

Mindanao (Philippines) - Bangsamoro Basic Law: Step Forward on a Longer Road to Peace

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Having followed as closely as possible, even from a distance, the Mindanao peace process for more than 20 years since 1993, mainly as a civil society peace advocate and occasionally as a peace researcher and consultant, one can perhaps be forgiven for giving occasional unsolicited analysis and advice. There are certain conjunctures in that process that particularly call for this. For me, the achievement of an “agreed version” between the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF) of the proposed Bangsamoro Basic Law (BBL) and its submission to Congress as House Bill (HB) No. 4994 and Senate Bill (SB) No. 2408 is one such conjuncture. The trajectory of this must ideally be not only understood but also influenced for the better of the whole process. It is better to say one’s piece now seeking to make a modest contribution to that end, rather than later when it no longer matters because it has been overtaken by events. But of course, one can only offer one’s thoughts in good faith and according to one’s best lights; their use or otherwise is mainly up to the direct and key actors in the peace process.

It's Complicated But It Will Pass

How are we to view the BBL or more precisely the proposed BBL now before Congress? It’s complicated, but this refers not only to its substantive content. It is made more complicated by what is not in its text or substantive content but also by its context and its place or role in the overall Mindanao peace process (and its various peace agreements) and in the solution of the Bangsamoro problem. Ultimately, the latter has to be the standard or lens for viewing the BBL. This is a decidedly strategic, larger and longer view of the BBL than just its substantive content. In this way one might see the BBL as a step forward on a longer road to peace. And this should help guide the current conjuncture which is in the arena of Congressional deliberations.

Note that there is in fact *no BBL* yet, it still has to be passed by Congress and then ratified by a plebiscite among the residents in its proposed core territory. In the nature of Congressional legislative processes, the proposed BBL cannot be expected to be passed as is by Congress, there

will be amendments to it. The question is whether the passed BBL would be faithful to the intent, spirit and key substance of the proposed BBL. There is also the possibility and even likelihood of constitutionality suit challenges in the Supreme Court (SC) against the proposed or passed BBL, if not also against its antecedent Framework Agreement on the Bangsamoro (FAB) and the Comprehensive Agreement on the Bangsamoro (CAB). The outcome of such constitutionality litigation will necessarily bear on the BBL – as in either upholding it or striking it down, either partially or entirely.

For purposes of this paper, I will assume that the proposed BBL will be passed by Congress more or less faithful to its intent, spirit and key substance, and there is political basis for this estimate. I will no longer hazard here an estimate on any final adjudication by the SC of the constitutionality issues. Your opinion is as good as mine on this (and some legal luminaries have already started to weigh in on this), but even Congress knows that the final arbiter of constitutionality is the SC in a proper suit or suits brought to it for that purpose.

For many, including in Congress, the key criterion for passing the proposed BBL is constitutionality. In fact, this was also the key criterion of the Office of the President (OP) in reviewing the proposed BBL as drafted by the Bangsamoro Transitory Commission (BTC). The ensuing further negotiations on this (more precisely, negotiations of interpretation and implementation of the FAB and its Annexes) between the GPH and the MILF, culminating all the way up to their respective principals President Benigno S. Aquino III and Chairman Al-Haj Murad Ebrahim, eventually resulted in the “agreed version” of the proposed BBL submitted to Congress as HB 4994 and SB 2408.

And so, on that basis, it may be said that as far as the GPH, or more precisely the Executive Department of the Philippine government, and the MILF are concerned, there is a consensus that the “agreed version” of the proposed BBL is faithful both to the Constitution (or more precisely “its flexibilities”) and to the FAB and its Annexes, the respective key parameters or terms of reference of the two peace negotiating parties and now peace partners. And so, I will no longer deal with these two lenses for viewing and evaluating the proposed BBL. I will look at it further below through some other lens or term of reference which is whether it serves the underlying goal of the Mindanao peace process to solve the Bangsamoro problem.

The MILF has taken a leap of faith of sorts in trusting not only President Aquino early on but also now “the collective wisdom of the members of Congress.” The sense of Congress appears to be that expressed by Senate President Franklin Drilon who has said the “first important issue” to be tackled is ensuring that the proposed BBL would not require an amendment to the Constitution, “It should be consistent with the Constitution, just like any law that we will pass.” He said in particular that Congress needed to ensure that the law will stand scrutiny if questioned in the SC, “It is therefore incumbent upon us to make sure that the efforts exerted by both panels will not be put in vain, by ensuring that the Bangsamoro law falls within the four corners of the Constitution...” Thus, also the prior thorough “due diligence” legal review by the OP of the BTC-drafted proposed BBL. Having resulted in the “agreed version” of the proposed BBL with the imprimatur of no less than President Aquino who himself directly endorsed it to the leaders of Congress as no less than his major legacy of legislation, HB 4994 and SB 2408 can be expected to be carried by the ruling majority of his Liberal Party (LP).

If ever, the said bills would be subject only to refinements and improvements, especially in defense or enhancement of the administration’s position that the proposed BBL is constitutional, including making whatever necessary or desirable bill amendments for this purpose (on the premise ideally of MILF concurrence therewith). If there is any provision that appears to require a constitutional amendment, the scenario would appear to be to remove or change it and defer to a later time whatever might require a constitutional amendment (again on the same ideal premise). In fact, the

second mandated task of the BTC is, whenever necessary, to recommend proposed constitutional amendments but the process and time frame for this is not indicated in the outlined GPH-MILF peace road map till the establishment of the Bangsamoro Government by mid-2016, the scheduled end of term of President Aquino.

Given President Aquino's avowed historical legacy stake in the GPH-MILF peace process, Bayan Muna party-list representatives have said that while the Congressional deliberations on the proposed BBL are expected to be lengthy and contentious due to the scope of the bill, the Congressional voting numbers which the President can muster would still carry the day for the passage of the BBL. This is what we referred to earlier as the political basis for our estimate that it will be passed by Congress more or less faithful to its intent, spirit and key substance, or at least to an extent acceptable enough to the MILF under a pragmatic doctrine of *realpolitik*.

Leaps of Faith, Tempering of Hopes

To be clear, this is not to say that Congress is a rubber stamp. The fact that the MILF itself refers to its "collective wisdom" may indicate that there would be, as there should be, genuine deliberations hearing all sides of the issues. If at all, this should also be an opportunity for public discussion and education not only on the BBL but also on the Bangsamoro problem and the Mindanao peace process. We mentioned earlier about the MILF's leap of faith in trusting that the merits of its cause will "survive" Philippine "constitutional processes," even if without expressly submitting itself to this. Maybe that leap of faith should count for something or should be reciprocated by leaps of faith from the other side.

One cannot apply that same political basis pertaining to Congress in order to estimate the likely outcome of BBL constitutionality litigation in the SC. But given the "due diligence" exercised by the Executive Department and to be exercised by the Legislative Department in "ensuring that the Bangsamoro law falls within the four corners of the Constitution," it can be fairly estimated that the BBL would on the whole be found and be upheld by the Judicial Department to be constitutional, with at most only a few provisions, if ever, found to be unconstitutional and separable from the constitutional whole - unlike the case of the aborted 2008 Memorandum of Agreement on Ancestral Domain (MOA-AD), which was declared unconstitutional as a whole.

It must be a bit frustrating though for the MILF that, after successfully negotiating with the GPH peace panel resulting in the FAB and then the CAB, it would appear to still have to further negotiate with the OP, then Congress and then maybe the SC as regards the interpretation and implementation of the FAB and its Annexes in the form of the BBL. Welcome to the Philippine presidential system of separation of powers, and checks and balances. This might have something to do with the MILF's decided preference for the parliamentary form for the Bangsamoro Government.

To be sure, so much effort, resources and even lives have gone into the GPH-MILF peace process since it officially started in January 1997. After a long and winding road to peace spanning so far more than 17 years (with the MILF, but 39 years for the Moro National Liberation Front counting from the first Jeddah peace talks in January 1975), the "agreed version" of the proposed BBL — now HB 4994 and SB 2408 — **represents the most developed level so far of a joint Filipino-Moro consensus measure to solve the Bangsamoro problem.** More so, if and when, it gets passed into a law that is acceptable to the MILF.

The aborted 2008 MOA-AD may have provided for a higher level of Bangsamoro self-determination (an "associative relationship") but this was a merely initialed not signed agreement and it never got to the stage of implementing legislation. As for Republic Act (RA) No. 9054, the second Organic Act

for the Autonomous Region in Muslim Mindanao (ARMM), though it purported to implement the 1996 Final Peace Agreement (FPA) with the MNLF, it did not, up to this day, have the latter's concurrence or acceptance as the implementing legislation. Precisely, the FAB learned that lesson of history when it stipulated that "This Agreement shall not be implemented unilaterally." It is the said ARMM that is sought to be replaced by a better Bangsamoro entity to be established by the BBL upon its ratification by the electorate in the proposed core territory which expands on that of the ARMM.

There is a valid and understandable sense that, having come this far with the proposed BBL, it is **the best or at least most feasible legislative measure moving forward**, while under the remainder of the Aquino administration till mid-2016, to address the Bangsamoro problem and secure peace in Muslim Mindanao. Actually, that view I credit to a Mindanaoan peace advocate friend Atty. Benedicto R. Bacani, who was in the panel of independent lawyers that ably assisted the proposed BBL negotiations, and who told me that the "proposed provisions in the BBL are the best moving forward." That may indeed be so, and **for this reason the proposed BBL deserves the support, or better still critical support, of all peace-loving Filipinos, not to mention Moros.**

Interior Secretary Mar Roxas has said that the proposed BBL is "the last chance that could bring about lasting peace in Mindanao." Just for historical perspective lest we forget, the same was said about the 1996 FPA with the MNLF. It is important to be aware of past lessons, including those about "premature exultation" and "the revolution of rising expectations." But just also for political perspective, it was Roxas and Drilon who were on record, in the mass media as well as in the SC, as the strongest oppositors to the 2008 MOA-AD — when they were in the opposition to the administration of President Gloria Macapagal Arroyo. What a difference a presidential administration makes in the Philippines! Which actually also raises question about the future of the Bangsamoro Government under whatever next administration.

Indeed, what a difference a presidential administration makes, or more precisely its popularity. The 2008 MOA-AD under auspices of the unpopular President Arroyo was not even a signed agreement but it was already subjected to constitutionality litigation in the SC and which eventually struck it down as unconstitutional, while the FAB, then its Annexes and finally the CAB under the auspices of the popular President Aquino were all fully signed and sealed agreements but until now no constitutionality suits have been filed against them, notwithstanding continuing commentaries of unconstitutionality by various legal luminaries, including most prominently Senator Miriam Defensor Santiago and the Philippine Constitution Association (Philconsa). Whatever constitutionality issues against the FAB-CAB appear to have already been overtaken by the proposed BBL now before Congress. Of course, normally constitutionality litigation would be considered premature in the case of mere bills which are not yet laws (yet it was not considered premature for an unsigned agreement like the 2008 MOA-AD!).

But of course one cannot deny those, especially the Moros, who place their hopes for a finally just and lasting peace in the FAB-CAB and the proposed BBL. One senior Moro, lawyer Makabangkit B. Lanto, expressed it well in response to critics of the peace pact: "Many Moros like myself will accept any piece of paper, short of compromising our honor and dignity, that will keep the ember of hope for peace burning in our hearts and heal the wounds inflicted by the injustice of the past." While a "young blood" Moro like Maleiha Shahara D. Alim says it just as eloquently: "Our ancestors envisioned this moment. Our warriors fought for it. Our people clamored and struggled for what is rightly ours. And now it is within our grasp, to hold and uplift: the promised land of the Bangsamoro." And as MILF peace panel chair Mohagher Iqbal told the House ad hoc committee on the proposed BBL: "The Bangsamoro is the sum of our hopes and dreams. It may mean nothing to you. But it is the whole world to us."

MILF Chairman Murad, in his remarks on the signing of the CAB on 27 March 2014 at Malacanang Palace, described it as “the crowning glory of our struggle” and “as the most fitting solution to the undying aspiration of the Bangsamoro.” A recent (16-22 September 2014) editorial of Luwaran, official website of the MILF Central Committee, titled “BBL Menu for Unity and Solidarity,” has however shed some particularly interesting, if not instructive and tempering, light on these high hopes, at the time of Congressional deliberations on the proposed BBL:

"In the BBL, it addresses the issues of identity, territory of the Bangsamoro, ancestral domain, natural resources, sharing of powers and wealth, administration of justice (Shariah Law, local courts, and indigenous justice system of the indigenous peoples), human rights issues, etc. What more a Moro can ask for?"

Of course, solving the Bangsamoro Question or Problem will not be fully addressed by the BBL alone even if it is passed by Congress. The basis of the BBL is only the Framework Agreement on the Bangsamoro (FAB), its four Annexes and the Addendum on the Bangsamoro Waters, thereby leaving other parts of the Comprehensive Agreement on the Bangsamoro (CAB) not yet addressed or unimplemented.

This will be done through the other mandate of the Bangsamoro Transition Commission (BTC) which is to make proposals to amend the Constitution..."

The last two quoted paragraphs raise particularly important angles that may have escaped the previous attention of most. To recapitulate and/or restate these angles coming from the MILF:

1. The Bangsamoro problem will not be fully addressed by the proposed BBL alone even if passed as is by Congress.
2. The proposed BBL is based only on the FAB, its four Annexes and the Addendum on Bangsamoro Waters, and not also on the other component agreements of the CAB.
3. The other parts of the CAB (i.e. those not covered by the BBL) are to be addressed or implemented by constitutional amendments to be proposed by the BTC.

These angles, which are clearly propositions of the MILF (it remains to be seen whether these are concurred in or shared by the GPH), might be said to jibe with our view that the BBL is or should be seen as a step forward in what is entailed to be a longer road to peace, beyond 2016. These MILF angles should give us some pause to ponder on their implications and also to get a better sense of where we really are at in the larger picture.

Solving the Bangsamoro Problem

If the MILF itself, which had first posed in January 1997 the single peace talking point “To solve the Bangsamoro problem,” says that “solving the Bangsamoro Question or Problem will not be fully addressed by the BBL alone even if it is passed by Congress,” then who are we to say otherwise? After all, it is *their*, not the GPH’s, perception of the Bangsamoro problem that is crucial for its solution. It is important to go back to how the MILF elaborated on this problem, through its Technical Committee’s Sub-Committee on Agenda Setting, in February 1997:

"This problem involves a wide variety of social, cultural, economic and political issues and concerns that include, but not limited to, the following:

1. *Ancestral domain*

2. Displaced and landless Bangsamoro
3. Destruction of properties and war victims
4. Human rights issues
5. Social and cultural discrimination
6. Corruption of the mind and the moral fiber
7. Economic inequities and widespread poverty
8. Exploitation of natural resources
9. Agrarian reform"

*"The above issues and concerns are what we perceive to be the Bangsamoro problem. Finding a political and lasting solution to this problem will form part of the agenda in the forthcoming formal talks between the GRP and the MILF panels, **with the end in view of establishing a system of life and governance suitable and acceptable to the Bangsamoro people.**"* (bold supplied)

At one level, one can compare the above-enumerated *non-exclusive* nine-point substantive agenda starting with ancestral domain, on one hand, with the substantive content of the FAB-CAB and BBL, on the other. Most of the said nine-point substantive agenda appear to be covered by the latter. However, if we take the very important and contentious first item "ancestral domain," its substantive content has not been spelled out in the FAB-CAB and BBL. In the BBL, it is *merely listed* in the FAB, its Annex on Power-Sharing and the BBL as "ancestral domain and natural resources" under the "Exclusive Powers" of the Bangsamoro Government. The "exploitation of natural resources" is spelled out substantially in the FAB, its Annex on Wealth-Sharing, its Addendum on Bangsamoro Waters and the BBL, but not so when it comes to "ancestral domain." It was spelled out in the aborted 2008 MOA-AD but this is not considered among the non-derogable "prior peace agreements" (not being a signed agreement) nor a component of the CAB.

One component of the CAB, the "Declaration of Continuity for Peace Negotiation" dated 3 June 2010, however, speaks of "reframing the consensus points on Ancestral Domain." An earlier Joint Statement dated 29 July 2009 included an "Acknowledgment of MOA-AD as an unsigned and yet initialed document, and commitment by both sides to reframe the consensus points with the end in view of moving towards the comprehensive compact to bring about a negotiated political settlement." Have the consensus points on Ancestral Domain been reframed in the FAB, its Annexes and the BBL? Can the listing of "ancestral domain" under the "Exclusive Powers" of the Bangsamoro Government be considered as that reframing? The interpretation of "ancestral domain," as well as the constitutionality of "Exclusive Powers" for the Bangsamoro Government, would appear to be still contentious issues, particularly in the Congressional deliberations on the BBL, if not also in any relevant constitutionality suit litigation.

On another level, one can look at the bottom-line of the above-quoted elaboration of the Bangsamoro problem: "with the end in view of establishing a system of life and governance suitable and acceptable to the Bangsamoro people." Would the BBL establish this? Speaking of "acceptable," the FAB sets the tone at the outset by stating that "The Parties agree that the status quo is unacceptable and that the Bangsamoro shall be established to replace the Autonomous Region in Muslim Mindanao (ARMM)." The ARMM referred to here as "the unacceptable status quo" is subsequently made clear to be the *existing* ARMM which is "deemed abolished" (and RA 9054 creating it is deemed repealed) upon the ratification of the BBL in a plebiscite. The proposed BBL, in its very title, indicates the abolition of the ARMM and the repeal of the first and second Organic Acts for the ARMM, RA 9065 and RA 6734. But in the body of the proposed BBL, it is only the "Abolition of the ARMM" that is expressly or specifically provided, not the repeal of RA 9054 and RA 6734 (itself not repealed but amended by RA 9054). Of course, the intent as well as the effect of the ratification of the BBL is to repeal RA 9054, if only as an inconsistent law – even as the proposed BBL itself actually adopts, by specific reference, certain provisions of RA 9054.

The rationale for the abolition of the existing ARMM is that it was famously pronounced by President Aquino himself to be a “failed experiment.” The MILF has of course long considered it as a *non-solution* to the Bangsamoro problem, particularly as a political entity for Bangsamoro self-governance. But as Fr. Joaquin G. Bernas, S.J. writes: “An important point to remember is that the Autonomous Region in Muslim Mindanao (ARMM) is **governed by two organic acts**: the 1987 Constitution and the Organic Act for Muslim Mindanao.” **The BBL as an organic act to govern the new autonomous political entity called Bangsamoro would replace only the latter (RA 9054) but not the former (the Constitution).** In other words, the constitutional underpinning of “the unacceptable status quo” which is the ARMM would still be there, even as its legislative underpinning would be repealed and replaced by the BBL.

In fine, the new Bangsamoro entity under the BBL would still be considered an autonomous region under the Constitution. The level of Bangsamoro self-determination would still be one of autonomy, particularly of autonomous regions under the Constitution’s Article X, Sections 15-21. It would not be the level of Bangsamoro self-determination conceived as an “associative relationship” under the aborted 2008 MOA-AD, nor that conceived as a “sub-state” under the MILF’s 2010 and 2011 Draft Comprehensive Compact on Interim Governance. In fact, in the MNLF Leaders Meeting statement dated 11 June 2014, particularly on the CAB, “They welcome the MILF acceptance of autonomy as a solution to the Bangsamoro problem.” This, after the MILF’s long-time aversion to “autonomy” as a political solution. But the new Bangsamoro entity under the BBL is indeed what might be called “enhanced autonomy” within the flexibilities of the Constitution’s Art. X, Sec. 15-21. If anything, this shows the MILF’s track record of and continued willingness to compromise, to scale down its demands, which at a previous historical point was for no less than independence. Perhaps a question here is whether the compromise or scaling down is tactical or strategic.

The implications of the new Bangsamoro entity under the BBL being still an autonomous region under the Constitution should not be lost to the MILF and other Moros for whom the Bangsamoro “is the sum of our hopes and dreams... is the whole world to us.” There should be no illusions or unduly “great expectations” about this “promised land of the Bangsamoro” in terms of their legitimate aspiration for self-governance. The Philippine jurisprudence on autonomous regions, particularly in *Kida vs. Senate*, 659 SCRA 270 (2011), and which will bear on the new Bangsamoro entity even under the BBL, is that:

*“The totality of Sections 15 to 21 of Article X should likewise serve as a standard that Congress must observe in dealing with legislation touching on the affairs of the autonomous regions. The terms of these sections leave no doubt on what the Constitution intends – the idea of self-rule or self-government, in particular, the power to legislate on a wide array of social, economic and administrative matters. But equally clear under these provisions **are the permeating principles of national sovereignty and the territorial integrity of the Republic**... In other words, the Constitution and the supporting jurisprudence, as they now stand, reject the notion of imperium et imperio [“an empire within an empire”] in the relationship between the national and regional governments.”*

Furthermore, the *Kida* Decision also pronounced that “From the perspective of the Constitution, autonomous regions are considered one of the forms of local governments, as evident from Article X of the Constitution entitled ‘Local Government.’ Autonomous regions are established and discussed under Sections 15 to 21 of this Article – the article wholly devoted to Local Government.... the ARMM is a local government unit just like provinces, cities, municipalities, and barangays...” This actually may clash in a sense with the provision in the proposed BBL which speaks of the Bangsamoro as “distinct from other regions and other governments” in the context of providing for the “Asymmetric Relationship” between the Central Government and the Bangsamoro Government.

The existing constitutional framework that would bear on autonomous regions is more precisely indicated in the *Kida* Decision to be “the Constitution and its established supporting jurisprudence” which is not limited to the jurisprudence on autonomous regions and on local governments, but includes the whole caboodle of constitutional jurisprudence. One such jurisprudence on local governments is *Basco vs. PAGCOR*, 197 SCRA 52 (1991), which referred to “a unitary system of government, such as the government under the Philippine Constitution.” Being subject to this existing constitutional framework, which includes being expressly “subject to the provisions of this Constitution and national laws,” the new Bangsamoro entity under the BBL will provide at most **only a quantitative but not a qualitative “liberation” from the overarching highly-centralized unitary system of government** of the Philippines.

Is the constitutionally entrenched unitary system of the Central Government not the bigger “unacceptable status quo” that, for the longest time, has been the main fetter to the legitimate wishes of the Bangsamoro people to govern themselves? Would a new Bangsamoro entity under the national sovereignty of the unitary Republic of the Philippines be able to “establish a system of life and governance suitable and acceptable to the Bangsamoro people”? Would it thereby “solve the Bangsamoro problem”? The MILF, through its afore-quoted *Luwaran* editorial, has already answered this last question by saying that “it will not be fully addressed.”

And so if, as the MILF says, the Bangsamoro problem will not be fully addressed by the BBL, then what else has to be done to solve it? The other important angles of the MILF in that afore-quoted *Luwaran* editorial may provide some answers or steps. Take the second important angle which is that the proposed BBL is based only on the FAB, its four Annexes and the Addendum on Bangsamoro Waters, and *not also* on the other component agreements of the CAB. Why this is so is not clear, but the inclusion or incorporation of six specific prior peace agreements into the CAB came only towards the end of its negotiations in March 2014, after there were already the FAB and all its Annexes. When the Annex on Transitional Arrangements and Modalities (ATAM) was signed in February 2013, when there was still no CAB, the ATAM provided that the BTC “shall draft the Bangsamoro Basic Law, using as bases the FAB and its annexes.” This was the guidance followed by the BTC in drafting the proposed BBL, even though the rest of the finalized and signed CAB was already there as a possible reference.

CAB is Not Just FAB Plus its Annexes

The earlier notion that the CAB would be merely the consolidation or putting together of the FAB and its Annexes, as indicated in the FAQ primer about the FAB by the Office of the Presidential Adviser on the Peace Process (OPAPP), turned out to be mistaken. As finalized, the 87-page CAB consisted of twelve appended specific peace agreements, namely the FAB, its four Annexes and one Addendum (sub-totaling six peace agreements) AND the following six specific prior peace agreements:

1. “Agreement for the General Cessation of Hostilities” dated 18 July 1997 [Ramos administration]
2. “General Framework of Agreement of Intent” dated 27 August 1998 [Estrada administration]
3. “Agreement on the General Framework for the Resumption of Peace Talks” dated 24 March 2001 [Arroyo administration]
4. “Tripoli Agreement on Peace” dated 22 June 2001 [Arroyo administration]
5. “Declaration of Continuity for Peace Negotiation” dated 3 June 2010 [Arroyo administration]
6. “Decision Points on Principles as of April 2012” dated 24 April 2004 [Aquino administration]

In addition, the CAB provides that “Supplementary to the CAB are the various agreements,

guidelines, terms of reference, and joint statements duly signed and acknowledged by the Parties in the course of the negotiations between the two parties beginning in 1997.” Yes, also this whole caboodle. This may be attributed or credited to the MILF’s long-time consistent insistence that “The parties commit to honor, respect and implement all past agreements,” as well as its “incremental” (or cumulative) strategy for the peace negotiations.

Again, going back to the afore-quoted Luwaran editorial, it says that “The basis of the BBL is only the Framework Agreement on the Bangsamoro (FAB), its four Annexes and the Addendum on the Bangsamoro Waters, thereby leaving other parts of the Comprehensive Agreement on the Bangsamoro (CAB) not yet addressed or unimplemented.” But right before this it says “Of course, solving the Bangsamoro Question or Problem will not be fully addressed by the BBL alone even if it is passed by Congress.” The implication is that addressing or implementing the other parts of the CAB will make full or complete the solution of the Bangsamoro problem. And then the editorial ends with “This will be done through the other mandate of the Bangsamoro Transition Commission (BTC) which is to make proposals to amend the Constitution...” To be clear, it is saying **two things about addressing or implementing the other parts of the CAB: (1) that this will make full or complete the solution of the Bangsamoro problem; and (2) that this will be done through or will entail no less than constitutional amendments.**

This is, to say the least, a “major, major” proposition made by the MILF through its *Luwaran* editorial. Without prejudice to further teasing this out or even deconstructing it, the immediate implication it brings is that the BBL should not be the end of it in terms of legislative measures, which also include proposals for constitutional amendments, to fully address the Bangsamoro problem. Corollary to this and towards the latter end, the establishment of the new Bangsamoro entity under the BBL should likewise not be the end of it. What should follow next after the BBL is not clear. What is only clear is that the BTC has a secondary mandate to work on or recommend proposals for constitutional amendments. But the dealing with such proposals, which normally would require Congressional action, is not indicated in the announced GPH-MILF peace road map till mid-2016. While the MILF has an eye towards necessary constitutional amendments, and it was at their instance that the BTC has that secondary mandate, the GPH under President Aquino has never shown keenness for such constitutional amendments based on its position of negotiating only “within the flexibilities of the Constitution.” As far as the Aquino administration is concerned, it is effectively leaving this matter of whatever necessary constitutional amendments to the next administration to deal with.

But as far as the MILF is concerned, constitutional amendments are eventually necessary, whether these be for “accommodating” or “entrenching” political arrangements of self-governance. The exact mutually agreed formulation of the BTC’s secondary task in the FAB and its ATAM is “To work on proposals to amend the Philippine Constitution for the purpose of accommodating and entrenching in the Constitution the agreement(s) of the Parties whenever necessary without derogating from any prior peace agreements.” The corresponding formulation in the President’s implementing Executive Order (EO) No. 120 constituting the BTC is more general: “Whenever necessary, to recommend to Congress or the people proposed amendments to the 1987 Philippine Constitution.”

Speaking of “prior peace agreements,” one might divide into two clusters the list of 12 peace agreements that constitute the integral parts of the CAB: (1) the first five listed peace agreements from 1997 to 2010 *before the Aquino administration*; and (2) the last seven peace agreements, especially the FAB and its Annexes, from 2012 to 2014 under the Aquino administration. How does this relate now to the MILF’s *Luwaran* editorial statement that the other parts of the CAB (i.e. those not covered by the BBL which is based only on the FAB and its Annexes) are to be addressed or implemented by constitutional amendments to be proposed by the BTC? The big difference between the two clusters of the CAB is not only with the presidential administrations involved but also with

MILF acquiescence, as it were, to the flexibilities of the Philippine constitution. This is rather clear when it comes to the FAB and the BBL, starting with former GPH peace panel chair Marvic M.V.F. Leonen's assurances regarding such flexibilities. The said MILF acquiescence was definitely not there during the time of the first cluster. In other words, for those earlier peace agreements from 1997 to 2010, as far as the MILF was concerned, there was no limiting parameter of working within the existing constitutional framework – thus, some of these earlier agreements or some provisions therein could be “out of the (constitutional) box.”

It will be recalled that the aborted 2008 MOA-AD emerged during that time as an attempt to flesh out the “Ancestral Domain Aspect” indicated by the 2001 Tripoli Agreement on Peace, then considered the mother framework agreement with its three aspects of Security, Rehabilitation and Ancestral Domain, and with the latter as a prelude to the political solution of the Bangsamoro problem. The MOA-AD stated that any provisions “requiring amendments to the existing legal order shall come into force upon signing of a Comprehensive Compact and upon effecting the necessary changes to the legal framework...” This stipulation, which was understood to refer to amendments or changes to no less than the existing *constitutional* order and framework, was particularly struck down by the SC in its Decision in *Province of North Cotabato vs. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 568 SCRA 402 (2008), as a usurpation of the constituent powers of Congress, a Constitutional Convention and the people in the constitutional amendment process.

The said *Province of North Cotabato Decision* also found that the MOA-AD “cannot be reconciled with the present Constitution... Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the GRP [Government of the Republic of Philippines] and the BJE [Bangsamoro Juridical Entity], are unconstitutional, for the concept presupposes that the associated entity is a state and implies that the same is on its way to independence.” But a close reading of this Decision will show that it does not preclude constitutional amendments, including for an associative relationship and for independence (giving up a portion of national territory), as long as the constitutional processes are followed – which include adequate public information and consultation, as well as the non-guaranteeing of constitutional amendments and the non-usurpation of constituent powers. In fact, this Decision made this pronouncement:

“... If the President is to be expected to find means for bringing this conflict to an end and to achieve lasting peace in Mindanao, then she must be given the leeway to explore, in the course of peace negotiations, solutions that may require changes to the Constitution for their implementation....”

The President may not, of course, unilaterally implement the solutions that she considers viable, but she may not be prevented from submitting them as recommendations to Congress, which could then, if it is minded, act upon them pursuant to the legal procedures for constitutional amendment and revision....”

The Decision also noted the observation of Professor Christine Bell in her law journal article on the nature and legal status of peace agreements “that the typical way that peace agreements establish and confirm mechanisms for demilitarization and demobilization is by linking them to **new constitutional structures** addressing governance, elections, and legal and human rights institutions.” The Separate Opinion of Justice Minita Chico-Nazario states the point even better than the majority Decision:

“It must be noted that the Constitution has been in force for three decades now, yet, peace in Mindanao still remained to be elusive under its present terms. There is the possibility that the solution to the peace problem in the Southern Philippines lies beyond the present Constitution. Exploring this possibility and considering the necessary amendment of the Constitution are not per

se unconstitutional...”

And so, it should not be any wonder that also during the time of the pre-Aquino first cluster of peace agreements that constitute the integral parts of the CAB, the MILF submitted its 2010 and 2011 Drafts for a Comprehensive Compact on Interim Governance that included an Annexure Draft Amendatory Clauses/Article to the Constitution that would allow for a Bangsamoro “sub-state” in “asymmetrical relationship” with the Philippine state. At that point, the MILF was clearly calling for a constitutional amendment. But now, with the proposed BBL, it is clear, as we said, that the MILF has acquiesced to the GPH position for a basic law or organic act “within the flexibilities of the Constitution.” This obviously involved a judgment call on the part of the MILF that this is what is politically feasible under the Aquino administration and that it is better to have this BBL now as a building block rather than have nothing to show or the “unacceptable status quo” of the “failed experiment” ARMM. At the same time, this converged with President Aquino’s avowed historical legacy stake in the GPH-MILF peace process.

Still, post-“agreed version” of the proposed BBL, the MILF through its Luwaran editorial is now saying that addressing or implementing the other parts of the CAB will make full or complete the solution of the Bangsamoro problem which will not be fully addressed by the BBL which is based only on the FAB and its Annexes, and that this addressing or implementing of the other parts of the CAB will be done through constitutional amendments. As for which are those other parts of the CAB being referred to, it is not yet clear. Among the obvious relevant questions to ask, either for clarity or for acting on, are the following:

1. Why is the Bangsamoro problem not fully solved by the BBL? (which question we also addressed in the discussion above)
2. What are the key parts of the CAB not yet addressed or fully addressed by the BBL?
3. Why was the BBL based only on the FAB and its Annexes and not also on the rest of the CAB when in fact this was already available at the start of the drafting of the BBL?
4. Do all of the other parts of the CAB which are not yet addressed or implemented by the BBL need constitutional amendments (con-am) for that purpose? Which key parts of the CAB need con-am? Which key parts do not need con-am but only legislation?
5. For those key parts of the CAB that need only legislation, why were these not addressed in the proposed BBL? Whatever the reason, can these not be now addressed in the finalization of the BBL?

To be sure, the solution of the Bangsamoro problem does not lie solely in constitutional amendments and legislation. For example, as we know, the FAB’s Annex on Normalization, which includes Decommissioning of the MILF forces and weapons and a Socio-Economic Development Program, for the most part, except for Policing, does not need legislation in order to be implemented by executive and other action. Another friend, long-time Mindanao historian, peace advocate and former GRP peace negotiator Prof. Rudy B. Rodil cautions that constitutional change “is only one solution” and we must not forget “finding the emotional flavor for community harmony.” His wisdom on this is well-taken.

If the Bangsamoro problem is seen as a problem of relationships, there are two key dimensions to this. One dimension is the structural or vertical relationship between the Philippine state and the Bangsamoro people, and this is mainly a matter of constitutional association (at present, it is through an autonomous region). The other dimension is the socio-cultural-emotional or horizontal relationship between or among peoples, like particularly the tri-peoples of Mindanao. We are just

dealing here in this article mainly with the former dimension without forgetting the latter dimension, which we shall also touch on – because they are inter-related. But **it is still the constitutional-structural dimension that is decisive for the core issue of self-determination.**

The constitutional unitary system of government of the Philippines is the major problem for Bangsamoro self-determination. In this sense, or stated otherwise, the Philippine Constitution is a major part of the Bangsamoro problem. Another MILF Luwaran editorial, of July 8-15, 2014 and titled “The Moro Question is Political,” put it this way: “While we respect the Philippine Constitution, but it is too shallow and limited to fully address this [Bangsamoro] problem. This is the reason why up to now the MILF is firm on its conviction that the current Constitution would require an amendment to finally put to rest the conflict in Mindanao.” The Constitution is part of the problem but it can also be part of the solution through a correct constitutional amendment.

But also, as things stand, including for the MILF, the “menu of the day” is the BBL, not constitutional amendment. This could be, as it should be, the “menu for tomorrow.” How and when it will get there is not yet clear. What is only clear is the secondary mandated task of the BTC to work on proposals for necessary constitutional amendments AND the likelihood that the time for such amendments will not be during the remaining term of President Aquino till mid-2016. It may take much longer because one effect, even if unintended, of the BBL is to postpone constitutional amendments. The general or prevailing thinking would be to give the BBL and the new Bangsamoro entity a reasonable time or period of testing before resorting to constitutional amendments. RA 6734, the first Organic Act of the ARMM, had a lifetime from 1989 to 2001 or about 12 years, while RA 9054, the second Organic Act of the ARMM, would have a lifetime from 2001 to (expected) 2015 or about 14 years – a total of about 26 years or one generation for the “unacceptable status quo” and “failed experiment” which is the existing ARMM. Will it take another generation for necessary constitutional amendments to come to life and “finally put to rest the conflict in Mindanao”? This is why we speak of a longer road to peace.

Does this mean more peace negotiations? Maybe, maybe not. There is an understandable aversion by many to seemingly interminable or never-ending peace negotiations of a protracted peace process. At the same time, it has also been noted that peace agreements cannot be expected to anticipate everything and that the changing times, situation and issues would often call for new negotiations. Just witness the Mindanao peace process since it started with the MNLF in 1975. There are negotiations and there are negotiations. The 2012 FAB itself provides that “The Negotiating Panel of both Parties shall continue the negotiations until all issues are resolved and all agreements are implemented.” So, there may be negotiations to resolve still unresolved issues and negotiations on implementation. The GPH-MILF process of agreeing on the version of the proposed BBL might be characterized as negotiations on the implementation of the CAB or, more precisely as the MILF would say, on the implementation of the FAB and its Annexes.

It will be noted, however, that for what has been referred to by the MILF as “the crucial engagements on August 10, 13-15, 25, 26, and September 4 [2014] during the meeting between President Aquino and Chairman Murad in the Palace,” the negotiations were no longer actively conducted by the two peace panels but instead by selected high-level officials of both sides. The MILF points to “the nuances, contexts, and issues settled or agreed by the parties especially during the crucial engagements” as particularly important for what is in effect the “statutory construction” (i.e. the correct interpretation or understanding) of the proposed BBL.

Possible Contours of a Longer Road to Peace

The short GPH-MILF road map to peace till 2016 envisions a very short transition process highlighted by a transition mechanism in the form of an appointed MILF-led Bangsamoro Transition Authority (BTA) that is estimated to serve as the interim Bangsamoro Government for likely only one year until the duly elected regular Bangsamoro Government takes office. By any standard, this is an extremely short transition period that many, notably veteran Mindanao journalist Patricio P. Diaz, have already noted would not serve the standard purposes of transition like institution-, capacity- and unity-building. It will be recalled that the MILF originally sought as long as a six-year Interim Period in its 2010/2011 Draft Comprehensive Compact, precisely on the ground that sufficient lead time is necessary to adequately prepare the ground for self-government. And this preparation to govern should include adequate testing and tempering against the corrupting influence and arrogance of power.

There are thus suggestions of extending the transition period of the BTA say to the next scheduled synchronized elections in 2019. But there may be an **alternative way of looking and going about the transition**. If the election of the first Bangsamoro Government (BG) would not be postponed to give more time for the transition to ripen under the BTA, then one alternative may be to treat the period/s of the first BG or the first two BGs (together presumably from 2016 to 2022) *as still part of the transition*. Before the end of this longer transition period, it can be expected that the time would also already be more opportune for charter change to accommodate “out of the box” arrangements to complete the solution to the Bangsamoro problem, including enabling a new political entity *with a qualitatively higher and better degree of self-determination* for the Bangsamoro people. This would entail readiness of the sovereign Filipino people to “change the Constitution in any way it wants... for the sake of peace.”

On this particular strategic or “long-term process outlook,” another friend, young Filipino-German political scientist and mediator Ariel Macaspac Hernandez (formerly Penetrante), writes in his well-researched and analytically insightful new *Springer VS* book *Nation-building and Identity Conflicts: Facilitating the Mediation Process in Southern Philippines*:

“The Philippine public must realize the constitution constantly needs reforms. These reforms do not always mean a threat to the state. The constitution cannot codify everything at one time and should therefore be dynamic. The constitution is not written to satisfy a single moment, but needs to remain relevant in perpetuity. The constitution is the aggregate of the experiences of the state. It should be possible for the constitution to evolve to accommodate claims of minority groups. While it is understandable that the Philippine public resists any measures to change the constitution, because of the Marcos experience, this conviction is not sustainable. The constitution must maintain flexibility, while enforcing rules. The public must understand any resolution of the conflict in the Southern Philippines needs revisions of the constitution. The Filipinos must learn to trust again in the political processes of the country. Not all proposed measures to change the constitution are moved by the intention to install another military regime in the country. Nevertheless, this anxiety of the Philippine public of any change must be addressed well. This anxiety is indeed well grounded and is therefore legitimate. Hence, the peace process in the Southern Philippines must be complemented by a rejuvenation of the political culture in the country.”

When the time for that idea comes, ideally it should be the Bangsamoro people themselves who should draft the necessary constitutional amendments to complete the solution to the Bangsamoro problem, of course still subject to the constitutional process of ratification by the Filipino people. A more inclusive and representative multi-stakeholder body than the MILF-tilted BTC will be needed to work on proposals for such constitutional amendments. As it is, the BTC shall cease to exist upon the

enactment of the BBL. Just as it will take time for the idea of constitutional amendments to ripen, so too will it take time to bring together **a more inclusive and representative multi-stakeholder Bangsamoro constitutional convention**. And if co-related with peace negotiations, a recent Conciliation Resources publication *Accord* policy brief on “Legitimacy and peace processes” has noted the case of the Darfurians (in Western Sudan) who “rejected the idea of conventional bilateral negotiations between the Khartoum government and rebels as irrelevant to the fragmented nature of the conflict. Instead, they suggested a negotiating roundtable at which all stakeholders, armed and unarmed, represented themselves.”

In the case of the Bangsamoro, at least there is already, for one, the proposal of Muslim Filipino intellectual and legal luminary Firdausi I.Y. Abbas, Ph.D. for a “Bangsa Moro Constitutional Convention... which Congress shall convoke wherein all the Moro sectors – 1. Revolutionary, 2. Political, 3. Traditional, 4. Professional, 5. Educational, 6. Women, 7. Labor/Industrial, 8. Youth, 9. Agricultural, 10. Economic/Business, 11. Indigenous Non-Muslim/Non-Christian Tribes, and 12. Religious which has two sub-sectors, (a). Muslim Moros and (b). Christian Moros” – shall be guaranteed appointed representatives and together with freely elected delegates duly constitute the congregation” to draft a new constitution/fundamental law/organic act/basic law for the Bangsa Moro regional entity. **Better though if such a convention focuses first on a primary agenda of drafting the necessary constitutional amendments** that would accommodate and enable that entity as desired to “reflect in this fundamental law the historicity, identity, aspirations, sentiments, hopes and dreams of the Bangsa Moro,” **before working on a new or amended BBL guided by those constitutional amendments.**

Former Law Dean Merlin M. Magallona has noted regarding the FAB-based BBL that “Congress would measure its validity against the Constitution *as it stands unamended*. In the first place, unless the Basic Law would not depart from the Constitution, *the necessary constitutional changes must be in place first* before the Basic Law could come to Congress for enactment.” (underscoring supplied) This is actually **the ideal process** if we seek “out of the box” solutions to the Bangsamoro problem. This is the only way that a BBL could rise to a level beyond that of the status quo of the existing constitutional framework.

It must be pointed out that while the passage of the BBL might have the unintended effect of postponing necessary constitutional changes, some observers have noted that the proposed BBL has already had the “unintended consequence” of “waking up” the federalist movement which is mainly being generated from Mindanao. Long-time friend and organizational colleague, GPH chief peace negotiator Prof. Miriam Coronel Ferrer says that the new Bangsamoro entity being created through the BBL is “showing the way for future charter change that would loosen the strictures of a unitary state.” A shift to a federal state would indeed necessitate charter change. Ironically, this particular political-constitutional reform might even overtake the necessary constitutional amendments to complete the political solution of the Bangsamoro problem. But it has to be asked, why is it that proposed federalism does not raise questions of unconstitutionality in the way that a proposed “semi-federal” Bangsamoro entity does? Part of the answer must have to do with the long-standing anti-Muslim bias among the Filipino Christian majority.

But of course **the Bangsamoro problem is not only a constitutional problem of Bangsamoro self-determination; an increasingly major aspect of it is the political problem of Bangsamoro unity**. I never tire quoting this from a fraternity brother friend, sociology professor and newspaper columnist Randolph S. David: “It is difficult to imagine an experiment in Islamic self-determination succeeding against a background of Moro disunity. While such disunity may have been instigated by Manila’s imperial governments in the past, no amount of constitutional accommodation by the center can solve this now for Muslim Mindanao. Self-determination requires

that the Bangsamoro people imagine themselves as one nation.”

This requirement has become more urgent as demonstrated by the Sabah and Zamboanga standoffs of 2013 (which represent the peace disgruntlement of the Sulu sultanate remnants and the MNLF Misuari group) and by the eruption of fighting with the MILF breakaway Bangsamoro Islamic Freedom Fighters (BIFF) right after the signing of the last FAB Annexes in January 2014 (reminiscent of the MILF’s own “Five-Day War” shortly after the signing of the GRP-MNLF Jeddah Accord in January 1986 – as concerned U.S.-based Filipina academic Michelle A. Roque incisively commented, “the MILF was once in the shoes of the BIFF”).

Bostonian friend Steven Rood, who is The Asia Foundation (TAF) representative first in the International Contact Group (ICG) and then in the Third-Party Monitoring Team (TPMT) of the GPH-MILF peace processes, considers the Zamboanga Tragedy as a “pivot point for the Mindanao peace process.” Firstly, it aggravated the long-standing anti-Muslim bias among the Filipino Christian majority which has adverse bearing on public opinion about concessions to the minority Bangsamoro people arising from the peace process. Secondly, it highlighted the Bangsamoro disunity problem, exemplified by the MNLF and the MILF, about the peace process, with long-time MNLF Chairman Prof. Nurullaji P. Misuari as the most vocal oppositor to the new deal with the MILF. One might say, this is a different kind of “Moro-Moro,” an intra-Moro dynamic where Moros are sometimes their own worst enemies. All is not quiet on the Western front of Muslim Mindanao.

The MILF *Luwaran* editorial which we have extensively discussed has touted the BBL as a “Menu for Unity and Solidarity.” It would seem, however, that this is addressed more to Filipino-Bangsamoro unity rather than intra-Bangsamoro unity. Says the editorial: “the BBL is a menu for unity and solidarity of the entire Philippine state... We firmly believe the BBL is an antidote to secession; and moreover, it gives more legitimacy to the Philippine state.” In allaying fears about the proposed new Bangsamoro entity, MILF chief negotiator Iqbal told a House committee hearing, “Instead of dismemberment of the Republic, the Bangsamoro will further unite our peoples. There shall be no state within a state. The Philippines shall remain sovereign.” But as far as the Bangsamoro revolutionary (liberation fronts) sector is concerned, exemplified by the MNLF and BIFF, the BBL might be in danger of being a “document of perpetual division,” to use an expression from the much more problematic peace process on the Communist front.

The MNLF Leaders Meeting statement dated 11 June 2014 referred to “the Jeddah Formula” that appears to be the latest mutation of the MNLF and its position. There now appears another unified leadership under Chairman Misuari. The agenda position is that the BBL or “a new autonomy law” include all the provisions of the 1976 Tripoli Agreement and the 1996 FPA (the “Jakarta Agreement”) “in tandem” with all the provisions of the CAB (even as the MILF itself, as we pointed out, views the BBL as based, by stipulation, only on the FAB and its Annexes). At any rate, “they express openness to pursue collaborative efforts to build on commonalities.” The difference or problem is in the MNLF’s view that the CAB is inferior to the 1976 Tripoli Agreement and 1996 FPA: that the former is only “a partial fulfillment of the requirements” of the latter, and that the former has provisions “inconsistent” with the latter.

This MNLF agenda position is supported by or “in tandem” with the latest Resolution No. 2/41-MM “On Question of Muslims in Southern Philippines” by the Organization of Islamic Cooperation (OIC) at its 41st Session of its Conference of Foreign Ministers held in Jeddah on 18-19 June 2014. It sees the CAB as “a major first step toward the implementation of previous agreements [referring to the 1976 Tripoli Agreement and the 1996 FPA] as they are binding international commitments” AND they “continue to formulate the basis of any settlement of the conflict.” It calls upon the OIC Secretary-General to “find common grounds” and “narrow the gap” between the MNLF and the MILF leaderships and their respective positions through coordination “in the framework of the

Bangsamoro Coordination Forum (BCF) established between the two fronts at the Islamic Conference in Dushanbe.” Well, it’s been four years since the 2010 Dushanbe Conference, and the GPH-MNLF-OIC Tripartite Implementation Review has since been overtaken by the GPH-MILF peace negotiations resulting in the FAB, its Annexes, the CAB and the proposed BBL.

The FAB Annex on Power Sharing actually contains towards its end this provision, including an additional task for the BTC:

“As part of the Philippine Government commitment in other peace agreements involving the Bangsamoro, the Bangsamoro Basic Law may adopt specific powers contained in these agreements and in the ARMM Organic Law, as amended.”

“The Bangsamoro Transition Commission shall undertake an inventory of the powers and consider the proposed recommendations from the review process of the 1996 Final Peace Agreement between the Government and the Moro National Liberation Front for possible incorporation into the Bangsamoro Basic Law. It shall also take into account the proposed amendments of the ARMM Regional Legislative Assembly to R.A. No. 9054.”

And so, the BBL should also be scrutinized on this basis. The GPH-MNLF-OIC Tripartite Implementation Review had actually come up with 42 common proposed amendments to RA 9054. But three remaining contentions issues have bogged down this process. These issues are indicated by the above-cited MNLF statement to be: “a) definition/sharing of revenues of strategic materials; b) transitory mechanism-provisional government/plebiscite; and c) territory.”

The issue of strategic materials is well covered by the provisions on Wealth Sharing in the FAB Annex on Revenue Generation and Wealth Sharing and in the proposed BBL. In fact, the provisions on Wealth Sharing and Power Sharing for the Bangsamoro people in the FAB and its Annexes make for a better deal for them than did/does the 1976 Tripoli Agreement and the 1996 FPA as well as RA 9054. The former also addresses, much better than the latter does, the concern of Normalization, including Decommissioning a.k.a. disarmament and demobilization. The MNLF and for that matter the OIC should be honest, humble and statesman-like enough to acknowledge and concede this. They should not begrudge a better deal for the Bangsamoro people even if this deal just further enhances the existing level of Muslim autonomy under the status quo of the existing constitutional framework. As we said, it is still a step forward even if it makes the road to peace longer.

But if there is that mindset problem on the part of the MNLF, it must also be asked why, despite the better deal which the MILF has achieved, it has seemingly not been able to convince and get the best possible support for it from its fraternal Moro liberation front? Not to mention really broad-based multi-stakeholder Moro support for it, especially in the Sulu Archipelago. This would appear to do with the question of the necessary level of Moro leadership and statesmanship that inspires trust, confidence and allegiance of the Bangsamoro people. The next issue may be relevant to this.

The issue of “transitory mechanism-provisional government” is actually addressed in the FAB, its ATAM and the proposed BBL, with the BTA as the interim Bangsamoro government (in effect, a provisional government). But its being pre-ordained to be “MILF-led... as the main mechanism for the MILF’s leadership in the Bangsamoro during the transition process” naturally or understandably leads to perceptions of MILF domination or even exclusivity, as tended to be shown in the BTC. And this clashes with Chairman Misuari’s overblown sense of his pre-eminent leadership over the Bangsamoro struggle and the MNLF’s international status as the “sole and legitimate representative of the Muslims in the Southern Philippines” as continues to be recognized by the OIC. The MNLF and the OIC, if not Misuari himself, should wake up to the historical and political reality that the MNLF, particularly under Misuari’s paramount leadership, has been eclipsed by the truly collective

leadership of the MILF. But this in turn demands a certain level of statesmanship on the part of the MILF. Its sometimes knee-jerk and easy labelling of critical voices as “peace spoilers” shows some insecurity or intolerance towards dissenting opinions. Such negative tendencies are precisely among what has to be checked and corrected while still early, like during a viable transition.

The bottom-line for the MNLF, as exemplified by Misuari, appears to be getting some share of the power in the “transitory mechanism-provisional government.” There may still be a way of working this out through a “unity government” type of formula that has been employed in many other country conflicts. In this regard, the MILF can be magnanimous in the same way that the MNLF had previously accommodated MILF representatives as part of the MNLF delegations with observer status to several OIC annual Conferences/Councils of Foreign Ministers.

It is the issue of “plebiscite” linked to “territory” that may prove unresolvable, not so much between the MNLF and the MILF as between the MNLF and the GPH. The purported superiority of the 1976 Tripoli Agreement and the 1996 FPA stands on the flimsy ground of “the area of the autonomous region stipulated” – 14 provinces and 9 cities – compared to the FAB’s core area of 5 provinces, 3 cities, 6 separate municipalities and 39 separate barangays. But the “14 provinces and 9 cities” is a Misuari pipe-dream because most of these are already Christian majority areas and these have voted consistently against inclusion in a Muslim autonomous region in two plebiscites already, in 1989 and 2001. The FAB is more realistic in aspiring for the inclusion of only Muslim majority areas in the vicinity of, but not yet under, the existing ARMM. The undue focus by the MNLF and the OIC in expanding the territory of a Muslim autonomous region even to provinces and cities, where by all counts the Christian majority there would not accept it, is not only unrealistic for expansion but also is potentially trouble-stoking which may instead defeat the purpose of expansion.

As Steve Rood commented, “While from Misuari’s point of view this [another plebiscite throughout the entire territorial coverage of the original 1976 Tripoli Agreement] is a reasonable demand, since the previous plebiscites had gone ahead over the objections of the MNLF, such a move would cause unrest in widespread areas of Mindanao such as Zamboanga City, raising the simple question: What part of ‘no’ in two plebiscites is not understood?” As it is, there are even oppositors to a plebiscite for the BBL say in the six separate Muslim-majority Lanao del Norte municipalities which voted “Yes” in the 2001 plebiscite because the province already voted “No.” The above-quoted OIC Resolution also refers to the BBL as “governing the Bangsamoro Autonomous Region” but “As for the greater area outside this enclave, the Tripoli Agreement still applies.” Again, please wake up!

Bangsamoro Unity Process

The still potentially helpful role of the OIC may no longer be so much in shaping the agenda of the Mindanao peace process, as the parties themselves have done so and can still do this well enough, but rather in honestly brokering MNLF-MILF unity in the peace process. It is ironic but it is the reality that it has to take an external entity to mediate between the MNLF and the MILF. But it appears that it is only the OIC that has the clout as well as the respect of both Moro liberation fronts for this, as shown by the OIC-initiated BCF. Be that as it may, the two Moro liberation fronts should be able to dialogue and negotiate even just between themselves, without an OIC mediator. There is also the just as important domestic intra-Moro effort of Bangsamoro civil society to work for MNLF-MILF unity. After all, if the Moros should be able to govern themselves, then they should be able to unite themselves.

It has become increasingly clear that **Bangsamoro unity, with MILF-MNLF unity as the litmus test, should already be treated as a goal itself of the peace process and no less than part of**

solving the Bangsamoro problem. The better deal gains for the Bangsamoro people in the GPH-MILF peace process could come to naught if the MNLF problem (to put it bluntly) is not solved. Better to address this problem now early in the transition rather than as a bigger problem later down the road. **This urgent task of Bangsamoro unity should have its own road map which of course should interlink with the peace road map, and thus contribute thereto.** Even road maps can be works in progress. If there are to be institutions and mechanisms of Bangsamoro self-governance, there too should be institutions and mechanisms of Bangsamoro unity.

To start with or more precisely start anew with, there can be more inclusiveness in the Congressional deliberations on the proposed BBL, to also make up for the lack of inclusiveness and transparency in the drafting of that proposed BBL, whether in the drafting first by the BTC or in the subsequent re-drafting by the homestretch meetings between the GPH-OP and the MILF-BTC resulting in an "agreed version." It is notable that in these now very public deliberations, Cagayan de Oro City Rep. Rufus B. Rodriguez, who chairs the House ad hoc committee on the proposed BBL, has sought to invite Misuari as well as known BIFF leader Ameril Umbra Kato to present their views, notwithstanding standing warrants of arrest against them for their forces' military attacks against the government. The two Moro rebel group leaders are said to have rejected such an invitation, and have thus excluded themselves from this process. Even so, their agenda, like that of the MNLF discussed above, is of fairly public articulation, if not documentation, and should be factored in for what it may be worth for informed Congressional deliberations.

There are those who say that it is better to just forget Misuari and his MNLF as well as Kato and the BIFF, and move ahead towards the BBL and its new Bangsamoro entity. After all, if this entity succeeds in good self-governance, then those forces will eventually come into the fold. But that does not always follow. The quality of governance – of autonomy, peace and development – will be strained by lack of cooperation and support, and worse by continuing armed hostilities. Commonalities in agenda and a better peace deal will not be enough. Better fraternal organization relations and a sense of stakeholdership and ownership will be needed. The MILF's Iqbal has said that "what's important is, at the end of the day, we'll be able to handle all those issues and move forward until we settle them." This will be a test of Bangsamoro leadership and statesmanship on the part of the MILF. It will have to find a way to reach out to and constructively engage Misuari/his MILF and Kato/the BIFF.

Misuari has himself only last August 2014 renewed, for the nth time, his call for independence. Because he has cried wolf on this so many times, one wonders whether this is for his usual saber-rattling posturing or for real. More believable as for real, even though with a much smaller military force, is the beef (pun intended) of the BIFF not only for independence but also for an Islamic state. "Even if it is as small as a barangay, as long as it is following the Islamic law," said its spokesperson Abu Misry Mama, "The Philippine Constitution will never accommodate the Islamic law." As for his views on the peace deal of the MILF, which the BIFF had split from, there was a newspaper report that "Misry said the MILF made compromises to clinch a deal, but the BIFF doubted that the agreement would get congressional approval without further compromises."

It seems ironic that the above-discussed MILF *Luwaran* editorial, as already quoted, states "We firmly believe the BBL is an antidote to secession..." given that the MILF has been the long-time standard-bearer of Moro secession. But even as the MILF has to allay Filipino fears about the proposed new Bangsamoro entity, it is also accountable to its Bangsamoro constituency for upholding their aspirations, just as it is accountable to itself for being true to itself. There will be those from its own rank and file, like the BIFF once was, who will ask about, if not ask for, fidelity to "the justness of the original position" – like "Islamic" and "Liberation" in the very name of the MILF (note how the BIFF has retained these as "Islamic" and Freedom"). There will be some internal reckoning with the guidelines of the MILF founding Chairman and ideologue Salamat Hashim such

as “the ultimate aim of our Jihad is to make supreme the word of Allah” and “There is no way to solve the [Bangsamoro] problem except through independence... independence is the only viable solution but armed struggle should be the last recourse.” On the other hand, the BIFF would fight for “independence... through armed struggle.”

If one would study history (so as not to be condemned to repeat its mistakes), a legitimate case for Bangsamoro independence can be made. There is of course a difference between independence through armed struggle and independence through non-armed struggle. In Philippine history, the former was achieved from Spain, while the latter was achieved from the United States. What will it be for Bangsamoro history? The jury is still out on this, as it were. But the current standard bearer of the Bangsamoro cause, the MILF, has clearly opted, at this juncture of history, for a non-independence solution through peace negotiations that envision subsequent parliamentary struggle. Whatever “the ultimate aim” is, even for an “independent Islamic state,” indeed it may be said as a most level-headed MILF leader has said “Would it be politically taboo if you aspire for anything through democratic means?” One can hardly argue with peaceful, civilized, and democratic means of solving conflict or achieving political objectives.

It will likely take some more years (decades?) for the Filipino body politic to develop the political culture and maturity to be able to peacefully and civilly allow the Bangsamoro people to undertake the kind of credible democratic exercise like the recent Scotland and Quebec referendums for independence. Incidentally, the “No” votes won, but only closely, in both those referendums. But of course it could be different the next time around because of an already substantial bloc of support for independence in both cases. What is particularly notable, and perhaps more important for such exercises, was the mature respect shown by the “Yes” losers for the people’s will. Perhaps the Bangsamoro’s envisioned experience in a chosen parliamentary or ministerial form of government based on genuine political parties will contribute good examples and lessons for the rejuvenation of Philippine political culture.

In this time of the current global hot topic of the Islamic State of Iraq and the Levant (ISIL) – which the Abu Sayyaf Group and the BIFF have “pledged allegiance to” but which the MILF has offered to join the fight against – there is all the more understandable fear about the Islamic agenda, even in the peace process. As early as the afore-mentioned FAQ Primer on the FAB by the OPAPP among the Q&As is this:

"Q: Is the Bangsamoro an Islamic state?

A: No. The Bangsamoro Government will be a **secular government where basic rights of all will be protected**". (bold supplied)

The answer seems to imply that the basic rights of all will not be protected in a non-secular government, thus perhaps unduly stoking fears about an Islamic government. What now about the solution of the Bangsamoro problem “with the end in view of establishing a system of life and governance suitable and acceptable to the Bangsamoro people”?

It is already of public knowledge that integral not only to that system or way of life but also to the very identity (if not also unity) of the Bangsamoro is their religious belief of Islam. Part of this belief is that “religion is not separate but rather integral to every aspect of life: prayer, fasting, politics, law, and society.” So why impose on them a “secular political unit” hewing to the constitutional principle of “inviolable separation of Church and state”? Is there or is there no constitutional space for an Islamic, or more precisely a *Moro Islamic*, way of life and governance? Unless this legitimate Islamic aspiration is addressed or at least recognized, there will likely emerge new Bangsamoro Islamic rebel groups in the future. But of course we should also respect and not “be holier” than what is truly “acceptable to the Bangsamoro people.”

Final Note

I have probably said more than enough (or to some, more than I should say) in terms of unsolicited analysis and advice. I will leave it at that for now, for what it may be of help to the Mindanao peace process. Its current juncture of a short road map to peace till 2016 is already playing itself out. The end of that short road in 2016 will of course be another important juncture. When that point comes, but even where we are now with an agreed version of the proposed BBL just starting to be deliberated in Congress, I believe it would help to have a more strategic direction for the longer road ahead to peace - or to the full solution of the Bangsamoro problem. This problem is so intractable that it may still be around for another generation. I hope this piece can help set that direction and generate more strategic thinking and of course action on what is to be done. In the end, we all hope for a better judgment of history and of future generations.

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P.S.

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