra* note 122, at 181.

²⁵² JOAQUIN G. BERNAS, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES* 3 (1997) [hereinafter JOAQUIN BERNAS].

²⁵³ BAGTAS, *supra* note 237.

2. Interaction of Church and State

The Church and the State are two separate and independent entities. The separation, however, does not necessarily mean complete alienation. In *Zorach v. Clauson*²⁵⁴, the United States Supreme Court stated that, "[t]he First Amendment does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency of one on the other."²⁵⁵ Further, the same Court declared that "[n]o perfect or absolute separation is really possible."²⁵⁶

Church and the State can actually participate in any particular activity aimed at promoting a common cause. This interaction is considered legitimate provided this is not "excessive." In the case of *Tilton v. Richardson*²⁵⁷, the United States Supreme Court upheld the validity of a federal aid granted to institutions of higher learning, including Church-related colleges, for the construction of buildings and facilities. The Court said that there was no excessive entanglement of religion since it was given on a one-time, single purpose basis and the facilities to be built are religiously neutral.²⁵⁸

The same is also recognized in the Philippines. The government acknowledges that the Church makes a very important contribution in the moral upbringing and education of the people. The relationship of the Church and the State has been properly described as "... a friendly cooperation on the morality side and although they are collaborating to that effect, it is best, however, that the principle separating them is recognized."²⁵⁹

²⁵⁴ 343 U.S. 306 (1951).

²⁵⁵ *Id.* at 312.

²⁵⁶ *Walz v. Tax Commission*, 397 U.S. 664, 670 (1970).

²⁵⁷ 403 U.S. 672 (1971).

²⁵⁸ *Id.*

²⁵⁹ 4 RECORD OF THE CONSTITUTIONAL COMMISSION 972 (1986).

In fact, the 1987 Philippine Constitution has provided for certain exceptions to the separation of the Church and State by according certain concessions to religious sects and denominations.²⁶⁰

A closer analysis of the permitted interactions, however, would reveal that they greatly benefit, if not provide outright accommodations for the Catholic religion. For instance, the exemption of religious institutions from real property taxation greatly benefits the Catholic Church, which owns one of the largest, if not the largest, landholding in the country. The same is also evident in the sectarian aid given to a priest or preacher when such is assigned to the armed forces, or to any penal institution, orphanage and leprosarium. In the case of *Aglipay v. Ruiz*²⁶¹, the religion that benefited was the Catholic religion. In the same case, the Court noted that Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays are made legal holidays because of the secular idea that their observance is conducive to beneficial moral results. A mere glance at the holidays would clearly show that they are Christian holidays.²⁶² In *Garces v. Estenzo*²⁶³, the barangay council passed a resolution to raise funds by solicitations and donations for the purchase of the patron saint's wooden image and making the image available to the Catholic Church. In setting aside the objection on the separation of Church and State, the Court held:

The image was purchased with private funds, not with tax money... The wooden image was purchased in connection with the celebration of the barrio fiesta honoring the patron saint, San Vicente Ferrer, and not for the purpose of favoring any religion... If there is nothing unconstitutional or illegal in holding a fiesta and having a

²⁶⁰ These are:

- (1) The exemption of religious institutions from real property taxation (art. 6, §28(3))
- (2) Public funds, while generally prohibited from being spent for religious purposes as an aspect of the Non-Establishment Clause, may be applied to priest rendering religious service to the Armed Forces of the Philippines, a penal institution, or a government orphanage or leprosarium (art. 6, §29(2))
- (3) The permission to have optional religious instruction during regular class hours upon written request of the parents or guardian, to be taught by a teacher approved by the authorities of the religion of which the child is a member, provided it is without cost to the government (art. 14, §3(3))
- (4) With the exception of sectarian schools, all schools must be owned by citizens or 60% Filipino corporations (art. 14, §4(2))

²⁶¹ 64 Phil 201 (1937).

²⁶² E.O. 292, Administrative Code §26 (1987).

²⁶³ 104 SCRA 510 (1981).

patron saint for the barrio, then any activity intended to facilitate the worship of the patron saint (such as acquisition and display of his image) cannot be branded as illegal.²⁶⁴

The Court further stated that the *barrio fiesta* is a socio-religious affair and its celebration is an ingrained tradition in rural communities.²⁶⁵ It would seem that the Court was advancing the idea that acquisition and display of a patron saint by the government, provided that it is not with public funds, is in consonance with the principle of separation of Church and State.

B. Freedom of Religion and its Practice

The principle of separation of Church and State is intertwined with the constitutional provision of freedom of religion. Freedom of religion is basically embodied in this provision:

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.²⁶⁶

As guaranteed, freedom of religion is composed of two clauses: (1) the non-establishment clause and (2) the free exercise clause. These clauses are the means by which the separation of Church and State is enforced in society.²⁶⁷ As enshrined in the Bill of Rights, religious freedom basically operates as a limitation on government.

There are two fundamental principles that concretely define religious freedom - separatism and voluntarism. Separation mandates the non-establishment clause, which means not only institutional separation of church and state but also the ideal of mutual abstinence. This ideal has three facets: that the state should not become involved in religious affairs or derive its claim to authority from religious sources; that religious bodies should not be granted governmental powers; and that sectarian differences should not be allowed unduly to fragment the body politic. Religious voluntarism mandates the free exercise clause that guarantees freedom of conscience by preventing any degree of compulsion in matters of belief. The clause prohibits both direct and indirect compulsion.²⁶⁸

²⁶⁴ *Id.*

²⁶⁵ 104 SCRA 510 (1981).

²⁶⁶ 1987 PHIL. CONST., art. 3, § 5.

²⁶⁷ JOAQUIN BERNAS, *supra* note 252, at 288.

²⁶⁸ *Id.* at 303 - 304.

1. Non-Establishment Clause

The Non-Establishment Clause was originally intended to perform the dual functions of protecting religious establishments from national displacements and the prevention of government from aiding some but not all religions.²⁶⁹ The modern context of these functions was manifested in the 1985 case of *Wallace v. Joffree*²⁷⁰ where the U.S. Supreme Court struck down statutes permitting silent prayer or meditation in school.

The clause calls for government neutrality in religious matters. Bernas summarized government neutrality in four general propositions:

"(1) Government must not prefer one religion over another or religion over irreligion because such preference would violate voluntarism and breed dissension;

(2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension;

(3) Government action must not aid religion because this too violate voluntarism and breed interfaith dissension;

(4) Government action must not result in excessive entanglement with religion because this too violate voluntarism and breed interfaith dissension."²⁷¹

It is encapsulated in the phrase "the state cannot establish or sponsor an official religion." In the case of *Everson v. Board of Education*²⁷², the United States Supreme Court elaborated on the non-establishment clause as follows:

Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion to another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may

²⁶⁹ JOAQUIN BERNAS, *supra* note 252, at 303.

²⁷⁰ 478 U.S. 38.

²⁷¹ JOAQUIN BERNAS, *supra* note 252, at 303 - 304.

²⁷² 330 U.S. 1 (1947).

adopt to teach or practice religion. Neither a State nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.²⁷³

Despite the absolutist language of the Everson Court, it upheld a statute authorizing government to reimburse parents of Catholic school children for the cost of bus transportation to and from the parochial school.²⁷⁴

The non-establishment clause does not prohibit all government aid to religion provided the following are satisfied:

1. It must have a secular legislative purpose;
2. Its principal or primary effect must be one that neither advances nor inhibits religion; and
3. It must not foster "an excessive government entanglement with religion."²⁷⁵

The first two requirements are essentially related because for a government measure or a law to have a "secular" purpose,²⁷⁶ it must not advance nor inhibit any religion, including non-belief in God.

While government measures may affect a religion, they must, however, be neutral in the sense that the general welfare of the public is ultimately benefited by the measure, although an incidental benefit may redound to a form of religion.²⁷⁷ In the Aglipay case, the Court held that "while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any received by the Roman Catholic Church, was not the aim and purpose of the Government."²⁷⁸ In *Garces v. Estenzo*²⁷⁹, the Court held that the barangay's acquisition of a wooden image of their patron saint was "not for the purpose of favoring any religion."²⁸⁰

The third requirement was first introduced in the case of *Lemon v. Kurtzman*²⁸¹ where the United States Supreme Court invalidated state aid to parochial schools in a system involving close government supervision. The

²⁷³ *Id.* at 15 - 16.

²⁷⁴ 330 U.S. 1 (1947).

²⁷⁵ *Lemon v. Kurtzman*, 403 U.S. 602, at 612 - 613 (1971).

²⁷⁶ BACTAS, *supra* note 237, at 60.

²⁷⁷ *Id.* at 59-60.

²⁷⁸ *Aglipay v. Ruiz*, 64 Phil 201 (1937).

²⁷⁹ 104 SCRA 510 (1981).

²⁸⁰ *Id.*

²⁸¹ 403 U.S. 602 (1971).

Court said that there was a violation of the non-establishment clause due to "excessive entanglement with religion."²⁸²

2. Free Exercise Clause

The basis of the free exercise clause is the respect for the inviolability of the human conscience.²⁸³ As one of the most valuable rights accorded in the Bill of Rights, it is insulated from government intervention. It guarantees free exercise by explicitly prohibiting the legislature from passing any law that restrains the free exercise of religion.

The free exercise clause has a dual aspect - it prohibits compulsion and recognizes the freedom to act according to one's beliefs. In *Cantwell v. Connecticut*,²⁸⁴ the United States Supreme Court declared:

"On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the amendment embraces two concepts - freedom to believe and freedom to act. The first is absolute but in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of the society."²⁸⁵

The State, therefore, cannot compel anyone to accept any religious faith or practice any form of worship. It also guarantees the liberty to believe and to act and worship according to one's belief. The freedom to act on one's belief, however, is not absolute.

According to Bernas, "the absoluteness of the freedom to believe carries with it the corollary that the government, while it may look into the good faith of the person, cannot inquire into a person's religious pretenses."²⁸⁶ In *U.S. v. Ballard*,²⁸⁷ the United States Supreme Court declared, "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs..."²⁸⁸ The Court further added, "[m]an's relation to his God was made not a concern of the State. He was granted the right to worship as

²⁸² *Id.*

²⁸³ *Everson v. Board of Education*, 330 U.S. 668 (1947).

²⁸⁴ 310 U.S. 296 (1939).

²⁸⁵ *Id.* at 303.

²⁸⁶ JOAQUIN BERNAS, *supra* note 252, at 291.

²⁸⁷ 322 U.S. 78, 86 (1944).

²⁸⁸ *Id.*

he pleased and to answer to no man for the verity of his religious views."²⁸⁹ In *Gerona v. Secretary of Education*²⁹⁰, the Philippine Supreme Court had occasion to state that "[o]ne may believe in most anything, however strange, bizarre and unreasonable the same may appear to others, even heretical when weighed in the scales of orthodoxy or doctrinal standards."²⁹¹

In the realm of action, the free exercise becomes subject to government regulation. In *Reynolds v. United States*,²⁹² the Court enunciated a "belief-action dichotomy" wherein the free exercise clause completely insulated the realm of belief from state action, while leaving religiously motivated action, including expression, subject to police power.²⁹³ The Court said, "[l]aws are made for the government of action, and while they cannot interfere with mere religious beliefs and opinion, they may with practice."²⁹⁴

Although the guarantee includes a full right to entertain any religious belief and to practice any religious principle, the right may not be exercised in violation of the laws of morality and property or used to infringe the personal rights of others. It does not afford justification for actions or practices that disrupt public peace and offend public morals. Hence, the government may enact and enforce measures prohibiting acts which though religious in nature, breach public peace and expose others to harm and danger.

Laws enacted for the purpose of restraining and penalizing acts which tend to disturb public order or to corrupt morals, although such acts may have been committed in furtherance and in conformity with what is believed to be a religious obligation, are not automatically repugnant to the Constitution. Thus, in reviewing a statute questioned on grounds of free exercise, the judicial task is one of balancing the interest of religion with the secular interest of the state involved.

In *Wisconsin v. Yoder*,²⁹⁵ the U.S. Supreme Court arrived at their decision after balancing the interest of religion and that of the state. The Court said, "[t]hus a State's interest in universal education, however, highly we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interest, such as those specifically protected by the Free Exercise Clause."²⁹⁶

²⁸⁹ *Id.*

²⁹⁰ 106 Phil 2 (1959).

²⁹¹ *Id.*

²⁹² 98 U.S. 145 (1879).

²⁹³ *Id.*

²⁹⁴ *Id.* at 166.

²⁹⁵ 406 U.S. 205 (1972).

²⁹⁶ *Pierce v. Society of Sisters*, 268 U.S. 535 (1925).

For a valid curtailment, the exercise of the freedom to act on one's belief, the same tests used with respect to free speech is applied. In *American Bible Society v. Manila*,²⁹⁷ the Court said that the sole justification for a limitation on free exercise is "the existence of a grave and present danger of a serious evil to public safety, public morals, health or any other legitimate public interest that the State has a right to prevent."²⁹⁸ Thus, the Court upheld the free exercise clause that includes the right to disseminate religious information in the absence of a clear and present danger.²⁹⁹

D. ARMM and Presidential Decree No. 1083

The ARMM and the Code of Muslim Personal Laws in the Philippines are two important laws that are relevant to the present status of the Muslim People's practice of religion. Parenthetically, the Government of the Republic of the Philippines views the two laws as sufficient concessions to the Muslim People's aspirations to retain and enforce their "way of life." It is with this GRP perspective that there has been a continuous failure in a final resolution to the Muslim People's aspirations.

The enactment of the Code of Muslim Personal Laws of the Philippines was a recognition of the distinctive character of the personal laws of the Muslim People. This recognition was long overdue, given the previous acts of the government in exempting the Muslim People from the application of the marriage laws of the Philippines, especially those prohibiting polygamy. Promulgated five months after the hostilities by the MNLF against the Marcos government began, P.D. 1083 was an appeasement measure done to pacify the Filipino Muslims.³⁰⁰

Unfortunately, there is an ironic twist to the GRP's commendable intention to appease the Muslims and to show respect for Islamic traditions and culture. The mechanism of the law is discriminatory to the Muslim People. Thus, the very law which sought to respect their religion actually served as a vehicle for

²⁹⁷ 101 Phil 386 (1957).

²⁹⁸ *Id.* at 398.

²⁹⁹ *Id.*

³⁰⁰ CHE MAN, *supra* note 64, at 89.

discrimination.³⁰¹ Moreover, some provisions of the law have been found to be "un-Islamic."³⁰²

Since the Islamic concept of practice of religion essentially involves governance, it is important to discuss the laws on the Autonomous Regions in Muslim Mindanao. In recognition of the "common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics" of the Muslims, the Constitution has mandated the creation of an autonomous region in Muslim Mindanao.³⁰³ The major purpose of the provision is the creation of a situation that will allow Muslim culture to flourish unhampered by the dominance of all other cultures and thereby to contribute more effectively to national progress. Another purpose was to furnish a possible solution to the regional conflicts that have arisen partly from cultural diversity.³⁰⁴ The Organic Act further adds, "to ensure the peace and equality before the law of all people in the Autonomous Region."³⁰⁵

The ARMM was created in response to the persistent clamor and the fierce struggle for local autonomy, a government founded on Islamic laws and respectful of the Muslim way of life.³⁰⁶ Accordingly, the creation of such autonomous region must be within the framework of the Constitution and the national sovereignty of the Philippines. It is therefore subject to the principles espousing the sovereignty of the people, the separation of the Church and State, and the Non-Establishment Clause. The Constitution also mandates that Congress shall

³⁰¹ Adel Fadel Tamano, Article 143 of P.D. IO83: *An Example of Discrimination Against Muslims of the Philippines* (1996) (unpublished LIB. Thesis, Ateneo de Manila College of Law) (on file with the Ateneo Professional Schools Library).

Basically, the thesis dealt with Article 143 of P.D. 1083 which granted *Sharia* District Court courts exclusive jurisdiction over majority of actions involving personal laws. The same law, however, limited the establishments of the *Sharia* Courts to Muslim dominated areas. In effect, a Muslim Filipino residing in Manila must go to Sulu or Cotabato to file his case. In his conclusion, the proponent found Article 143 as violative of: 1. the constitutional guarantee of equal protection as there is no valid classification; 2. the constitutional guarantee of freedom of religion as it indirectly compels the Filipino Muslims to abandon their religion due to imposition of greater burdens; 3. the constitutional guarantee of freedom of religion as it imposes a "religious test" in the exercise of the right to file an action or proceeding in the non-*Sharia* courts of justice.

³⁰² Haron A. Pangcoga, *Some Un-Islamic Provisions of the Code of Muslim Personal Laws of the Philippines: A Critique*, 3(1) MINDANAO ISLAMIC JOURNAL 130-46 (1991).

³⁰³ 1987 PHIL. CONST., art. 10, § 15.

³⁰⁴ BERNAS, *supra* note 18, at 393.

³⁰⁵ Letty Tumbaga, *The Autonomous Region in Muslim Mindanao in Crisis*, POLITIK MAGAZINE 19 (August 1999) [hereinafter Tumbaga].

³⁰⁶ RA 6734, Organic Act for the ARMM, Article 1, §2 (1989).

enact an Organic Act that shall provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of the Constitution and national law. It also granted limited legislative power to the autonomous region with the same restriction that it remain subject to the provisions of the Constitution and national laws.³⁰⁷ As the Organic Act now reads, these were sufficiently covered.

The preamble of the Organic Act provides that the people of ARMM "establish an Autonomous Regional Government that is truly reflective of their ideals and aspirations within the framework of the Constitution and national sovereignty."³⁰⁸ The ARMM provisions are, in effect, the recognition of the Moros' right to self-determination.

Self-determination is considered as the freedom to make one's own decisions without interference from others. On the political level, it relates to a nation's freedom to govern itself without outside control. To many racial minorities, the concept of self-determination may include the recognition and preservation of their culture and cultural identity, or the grant of autonomy where a degree of independent decision-making is allowed and central government control is minimized, or the complete separation or secession from the mother country and the formation of an independent nation state.³⁰⁹ For the Moros, self-determination is their right to live and judge their actions in accordance with *Shari'ah*.³¹⁰ The *Qur'an* states: "If any do fail to judge and command by the light of what Allah has revealed, they are unbelievers."³¹¹

The people of ARMM thus view the kind of local governance endorsed by the GRP as incompatible with acceptable religious and traditional systems and is less popular with them. According to many Muslim leaders, the crisis in the ineffectiveness of the ARMM can be traced to a whole system of local governance endorsed by the national government that does not take Islam culture into consideration.³¹²

The 1987 Constitution has provided for the Moros the option of self-determination through autonomy. It is, however, a very limited form of self-determination. As enunciated in *Magtajas v. Pryce Properties Corporation*,³¹³

³⁰⁷ 1987 PHIL. CONST., art. 10, § 20.

³⁰⁸ R.A. 6734, Organic Act for the ARMM, Preamble (1989).

³⁰⁹ Mehol K. Sadain, *The Concept of Human Rights in Islam and Its Relevance to the Movement for Self-Determination by the Muslims in the Southern Philippines*, 1 THE HUMAN RIGHTS JOURNAL 40 (1995).

³¹⁰ *Id.* at 43.

³¹¹ THE HOLY QUR'AN, 5: 47.

³¹² Tumbaga, *supra* note 305, at 21.

³¹³ 234 SCRA 255, at 258-9 (1994).

Congress now retains control of the local government units in a significantly reduced degree as compared to previous Constitutions. In *Ganzon v. Court of Appeals*, the Court ruled that in spite of autonomy, the Constitution places the local governments under the general supervision of the President. In effect, the acts of the ARMM can be effectively undermined by Congress and the President.

In this respect, the ARMM failed. On the one hand, 'it raises regional autonomy to a constitutional level and thereby strengthens its legal foundation... and also makes the rational for autonomy (diversity in cultures) part of the constitutional corpus.'³¹⁴ On the other hand, by permanently embedding into the body of the Constitution a limited autonomy under a central authority, it has also narrowed the constitutional space for a more self-determinative sub-system.³¹⁵

V. COMPARATIVE ANALYSIS

There is difficulty juxtaposing the two principles in a parallel paradigm. On one hand, the Islamic principle views practice of religion as intertwined with the political sphere. It defines religion as a way of life covering all aspects of human affairs. In Islamic concept, an important part of religion is the role of the political authority. On the other hand, the Constitutional principle views practice of religion as isolated from the affairs of the State. It leaves the practice of religion as a personal matter between the believer and his beliefs. This is the essence of the constitutional injunction of separation of Church and State.

The Constitution, however, unconsciously³¹⁶ attempts to accommodate the Islamic concept of religion by addressing the Muslim People's aspirations for self-determination in the provisions for an autonomous region in Muslim Mindanao. It is an attempt that greatly fails as the ARMM is made subject to provisions of the Constitution and national laws that conflict with the Islamic way of life and governance.

A. Irreconcilable Principles

In order to lay the basis for constitutional amendment, the contrasting concepts of Islam and the 1987 Philippine Constitution on the practice of religion must be discussed.

³¹⁴ Joaquin G. Bernas, *The Challenge of Autonomy*, 3 MINDANAO LAW JOURNAL 123 (1988).

³¹⁵ Soliman M. Santos, Jr., *Constitutional Accommodation of a Moro Islamic System in the Philippines* (1999) (unpublished thesis, University of Melbourne) (on file with University of Melbourne Faculty of Law) [hereinafter Santos].

³¹⁶ It was unconscious effort because the reason of the framers for including the ARMM provisions in the Constitution was to recognize and accommodate the Moro People's right to self-determination and not in consideration of their religion.

1. Definition of Religion

In Islam, religion finds its rough translation in *Din*. *Din* is the way of life prescribed by Allah in the *Qur'an* and the *Sunnah*. Its legal embodiment is the *Shari'ah*. As a way of life, it covers everything from the religious to the secular. It involves all aspects of life including the affairs of the State.

For the Muslim, his life must be one of *Ibadah* or worship. *Ibadah* is what ideally constitutes the Muslims' life and should be a manifestation of *Din*. Thus, worship or practice of Islam is not limited to rituals but includes the affairs of the State. If the political authority or the laws to which he is bound does not recognize the supremacy of Allah's law or *Shari'ah*, he has not perfected his *Ibadah*.³¹⁷

The Philippine Constitution views religion through the concept of separation of Church and State. As defined by the Courts, religion is defined in a theistic and non-theistic manner. In practice, however, while the Court has recognized relations to a Creator and the obligations such relations impose, it has insulated religion from the interference of the State. The State cannot be an instrument or part of the practice of religion. There is, therefore, a dichotomy between the religious and the secular. If it is religious, then it must not be secular and vice versa.

Under the Philippine Constitution, the Muslim Filipinos are denied the opportunity to perfect their *Ibadah*. The State or the political authority is barred from playing a part in the Muslim's practice of religion. The State cannot adequately accommodate the Muslim Filipinos because to do so would be unconstitutional.

2. *Tawhid* (Din wa Dawla) and Separation of Church and State

In Islam, the Church and State relations are viewed through the concept of *Tawhid* (One-ness of God) or more specifically, *Din wa Dawla*. This concept is exemplified by Prophet Muhammad (S.A.W.) who was both a prophet and a ruler. There is no compartmentalization in Islam – the affairs of the State are ultimately tied in with the affairs of religion. Islam is a total system of existence. As such, the union of religion and politics is inherent. Therefore, the separation of Church and State in Islam is inconceivable.

In the Philippine Constitution, Church and State relations are viewed through the principle of the inviolability of the separation of Church and State.³¹⁸ The development of this principle in the Philippines was partly a result of the Christian Filipinos experience with Spain and largely due to American influence and rule. It advances that the Church and State should respect the principle of separation and neither should transgress it. There is, therefore, a compartmentalization between religious and secular.

³¹⁷ Lingga, *supra* note 96.

³¹⁸ 1987 PHIL. CONST., art. 2, § 6.

Despite the absolutist tone of the Constitution, jurisprudence has permitted State interaction with the Church. There is even recognition of the fact that absolute separation is not possible. It is, however, an interaction where the State's purpose is avowedly secular and there must be no excessive entanglement with religion. Even the Constitution has allowed certain exceptions to the principle of separation of Church and State. These exceptions, however, present a particular benefit to Christianity. As one legal expert posits, "[I]t might be the case that, in a country where most people are Christians, the laws are written in such a way that they do not interfere with the free exercise of the majority religion."³¹⁹

The Muslim Filipino is thus put in a precarious situation. The creed of his faith declares to him the union of religion and politics and that the State plays an important part in his *Ibadah*. On the other hand, the basic ideological principle of the Philippine Constitution proclaims the inviolability of the separation of Church and State. It frowns upon State interference in religion and views it as perilous to society.

The present state of things presents two realities to the Muslim Filipinos. One, abidance to the Constitution constitutes a violation of Islam. Two, abidance to Islam constitutes a violation of the Constitution. Given the Philippine history of Moro-Christian relations, these two realities become more glaring in light of the fact that the Constitution's principle is basically a tenet of Christianity. It does not help that the development of jurisprudence on separation of Church and State is especially accommodating to the Christian religion.

The same Constitutional principle also posits a difficult situation for the GRP. It presents to the GRP two realities. One, it is bound to uphold the fundamental law of the land. Two, it needs to recognize and uphold the rights of its Muslim minority. The GRP can no longer play deaf to the yearning of the Muslim Filipinos for the full and real practice of their faith. Muslim Filipinos want to live under an Islamic system and be governed by *Shari'ah* in its full scope. This, however, is not possible under the present Constitution.

3. Religious Liberty: Non-Establishment and Free Exercise

Islam calls upon the Muslims to live a life of *Ibadah*. To be meaningful, the practice of Islam must be a free and voluntary act. *Ibadah* follows a belief-action singularity. It begins with an intention or *niyah*, which is an objective to serve Allah. It presupposes belief in the creeds of Islam. With this intention, the act itself or the living out of God's will consummates the *Ibadah*. Belief alone, without the action, is not worship but hypocrisy. In Islam, hypocrisy is a grave sin.

³¹⁹ Eduardo Penalver, *The Concept of Religion*, 107 YALE LAW JOURNAL 791, 793 (1997).

The *Shari'ah* decrees that "there be no compulsion in religion."³²⁰ It is a resolute decree that even Allah refrain from forcing individuals to follow Islam. Allah has set us free to make our choice. Forms of compulsion include physical coercion, social pressure, inducements by wealth or position and other unintentional advantages. Islam, however, does not look at an Islamic political authority as a form of compulsion. It views it as part of the perfection of the practice of Islam. In its relations with a non-Muslim minority or *dhimmis*, the Islamic political authority is mandated to simply bear witness to the religious life of others. It must live in a courteous dialogue with the *dhimmis*.

In the Muslims' practice of his faith, it is important, therefore, that the political authority to whom he renders his allegiance follows the tenets of Islam. In his *Ibadah*, the political authority plays an integral part. It must embody the ideals of Allah, enforce the *Shari'ah*, and recognize the sovereignty of God.

The *Shari'ah* decrees that the State accommodate and render assistance to *dhimmis* and Muslims in equal terms whether the aid itself is religious or secular. The State must not distinguish, instead look at the assistance as essentially a mandate of Allah. *Shari'ah* makes the State a part and instrument of religion. The State, therefore, must conform to the Will of Allah and ensure that the individuals that compose it are free to exercise their *Ibadah*. As part and instrument of religion, the State itself must embody Islamic principles and act in the Islamic way. In effect, the State establishes Islam as the official religion. It can be said, therefore, that entanglement or union between the religion and politics is the policy of Islam.

The Philippine Constitution guarantees religious liberty and recognizes it as one of the revered rights of the individual. It is, however, a guarantee that largely relies on the Non-Establishment Clause. It views State interference with religion as dangerous to religious liberty. In effect, the constitutional proscription on religious liberty is envision to be achieved through State neutrality on religious matters.

In application, however, the non-establishment clause has rarely been absolutely imposed. On this point, the case of *Everson v. Board of Education*³²¹ is instructive. The Court was resolute on the absolute separation of Church and State. Despite the absolutist language of the Court, it upheld a statute authorizing the government to reimburse parents of Catholic school children for the cost of bus transportation to and from school. Clearly, the non-establishment clause does not prohibit all government aid to religion. For as long as the primary purpose is secular and the measure does not foster excessive entanglement with religion, the Non-Establishment Clause is not violated.

³²⁰ The HOLY QUR'AN 2:256.

³²¹ 330 U.S. 1 (1947).

The Free Exercise Clause recognizes the right of the individual to freely exercise his religion. It has a dual aspect: to prohibit compulsion of the acceptance of any creed or the practice of any form of worship, and recognize the freedom to act on one's beliefs. It further provides that the freedom to believe is absolute but the freedom to act is not. In *Reynolds v. United States*³²², the Court enunciated a "belief-action" dichotomy wherein the free exercise clause completely insulates the realm of belief from State action, while leaving religiously motivated action, including expression, subject to police power of the State.

Clearly, this puts the minority Muslim Filipinos in a quandary. The above discussion presents to the Muslim Filipinos two problems. One is the practice of religion of the individual and the other is the effective mode of guaranteeing religious liberty.

In Islam, the five-times-a-day prayer, the Friday rest and worship³²³ and fasting on Ramadan are absolutely protected. Under the Constitution and Philippine law, they are not. The difficulty experienced by the Moros is due to two factors: one, the mostly Christian-influenced working conditions, and two, the Constitution's belief-action dichotomy. The first does not accommodate the Muslim religious duties, as evident in the established regular working days and hours. The second disallows religion as a reason for Moros not abiding by regulations of non-Muslim institutions. The present development of jurisprudence does not in any way begin to ease the difficulty experienced by Moros living and working in a Christian society.

These problems, however, can be solved through legislation. Congress can pass a law accommodating the practice of religion of the minority Muslim Filipinos. This approach, however, may not succeed as the Non-Establishment Clause can be raised against it.

The belief-action dichotomy also presents a problem in the minority Muslim Filipinos' enforcement of the *Shari'ah* regarding crime and punishment. The absence of Philippine legislation recognizing an Islamic penal code effectively affects the Muslim Filipinos from acting according to the tenets of their religion. The Constitution grants them the freedom to believe in an Islamic penal code, but not the freedom to enforce it. The moment Muslim Filipinos start to enforce an Islamic penal code, they become criminals under Philippine law.

³²² 98 U.S. 145 (1879).

³²³ According to Professor Yoram Dinstein: "Legislation in an overwhelmingly Christian country pertaining to a weekly day of rest must take into account the religious practices of Jewish and Muslim minorities. Otherwise, it would amount to de facto discrimination," in YORAM DINSTEIN, *THE PROTECTION OF MINORITIES AND HUMAN RIGHTS* (1992).

Regarding the mode of guaranteeing religious liberty, Islam posits an official recognition of religion while the Constitution posits a non-establishment of religion. Islam regards religious liberty as a sacred right and considers State participation as instrumental to its preservation and perfection. The Constitution also recognizes religious liberty but views State interference as destructive to society. It, therefore, places the Non-Establishment Clause as a legal bar to State interference in religion.

For the Muslim Filipinos, the pervading role of religion in their lives requires State recognition of religion. The State must play its important role in molding a community that lives out the Islamic ideals. The failure of the State to play its role results in the moral and spiritual erosion of the community and the individuals composing it. Thus, State participation is very important in the perfection of the Muslim Filipinos' practice of religion. This, however, does not mean that there is no protection to non-Muslim minorities or *dhimmis*. The *Shari'ah* has decreed that "there be no compulsion in religion." This is an all-powerful decree because even Allah adheres to it.

The Muslim Filipinos find themselves living in a legal system that bars the State from interfering in the affairs of religion. It is also a legal system that contains principles that fail to conform to the creeds of Islam. The perfection of practice of Islam that the minority Muslim Filipinos has aspired and fought for the last five centuries remains an aspiration. The constitutional bar on the State interference with religion has affected the capacity of the Muslim Filipinos from embodying an Islamic way of life. Muslim Filipinos encounter obstacles even in their ritual practices. Worse, Muslim Filipinos become criminals the moment they assert and enforce the Islamic penal code.

The predicament of the Muslim Filipinos is a cause for concern of the GRP. Again, the GRP is bound to uphold the Constitution but it cannot disregard the religious liberty of its Muslim minority. Perhaps, legislation accommodating the ritual practices of the Muslim Filipinos can remedy the situation. The same, however, remains subject to the Non-Establishment Clause in the Constitution. As the ritual practices are inherently religious, it is bound to fail the secular test for validity of the law.

If the GRP encounters great difficulty in accommodating the ritual practices of the Muslim Filipinos under the present Philippine legal system, the enforcement of the Islamic penal code is even more troublesome.³²⁴ It does not only have to contend with the Non-Establishment Clause, it must abide by the

³²⁴ In line with its ideology of an Islamic way of life, the MILF executed in 11 March 1999 two Muslim men convicted by an MILF Court for robbery and murder of a Christian couple. This drew various reactions from different sectors of Philippine society. Applying the provisions of the Revised Penal Code, however, the executioners committed murder and rebellion.

constitutional provision and jurisprudence on cruel and inhuman punishment. Moreover, there are implications on the sovereignty of the Republic of the Philippines. The proscription of the *Shari'ah* on crimes and punishments would understandably fail the Constitutional test. The GRP, therefore, is practically constitutionally barred from recognizing and upholding the religious liberty of the minority Muslim Filipinos. There must be a constitutional recognition of practice of religion in conformity with the Islamic concept as the present formulation is an effective negation of the Muslim Filipinos' practice of religion.

4. Political Principles

The political principles of Islam are viewed through the fundamental concept of *Tawhid*. *Tawhid* refers to the oneness of Allah, the unity and equality of man, and man as the vicegerent of Allah. It lays the foundation for a human society built on the responsibility of each person as God's representative where sovereignty is exclusively with Allah. Sovereignty, therefore, rests with Allah. As a political theory, there are four important subsumed concepts in *Tawhid*: *Shari'ah*, *Amanah*, *Khilafat* and *Shura*. The Philippine Constitution views it through the principle of republicanism. It views the government as of the people, by the people, and for the people. As declared in the Constitution, "[s]overeignty resides in the people and all government authority emanates from them."³²⁵ Sovereignty, therefore, resides with the people. Thus, the following are the resulting contrapositions.

In Islam, *Shari'ah* is the embodiment of God's Will and is the fundamental law. Its source is Allah and this revelation is mainly found in the *Qur'an* and the *Sunnah*. For the Philippine Constitution, the fundamental law is the Constitution itself. Its source is the Filipino people as provided for in the preamble. It is, therefore, the embodiment of the will of the Filipino people.

The contraposition in the conception of *Shari'ah* and Philippine law is significant. On one hand, *Shari'ah* is enormously wider in scope and covers all aspects of human conduct. It is essentially religious and is an integral part of religion and its practice. There is, therefore, an intrinsic unity between religion and politics in Islam. On the other hand, Philippine law is essentially secular and is traditionally and firmly insulated from religion and its influence. There is, therefore, a necessary consequence of separation of Church and State.

In the matter of the right of the people to administer their affairs, the same is governed by *Shari'ah* through the concept of *Amanah*. The people are mere trustees of God and exercise authority on earth by virtue of the power delegated by Allah. This concept of *Amanah* is interrelated with the concept of *Khilafat* wherein the people act as a representative of God on earth and exercise authority by virtue of the powers delegated by God. As a *khalifah*, he must therefore act according to the *Shari'ah*. For the Philippine Constitution, the right of the people to administer their affairs is

³²⁵ 1987 PHIL CONST., art. 2, § 1.

governed by the concept of people's sovereignty. The people are the sovereign and they exercise their authority by virtue of a power vested in them by themselves. In effect, they act according to the laws they have enacted.

In Islam, the participation of the people in the affairs of the State is decreed by *Shari'ah* through the concept of *shura*. The political leaders are mandated to carry out the state affairs through consultation with the people. There is, however, no prescribed institutional form in which consultation must occur. Nevertheless, it is required that the leaders and the institutional form of the *shura* be grounded on the *Shari'ah*. In the Philippine Constitution, there is a semblance of *shura* in the form of elections and the legislative framework of representation as well as the provision on initiative and referendum. The incompatibility is in the fact that the consultation of the people in the Constitution is not grounded on *Shari'ah* but on the sovereignty of the people.

The Philippine State cannot be legitimate in the eyes of the Muslim Filipinos if it fails to conform to the *Shari'ah*. It might coerce obedience, but Muslim Filipinos will not abandon their belief that state affairs should be supervised by the teachings of the holy law. Why force on the Muslim Filipinos Western norms and not recognize their Islamic norms?

It is important to note that there was an "unconscious"³²⁶ effort in the Philippine Constitution to address this problem of irreconcilable principles in the form of the Autonomous Region on Muslim Mindanao. Despite the earnest and sincere effort of the drafters of the 1987 Philippine Constitution, the policy of national unity and integrity still prevailed. The ARMM is still very much subject to the countervailing provisions of the Constitution and national laws. In effect, the constitutional accommodation of the Moro people's right to self-determination was negated by the express limitations. The framers failed to consider the reality that for the Moros, self-determination is their right to live and judge their actions in accordance with the *Shari'ah*.

In light of the failure of the ARMM, there must be an earnest rethinking of its conceptualization. On one hand, regional autonomy is raised to a constitutional level and thereby strengthened in its legal foundation. The same also makes the rationale for autonomy (diversity in cultures) part of the constitutional corpus.³²⁷ On the other hand, by 'permanently embedding into the body of the Constitution' a limited autonomy under a central authority, it has also narrowed the constitutional space for an accommodation of a more self-determinative Islamic subsystem.³²⁸

³²⁶ It was an unconscious effort because the reason of the framers for including the ARMM provisions in the Constitution was to recognize and accommodate the Moro people's right to self-determination and not in consideration of their religion.

³²⁷ Joaquin G. Bernas, *The Challenge of Autonomy*, 3 MINDANAO LAW JOURNAL 123 (1988).

³²⁸ Santos, *supra* note 316, at 23.

B. Reconcilable Principles

The discussion above would seem to point to Islam being the antithesis of the Philippine Constitution. Practice of religion being the absolute and resolute duty of a Moro, the consequence of such a conclusion would be a perpetual struggle of the Moro people for liberation and independence. For a Moro, that is the ultimate destiny. For the GRP, that is the ultimate capitulation. There must be a middle ground and an earnest effort to look for reconcilable principles.

There are two principles that can spell the difference: religious liberty and the people's role in governance.

1. Religious Liberty

Islam and the Philippine Constitution guarantee religious liberty. Islam accords it the greatest protection that even Allah refrains from violating it. The Philippine Constitution includes it as part of the Bill of Rights so that it is protected from the interference of the government. They differ, however, in the role of the government. While Islam considers the role of government as an integral part in its practice, the Constitution looks at the role of government as one of neutrality. There is, therefore, a crucial and valid distinction.

As one legal expert wrote, "There are certain equalities, such as the equality of each individual to freely exercise his own religion, which often require that religious differences be taken into account. Indeed, a generally applicable law may well have a disparate impact on different religions, inhibiting the practice of certain religions while not interfering with that of the others. In that case, religious differences should *ceteris paribus* be taken into account to constrain application of the law in question to permit the adherents of all religions involved to practice equally and freely their chosen religion."³²⁹ Moreover, religious liberty is superior to or of higher value than the separation of Church and State provision or the Non-Establishment Clause. Put differently, the free exercise clause always prevails over the non-establishment clause.

In this respect, there should be a constitutional accommodation of Islam in recognition of the Moros' concept of practice of religion that is intrinsically related to their right to self-determination. First, the provision on the separation of Church and State should be amended. It must consider the Islamic concept of *Din wa Dawla*. There must be no compulsion in the matter of beliefs especially where it contravenes a fundamental belief of another religion. In addition, the international standards do not require the separation of Church and State. Rather, the international requirement is that any relationship of the Church and State should not result in discrimination against those who are not of the majority

³²⁹ McConnel and Teitel, *Modern Constitutionalism as Interplay between Identity and Diversity*, cited in CONSTITUTIONALISM, IDENTITY, DIFFERENCE, AND LEGITIMACY: THEORETICAL PERSPECTIVE 10 (Michael Rosenfield ed., 1994).

religion.³³⁰ Secondly, the provision on the sovereignty of the people should be amended. The Constitution must be sensitive to the beliefs of the Moros. It should exclude the Moros from such principle and declare one that is consistent with the Moros' belief of sovereignty of God and vicegerency of the people. Lastly, the provisions on the ARMM should be amended to remove the clauses that subject the autonomous region to national laws. There can be no real religious liberty for the Moros if national laws that do not conform to the *Shari'ah* are imposed on them.

In the case of religious minorities in an autonomous region where the Islamic system is fully enforced, their religious liberty is accorded the highest respect by the *Shari'ah*. Unlike the constitutional provision which violates the practice of Islam, the *Shari'ah* mandates the government to respect the practice of other religions. It must not discriminate and compel belief in Islam. Rather, it must accord protection.

2. Role of the people

Although Islam literally means "submission", there is no contradiction between Islam and the freedoms inherent in democracy. They are not only compatible, their association is inevitable.³³¹ The basic creeds of Islam stand firmly for individual liberty and representative government: Islamic government is only by consent and consultation of the people.

Islam and the Philippine Constitution mandate the empowerment of the people. Allah delegates the political authority to the people through the concept of *Khilafat*. The people, therefore, have delegated power to choose their leaders. In this instance, the *Shari'ah* decrees the application of *shura*. The process of *shura* means that decision-making belongs to the community as a whole.³³² The leader or leaders must be chosen after consultation with the people. This consultation can take the form of direct election by the people or an election by representatives of the people. Essentially, it is the people who determine the course of their governance.

The Philippine Constitution recognizes the political authority to be vested with the people when it declared that "sovereignty resides with people and all government authority emanates from them."³³³ The people, therefore, have the power to choose their leaders. In this regard, the Constitution has provided for

³³⁰ FREEDOM OF RELIGION AND BELIEF: A WORLD REPORT (Kevin Boyle and Juliet Sheen eds., 1997).

³³¹ Bernard Lewis, *Islam and Liberal Democracy, A Historical Overview*, JOURNAL OF DEMOCRACY 52, 68 (1996).

³³² *Id.* at 73-74.

³³³ 1987 PHIL. CONST., art 2, § 1.

the process of election in determining the leaders of the State. It is through this republican form of governance that the people largely exercise their political authority. The Constitution also provides for mechanisms of direct democracy such as initiative and referendum. In addition, there are consultation mechanisms encouraged by the constitution and which have been made effective through the Local Government Code³³⁴.

It is readily apparent that Islam and the Constitution are in conformity with regard to the political authority of the people. The only difference is the source of the authority. While Islam recognizes that the political authority of the people is delegated by Allah, the Philippine Constitution recognizes it as an original power of the people.

In this light, the GRP is under obligation to 'consult' the Muslim People whether they want an Islamic system and not the previous options given to the Muslim People that were 'un-Islamic,' thus, effectively ensuring their rejection by majority of the Muslim People. Such a consultation is consonant with the Constitution and Islamic Law. The Constitution recognizes the supremacy of the people. Islam recognizes the important role of the people in their affairs as a vicegerent of God. Moreover, in a consultation in the form of a referendum, the voice of the Muslim People now becomes the voice of God in the exercise of their vicegerency.

VI. SUMMARY AND CONCLUSION

The *Bangsa Moro* is a historically and culturally distinct and separate nation from the Christian majority and deserves this status under the universal principle of self-determination; and Islam is the religion and way of life of the *Bangsa Moro* which requires a separate political and administrative framework from the Western concept and principle of separation of church and state. The latter is similarly important because the *Bangsa Moro* embraces Islam as the central theme, not only of his religious practices, but all other aspects of life including the government and economy.

Commissioner Lugum Uka
1986 Constitutional Commission

It is all about a *way of life*.

The present problem between the Republic of the Philippines and the Muslim People is all about a way of life.

The Moros and the Christian Filipinos are people of the same Malay race. Before Islam came to the Philippines, all its inhabitants had a commonality or

³³⁴ R.A. 6734, Organic Act for the ARMM (1989).

common origin. Though the inhabitants were divided into different ethnolinguistic or geographical groups, there was no question in their minds that they were of the same race or blood.³³⁵

The arrival of Islam in the 9th century introduced a new way of life. It brought with it new laws, new ethical standards and a new outlook in the meaning and direction of life. The Muslims began to develop the consciousness of belonging to a wider Islamic community – the *Ummah*. One of most important contributions of Islam, however, was the centralized political structure in the form of the Sultanate. It made Islam a social and political force such that by the time of Spain's arrival, the Muslims were already in Luzon and the Visayas and were trading with the British, the Dutch and the Chinese. Most historians would agree that had Spain not made a timely arrival, the Philippines would be a Muslim country. By the time of Spain's arrival, the *Dar-ul-Islam* (the Abode of Islam) was firmly in place in Mindanao and Sulu.

Spain came to the Philippines with the express objective of colonization and Christianization. The Spaniards, however, were surprised to find a people adhering to Islam – the religion of the Moors, their rulers and adversary for 800 years. In some sort of thought transference, they began to call these people Moros. After their success in colonizing and converting the natives to Christianity in Luzon and Visayas, they trained their guns on the Moros of Mindanao and Sulu. Thus, the beginning of 333 years of war between the Moros and Spain.

For 333 years, the Moros zealously defended the *Dar-ul-Islam* against Spain. The Moros, therefore, developed a distinct identity intensified by Islam and self-preservation far different from the Christianized natives – the *Indios*. On the other hand, adopted the Christian religion with greater zeal than the Spaniards. They were so devoted to it that they willingly accepted Spain's hegemony and became her slaves. They adopted Spain's laws, her systems and the Spaniards' seething hatred of the Moros.

The gap, however, did not stop with the differences in history and culture. It was made worse by the fact that Spain used the *Indios* in their war against Moros. Spain also made sure that the *Indios* feared, disliked and hated the Moros with their frequent staging of Moro-Moro plays. The Moros retaliated with raids on the coastal communities of the *Indios*. There was, thus, a Moro Problem for the *Indios* and a Christian Problem for the Moros.

In the end, Spain left a 'heritage of suspicion, if not hatred'³³⁶, between the Moros and the Christian Filipinos.

³³⁵ *The Muslim Filipino Minority, in THE CRESCENT IN THE EAST* (Peter G. Gowing, Rafael Israeli eds., 1982).

³³⁶ Cesar Adib Majul, Speech for the Spanish Embassy (August 16, 1975).

It was in this condition that America found the inhabitants of the Philippines. America, however, easily crushed the rebellion of the Christian Filipinos who willingly accepted their rule. The Americans easily assimilated the Christian Filipinos into their own system of government including their principle of separation of Church and State. The principle of separation of Church and State was not entirely foreign to the Christian Filipinos. It was the same principle they adopted in the Malolos Constitution. It was not long before the Americans began to transfer the reins of government to the Christian Filipinos.

It was, however, a different matter for the Moros. America's policy toward the Moros started with appeasement. They forged a treaty wherein America committed to respect the religion and political affairs of the Moros. Later, the treaty lost its significance and America officially abrogated it. It was clear that America had no intention of honoring the treaty and was resolute on colonizing the Moros. The Moros, again, saw the need for defending *Dar-ul-Islam*. When organized resistance under the Sultanate failed, individual Moros began to take up the defense of *Dar-ul-Islam* through the phenomenon of *parang sabillullah*.

After establishing effective rule in the Moro areas, the Americans began to impose their laws. America, however, saw their political regime in the Philippines as one in which Church and State were firmly separate. America began to implement major programs in the Muslim South which were entirely secular from the point of view of their ideology. For the Moros, these programs were far from secular but were fundamental assaults on their Islamic faith.

Thus, while the Christian Filipinos began to adapt and perfect American and Christian principles, the Moros were reinforcing Islamic principles. Today, the Philippine Constitution is the embodiment of American principles that many Muslim Filipinos still find repugnant to their faith.

The Muslim Filipinos have an intensely deep sense of Islamic identity. It is an identity characterized by an Islamic way of life. It is an identity that began in the ninth century and profoundly nurtured by Spain's and America's campaign of its extirpation. It is an identity that is ten centuries old and which undertook a fundamental revival in the 1960's and 1970's when the Moros again felt the threat of physical and religious extinction in light of the Philippine governments' policies. Corollary to this revival of Islamic identity was the Islamic revivalism movement in the Muslim world. There is now a re-awakening of the worldwide Islamic community or the *Ummah* that has manifested itself in the Philippines in the form of the Organization of Islamic Conference's mediation in the armed conflict in Muslim Mindanao.

The assault on the Islamic identity and the revival of renewed enthusiasm for an Islamic way of life has brought the Moro people to once again fight. In the past, the Sultanates led the organized resistance. When the Sultanates fell, individual Moros continued the struggle through the institution known as *parang sabillullah*. Today, the MNLF, the MILF, and the upstart Abu Sayyaf are carrying

the torch of the armed struggle. They may have ideological and ethnic differences but in the end, they are all believers of Islam and united in its *Ummah*.

The seven million Muslim Filipinos today live with the question: Do I follow the fundamental law of the land or the fundamental law of my faith? Again, Moros are Muslims and will never aspire to violate the creed of Islam. In the eyes of Allah, they are obedient servants. In the eyes of the Republic of the Philippines, they are intransigent dissidents.

For the love of God, why does the GRP put the Muslim Filipinos in such a situation? Are they less Filipino than the Christian Filipinos? Is the GRP just interested in the wealth of their land?

In fairness to the GRP, it must be acknowledged that it has tried to remedy the situation. As a vestige of colonialism, it saw the problem as a Muslim Problem and its first remedy was the American formula of integration. It adopted the 1935 Constitution without special provisions concerning the Moros all in the name of national unity and integrity. It continued the enactment of national laws without due regard to the Islamic beliefs of the Moros. Worse, the land of the Moros was being given away to Christian settlers from Luzon and Visayas.

In the 1971 Constitutional Convention, the Moro voice was raised. The Muslim delegates' proposals ranged from a federal form of government to complete political autonomy. The Moro voice was, however, lost to the cacophony of the majority. The same objectionable provisions of the Constitution were again incorporated as part of the fundamental law of the land. In the year thereafter, the Philippines experienced an armed rebellion never before equaled in magnitude.

The GRP was forced to the negotiating table and had to work under the mediation of the Organization of Islamic Conference. This led to the Tripoli Agreement. The revelry for peace was quickly dashed by the violations of the agreement by the Marcos administration. The Moros were again back on the warpath.

The Aquino administration started with a pursuit for peace with the Moro people. Its promising beginning was betrayed by its machinations to undercut the bilateral talks.³³⁷ In the end, the government unilaterally imposed its solution by mandating the creation of the Autonomous Region in Muslim Mindanao in the 1987 Constitution. Its main purpose was to allow the Muslim culture to flourish unhampered by the dominance of another culture. The same purpose was rendered ineffectual by the same constitution when it provided that the

³³⁷ Santos, *supra* note 315. According to Atty. Soliman Santos, the Aquino administration adopted a policy to de-internationalize the MNLF, avoid reference to the Tripoli Agreement and OIC mediation, and discourage negotiations in order to bide time for processes related to the 1987 Constitution, particularly the enactment of the Organic Act for ARMM. With the collapse of the negotiations, the administration shifted to a new peace strategy called the 'multilateral consensus-building approach.'

ARMM would be subject to the provisions of the Constitution and national laws³³⁸. Again, the same objectionable provisions were made applicable to the Muslim Filipinos. Thus, to this day, the conflict in Mindanao continues to endure.

The resolution to the conflict in Muslim Mindanao has been staring the GRP in its face. The GRP, however, has refused to see and make an effective response to the reality. It is the reality that the Muslim People have a deep sense of Islamic identity that calls for the living out of an Islamic way of life. It is the reality that the Muslim People is yearning for a political authority that will perfect their *Ibadah*. It is the reality that the GRP must recognize the Islamic concept of practice of religion and play its role in the practice of Islam by the Muslim Filipinos.

The GRP's refusal, however, is understandable. It is bound to act in accordance with the Constitution – the fundamental law of the nation which posits principles that are in contraposition with that of the fundamental Islamic principles. The cardinal question, which the GRP has to answer to the Muslim Filipinos, is whether the constitutional principles on practice of religion is so important to its preservation that disregarding the Muslim Filipinos' religious liberty is an inevitability. Hopefully not.

The GRP must recognize that Muslim Filipinos are also citizens of the Philippines with equal rights as the other citizens. Moreover, the GRP must also recognize the validity of the Muslim Filipinos' aspiration to practice their religion that is essentially related to their right to self-determination. Lest the GRP forgets, the right to practice religion and the right to self-determination are internationally protected human rights. Therefore, there must be a constitutional accommodation of the Islamic concept of practice of religion.

VII. RECOMMENDATIONS

A. Trust

The conflict in Mindanao has sown deep-seethed animosity and prejudice. There is a need to re-establish trust between the Muslim Filipinos and the GRP. The administration of former President Fidel V. Ramos made significant headway in this respect. The 1992 Final Peace Agreement between the MNLF and the Republic of the Philippines is the ultimate manifestation of this trust. This trust, however, has been significantly eroded, as the provisions of the Agreement have been largely unimplemented. On one hand, the MNLF has consistently blamed

³³⁸ The grant of self-determination to the Moros in the 1987 Constitution was actually more of a limitation than a grant. Under the Tripoli Agreement, the autonomous regions were only made subject to the Constitution and there was no explicit mention of national laws.

the GRP for its failure to fulfill its part of the Agreement. On the other hand, the GRP is consistent in its avowal that it is fulfilling its part of the Agreement. The GRP pleads that its acts must be within the bounds of the Constitution.

Today, the Muslim People are once again on the threshold of unsheathing the swords of war. The GRP must contemplate its position: will it recognize the Muslim People's Islamic concept of practice of religion or will it continue its policies of attraction, integration and assimilation as dictated by an American and Christian concept that negates the Muslim People's 'way of life.' Clearly, the first is the rational choice.

B. Constitutional Accommodation

1. Proposal of Atty. Soliman Santos

In his thesis entitled "Constitutional Accommodation of a Moro Islamic System in the Philippines," Soliman Santos proposed the creation of a Special Islamic Region. The proposed formula draws much from the 'One Country, Two Systems' concept of the Hong Kong model, and from comparative constitutional models of treaty constitutionalism which also has some basis in Philippine vis-à-vis American jurisprudence and in Moro and Islamic history. The peace agreement would partake of the nature of a treaty with a view to some constitutional change.³³⁹ The proposed region is one with full political autonomy in conformity with the Islamic concept of practice of religion. It grants full recognition to the Muslim People's right to self-determination. Most significant, it gives the Muslim People the opportunity to free themselves from being subject to the present objectionable provisions of the Constitution and national laws. Thus, the proposed constitutional amendment:

There shall be created a Special Islamic Region to meet the aspiration for a system of life and governance suitable and acceptable to the Bangsamoro people who opt for it. This region shall exercise maximum autonomy with independent legislative, executive, and judicial powers under an Islamic system, as the Philippine constitutional system shall not be practiced there. This region shall be established pursuant to a peace agreement which shall have constitutional status as defining, among others, the relations of constitutional association between the region and the Bangsamoro people, on one hand, and the Republic and the Filipino people, on the other hand. This constitutional arrangement shall include personal or cultural autonomy³⁴⁰ for the Moros outside the region, and guarantees for the protection of human rights.

³³⁹ Santos, *supra* note 315.

³⁴⁰ *Id.*

2. The provision on separation of Church and State should not apply to the Moros. The proposed Constitutional amendment of Article II, Section 6:

The separation of Church and State shall be inviolable except with respect to the Autonomous Region in Muslim Mindanao or a Special Islamic Region.

3. The provision on Non-Establishment and Free Exercise of religion should recognize the Islamic concept of practice of religion. The proposed Constitutional amendment of Article III, Section 5:

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

This provision, however, shall be interpreted or applied with due consideration to the relevant concepts of the religion concerned.

4. The provision on sovereignty of the people should be amended to recognize the Muslim People's Islamic concept of sovereignty of God and vicegerency of the people. The proposed constitutional amendment to be added to Article II, Section 1:

The Republic of the Philippines recognizes the application of the Islamic concept of sovereignty of God and vicegerency of the people with respect to the Autonomous Region in Muslim Mindanao or a Special Islamic Region.

5. An alternative proposal in case the above recommendations are not taken is to amend the constitutional provisions on the Autonomous Region on Muslim Mindanao and make it truly autonomous by removing the provisions that it be subject to the provisions of the Constitution and national laws.

6. The provisions of the Muslim Code of Personal Laws which are "un-Islamic" should be amended. In addition, a law must be passed recognizing Islamic holy days to be effective in the entire Philippines. Moreover, there must be further study on other provisions of the Constitution and national laws that negatively affect the Islamic practice of religion.

7. In light of the importance of peace and inter-faith understanding, it is my further recommendation that the study of law in the Philippines should also involve study of the Islamic system of law.

VIII. FINAL REMARKS

But if you want peace, then let us have that peace and see to it that it is just, comprehensive and durable peace. Because peace, based on a hypocritical foundation, will never work.

Nur Misuari

It is the warmest hope of the proponent that the reader was enlightened about the situation of the Muslim People in the Philippines – their struggle in the past, the reasons for their present armed struggle and the role of Islam in their lives. GRP and the Christian Filipinos, on one hand, and majority of the seven million Muslim People, on the other, have yet to come to peace with each other in spite of the Tripoli Agreement and the 1996 Final Peace Agreement. The GRP and the Christian Filipinos, therefore, must re-examine their often tenuous and strained relationship with the Muslim People and the peace agreements that they have concluded. They have had the upper hand in the bargaining table – offering only what they can give. They have dictated the terms of the peace and its implementation. They must, therefore, bear the blame for its failure. Meanwhile, a people suffer. They suffer and they fight.

The GRP and majority of the Christian Filipinos must realize the injustice of forcing the effectivity of constitutional provisions that negatively affect the very essence of seven million other Filipinos. Likewise, the Muslim People must realize that Islam is a call for peace. It is, however, a peace that must be "just, comprehensive and durable." For the Muslim People, that means living the Islamic way of life. The GRP must start with that as a premise. Only then can there be a conclusion of peace. This proponent calls upon the GRP, the Christian Filipinos and the Muslim People to work and sacrifice together to achieve the elusive peace – *salam*.