

# The 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*

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\* “Step” could be either a noun or a verb. We point this out also in the light of long-time MILF peace process ideologue Datu Michael O. Mastura’s recent discourse seeking more verb forms (to perhaps connote pro-activeness) in the peace process.

\*\* With apologies to Salah Jubair, who wrote *The Long Road to Peace: Inside the GRP-MILF Peace Process*. “Salah Jubair” is the *nom-de-plume* of Mohagher Iqbal, the chief peace negotiator of the Moro Islamic Liberation Front (MILF).

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This Article is a comprehensively updated version of the Author’s work that has been published by different Mindanao peace process opinion columns. It was submitted to the *Journal* on 6 December 2014, pre-dating the Mamasapano Incident.

Opinions and arguments contained in this Article are solely those of the Author’s and do not reflect the official positions of either the *Ateneo Law Journal* or the Ateneo Law School.

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*for giving occasional unsolicited analysis and advice. There are certain conjunctures in the peace process that particularly call for this. For the Author, the achievement of an 'agreed version' by and 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 are part of such conjunctures. This trajectory must, ideally, not only be understood but also influenced for a better 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.*

## I. THE COMPLICATIONS THAT HOUND THE BANGSAMORO BASIC LAW

How does one view the proposed Bangsamoro Basic Law (BBL)<sup>1</sup> now pending before the two chambers of Congress?<sup>2</sup> To say that it is complicated is an understatement. But the complications refer not only to its substantive content. It is made more complicated by what *does not* appear in its text, by its context, and by its role in the overall Mindanao peace process, in various peace agreements, and in the solution of the Bangsamoro problem.<sup>3</sup>

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1. See generally An Act Providing for the Basic Law for the Bangsamoro and Abolishing the Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 9054, Entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao," and Republic Act No. 6734, Entitled "An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao," and for Other Purposes, H.B. No. 4994, 16th Cong., 2d Reg. Sess. (2014); An Act Providing for the Basic Law for the Bangsamoro and Abolishing the Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 9054, Entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao," and Republic Act No. 6734, Entitled "An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao," and for Other Purposes, S.B. No. 2408, 16th Cong., 2d Reg. Sess. (2014); & Office of the Presidential Adviser on the Peace Process (OPAPP), Draft Bangsamoro Basic Law, available at <http://www.opapp.gov.ph/sites/default/files/DRAFT%20Bangsamoro%20Basic%20Law.pdf> (last accessed Feb. 17, 2015) [hereinafter OPAPP Draft Bangsamoro Basic Law].
  2. See Catherine S. Valente, *BLL draft submitted to Congress*, MANILA TIMES, Sep. 10, 2014, available at <http://www.manilatimes.net/bbl-draft-submitted-congress/125610> (last accessed Feb. 17, 2015).
  3. The Bangsamoro problem has deep historical origins — from the arrival of Islam in the Philippines, to its spread as a way of life in Mindanao, to colonial aggression by the Spaniards, and to the schemes employed by the Americans to quell the Islamic resistance to American assimilation. See generally Guiamel M. Alim, Executive Director, Kadtuntaya Foundation, Inc., *The Bangsamoro Struggle for Self-Determination*, Remarks at the European Solidarity

Ultimately, the BBL should be viewed from the perspective of the Bangsamoro problem and how the BBL can peacefully resolve it. Viewing the BBL from the said perspective allows for a decidedly strategic, larger, and long-term evaluation of the BBL. It transcends more than just its substantive content. From this perspective, one might see the BBL as a step forward on a *longer* road to peace. At the end of the day, this should help guide the current conjuncture — the congressional deliberations.

Note that there is in fact no enacted BBL yet.<sup>4</sup> It still has to be passed by Congress and then ratified in a plebiscite by a majority of the residents in its proposed core territory.<sup>5</sup> Judging from the nature of legislative processes, the proposed BBL cannot be expected to be passed *as is* by both chambers of Congress. Surely, there will be amendments to it. The question that should be posed is whether the version of the BBL that Congress will enact will be faithful to the intent, spirit, and key substance of the BBL as proposed by its major stakeholders. Other situations that have to be considered include the possibility that the BBL, both in its proposed and enacted form, the Framework Agreement on the Bangsamoro (FAB)<sup>6</sup> and its Annexes,<sup>7</sup> and

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Conference on the Philippines at Hoisdorf, Ger. (June 23–25, 1995) (transcript available at [http://www.seasite.niu.edu/tagalog/Modules/Modules/MuslimMindanao/bangsamoro\\_struggle\\_for\\_self.htm](http://www.seasite.niu.edu/tagalog/Modules/Modules/MuslimMindanao/bangsamoro_struggle_for_self.htm) (last accessed Feb. 17, 2015)).

4. See generally H.B. No. 4994; S.B. No. 2408; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1.
5. See H.B. No. 4994, art. XV, § 1, ¶¶ a–e; S.B. No. 2408, art. XV, § 1, ¶¶ a–e; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XV, § 1, ¶¶ a–e. These provisions require ratification by a majority of the votes cast in a plebiscite, in the areas provided therein, in order for the Bangsamoro Basic Law (BBL) to become effective. *Id.*
6. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Framework Agreement on the Bangsamoro (An Agreement Between the Government of the Republic of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF)), available at <http://opapp.gov.ph/resources/framework-agreement-bangsamoro> (last accessed Feb. 17, 2015) [hereinafter Framework Agreement on the Bangsamoro].
7. See generally Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Transitional Arrangements and Modalities (An Annex of the Framework Agreement on the Bangsamoro), available at <http://www.opapp.gov.ph/sites/default/files/Annex%20on%20Transitional%20Arrangements%20and%20Modalities.pdf> (last accessed Feb. 17, 2015) [hereinafter Annex on Transitional Arrangements and Modalities]; Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Revenue Generation and Wealth Sharing (An Annex of the Framework Agreement on the Bangsamoro), available at <http://www.opapp.gov.ph/sites/default/files/Annex%20on%20Revenue%20Generation%20and%20Wealth%20Sharing.pdf> (last accessed Feb. 17, 2015) [hereinafter Annex on Revenue

the Comprehensive Agreement on the Bangsamoro (CAB)<sup>8</sup> will all be challenged before the Supreme Court as being constitutionally infirm. The outcome of such constitutional litigation, whether the BBL will be upheld as constitutional or will be struck down as being wholly or partially unconstitutional, will necessarily have serious repercussions on the BBL.

For purposes of this Article, the Author will assume that Congress will enact a BBL in a form which is more or less faithful to the intent, spirit, and key substance of the proposed BBL. The Author believes that there is political basis for this estimate. The Author will not speculate nor hazard any estimate on the adjudication by the Supreme Court of the issues of constitutionality of the BBL. The public's opinion is as good as the Author's and some legal luminaries have already weighed in on this issue, both before the media and before Congress itself.<sup>9</sup> Even Congress knows that the Supreme Court is the final arbiter of questions involving the constitutionality of laws.<sup>10</sup>

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Generation and Wealth Sharing]; Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Power Sharing (An Annex of the Framework Agreement on the Bangsamoro), *available at* [http://www.opapp.gov.ph/sites/default/files/annex\\_on\\_power\\_sharing.pdf](http://www.opapp.gov.ph/sites/default/files/annex_on_power_sharing.pdf) (last accessed Feb. 17, 2015) [hereinafter Annex on Power Sharing]; & Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Annex on Normalization (An Annex of the Framework Agreement on the Bangsamoro), *available at* [http://www.opapp.gov.ph/sites/default/files/Annex%20on%20Normalization\\_o.pdf](http://www.opapp.gov.ph/sites/default/files/Annex%20on%20Normalization_o.pdf) (last accessed Feb. 17, 2015) [hereinafter Annex on Normalization].

8. *See generally* Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Comprehensive Agreement on the Bangsamoro (An Agreement Between the GPH and the MILF), *available at* [http://www.opapp.gov.ph/sites/default/files/Comprehensive\\_Agreement\\_on\\_the\\_Bangsamoro.pdf](http://www.opapp.gov.ph/sites/default/files/Comprehensive_Agreement_on_the_Bangsamoro.pdf) (last accessed Feb. 17, 2015) [hereinafter Comprehensive Agreement on the Bangsamoro].
9. *See* DJ Yap, *Former SC justices differ on Bangsamoro constitutionality*, PHIL. DAILY INQ., Oct. 28, 2014, *available at* <http://newsinfo.inquirer.net/647399/former-sc-justices-differ-on-bangsamoro-constitutionality> (last accessed Feb. 17, 2015). Each legal luminary provides a different basis for his analysis of the BBL. These differences in opinion lead to the opinion that, as of present, the BBL cannot be legally passed. *See also* Oscar Franklin Tan, *Bangsamoro bill can't be analyzed legally*, PHIL. DAILY INQ., Nov. 7, 2014, *available at* <http://opinion.inquirer.net/79928/bangsamoro-bill-cant-be-analyzed-legally> (last accessed Feb. 17, 2015).
10. *See* Maila Ager, *Drilon urges swift passage of Bangsamoro Basic Law*, PHIL. DAILY INQ., July 23, 2014, *available at* <http://newsinfo.inquirer.net/622749/drilon-urges-swift-passage-of-bangsamoro-basic-law> (last accessed Feb. 17, 2015). *See also* PHIL. CONST. art. VIII, § 5, ¶ 2.

For many, including members of Congress, the key consideration in enacting the BBL is for it to successfully hurdle challenges against its constitutionality.<sup>11</sup> In fact, this was also the key criterion of the Office of the President (OP) in reviewing the proposed BBL drafted by the Bangsamoro Transitory Commission (BTC).<sup>12</sup> Efforts to ensure that the BBL will hurdle questions of constitutionality include negotiations of interpretation and implementation of the FAB and its Annexes by and between the GPH and MILF.<sup>13</sup> These efforts, culminating all the way up to their respective principals, President Benigno S. Aquino III and MILF Chairman Al-Haj Murad Ebrahim, have resulted in the “agreed version”<sup>14</sup> of the proposed BBL, which was submitted to the Congress as House Bill (H.B.) No. 4994<sup>15</sup> and Senate Bill (S.B.) No. 2408.<sup>16</sup>

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”<sup>17</sup> of the proposed BBL is faithful to the FAB and its Annexes and meets the flexibilities of the Constitution. These are the key terms of reference that both parties used. Because of these, the Author will no longer evaluate the constitutionality of the proposed BBL. Instead, the Author will look at the BBL through some

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11. See Christian V. Esguerra & DJ Yap, *Congress first hurdle: Is BBL constitutional?*, PHIL. DAILY INQ., Sep. 11, 2014, available at <http://newsinfo.inquirer.net/636993/congress-first-hurdle-is-bbl-constitutional> (last accessed Feb. 17, 2015).

12. See Genalyn Kabiling & Elena Aben, *Aquino, Murad to meet to find common ground on contentious BBL issues*, MANILA BULL., July 23, 2014, available at <http://www.mb.com.ph/aquino-murad-meet-to-find-common-ground-on-contentious-bbl-issues/> (last accessed Feb. 17, 2015). See also Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶ 4 (a-c).

13. See OPAPP, GPH, MILF complete final annex to Framework Agreement; stress bigger challenges ahead, available at <http://www.opapp.gov.ph/milf/news/gph-milf-complete-final-annex-framework-agreement-stress-bigger-challenges-ahead> (last accessed Feb. 17, 2015).

14. The version that both the GPH and the MILF agreed to are H.B. No. 4994 and S.B. No. 2408. Both bills originated from the OPAPP Draft Bangsamoro Basic Law before they were filed before both chambers of the Congress. These bills are collectively known as the “agreed version” of the BBL. See generally OPAPP, GPH, MILF reach substantial progress on draft Bangsamoro Law, available at <http://www.opapp.gov.ph/milf/news/gph-milf-reach-substantial-progress-draft-bangsamoro-law> (last accessed Feb. 17, 2015) [hereinafter OPAPP, Agreed Version of the BBL].

15. See H.B. No. 4994. See also OPAPP, Agreed Version of the BBL, *supra* note 14.

16. See S.B. No. 2408. See also OPAPP, Agreed Version of the BBL, *supra* note 14.

17. OPAPP, Agreed Version of the BBL, *supra* note 14.

other lens or term of reference, which is from a utilitarian perspective<sup>18</sup> — to see whether or not it serves the underlying goal of solving the Bangsamoro problem.

The MILF has taken a leap of faith in trusting not only President Aquino but also “the collective wisdom of the members of Congress.”<sup>19</sup> The sense of Congress appears to be best expressed by Senate President Franklin M. Drilon who said that the “first important issue”<sup>20</sup> to be tackled is ensuring that the proposed BBL will not require an amendment of the Constitution.<sup>21</sup> Senate President Drilon also quipped that the BBL “should be consistent with the Constitution, just like any law that [Congress] will pass.”<sup>22</sup> In particular, he elaborated that “[i]t is[,] therefore[,] incumbent upon [Congress] to make sure the efforts exerted by both panels will not be put in vain, by ensuring that the BBL [Congress] will debate upon will be in accordance with the Constitution and can withstand judicial scrutiny.”<sup>23</sup>

The OP, for its part, conducted prior due diligence and a thorough legal review of the proposed BBL.<sup>24</sup> This resulted in the nativity of the “agreed version”<sup>25</sup> of the proposed BBL with the imprimatur of no less than President Aquino.<sup>26</sup> With this “agreed version,”<sup>27</sup> endorsed by President

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18. In a sense, the utilitarian perspective surveys the practical usefulness and the functional consequences of an action. It views something from its perceived usefulness in society. See BLACK’S LAW DICTIONARY (6th ed. 1968).

19. See Germelina Lacorte, *MILF determined to join 2016 elections through political party*, PHIL. DAILY INQ., Oct. 12, 2014, available at <http://newsinfo.inquirer.net/644330/milf-determined-to-join-2016-elections-through-political-party> (last accessed Feb. 17, 2015) [hereinafter Lacorte, *MILF in 2016 elections*].

20. See Leila B. Salaverria, *Majority of senators sign on in support of Bangsamoro law*, PHIL. DAILY INQ., Sep. 16, 2014, available at <http://newsinfo.inquirer.net/638291/majority-of-senators-sign-on-in-support-of-bangsamoro-law> (last accessed Feb. 17, 2015).

21. *Id.*

22. *Id.*

23. *Id.*

24. Office of the President of the Philippines (OP), *Aquino pushes for reasonable, just, acceptable Bangsamoro law*, available at <http://president.gov.ph/news/aquino-pushes-reasonable-just-acceptable-bangsamoro-law/> (last accessed Feb. 17, 2015) [hereinafter OP, Aquino].

25. OPAPP, *Agreed Version of the BBL*, *supra* note 14.

26. See Genalyn Kabling, *PNoy submits draft Bangsamoro law*, MANILA BULL., Sep. 11, 2014, available at <http://www.mb.com.ph/pnoy-submits-draft-bangsamoro-law/> (last accessed Feb. 17, 2015) [hereinafter Kabling, *PNoy*].

27. OPAPP, *Agreed Version of the BBL*, *supra* note 14.

Aquino himself to the leaders of Congress as his major legislative legacy,<sup>28</sup> both H.B. No. 4994 and S.B. No. 2408 are expected to be enacted by Congress.<sup>29</sup> It can be foreseen that the ruling major political party in Congress, the Liberal Party, which, incidentally, is the political party of President Aquino, will lead the charge in carrying the BBL into fruition under President Aquino's term.<sup>30</sup>

At most, the said pieces of legislation would only be subject to refinements and improvements to make sure that the BBL is constitutional, ideally with the concurrence of the MILF. If there is any provision that appears to require an amendment of the Constitution, the scenario that is most likely to happen appears to be the removal or the change of the provisions affected and their deferment to a later time, again, ideally, with the concurrence of the MILF. In fact, one of the mandated tasks of the BTC is, whenever necessary, to recommend proposed amendments to the Constitution.<sup>31</sup> But the process and time frame for this task is not indicated in the GPH-MILF peace road map until the establishment of the Bangsamoro government by mid-2016, the scheduled end of President Aquino's term.<sup>32</sup>

Given that President Aquino's avowed historical legislative legacy is at stake in the GPH-MILF peace process, some members of the House of

28. See Aurea Calica, *Certified urgent: Bangsamoro, FOI, whistle-blowers act*, PHIL. STAR, July 31, 2014, available at <http://www.philstar.com/headlines/2014/07/31/1352203/certified-urgent-bangsamoro-foi-whistle-blowers-act> (last accessed Feb. 17, 2015).

29. See Kabling, *P*Noy, *supra* note 26.

30. See Xianne Arcangel, Liberal Party committed to passing Anti-Political Dynasty Law — Roxas, available at <http://www.gmanetwork.com/news/story/376366/news/nation/liberal-party-committed-to-passing-anti-political-dynasty-law-roxas> (last accessed Feb. 17, 2015). This news report mentions that President Benigno S. Aquino III is focused on passing the BBL. *Id.*

31. One of the tasks of the Bangsamoro Transition Commission (BTC) is “[t]o work on proposals to amend the [ ] Constitution for the purpose of accommodating and entrenching in the [C]onstitution[,] the agreements of the [p]arties[,] whenever necessary[,] without derogating from any prior peace agreement[.]” Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶ 4 (b).

32. See generally OPAPP, GPH-MILF Peace Process as of March 18, 2013, available at [http://www.opapp.gov.ph/sites/default/files/GPH-MILF\\_peace\\_process\\_timeline\\_1.jpg](http://www.opapp.gov.ph/sites/default/files/GPH-MILF_peace_process_timeline_1.jpg) (last accessed Feb. 17, 2015) [hereinafter OPAPP, MILF Peace Process Timeline]. See also H.B. No. 4994, art. XVI, § 12; S.B. No. 2408, art. XVI, § 12; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XVI, § 12. These provisions provide that the first election for the Bangsamoro government shall be held on the first Monday of May 2016. *Id.*

Representatives have expressed their concern that, while congressional deliberations on the proposed BBL are expected to be lengthy and contentious due to the scope of the bill, the number of members of Congress that the President could conjure to vote for the enactment of the BBL would still be enough.<sup>33</sup> This is what the Author referred to earlier as the political basis for the estimate that the BBL will be passed by the Congress in a form more or less faithful to the intent, spirit, and key substance of the proposed BBL or, at least, to an extent acceptable enough to the MILF under the pragmatic doctrine of *realpolitik*.<sup>34</sup>

## II. LEAPS OF FAITH AND TEMPERING OF HOPES

To be clear, the Author does not wish to insinuate that Congress is a rubber stamp of the desires and whims of the OP. The fact that the MILF refers to the “collective wisdom of the members of Congress”<sup>35</sup> indicates that there would be, as there should be, genuine deliberations on all the issues. If at all, this should also be taken as a potent opportunity for public discussion and education not only on the BBL but also on the Bangsamoro problem and on the Mindanao peace process. The Article earlier mentioned the MILF’s leap of faith in trusting that the merits of its cause will survive the hurdles of Philippine constitutional processes, even if they do not expressly submit themselves to such. The Author submits that, maybe, the leap of faith taken by the MILF should count for something and should be reciprocated by the same leap of faith and acts of good faith from the other side.

The political estimate that the Author applied to Congress’ enactment of the BBL cannot be used in hazarding the outcome of any constitutional challenge against the BBL before the Supreme Court. But given the thorough legal review and due diligence exercised by the Executive Department<sup>36</sup> and which Congress will exercise in “ensuring that the BBL ...

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33. See Allan Nawal & Judy Quiros, *Bayan Muna: Aquino has numbers in House to pass Bangsamoro law*, PHIL. DAILY INQ., Sep. 16, 2014, available at <http://newsinfo.inquirer.net/638459/bayan-muna-aquino-has-numbers-in-house-to-pass-bangsamoro-law> (last accessed Feb. 17, 2015).

34. *Realpolitik* is a German term that

teaches that in political affairs[,] the problem of morals does not enter, that might makes right, that the strong must[,] of necessity[,] prey upon the weak in order to increase their strength ... and that [ ] destiny must be ruthlessly carried out regardless of any past promises, however solemn, or any ethical principles, however binding upon individual action.

See Henry C. Emery, *What is Realpolitik?*, 25 INT’L J. ETH. 448, 449 (1915).

35. Lacorte, *MILF in 2016 elections*, *supra* note 19.

36. See OP, Aquino, *supra* note 24.

will be in accordance with the Constitution[.]”<sup>37</sup> it can be fairly estimated that the BBL will be upheld by the Supreme Court as wholly constitutional. At most, only a few provisions will be declared unconstitutional and the same could be treated as separable, unlike in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*<sup>38</sup> where the merely initialled Memorandum of Agreement on Ancestral Domain<sup>39</sup> (MOA-AD) was declared wholly unconstitutional.<sup>40</sup>

It must be a bit frustrating for the MILF that, after successfully negotiating with the GPH,<sup>41</sup> which culminated in both the FAB and then the CAB, it appears that they would still have to negotiate further with the OP, then to deliberate with and before Congress, and then, possibly, to argue the merits of their case before the Supreme Court. This might have something to do with the preference of the MILF for the parliamentary form of the Bangsamoro government.

To be sure, so much effort, resources, and lives have gone into the GPH-MILF peace process since it officially started in January 1997.<sup>42</sup> After a

37. Salaverria, *supra* note 20.

38. *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 568 SCRA 402 (2008).

39. *See generally* Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Memorandum of Agreement on the Ancestral Domain Aspect of the GPH-MILF Tripoli Agreement on Peace of 2001 (An Agreement Between the GPH and the MILF), *available at* <http://pcdsp.gov.ph/downloads/2012/10/MOA-%E2%80%93-Ancestral-Domain-August-5-2008.pdf> (last accessed Feb. 17, 2015) [hereinafter MOA-AD]. *See also* Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Tripoli Agreement on Peace of 2001 (An Agreement Between the GPH and the MILF), *available at* [http://peacemaker.un.org/sites/peacemaker.un.org/files/PH\\_010622\\_Agreement%20on%20Peace%20between%20the%20GRP%20and%20MILF.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/PH_010622_Agreement%20on%20Peace%20between%20the%20GRP%20and%20MILF.pdf) (last accessed Feb. 17, 2015) [hereinafter Tripoli Agreement on Peace of 2001].

40. *Province of North Cotabato*, 568 SCRA at 522.

41. OPAPP, Agreed Version of the BBL, *supra* note 14.

42. *See* OPAPP, MILF Peace Process Timeline, *supra* note 32. *See also* Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Agreement for General Cessation of Hostilities (An Agreement Between the GPH and the MILF), *available at* [http://www.opapp.gov.ph/sites/default/files/Agreement\\_for\\_General\\_Cessation\\_of\\_Hostilities%20-%20July%2020%201997.pdf](http://www.opapp.gov.ph/sites/default/files/Agreement_for_General_Cessation_of_Hostilities%20-%20July%2020%201997.pdf) (last accessed Feb. 17, 2015) [hereinafter Agreement for General Cessation of Hostilities]. The Agreement for General Cessation of Hostilities provides that the GPH and the MILF will “resume and proceed with the formal peace talks in a venue to be mutually agreed upon between the [GPH] and the MILF panels.” *Id.*

long and winding road to peace in Mindanao, spanning more than 17 years with the MILF<sup>43</sup> and 39 years with the Moro National Liberation Front (MNLF) — counting from the first peace talks in Jeddah in January 1975<sup>44</sup> — the “agreed version”<sup>45</sup> of the proposed BBL *represents the most developed level of a joint Filipino-Moro consensus to solve the Bangsamoro problem so far*; more so, if and when the BBL becomes law in a form and with substance acceptable to the MILF.

The aborted MOA-AD would have provided for a higher level of Bangsamoro self-determination in the form of an associative relationship<sup>46</sup> between the national government and the then proposed Bangsamoro Juridical Entity<sup>47</sup> (BJE). But the MOA-AD was merely initialled and was not signed.<sup>48</sup> It never reached the process of enacting implementing legislation.<sup>49</sup> Meanwhile, although Republic Act (R.A.) No. 9054<sup>50</sup> — the act that amended the original organic act for the Autonomous Region in Muslim Mindanao (ARMM)<sup>51</sup> — purported to implement the 1996 Final Peace

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43. See OPAPP, MILF Peace Process Timeline, *supra* note 32.

44. See OPAPP, GPH-MNLF Peace Process, *available at* [http://opapp.gov.ph/sites/default/files/GPHMNLF\\_10\\_7\\_2013.pdf](http://opapp.gov.ph/sites/default/files/GPHMNLF_10_7_2013.pdf) (last accessed Feb. 17, 2015) [hereinafter OPAPP, MNLF Peace Process Timeline].

45. OPAPP, Agreed Version of the BBL, *supra* note 14.

46. The term “associative relationship” or “associated state” has generally been used as “a transitional device of former colonies *on their way to full independence.*” *Province of North Cotabato*, 568 SCRA at 480 (citing LORI F. DAMROSCH, ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 274 (2d ed. 1987)).

47. *Id.* The Supreme Court characterized the suggested creation of the Bangsamoro Juridical Entity (BJE) as more of a state than an autonomous region. This characterization, according to the Supreme Court, is not supported by the Constitution, and is, thus, unconstitutional. *Id.* at 482-83.

48. See *generally* Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Joint Statement (A Joint Statement By the GPH and the MILF After the Special Meeting of the GPH and MILF Chairmen), *available at* <http://cbcsi.blogspot.com/2009/07/grp-milf-joint-statement.html> (last accessed Feb. 17, 2015) [hereinafter Joint Statement of the Special Meeting of the GPH and MILF Chairmen].

49. See *Province of North Cotabato*, 568 SCRA at 461-65.

50. An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled “An Act Providing for the Autonomous Region in Muslim Mindanao,” as Amended, Republic Act No. 9054 (2001).

51. *Id.*

Agreement,<sup>52</sup> the MNLF still declined to give its concurrence to and acceptance of the said amended organic act for ARMM.<sup>53</sup> Precisely, the FAB learned from that lesson in history and, as a result, stipulated that “[the FAB] shall not be implemented unilaterally.”<sup>54</sup> It is said that the existing ARMM will be replaced by a better and an expanded Bangsamoro entity created by the BBL upon its ratification by the electorate in its proposed core territory.<sup>55</sup>

There is a valid and understandable sense that, having come this far with the proposed BBL, it is *the best or, at least, the most feasible legislative measure moving forward* under the remainder of President Aquino’s term. Addressing the Bangsamoro problem and securing peace in Mindanao are said to be issues of national interest.<sup>56</sup> The view that the BBL is the best legislative measure moving forward should be partly credited to the efforts of a Mindanao native and peace advocate, Benedicto R. Bacani, who was part of the panel of independent lawyers that ably assisted the negotiations of the proposed BBL. *For these reasons, the proposed BBL deserves the support, or better still, the critical support, of all peace-loving Filipinos, not to mention Moros.*

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52. See generally Government of the Republic of the Philippines & the Moro National Liberation Front, Peace Agreement (An Agreement on the Implementation of the 1976 Tripoli Agreement Between the GPH and the Moro National Liberation Front (MNLF) With the Participation of the Organization of Islamic Conference (OIC) Ministerial Committee of the Six And the Secretary General of the OIC), available at <http://www.opapp.gov.ph/sites/default/files/The-Final-Peace-Agreement-on-the-Implementation-of-the-1976-Tripoli-Agreement-Between-the-GRP-and-the-MNLF.pdf> (last accessed Feb. 17, 2015) [hereinafter 1996 Final Peace Agreement]. See also Government of the Republic of the Philippines & the Moro National Liberation Front, The Tripoli Agreement (An Agreement Between the GPH and the MNLF With the Participation of the Quadripartite Ministerial Commission Members of the Islamic Conference And the Secretary General of the OIC), available at <http://pcdspo.gov.ph/downloads/2012/10/Tripoli-Agreement-December-23-1976.pdf> (last accessed Feb. 17, 2015) [hereinafter 1976 Tripoli Agreement].

53. See Carol Arguillas, After 10 years, MNLF peace pact in limbo, available at <http://www.gmanetwork.com/news/story/14568/after-10-years-mnlf-peace-pact-in-limbo> (last accessed Feb. 17, 2015).

54. Framework Agreement on the Bangsamoro, *supra* note 6, § IX, ¶ 1.

55. See H.B. No. 4994, art. XV, ¶¶ a-e; S.B. No. 2408, art. XV, § 1, ¶¶ a-e; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XV, § 1, ¶¶ a-e.

56. See Andreo Calonzo, PNoy personally submits draft Bangsamoro law to Congress leaders, available at <http://www.gmanetwork.com/news/story/378481/news/nation/pnoy-personally-submits-draft-bangsamoro-law-to-congress-leaders> (last accessed Feb. 17, 2015).

Part of the critical support for the proposed BBL is the corollary need to improve it, such as with the “full inclusion of the rights of indigenous peoples.”<sup>57</sup> This is, for now, not an issue of constitutionality. Rather, this concerns the application of an existing law — the Indigenous Peoples’ Rights Act of 1997 (IPRA)<sup>58</sup> — and whether the rights of indigenous peoples vested under the said law would be respected and maintained under the BBL. At its core, there appears to be differences in the understanding of the concept of ancestral domain between the Bangsamoro and the *Lumads*.<sup>59</sup> There also appears to be long-standing relational problems between dominant and marginalized indigenous peoples.<sup>60</sup> These differences have to be handled, ideally, in a conciliatory rather than in an adversarial manner, lest overall support for the BBL, including that from the Filipino mainstream society, be undermined.<sup>61</sup> The negative effects of the failure to handle these tensions in the best way possible include the raising of pertinent issues of constitutionality against the BBL vis-à-vis the rights of indigenous peoples under the IPRA and the breakaway of one or the other side from the BBL process.<sup>62</sup>

Department of Interior and Local Government (DILG) Secretary Manuel A. Roxas III said that the proposed BBL is “the last chance that could bring about lasting peace in Mindanao.”<sup>63</sup> Lest the public forget, the

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57. This is the title of a position paper formally submitted to the House of Representatives ad hoc Committee on the BBL. See Timuay Justice and Governance, et al., Full Inclusion of the Rights of Indigenous Peoples in the Proposed Bangsamoro Basic Law (A Position Paper on H.B. No. 4994 Submitted to the House of Representative ad hoc Committee on the BBL) 1, available at <https://www.scribd.com/doc/244051685/POSITION-PAPER-Full-Inclusion-of-the-Indigenous-People-s-in-the-Bangsamoro-pdf> (last accessed Feb. 17, 2015).

58. An Act to Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [The Indigenous People’s Rights Act of 1997], Republic Act No. 8371 (1997).

59. *Lumads* distinguish themselves from the *Moros* because the former did not convert to Islam at the peak of the spread of the religion in Mindanao. See INTERNATIONAL CRISIS GROUP, THE PHILIPPINES: INDIGENOUS RIGHTS AND THE MILF PEACE PROCESS I (ASIA REPORT NO. 31, NOVEMBER 2011).

60. *Id.* at 17.

61. *Id.*

62. *Id.*

63. See Germelina Lacorte, *Mar says BBL is Mindanao’s ‘last chance’ for peace*, PHIL. DAILY INQ., Oct. 4, 2014, available at <http://newsinfo.inquirer.net/642488/>

same imputations were said about the 1996 Final Peace Agreement with the MNLF.<sup>64</sup> It is important to be aware of past lessons, including those that concern “premature exultation”<sup>65</sup> and the proverbial revolution of rising expectations.<sup>66</sup> But for a political perspective, then Senator Roxas and then private citizen Drilon were both on record, before the media as well as before the Supreme Court, as two of the strongest assailants of the MOA-AD.<sup>67</sup> At that time, both were members of the opposition bloc against the administration of former President Gloria M. Macapagal-Arroyo.<sup>68</sup> This raises questions and concerns about the future of the Bangsamoro government under the next administration.<sup>69</sup>

Indeed, the personalities at the helm of the Executive Department and their popularity make a difference. The MOA-AD, which was proposed under the administration of former President Arroyo, was not yet a signed and binding agreement but was already subjected to challenges of unconstitutionality before the Supreme Court.<sup>70</sup> Eventually, the MOA-AD was struck down as unconstitutional.<sup>71</sup> Meanwhile, the FAB and its Annexes and the CAB, both being pursued under the administration of the

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mar-roxas-says-bbl-is-mindanaos-last-chance-for-peace (last accessed Feb. 17, 2015).

64. See Angela Casauay, The MNLF, MILF and 2 peace agreements, *available at* <http://www.rappler.com/newsbreak/38547-milf-mnlf-peace-agreements> (last accessed Feb. 17, 2015).

65. *Premature exultation*, PHIL. DAILY INQ., Apr. 18, 2013, *available at* <http://opinion.inquirer.net/50991/premature-exultation> (last accessed Feb. 17, 2015). The term “premature exultation” is borrowed from this column to contextualize the delays in completing the Comprehensive Agreement on the Bangsamoro after the well-celebrated breakthrough of the Framework Agreement on the Bangsamoro. *Id.*

66. *Id.*

67. *Province of North Cotabato*, 568 SCRA at 438 & 459.

68. See generally Teresita Quintos Deles, Presidential Adviser on the Peace Process, Will peace hold in Mindanao?, Remarks at the 27th Asia Pacific Roundtable organized by the Institute of Strategic and International Studies in Kuala Lumpur, Malaysia. (June 5, 2013) (transcript *available at* <http://www.opapp.gov.ph/resources/will-peace-hold-mindanao-27th-asia-pacific-roundtable-kuala-lumpur-malaysia> (last accessed Feb. 17, 2015)).

69. The term of President Aquino ends at noon on 30 June 2016. See Interview by Howie Severino with Professor Miriam Coronel-Ferrer, GPH Peace Panel Chairperson, in Quezon City, Philippines (Mar. 26, 2014).

70. See generally Joint Statement of the Special Meeting of the GPH and MILF Chairmen, *supra* note 48.

71. *Province of North Cotabato*, 568 SCRA at 522.

incumbent President Aquino, are all signed agreements yet no challenges against their constitutionality have been filed before the Supreme Court.<sup>72</sup> The absence of any constitutional challenge continues notwithstanding the commentaries assailing the unconstitutionality of the said agreements by various legal luminaries, including Senator Miriam P. Defensor-Santiago<sup>73</sup> and the Philippine Constitution Association.<sup>74</sup> The issues of unconstitutionality hurled against the FAB and its Annexes and the CAB appear to have already been overtaken by the fact that the proposed BBL is now pending before Congress. Normally, challenges against the constitutionality of bills still pending before Congress would be considered premature and not ripe for adjudication. Yet, the challenges against the constitutionality of the MOA-AD, which was then an unsigned agreement, were not considered premature.<sup>75</sup> Clearly, presidential administration and influence translate to a considerable difference.

One cannot deny that the people, especially the *Moros*, who have placed their hope for a just and lasting peace in Mindanao, aspire for the success of the FAB and its Annexes, the CAB, and the proposed BBL. One senior *Moro* lawyer, Macabangkit B. Lanto, best expressed this aspiration, in response to the criticisms against the peace agreements, by saying that “[m]any [*Moros*,] like [him]self[,] will accept any piece of paper, short of compromising [their] honor and dignity, that will keep the ember of hope for peace burning in [their] hearts and heal the wounds inflicted by the injustice[s] of the past.”<sup>76</sup> A young *Moro*, Maleiha Shahara D. Alim, said that “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

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72. *But see* Sun Star Manila, Petitions filed vs Bangsamoro Framework deal, available at <http://www.sunstar.com.ph/manila/local-news/2012/12/03/petitions-filed-vs-bangsamoro-framework-deal-256424> (last accessed at Feb. 17, 2015).

73. *See* Jefferson Antiporda, *Santiago just wants to make sure FAB could stand SC scrutiny*, MANILA TIMES, Apr. 4, 2014, available at <http://www.manilatimes.net/santiago-just-wants-to-make-sure-fab-could-stand-sc-scrutiny/87618/> (last accessed Feb. 17, 2015).

74. *See* Rey Carbonel, *Philconsa says Bangsamoro pact unconstitutional*, ZAMBOANGA TIMES, May 15, 2014, available at <http://www.zamboangatimes.ph/zamboanga-times/top-news/10712-philconsa-says-bangsamoro-pact-unconstitutional.html> (last accessed Feb. 17, 2015).

75. *See generally* Joint Statement of the Special Meeting of the GPH and MILF Chairmen, *supra* note 48.

76. Macabangkit B. Lanto, *The gov't-MILF peace pact: a Moro perspective*, PHIL. DAILY INQ., Mar. 26, 2014, available at <http://opinion.inquirer.net/72957/the-govt-milf-peace-pact-a-moro-perspective> (last accessed Feb. 17, 2015).

the promised land of the Bangsamoro.”<sup>77</sup> Additionally, as the MILF Peace Panel Chairperson Mohagher Iqbal remarked before the House ad hoc Committee on the BBL, “[t]he Bangsamoro is the sum of [their] hopes and dreams. It may mean nothing to [others]. But it is the whole world to [them].”<sup>78</sup>

Over-all MILF Chairman Murad, in his remarks at the signing of the CAB on 27 March 2014 at Malacañang, described the historic event as “the crowning glory of [their] struggle”<sup>79</sup> and “as the most fitting solution to the undying aspiration of the Bangsamoro.”<sup>80</sup> The MILF, however, through a commentary,<sup>81</sup> has shed some particularly interesting, if not instructive and tempering, light on these high hopes —

[The] BBL [ ] addresses the issues of identity, territory, ... ancestral domain, natural resources, sharing of powers and wealth, administration of justice, ... [and] human rights issues, [among others] ... [of the Bangsamoro.] What more [can] a [Moro] [ ] 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 [only] [bases] of the BBL [are] [ ] the [FAB], its four Annexes[,] and the Addendum on the Bangsamoro Waters, thereby leaving other parts of the [CAB] not yet addressed or unimplemented.

[The implementation of the remaining parts] will be done through the other mandate of the [BTC,] which is to make proposals to amend the Constitution[.]<sup>82</sup>

The last two quoted paragraphs raise particularly important angles that may have escaped the attention of most. To recapitulate, the MILF makes these observations about the BBL:

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77. Maleiha Shahara D. Alim, *The promised land is within our grasp*, PHIL. DAILY INQ., Oct. 12, 2014, available at <http://opinion.inquirer.net/79221/the-promised-land-is-within-our-grasp> (last accessed Feb. 17, 2015).

78. DJ Yap, *MILF negotiator appeals for Filipinos' acceptance of Bangsamoro*, PHIL. DAILY INQ., Sep. 24, 2014, available at <http://newsinfo.inquirer.net/640436/milf-negotiator-appeals-for-filipinos-acceptance-of-bangsamoro> (last accessed Feb. 17, 2015) [hereinafter Yap, *MILF negotiator*].

79. Christian V. Esguerra & TJ Burgonio, *Philippines, MILF sign peace agreement*, PHIL. DAILY INQ., Mar. 28, 2014, available at <http://newsinfo.inquirer.net/589706/bangsamoro-rising> (last accessed Feb. 17, 2015).

80. *Id.*

81. MILF, BBL Menu for Unity and Solidarity, available at <http://www.luwaran.com/index.php/editorial/item/1214-bbl-menu-for-unity-and-solidarity> (last accessed Feb. 17, 2015) [hereinafter MILF, Menu for Unity and Solidarity].

82. *Id.*

- (1) The Bangsamoro problem will *not* be *fully* addressed by the proposed BBL alone, even if passed *as is* by the Congress;<sup>83</sup>
- (2) The proposed BBL is based *only* on the FAB, its four Annexes, and the Addendum on Bangsamoro Waters.<sup>84</sup> It *is not* based on the other component agreements of the CAB;<sup>85</sup> and
- (3) The other parts of the CAB, such as those not covered by the BBL, are to be addressed or implemented *by constitutional amendments* to be proposed by the BTC.<sup>86</sup>

Although it remains to be seen if the GPH will concur with these observations by the MILF, the same concurs with the Author's view that the BBL is, or should be seen as, a step forward in what is said to be a *longer* road to peace — even beyond 2016. These observations by the MILF should be considered as thoughts to ponder on, especially with regard to their implications, to get a better sense of the *larger* picture.

### III. SOLVING THE BANGSAMORO PROBLEM

If the MILF itself, which had first posed the single peace talking point of solving the Bangsamoro problem in January 1997,<sup>87</sup> argues that “solving the Bangsamoro Question or Problem will not be fully addressed by the BBL alone[,] even if it is passed by Congress[,]”<sup>88</sup> then how can one argue otherwise? After all, it is *their* perception of the Bangsamoro problem that is crucial for its solution and *not the GPH's*. It is important to learn how the MILF first elaborated this problem —

This problem involves a variety of social, cultural, economic[,] and political issues and concerns that *include, but [are] not limited to*, the following:

- (1) ancestral domain[;]
- (2) displaced and landless Bangsamoro people[;]
- (3) destruction of properties and war victims[;]
- (4) human rights issues[;]
- (5) social and cultural discrimination[;]

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83. *Id.*

84. *Id.*

85. *Id.* See Comprehensive Agreement on the Bangsamoro, *supra* note 8, at 1-2.

86. MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

87. Eid Kabalu, *Perspectives: Will Addressing the Socioeconomic Concerns of the Mindanao People Put an End to Conflict in Southern Philippines?*, 19 KASARINLAN: PHIL. J. THIRD WORLD STUD. 186 (2003).

88. MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

- (6) corruption of the mind and moral fiber[;]
- (7) economic inequities and widespread poverty[;]
- (8) exploitation of natural resources[; and]
- (9) agrarian-related issues[.]<sup>89</sup>

Furthermore, the MILF also said that “[t]he above[-mentioned] issues and concerns are *what the Mindanao people perceive* to be the root cause of the Mindanao problem.”<sup>90</sup> The MILF goes further in saying that “[f]inding a *political and lasting solution* to this problem will form part of the agenda in the forthcoming formal talks between the [GPH] and the MILF panels, *with the end[-in]-view of establishing a system of life and governance suitable and acceptable to the Bangsamoro people.*”<sup>91</sup>

At one level, one can compare the enumerated *non-exclusive* nine-point substantive agenda with the substantive content of the FAB, the CAB, and the BBL. Most of the items included in the nine-point substantive agenda appear to be covered by the FAB,<sup>92</sup> the CAB,<sup>93</sup> and the BBL.<sup>94</sup>

However, if one is to consider the very important and contentious issue of ancestral domain, its substantive content has *not been spelled out* in the FAB, the CAB, and the BBL.<sup>95</sup> It is *merely listed* in the Annex on Power

89. Kabalu, *supra* note 87, at 197 (emphasis supplied).

90. *Id.* (emphasis supplied).

91. Soliman M. Santos, Jr., *War and Peace on the Moro Front: Three Standard Bearers, Three Forms of Struggle, Three Tracks (Overview)*, in PRIMED AND PURPOSEFUL: ARMED GROUPS AND HUMAN SECURITY EFFORTS IN THE PHILIPPINES 58 (Diana Rodriguez ed., 2010) [hereinafter PRIMED AND PURPOSEFUL] (citing GRP-MILF Meeting of Technical Committee, Sub-Committee on Agenda Setting, Feb. 25, 1997) (emphasis supplied).

92. *Compare* Framework Agreement on the Bangsamoro, *supra* note 6, with MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

93. The powers of the BTC, the BTA, and the Bangsamoro government, in relation to the MILF’s first elaboration of the Bangsamoro problem in its Menu for Unity and Solidarity. *Compare* Comprehensive Agreement on the Bangsamoro, *supra* note 8, with MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

94. *Compare* OPAPP, Agreed Version of the BBL, *supra* note 14, with MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

95. *Compare* MILF, BBL Menu for Unity and Solidarity, *supra* note 81, with Framework Agreement on the Bangsamoro, *supra* note 6; Comprehensive Agreement on the Bangsamoro, *supra* note 8; & OPAPP, Agreed Version of the BBL, *supra* note 14.

Sharing<sup>96</sup> and in the BBL as ancestral domain and natural resources under the exclusive control of the Bangsamoro government.<sup>97</sup> The exploitation of natural resources is substantially spelled out in the FAB,<sup>98</sup> its Annex on Wealth Sharing,<sup>99</sup> its Addendum on Bangsamoro Waters,<sup>100</sup> and the BBL.<sup>101</sup> However, the same does not hold true for ancestral domain. It was detailed in the aborted MOA-AD.<sup>102</sup> The MOA-AD is neither considered among the non-derogable prior peace agreements nor is it a component of the CAB.<sup>103</sup>

One component of the CAB speaks of “reframing the consensus points on [a]ncestral [d]omain.”<sup>104</sup> A Joint Statement<sup>105</sup> by the MILF and GPH included an “[a]cknowledgment of [the] MOA-AD as an unsigned and yet [initialled] 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.”<sup>106</sup> Have the consensus points on ancestral domain been reframed in the FAB and its Annexes and the BBL? Can the listing of ancestral domain under the

96. See Annex on Power Sharing, *supra* note 7, pt. three, § III, ¶ 29.

97. See H.B. No. 4994, art. V, § 3, ¶ 29; S.B. No. 2408, art. V, § 3, ¶ 29; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. V, § 3, ¶ 29.

98. See Framework Agreement on the Bangsamoro, *supra* note 6, § 4, ¶¶ 4 & 8.

99. See Annex on Revenue Generation and Wealth Sharing, *supra* note 7, § VII.

100. See Government of the Republic of the Philippines & the Moro Islamic Liberation Front, On the Bangsamoro Waters and Zones of Joint Cooperation (An Addendum to the Annex on Revenue Generation and Wealth Sharing and the Annex on Power Sharing) 1-2, available at [http://www.opapp.gov.ph/sites/default/files/addendum\\_on\\_the\\_bangsamoro\\_waters.pdf](http://www.opapp.gov.ph/sites/default/files/addendum_on_the_bangsamoro_waters.pdf) (last accessed Feb. 17, 2015).

101. See H.B. No. 4994, art. XIII, §§ 2-10; S.B. No. 2408, art. XIII, §§ 2-10; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XIII, §§ 2-10.

102. *Province of North Cotabato*, 568 SCRA at 522.

103. See generally Comprehensive Agreement on the Bangsamoro, *supra* note 8, at 1-2. The MOA-AD is not part of the agreements deemed incorporated in the Comprehensive Agreement on the Bangsamoro. *Id.*

104. Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Declaration of Continuity for Peace Negotiation between the GPH and the MILF (A Declaration Signed by the GPH and the MILF) 2, available at <http://www.gov.ph/downloads/2010/06jun/20100603-Declaration-of-Continuity-GRP-MILF.pdf> (last accessed Feb. 17, 2015) [hereinafter Declaration of Continuity for Peace Negotiation].

105. Joint Statement of the Special Meeting of the GPH and MILF Chairmen, *supra* note 48.

106. *Id.*

exclusive powers<sup>107</sup> of the Bangsamoro government be considered as reframing? The interpretation of ancestral domain and the constitutionality of exclusive powers of the Bangsamoro government are still contentious issues in congressional deliberations on the BBL. The same will also be considered as touchstone issues in any challenge against the constitutionality of the BBL before the Supreme Court.

On another level, one can look at the bottom line of the nine-point agenda of the Bangsamoro problem as having “the end[-]in[-]view of establishing a system of life and governance suitable and acceptable to the Bangsamoro people.”<sup>108</sup> Would the BBL establish this? Speaking of acceptable, the FAB sets the tone at the outset by stating that “[t]he [p]arties agree that the status quo is unacceptable and that the Bangsamoro shall be established to replace the [ARMM].”<sup>109</sup> The ARMM being referred to is the *existing* ARMM, which is “deemed abolished”<sup>110</sup> upon the ratification of the BBL in a plebiscite.<sup>111</sup> The proposed BBL, in its very title, indicates the abolition of the ARMM and the repeal of the *first*<sup>112</sup> and *second*<sup>113</sup> organic acts of ARMM. But in the body of the proposed BBL, it is only the abolition of the ARMM<sup>114</sup> that is expressly provided, and not the repeal of R.A. No. 9054 and R.A. No. 6734.<sup>115</sup> Of course, the intent and the effect of the ratification of the BBL are to repeal both organic acts as inconsistent

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107. See H.B. No. 4994, art. V, § 3, ¶ 29; S.B. No. 2408, art. V, § 3, ¶ 29; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. V, § 3, ¶ 29.

108. PRIMED AND PURPOSEFUL, *supra* note 91, at 58.

109. Framework Agreement on the Bangsamoro, *supra* note 6, § I, ¶ 1.

110. *Id.* § VII, ¶ 8.

111. *Id.*

112. See *generally* An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao, Republic Act No. 6734 (1989).

113. See *generally* R.A. No. 9054.

114. See H.B. No. 4994, art. XVIII, § 5; S.B. No. 2408, art. XVIII, § 5; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XVIII, § 5.

115. See H.B. No. 4994; S.B. No. 2408; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1.

laws<sup>116</sup> — even if the proposed BBL actually adopts, by specific reference, certain provisions of R.A. No. 9054 and R.A. No. 6734.<sup>117</sup>

The rationale for the abolition of the existing ARMM is best expressed by President Aquino, who pronounced it as a “failed experiment.”<sup>118</sup> The MILF has long considered the ARMM as a *non-solution* to the Bangsamoro problem, particularly as a political entity for Bangsamoro self-governance.<sup>119</sup> But, as Fr. Joaquin G. Bernas, S.J. wrote, “[a]n important point to remember is that the [ARMM] is *governed by two organic acts[ , namely] the [ ] Constitution and the [prevailing] [o]rganic [a]ct for [the ARMM].*”<sup>120</sup> *The BBL, as an organic act to govern the new autonomous political entity called the Bangsamoro government, would replace only the existing organic act for ARMM but not the Constitution.* In other words, the constitutional basis of the unacceptable status quo, which is the ARMM, would still continue to exist, even as its statutory 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.<sup>121</sup> The level of

116. See H.B. No. 4994, art. XVIII, § 2; S.B. No. 2408, art. XVIII, § 2; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XVIII, § 2. These provisions provide the statute’s repealing clause, akin to an implied repeal, rendering all “laws, decrees, orders, rules and regulations, and other issuances or parts thereof” as repealed. *Id.*

117. See *generally* H.B. No. 4994, art. V, § 4, ¶¶ a-p; S.B. No. 2408, art. V, § 4, ¶¶ a-p; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. V, § 4, ¶¶ a-p. These provisions vest some of the powers and competencies previously granted to the ARMM to the Bangsamoro government. *Id.*

118. Benigno S. Aquino, III, President of the Republic of the Philippines, Speech on the Framework Agreement on the Bangsamoro at Malacañang Palace (Oct. 7, 2012) (transcript *available at* <http://www.gov.ph/2012/10/07/speech-of-president-aquino-on-the-framework-agreement-with-the-milf-october-7-2012/> (last accessed Feb. 17, 2015)).

119. See *generally* Rufa Cagoco-Guiam, Checkpoints and Chokeypoints: The Rocky Road to Peace in the Bangsamoro, *available at* <http://peacebuilding.asia/checkpoints-and-chokeypoints-the-rocky-road-to-peace-in-the-bangsamoro/> (last accessed Feb. 17, 2015).

120. Joaquin G. Bernas, S.J., *Toward broader autonomy for Muslim Mindanao*, PHIL. DAILY INQ., July 21, 2013, *available at* <http://opinion.inquirer.net/57071/toward-broader-autonomy-for-muslim-mindanao> (last accessed Feb. 17, 2015) (emphasis supplied).

121. See OPAPP, Frequently Asked Questions on the Draft Bangsamoro Basic Law (A Primer By the OPAPP on the Draft BBL) 8, *available at* [http://www.opapp.gov.ph/sites/default/files/Draft%20Bangsamoro%20Basic%20Law\\_FAQs.pdf](http://www.opapp.gov.ph/sites/default/files/Draft%20Bangsamoro%20Basic%20Law_FAQs.pdf) (last accessed Feb. 17, 2015). One part of the primer provides —

Bangsamoro self-determination would still be one of autonomy, particularly that provided to autonomous regions by the Constitution.<sup>122</sup> It would not be the level of Bangsamoro self-determination conceived as an associative relationship under the aborted MOA-AD,<sup>123</sup> nor that conceived as a sub-state under the MILF's 2010 Draft Comprehensive Compact on Interim Governance.<sup>124</sup> In fact, the leaders of the MNLF released a statement<sup>125</sup> where "[t]hey welcome the MILF[s] acceptance of autonomy as a solution to the Bangsamoro problem."<sup>126</sup> This comes after the MILF's long-time aversion to autonomy as a political solution.<sup>127</sup> But the new Bangsamoro entity under the BBL can be considered as an enhanced autonomy within the flexibilities of the Constitution.<sup>128</sup> If anything, this shows the MILF's record of continued willingness to compromise and to scale down its demands, which, at a previous historical point, was for no less than

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Q. Describe the relationship between the [n]ational and Bangsamoro [g]overnments.

A. The relationship between the [n]ational and Bangsamoro [g]overnments shall be asymmetric. It is asymmetric because it is distinct from the relationship between the [n]ational [g]overnment and other local government units. Specifically, the ... Constitution ... confers the Bangsamoro [g]overnment, *as an autonomous region*, legislative powers over such matters as administrative organization and ancestral domain [—] which are not granted to local government units. However, similar to local government units, the President's power of general supervision remains[.]

*Id.* (citing PHIL. CONST. art. X, § 20 & art. VI, §§ 1 & 3) (emphasis supplied).

122. *See generally* PHIL. CONST. art. X, §§ 15–20.

123. *See generally* *Province of North Cotabato*, 568 SCRA at 480.

124. *See generally* Moro Islamic Liberation Front, Government of the Republic of the Philippines and Moro Islamic Liberation Front Comprehensive Compact on Interim Governance (A Draft Comprehensive Compact on Interim Governance by the MILF), *available at* [https://www.academia.edu/3469266/Peace\\_Agreement\\_in\\_Southern\\_Philippines](https://www.academia.edu/3469266/Peace_Agreement_in_Southern_Philippines) (last accessed Feb. 17, 2015) [hereinafter 2010 Draft Comprehensive Compact on Interim Governance].

125. Perseus Echeminada, *MNLF groups back OIC stand on CAB*, PHIL. STAR, July 3, 2014, *available at* <http://www.philstar.com/nation/2014/07/03/1341667/mnlf-groups-back-oic-stand-cab> (last accessed Feb. 17, 2015).

126. *Id.*

127. *See* Aurea Calica, *MILF rejects autonomy offer*, PHIL. STAR, Aug. 24, 2011, *available at* <http://www.philstar.com/headlines/719610/milf-rejects-autonomy-offer> (last accessed Feb. 17, 2015).

128. PHIL. CONST. art. X, §§ 15–20.

independence.<sup>129</sup> Perhaps a question that should be posed is whether the compromise is tactical or strategic.

The implications of the new Bangsamoro entity under the BBL being considered, still, as an autonomous region under the Constitution should not be considered a loss for the MILF and other *Moros* for whom the Bangsamoro “is the sum of [their] hopes and dreams.”<sup>130</sup> There should be no illusions or undue expectations about the Bangsamoro in terms of their legitimate aspiration for self-governance. The Supreme Court, in *Kida v. Senate of the Philippines*,<sup>131</sup> stated —

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* in the relationship between the national and regional governments.<sup>132</sup>

Furthermore, *Kida* also pronounced that

[f]rom 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.<sup>133</sup>

Supreme Court Justice Antonio T. Carpio, in his dissenting opinion in *Kida*, even went to the extent of classifying the ARMM as “a local government unit just like provinces, cities, municipalities, and [*barangays*].”<sup>134</sup>

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129. GMA News Online, MILF to push for creation of Moro ‘sub-state’ in Mindanao, available at <http://www.gmanetwork.com/news/story/201653/news/regions/milf-to-push-for-creation-of-moro-sub-state-in-mindanao> (last accessed Feb. 17, 2015).

130. Yap, *MILF negotiator*, *supra* note 78.

131. *Kida v. Senate of the Philippines*, 659 SCRA 270 (2011).

132. *Id.* at 306. The latin phrase *imperium et imperio* means “empire within an empire.” In Rebus, Latin quotes, sayings and words of wisdom, available at [http://www.inrebus.com/latinphrases\\_i.php](http://www.inrebus.com/latinphrases_i.php) (last accessed Feb. 17, 2015).

133. *Kida*, 659 SCRA at 292.

134. *Id.* at 349 (J. Carpio, dissenting opinion).

These pronouncements clash with the provision in the proposed BBL, which speaks of the Bangsamoro as “distinct from other regions and other governments”<sup>135</sup> in the context of providing for an asymmetric relationship between the national government and the Bangsamoro government.<sup>136</sup>

*Kida* explained that the existing legal framework on autonomous regions is composed of “the Constitution and its established supporting jurisprudence[.]”<sup>137</sup> which is not only limited to the jurisprudence on autonomous regions and on local governments but also includes the whole gamut of constitutional jurisprudence. One such jurisprudence on local governments is *Basco v. Phil. Amusements and Gaming Corporation*,<sup>138</sup> which referred to “a unitary system of government, such as the government under the [ ] Constitution.”<sup>139</sup> Being subject to this existing constitutional framework, which includes being expressly “subject to the provisions of [the] Constitution and national laws,”<sup>140</sup> the new Bangsamoro entity under the BBL will provide, at most, *only a quantitative and not a qualitative liberation from the overarching and highly-centralized unitary system of government prevailing in the Philippines.*

Is the constitutionally entrenched unitary system of the Central Government not the bigger and unacceptable status quo, which, for the longest time, has been the main fetter to the legitimate wishes of the Bangsamoro people to govern themselves? Will a new Bangsamoro entity under the 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? Will it solve the Bangsamoro problem? The MILF has already answered this last question in the negative by saying that “[these] will not be fully addressed.”<sup>141</sup>

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 observations of the MILF may provide some answers.<sup>142</sup> Take, for

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135. See H.B. No. 4994, art. VI, § 1; S.B. No. 2408, art. VI, § 1; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. VI, § 1.

136. *Id.*

137. *Kida*, 659 SCRA at 307.

138. *Basco v. Phil. Amusements and Gaming Corporation*, 197 SCRA 52 (1991).

139. *Id.* at 65 (citing JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 374 (1988 ed.)).

140. See PHIL. CONST. art. X, § 20. This Section states that the organic act for the autonomous regions is still “subject to the provisions of [the] Constitution and national laws.” PHIL. CONST. art. X, § 20.

141. MILF, *Menu for Unity and Solidarity*, *supra* note 81.

142. *Id.*

instance, the important observation that the proposed BBL is based *only on* the FAB, its four Annexes, and the Addendum on Bangsamoro Waters and *not* on the other component agreements of the CAB.<sup>143</sup> Why this is so is not clear, but the incorporation of prior peace agreements into the CAB happened only towards the end of the negotiations and after the FAB and all its Annexes were already drawn up. When the Annex on Transitional Arrangements and Modalities<sup>144</sup> was signed in February 2013 — a time when there was still no CAB — it provided that the BTC “shall draft the [BBL], using as bases the FAB and its [A]nnexes.”<sup>145</sup> This guided the BTC in drafting the proposed BBL, even though the rest of the finalized and signed CAB was already there as a possible reference.

#### IV. DISSECTING THE CAB

The earlier notion that the CAB would be merely the consolidation of the FAB and its Annexes as posited by the Office of the Presidential Adviser on the Peace Process (OPAPP), turned out to be mistaken. As finalized, the CAB consisted of 12 peace agreements, namely the FAB and its four Annexes, one Addendum, and the following prior peace agreements:

- (1) Agreement for General Cessation of Hostilities,<sup>146</sup> which was signed during the administration of former President Fidel V. Ramos on 18 July 1997;<sup>147</sup>
- (2) General Framework of Agreement of Intent,<sup>148</sup> which was signed under the administration of former President Joseph Ejercito Estrada on 27 August 1998;<sup>149</sup>
- (3) Agreement on the General Framework for the Resumption of Peace Talks,<sup>150</sup> which was signed under the administration of former President Arroyo on 24 March 2001;<sup>151</sup>

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143. *Id.*

144. *See* Annex on Transitional Arrangements and Modalities, *supra* note 7.

145. *Id.* § II, ¶ A (6) (a).

146. Agreement for General Cessation of Hostilities, *supra* note 42.

147. *Id.* at 1.

148. *See* Government of the Republic of the Philippines & the Moro Islamic Liberation Front, General Framework of Agreement of Intent between the GPH and the MILF (An Agreement of Intent Between the GPH and the MILF), *available at* <http://www.gov.ph/downloads/1998/08aug/19980827-General-Framework-of-Agreement-GRP-MILF.pdf> (last accessed Feb. 17, 2015).

149. *Id.* at 1.

- (4) Agreement on Peace between the GPH and the MILF<sup>152</sup> (Tripoli Agreement on Peace of 2001), which was signed also under the administration of former President Arroyo on 22 June 2001;<sup>153</sup>
- (5) Declaration of Continuity for Peace Negotiation,<sup>154</sup> which was signed also under the administration of former President Arroyo on 3 June 2010;<sup>155</sup> and
- (6) GPH-MILF Decision Points on Principles as of April 2012,<sup>156</sup> which was signed under the current administration of President Aquino on 24 April 2012.<sup>157</sup>

In addition, the CAB provides that “[s]upplementary to the CAB are the various agreements, guidelines, terms of reference, and joint statements duly signed and acknowledged by the [p]arties in the course of the negotiations between the two [p]arties beginning in 1997.”<sup>158</sup> This adds to the whole picture. This may be attributed to the MILF’s long-time consistent insistence that “[t]he parties commit to honor, respect[,] and implement all [ ] past agreements[,]”<sup>159</sup> as well as its incremental or cumulative strategy for the peace negotiations.

Again, the MILF said that “[t]he basis of the BBL is only the [FAB], its four Annexes[,] and the Addendum on the Bangsamoro Waters, thereby

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150. See Government of the Republic of the Philippines & the Moro Islamic Liberation Front, Agreement on the General Framework for the Resumption of Peace Talks between the GPH and the MILF (An Agreement Between the GPH and the MILF for the Resumption of Peace Talks), *available at* <http://www.gov.ph/downloads/2001/03mar/20010324-Agreement-on-the-General-Framework-GRP-MILF.pdf> (last accessed Feb. 17, 2015).

151. *Id.* at 1.

152. See Tripoli Agreement on Peace of 2001, *supra* note 39.

153. *Id.* at 4.

154. See Declaration of Continuity for Peace Negotiation, *supra* note 104.

155. *Id.* at 2.

156. See Government of the Republic of the Philippines & the Moro Islamic Liberation Front, GPH-MILF Decision Points on Principles as of April 2012 (An Agreement on Principles Between the GPH and the MILF), *available at* <http://www.gov.ph/downloads/2012/04apr/20120424-GPH-MILF-Decision-Points-on-Principles.pdf> (last accessed Feb. 17, 2015).

157. *Id.* at 2.

158. Comprehensive Agreement on the Bangsamoro, *supra* note 7, at 2.

159. *Id.*

leaving other parts of the [CAB] not yet addressed or unimplemented.”<sup>160</sup> But right before this, the MILF said that “solving the Bangsamoro Question or Problem will not be fully addressed by the BBL alone[,] even if it is passed by Congress.”<sup>161</sup> This implies that implementing the other parts of the CAB will be the full and complete solution to the Bangsamoro problem. This solution ultimately ends, according to the MILF, “through the other mandate of the [BTC,] which is to make proposals to amend the Constitution.”<sup>162</sup> To be clear, the MILF is saying *two things about the implementation of the other parts of the CAB*:

- (1) First, that this will make the solution of the Bangsamoro problem full or complete;<sup>163</sup> and
- (2) Second, that this will be done through or will entail no less than constitutional amendments.<sup>164</sup>

This is a major proposition made by the MILF, to say the least. Without prejudice to further deconstruction of the propositions made by the MILF, the immediate implication is that the BBL should not be the end of the process in terms of legislative measures. The propositions also include proposals for constitutional amendments to fully address the Bangsamoro problem.<sup>165</sup> Corollary to this, the establishment of the new Bangsamoro entity under the BBL should likewise not be the end. What should follow after the enactment of the BBL is not clear. The only thing clear is that the BTC has a mandate to recommend proposals for constitutional amendments to accommodate the BBL.<sup>166</sup> But dealing with such proposals, which normally would require congressional action, is not indicated in the announced GPH-MILF peace road map until after the establishment of the Bangsamoro government in mid-2016.<sup>167</sup> While the MILF was eyeing the

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160. See MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

161. *Id.*

162. *Id.* See also Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶ 4 (b).

163. See MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

164. *Id.*

165. Incidentally, this position of the MILF is also supported by the Framework Agreement on the Bangsamoro as it directs the BTC to make necessary recommendations to amend the Constitution. See Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶ 4 (b).

166. *Id.*

167. OPAPP, MILF Peace Process Timeline, *supra* note 32. See also H.B. No. 4994, art. XVI, § 12; S.B. No. 2408, art. XVI, § 12; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XVI, § 12.

necessary constitutional amendments<sup>168</sup> and while it was at the MILF's instance that the BTC was given mandate to recommend constitutional amendments, the GPH, under President Aquino, has never shown keenness for amending the Constitution based on its position of negotiating only "within the flexibilities of the Constitution."<sup>169</sup> As far as the Aquino Administration is concerned, the matter of effecting the necessary amendments to the constitution is being left for the next administration to deal with.

But as far as the MILF is concerned, constitutional amendments are necessary, whether these be for accommodating or entrenching political arrangements for self-governance.<sup>170</sup> The exact formulation of the BTC's task of recommending constitutional amendments in the FAB and its Annex on Transitional Arrangements and Modalities is "[t]o work on proposals to amend the [ ] Constitution for the purpose of accommodating and entrenching in the Constitution[,] the [agreements] of the [p]arties[,] whenever necessary[,] without derogating from any prior peace agreements."<sup>171</sup> The corresponding formulation in President Aquino's Executive Order No. 120,<sup>172</sup> which constituted the BTC, is more general as it provides that "[w]henever necessary, to recommend to [the] Congress or the people[,] proposed amendments to the ... Constitution."<sup>173</sup>

The list of 12 peace agreements<sup>174</sup> that form part of the CAB can be divided into two clusters, with 30 June 2010 as the reckoning point on:<sup>175</sup>

- (1) the first five peace agreements, from 1997 to 2010, *before the Aquino Administration*;<sup>176</sup> and

168. See Joel M. Sy Egco, *Two key issues snag Bangsamoro talks*, MANILA TIMES, Aug. 5, 2014, available at <http://www.manilatimes.net/two-key-issues-snag-bangsamoro-talks/116574/> (last accessed Feb. 17, 2015).

169. See Professor-Miriam Coronel-Ferrer, Statement of GPH chief negotiator Professor Miriam Coronel-Ferrer on the status of the draft Bangsamoro Basic Law, available at <http://www.opapp.gov.ph/milf/news/statement-gph-chief-negotiator-professor-miriam-coronel-ferrer-status-draft-bangsamoro> (last accessed Feb. 17, 2015).

170. *Id.* See also Sy Egco, *supra* note 168.

171. Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶ 4 (b). See also Annex on Transitional Arrangements and Modalities, *supra* note 7, § I, ¶ D & § II, ¶ A (6) (d).

172. Office of the President, Constituting the Transition Commission and For Other Purposes, Executive Order No. 120, (Dec. 17, 2012).

173. *Id.* § 3, ¶ b.

174. See Comprehensive Agreement on the Bangsamoro, *supra* note 7, at 1-2.

175. President Aquino took office at noon on 30 June 2010.

- (2) the last seven peace agreements, especially the FAB and its Annexes, from 2012 to 2014, *under the Aquino Administration*.<sup>177</sup>

How does this relate now to the MILF's position that the other parts of the CAB not covered by the BBL 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 Constitution. This is rather clear when it comes to the FAB and the BBL because of former GPH Peace Panel Chairperson Marvic Mario Victor F. Leonen's assurances regarding such flexibilities.<sup>178</sup> The MILF did not give such acquiescence during the period when the agreements in the first cluster were signed. In other words, for 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 at least some provisions therein, could be outside the bounds of the Constitution.

It will be recalled that the aborted MOA-AD emerged as an attempt to implement the ancestral domain aspect of the Tripoli Agreement on Peace of 2001,<sup>179</sup> then considered as the mother of all framework agreements with its aspects of security,<sup>180</sup> rehabilitation,<sup>181</sup> and ancestral domain.<sup>182</sup> The MOA-AD stated that any of its provisions "requiring amendments to the existing legal framework shall come into force upon signing of a [c]omprehensive [c]ompact and upon effecting the necessary changes to the legal framework[.]"<sup>183</sup> This stipulation, which was understood to refer to amendments to the *existing Constitution*, was particularly struck down by the Supreme Court in *Province of North Cotabato*<sup>184</sup> as a usurpation of the

176. See Comprehensive Agreement on the Bangsamoro, *supra* note 7, at 1-2.

177. *Id.*

178. See Ryan D. Rosauero, *MILF leader unfazed by PH peacemaker's impending move to SC*, PHIL. DAILY INQ., Oct. 30, 2012, available at <http://newsinfo.inquirer.net/298580/milf-leader-unfazed-by-ph-peacemakers-impending-move-to-sc> (last accessed Feb. 17, 2015).

179. Tripoli Agreement on Peace of 2001, *supra* note 39.

180. *Id.* at 2.

181. *Id.* at 2-3.

182. *Id.* at 3.

183. MOA-AD, *supra* note 39, Governance, ¶ 7.

184. *Province of North Cotabato*, 568 SCRA at 402.

constituent powers of the Congress, of a constitutional convention, and of the people to the extent reserved to them by initiative and referendum.<sup>185</sup>

The Supreme Court, in *Province of North Cotabato*, also found that the MOA-AD

*cannot be reconciled with the present Constitution and laws. Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the [GPH] and the BJE, are unconstitutional, for the concept presupposes that the associated entity is a state and implies that the same is on its way to independence.*<sup>186</sup>

But a close reading of *Province of North Cotabato* will show that the Supreme Court did not preclude constitutional amendments, including providing for an associative relationship and for independence, as long as the constitutional processes are followed — adequate public information and consultation, the non-guaranteeing of constitutional amendments, and the non-usurpation of constituent powers.<sup>187</sup> In fact, *Province of North Cotabato* said that

[i]f the President is to be expected to find means [of] 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.<sup>188</sup>

*Province of North Cotabato* also noted the observation of Professor Christine Bell on the nature and legal status of peace agreements.<sup>189</sup>

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185. *Id.* at 521. See PHIL. CONST. art. VI, § 1.

186. *Province of North Cotabato*, 568 SCRA at 521 (emphasis supplied).

187. *Id.*

188. *Id.*

189. See Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 375 (2006). This seminal work was later expanded and was published as ON THE LAW OF PEACE: PEACE AGREEMENTS AND LEX PACIFICATORIA (2008 ed). This book has already entered the Philippine legal discourse on peace processes. See, e.g., Sedfrey M. Candelaria & Regina Ann L. Nonato, *An Overview of the International Legal Concept of Peace Agreements as Applied to Current Philippine Peace Processes*, 53 ATENEO L.J. 263 (2008) & Bettina R. Melchor, *Road to Peace Better Paved: A Novel Legal Approach to Philippine Revolutionary Conflicts Using Lex Pacificatoria* (2013) (unpublished J.D. thesis,

Professor Bell opines 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.”<sup>190</sup> Former Supreme Court Justice Minita V. Chico-Nazario, in her separate opinion, states this point even better —

Peace negotiations are never simple. If neither party in such negotiations thinks outside the box, all they would arrive at is a constant impasse.

...

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 [s]outhern Philippines lies beyond the present Constitution. Exploring this possibility and considering the necessary amendment of the Constitution are not [per se] unconstitutional.<sup>191</sup>

And so, it should not be any wonder that during the time when the first cluster of peace agreements was signed before the Aquino Administration, the MILF submitted its 2010 Draft for a Comprehensive Compact on Interim Governance<sup>192</sup> that included an Annex on Draft Amendatory Clauses and Articles to the Constitution.<sup>193</sup> These documents would establish a Bangsamoro sub-state having an asymmetrical relationship with the national government.<sup>194</sup>

At that point, the MILF was clearly calling for constitutional amendments. But now, with the proposed BBL, it is clear that the MILF has acquiesced to the position of the GPH of enacting an organic act within the flexibilities of the Constitution.<sup>195</sup> This obviously involved a judgment call

Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

190. *Province of North Cotabato*, 568 SCRA at 503; See also Bell, *supra* note 189, at 377.

191. *Id.* at 659-60 (J. Chico-Nazario, separate opinion).

192. 2010 Draft Comprehensive Compact on Interim Governance, *supra* note 124.

193. See generally Moro Islamic Liberation Front, Draft Amendatory Clauses/Article of Amendment to the Constitution (An Annex to the 2010 Draft Comprehensive Compact on Interim Governance by the MILF) annex 1, available at [https://www.academia.edu/3469266/Peace\\_Agreement\\_in\\_Southern\\_Philippines](https://www.academia.edu/3469266/Peace_Agreement_in_Southern_Philippines) (last accessed Feb. 17, 2015).

194. *Id.* § 2, ¶ 2.

195. See Nikko Dizon, *Peace deal won't abandon 1996 pact*, PHIL. DAILY INQ., Feb. 2, 2014, available at <http://newsinfo.inquirer.net/572762/peace-deal-wont-abandon-1996-pact> (last accessed Feb. 17, 2015).

on the part of the MILF — that this is what is politically feasible under the Aquino Administration and that it is better for a BBL to be enacted now as a building block rather than to have the “unacceptable status quo” or the “failed experiment” that is the ARMM. At the same time, this converged with President Aquino’s avowed historical legacy in the GPH-MILF peace process.

Even after both the GPH and the MILF have reached an “agreed version” of the BBL, the latter maintains that implementing the other parts of the CAB will be the full or complete solution to the Bangsamoro problem.<sup>196</sup> The MILF also stresses that the full implementation of the other parts of the CAB can only be done through constitutional amendments.<sup>197</sup> It is not clear which parts of the CAB are being referred to by the MILF as not having been implemented. Among the relevant questions to ask are the following:

- (1) Why is the Bangsamoro problem not fully solved by the BBL?
- (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? Which key parts of the CAB need constitutional amendments? Which key parts only need congressional legislation?
- (5) For those key parts of the CAB that only need congressional legislation, why were these not addressed during the deliberations of the proposed BBL? Whatever the reason, can these not be addressed in the finalization process of the BBL?

To be sure, solving the Bangsamoro problem does not rely solely on constitutional amendments and legislation. For example, the Annex on Normalization,<sup>198</sup> which includes the decommissioning of the MILF forces and weapons<sup>199</sup> and a socio-economic development program,<sup>200</sup> for the most

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196. MILF, Menu for Unity and Solidarity, *supra* note 81.

197. *Id.*

198. See Annex on Normalization, *supra* note 7, § C.

199. *Id.*

200. *Id.* § G.

part, does not need implementing legislation.<sup>201</sup> Mindanao historian, peace advocate, and former GPH peace negotiator Professor Rudy B. Rodil cautions that constitutional change “is only one solution”<sup>202</sup> and one must not forget “finding the emotional flavor for community harmony.”<sup>203</sup> This wisdom of Professor Rodil is well-taken.

If the Bangsamoro problem is seen as a problem of relationships, then there are two key dimensions to consider. One dimension is the structural or vertical relationship between the national government and the Bangsamoro people, a matter of constitutional association, which presently is through an autonomous region. The other dimension deals with the social, cultural, and emotional dynamics or horizontal relationship between or among peoples, particularly the tri-peoples of Mindanao.<sup>204</sup> What the Author deals with in this Article is mainly the former dimension without forgetting the latter dimension, which shall also be discussed because they are inter-related. *But it is still the constitutional-structural dimension that is decisive as it is at the core of the issue of self-determination.*

The constitutional unitary system of government of the Philippines is the major problem for Bangsamoro self-determination. Stated otherwise, the Constitution is a major part of the Bangsamoro problem. The MILF puts this problem in point —

While [they] respect the [ ] Constitution, [ ] it is too shallow and limited to fully address this Bangsamoro problem. This is the reason why[,] up to now[,] the MILF is firm [in] its conviction that the current Constitution would require an amendment to finally put to rest the conflict in Mindanao.<sup>205</sup>

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201. See, e.g., Nikko Dizon, ‘No need to legislate disarming of MILF,’ PHIL. DAILY INQ., Sep. 13, 2014, available at <http://newsinfo.inquirer.net/637662/no-need-to-legislate-disarming-of-milf> (last accessed Feb. 17, 2015) & Paolo G. Montecillo, *Bangsamoro development plan launched*, PHIL. DAILY INQ., Mar. 6, 2014, available at <http://business.inquirer.net/165453/bangsamoro-development-plan-launched> (last accessed Feb. 17, 2015).

202. Correspondence between the Author and Professor Rudy B. Rodil (on file with the Author).

203. *Id.*

204. The tri-peoples of Mindanao refer to three different groups of Mindanao inhabitants, namely the *Bangsamoro*, the *Lumads*, and the Christian settlers. See Dipolog City Government, Dipolog P’gsalabuk Festival, available at <http://www.dipologcity.gov.ph/main.jsp?url=pgsalabuk> (last accessed Feb. 17, 2015).

205. MILF, Moro Question is Political, available at <http://www.luwaran.com/index.php/editorial/item/1076-moro-question-is-political> (last accessed Feb. 17, 2015).

While the Constitution is part of the problem, it can also be part of the solution by means of a correct constitutional amendment.

From where both the GPH and the MILF stand, the primary thrust is to enact the BBL and not to amend the Constitution.<sup>206</sup> The amendment of the Constitution could be, as it should be, considered at a later time. *How* and *when* the constitutional amendments will happen is not yet clear. The only clear thing is the mandated task of the BTC to work on proposals for necessary constitutional amendments.<sup>207</sup> However, it is very likely that such constitutional amendments will not happen during the remaining term of President Aquino. It may take longer because an effect of the enactment of the BBL, even if unintended, is to postpone constitutional amendments. The prevailing outlook is to give the BBL and the new Bangsamoro entity a reasonable testing period before resorting to constitutional amendments. The first organic act for ARMM<sup>208</sup> had a life of 12 years, from 1989 to 2001.<sup>209</sup> The second organic act for ARMM,<sup>210</sup> meanwhile, would have a life of around 14 years, from 2001 to 2015, if the BBL is enacted.<sup>211</sup> When combined, both organic acts would span a total of about 26 years — 26 years of having an unacceptable status quo and a failed experiment — that is the ARMM — in existence. Will it take another generation for necessary constitutional amendments to come to life and finally put the conflict in Mindanao to rest? This is precisely the reason why the Author speaks of a *longer* road to peace.

Does this mean having to engage in more peace negotiations? Maybe. There is an understandable aversion by many against seemingly unending peace negotiations.<sup>212</sup> At the same time, it has also been noted that peace agreements cannot be expected to anticipate everything and that the changing times, situations, and issues would often call for new negotiations. Just witness the Mindanao peace process since it started with the MNLF in

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206. See José V. Abueva, “Bangsamoro” *A Welcome Model for Achieving Genuine Regional Autonomy and Development*, AUTONOMY & PEACE REV., Special Publication 2012, at 25.

207. See Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶ 4 (b).

208. See generally R.A. No. 6734.

209. *Id.*

210. See generally R.A. No. 9504.

211. *Id.*

212. See United Youth for Peace and Development, Inc., Fast track GPH-MILF peace negotiation (Media Statement — United Youth for Peace and Development, Inc.), MINDANAO EXAMINER, Nov. 29, 2011, *available at* [http://www.mindanaoexaminer.com/news.php?news\\_id=20111129101725](http://www.mindanaoexaminer.com/news.php?news_id=20111129101725) (last accessed Feb. 17, 2015).

1975.<sup>213</sup> There are endless negotiations. The FAB itself provides that “[t]he [n]egotiating [p]anel of both [p]arties shall continue the negotiations until all issues are resolved and all agreements [are] implemented.”<sup>214</sup> So, there may still be negotiations on resolving issues and negotiations on questions of implementation. The process by which the GPH and the MILF both agreed on a version of the proposed BBL might be characterized as negotiation on the implementation of the CAB or, as the MILF would say, on the implementation of the FAB and its Annexes.

It will be noted, however, that during the “crucial engagements”<sup>215</sup> at Malacañang, negotiations were no longer actively conducted by the two peace panels but, instead, by selected high-level officials of both sides — by President Aquino and MILF Chairman Murad themselves.<sup>216</sup> The MILF points to “the nuances, contexts, and issues settled or agreed by the parties[,] especially during the crucial engagements”<sup>217</sup> as particularly important for what is, in effect, the correct interpretation of the proposed BBL.<sup>218</sup>

#### V. POSSIBLE CONTOURS OF A LONGER ROAD TO PEACE

The short GPH-MILF road map to peace until 2016 envisions a very short transition process. One of its highlights includes a transition mechanism in the form of an appointed MILF-led Bangsamoro Transition Authority (BTA).<sup>219</sup> The BTA is estimated to serve as the interim Bangsamoro government for approximately one year until the duly elected regular Bangsamoro government takes office.<sup>220</sup> This extremely short transition period has been noted by many, including veteran Mindanao journalist Patricio P. Diaz, as a period that will not serve the standard purposes of transition, such as institution-, capacity-, and unity-building.<sup>221</sup> It will be recalled that the MILF originally sought a six-year interim period in its 2010

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213. See OPAPP, MNLF Peace Process Timeline, *supra* note 44.

214. See Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶ 13.

215. See MILF, Deliberation of BBL in Congress, *available at* <http://www.luwaran.com/index.php/editorial/item/1229-deliberation-of-bbl-in-congress> (last accessed Feb. 17, 2015).

216. *Id.*

217. *Id.*

218. *Id.*

219. See generally OPAPP, MILF Peace Process Timeline, *supra* note 32 & OPAPP, MNLF Peace Process Timeline, *supra* note 44.

220. *Id.*

221. See Patricio P. Diaz, COMMENT: Bangsamoro Deals to Be Done, *available at* <http://www.mindanews.com/mindaviews/2014/03/26/comment-bangsamoro-deals-to-be-done/> (last accessed Feb. 17, 2015).

Draft Comprehensive Compact on Interim Governance,<sup>222</sup> precisely on the ground that sufficient time is necessary to adequately prepare the ground for self-governance.<sup>223</sup> And this preparation for self-governance 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 and synchronizing it with the scheduled elections in 2019.<sup>224</sup> But there may be *an alternative way of going about the transition*. If the election of the first Bangsamoro government would not be postponed in order to give more time for the transition to ripen under the BTA, then one alternative may be to treat the period of service of the first or second Bangsamoro government from 2016 to 2022 *as still part of the transition*. Before the end of this longer transition period, it can be expected that charter change would already be more opportune to accommodate arrangements aimed at arriving at a complete solution to the Bangsamoro problem. This could include empowering a new political entity with *a qualitatively higher and better degree of self-determination* for the Bangsamoro. This would entail readiness of the sovereign Filipino people to amend the Constitution for the sake of peace.<sup>225</sup>

On this particular strategic outlook, political scientist and peace mediator Ariel Macaspac Hernandez (formerly Penetrante) posits the need for constant amendments in a country's constitution —

The Philippine public must realize [that] the [C]onstitution constantly needs reforms. These reforms do not always mean a threat to the State. The [C]onstitution cannot codify everything at one time and should[,] therefore[,] be dynamic. The [C]onstitution is not written to satisfy a single moment, but needs to remain relevant in perpetuity. The [C]onstitution is the aggregate of the experiences of the [S]tate. It should be possible for the [C]onstitution to evolve to accommodate claims of minority groups. While it is understandable that the Philippine public resists any [measure] to change the [C]onstitution [ ] because of the Marcos experience, this conviction is not sustainable. The [C]onstitution must maintain flexibility[ ] while enforcing rules. The public must understand [that] any resolution of

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222. See 2010 Draft Comprehensive Compact on Interim Governance, *supra* note 124, art. V, § 3.

223. *Id.* art. V, §§ 1-6.

224. See Carolyn O. Arguillas, Dureza: extend Bangsamoro transition period to 2019, available at <http://www.mindanews.com/peace-process/2014/09/15/dureza-extend-bangsamoro-transition-period-to-2019/> (last accessed Feb. 17, 2015).

225. *Province of North Cotabato*, 568 SCRA at 518. The Supreme Court said that “[t]he sovereign people may, if it so desired, go to the extent of giving up a portion of its own territory to the [Moros] for the sake of peace, for it can change the Constitution in any [way] it wants[.]” *Id.*

the conflict in the [s]outhern Philippines needs revisions of the [C]onstitution. The Filipinos must learn to trust again in the political processes of the country. Not all proposed measures to change the [C]onstitution 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 [s]outhern Philippines must be complemented by a rejuvenation of the political culture in the country.<sup>226</sup>

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. These amendments should still be subject to the constitutional process of ratification through a plebiscite.<sup>227</sup> A more inclusive and representative multi-stakeholder body other than the MILF-led 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.<sup>228</sup> Just as it will take time for the idea of constitutional amendments to ripen, so, too, will the time to bring together *a more inclusive and representative multi-stakeholder Bangsamoro constitutional convention*.

One can look at a seemingly parallel case of the Darfurians in West 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.”<sup>229</sup>

In the case of the Bangsamoro, there is a proposal by legal luminary Firdausi I.Y. Abbas for a constitutional convention wherein the Bangsamoro will be “[allowed] ... to enact this constitution in a convention[,] which Congress shall convoke[,] wherein all the [Moro] sectors ... shall be

226. ARIEL HERNANDEZ, NATION-BUILDING AND IDENTITY CONFLICTS: FACILITATING THE MEDIATION PROCESS IN SOUTHERN PHILIPPINES 258 (2014 ed.).

227. See H.B. No. 4994, art. XV, § 1, ¶¶ a-e; S.B. No. 2408, art. XV, § 1, ¶¶ a-e; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XV, § 1, ¶¶ a-e.

228. See Framework Agreement on the Bangsamoro, *supra* note 6, § VII, ¶¶ 4 & 6-10. Note that these provisions only provide the tasks of the BTC and that the BTA shall take the helm once the BBL is enacted. Thus, the implied rendering of the BTC as *functus officio* can be surmised. *Id.*

229. Achim Wennmann & Alexander Ramsbotham, *From coercion to consent*, ACCORD, Issue No. 25, April 2014, at 117.

guaranteed appointed representatives and together[,] with freely elected delegates[,] duly constitute the congregation.”<sup>230</sup>

The said constitutional convention shall draft a new organic law for the Bangsamoro entity. *It would be better, though, if such a convention focuses on a primary agenda of drafting the necessary constitutional amendments that would enable that entity to “reflect in this fundamental law the historicity, identity, aspirations, sentiments, hopes[,] and dreams of the Bangsamoro,”*<sup>231</sup> *before working on a new or amended BBL.*

Dean Merlin M. Magallona commented about the process by which the BBL would be passed. Dean Magallona said that “Congress would measure its validity against the Constitution as it stands *unamended*. In the first place, unless the [BBL] would not depart from the Constitution, *the necessary constitutional changes must be in place* before the [BBL] could come to Congress for enactment.”<sup>232</sup>

This is actually *the ideal process* if one seeks alternative solutions to the Bangsamoro problem. This is the only way that a BBL could rise to a level beyond 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 mostly being generated from Mindanao.<sup>233</sup> Incumbent GPH Peace Panel Chairperson Professor Miriam Coronel-Ferrer says that the new Bangsamoro entity being created through the BBL is “showing the way for future charter change that

230. See Firdausi I.Y. Abbas, Ph.D., *On the 2012 MILF-PG Framework on the Bangsamoro*, AUTONOMY & PEACE REV., Special Publication 2012, at 110. Dr. Abbas suggests that the following *Moro* sectors should be guaranteed representation in the suggested constitutional convention, namely the revolutionary, political, traditional, professional, educational, women, labor and industrial, youth, agricultural, economic and business, indigenous non-Muslim and non-Christian tribes, and the religious — both Muslim and Christian *Moros* — sectors. *Id.* (emphasis supplied).

231. *Id.*

232. Merlin M. Magallona, *Constitutional Dilemmas in the Creation of the Bangsamoro Autonomous Political Entity*, IBP J., Special Issue No. 2, December 2012, at 31 (emphasis supplied).

233. See Germelina Lacorte, *Federalism dreamers eye BBL, Charter change*, PHIL. DAILY INQ., Dec. 3, 2014, available at <http://newsinfo.inquirer.net/654242/federalism-dreamers-eye-bbl-charter-change> (last accessed Feb. 17, 2015).

would loosen the strictures of a unitary state.”<sup>234</sup> A shift to a federal state would indeed necessitate charter change. Ironically, this particular political-constitutional reform might even overtake the necessary constitutional amendments needed to complete the political solution of the Bangsamoro problem. But 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.<sup>235</sup>

The Bangsamoro problem is not only one of self-determination. A major aspect of this is the political problem of Bangsamoro unity. The Author never tires of quoting 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.<sup>236</sup>

This requirement of unity has become more urgent, as demonstrated by the Sabah Standoff,<sup>237</sup> by the Zamboanga Siege,<sup>238</sup> and by the eruption of fighting with the MILF breakaway Bangsamoro Islamic Freedom Fighters (BIFF) right after the signing of the last Annex of the FAB in January 2014.<sup>239</sup> Filipina academician Michelle A. Roque commented that the MILF

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234. Electronic correspondence between the Author and Professor Miriam Coronel-Ferrer (on file with Author).

235. See HUMAN DEVELOPMENT NETWORK, PHILIPPINE HUMAN DEVELOPMENT REPORT 2005: PEACE, HUMAN SECURITY AND HUMAN DEVELOPMENT IN THE PHILIPPINES 53-58 (2d ed., 2005).

236. Randy David, *Robin Padilla and the Mindanao Question*, PHIL. DAILY INQ., Apr. 2, 2000, available at <http://randy david.webs.com/2000/lives20000402.pdf> (last accessed Feb. 17, 2015).

237. See Floyd Whaley, *Malaysians Encircle Militia Intruders From Philippines*, N.Y. TIMES, Feb. 14, 2013, available at <http://www.nytimes.com/2013/02/15/world/asia/malaysians-encircle-military-clad-intruders-from-philippines.html> (last accessed Feb. 17, 2015).

238. See Floyd Whaley, *Philippine Stand Off Ends, but Fighting Goes On*, N.Y. TIMES, Sep. 29, 2013, available at <http://www.nytimes.com/2013/09/30/world/asia/fighting-continues-in-philippine-city-after-standoff-ends.html> (last accessed Feb. 17, 2015).

was once in the shoes of the BIFF<sup>240</sup> as, incidentally, this move by the BIFF is reminiscent of the MILF's own "Five Day War"<sup>241</sup> shortly after the signing of the GRP-MNLF Jeddah Accord<sup>242</sup> in January 1987.<sup>243</sup>

Steven Rood, who is a representative of The Asia Foundation in the International Contact Group and in the Third-Party Monitoring Team of the GPH-MILF peace processes, considers the Zamboanga Siege as a "[p]ivot [p]oint in the Mindanao peace process."<sup>244</sup> 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 Bangsamoro minority arising from the peace process.<sup>245</sup> Secondly, it highlighted the Bangsamoro disunity problem, exemplified best by the differences between MNLF and the MILF about the peace process, with long-time MNLF Chairman Nurullaji P. Misuari being the most vocal oppositor to the new deal with the MILF.<sup>246</sup> One might say that this is a

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239. See Floyd Whaley, *Rebel Rifts on Island Confound Philippines*, N.Y. TIMES, Sep. 15, 2013, available at [http://www.nytimes.com/2013/09/16/world/asia/rebel-rifts-on-island-confound-philippines.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/16/world/asia/rebel-rifts-on-island-confound-philippines.html?pagewanted=all&_r=0) (last accessed Feb. 17, 2015).

240. See Michelle A. Roque, *To the gov't, MILF: Address resistance to peace deal creatively*, PHIL. DAILY INQ., Feb. 9, 2014, available at <http://opinion.inquirer.net/71326/to-govt-milf-address-resistance-to-peace-deal-creatively> (last accessed Feb. 17, 2015).

241. See generally SALAH JUBAIR, *BANGSAMORO: A NATION UNDER ENDLESS TYRANNY 186-87* (1999 ed.). This "Five Day War," which is now part of MILF lore, is recounted in this book. *Id.*

242. See generally Government of the Republic of the Philippines & the Moro National Liberation Front, Joint Statement of the Philippine Government and the MNLF Panels (A Joint Statement By the GPH and the MNLF After the Meeting of the GPH and MNLF Panels in Jeddah, Kingdom of Saudi Arabia on Jan. 3, 1987), available at [http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/jeddah\\_01041987.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/jeddah_01041987.pdf) (last accessed Feb. 17, 2015).

243. *Id.*

244. Steven Rood, *Zamboanga Tragedy: A Pivot Point in the Mindanao Peace Process*, available at <http://asiafoundation.org/in-asia/2013/10/09/zamboanga-tragedy-a-pivot-point-in-the-mindanao-peace-process/> (last accessed Feb. 17, 2015).

245. See Patricio N. Abinales, *Sancho Panza in Buliok Complex*, in *WHITHER THE PHILIPPINES IN THE 21ST CENTURY?* 285-86 (Rodolfo C. Severino & Lorraine Carlos Salazar eds., 2007).

246. See Edd Usman & Hannah Torregoza, *Misuari wants to meet, talk peace with Murad*, MANILA BULL., Sep. 16, 2014, available at <http://www.mb.com.ph/misuari-wants-to-meet-talk-peace-with-murad/> (last accessed Feb. 17, 2015).

different kind of *Moro-Moro*,<sup>247</sup> an intra-*Moro* dynamic where *Moros* are sometimes their own worst enemies. Alas, all is not well on the western front of Muslim Mindanao.<sup>248</sup>

The MILF's observations, which the Author has extensively discussed, have touted the BBL as a "Menu for Unity and Solidarity."<sup>249</sup> It would seem, however, that this is geared more towards Filipino-Bangsamoro unity rather than intra-Bangsamoro unity. The MILF believes that "the BBL is a menu for unity and solidarity of the entire Philippine state[.] ... [The MILF] firmly [believes that] the BBL is an antidote to secession; and moreover, it gives more legitimacy to the Philippine state."<sup>250</sup>

In allaying fears about the proposed new Bangsamoro entity, MILF Peace Panel Chairperson Iqbal remarked before House of Representatives ad hoc Committee on the BBL that "[i]nstead of dismemberment of the Republic, the Bangsamoro will further unite the country's peoples. There shall be no state within a state. The Philippine state shall remain sovereign."<sup>251</sup> But as far as the Bangsamoro revolutionary sector is concerned, exemplified by the MNLF and the BIFF, the BBL might be in danger of becoming a "document of perpetual division"<sup>252</sup> akin to a term used in the problematic peace process with the communists.<sup>253</sup>

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247. Originally, this referred to anti-*Moro* stage plays that were popular among the Filipino Christian majority. Later, the term was used popularly and pejoratively to refer to any stage-managed or mock scenario — even if no ethnic *Moros* were actually involved. See also The Free Dictionary by Farlex, *Moro-Moro Play*, available at <http://encyclopedia2.thefreedictionary.com/Moro-Moro+Play> (last accessed Feb. 17, 2015).

248. See generally INTERNATIONAL CRISIS GROUP, THE PHILIPPINES: LOCAL POLITICS IN THE SULU ARCHIPELAGO AND THE PEACE PROCESS (ASIA REPORT NO. 225, 2012).

249. MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

250. *Id.*

251. Yap, *MILF negotiator*, *supra* note 78.

252. The GPH has, in more recent times, referred to The Hague Joint Declaration of 1 September 1992 as a "document of perpetual division" because both sides cannot seem to agree on the interpretation of several key terms for the formal peace negotiations indicated in such document. See Ronalyn V. Olea, Why is there an impasse on GPH-NDFP peace talks, available at <http://bulatlat.com/main/2014/05/06/why-is-there-an-impasse-on-gph-ndfp-peace-talks/> (last accessed Feb. 17, 2015) (citing Government of the Republic of the Philippines & the National Democratic Front of the Philippines, The Hague Joint Declaration (A Joint Declaration By the GPH and the National Democratic Front of the Philippines (NDFP) After Exploratory Talks at The Hague, Netherlands On Aug. 31-Sep. 1, 1992), available at <http://bulatlat.com>).

The MNLF referred to the “Jeddah Formula”<sup>254</sup> as the latest mutation of the MNLF’s position on the peace process.<sup>255</sup> There now appears to be another unified leadership of the MNLF under Misuari.<sup>256</sup> The MNLF’s position is that the BBL includes all the provisions of the 1976 Tripoli Agreement and the 1996 Final Peace Agreement in tandem with all the provisions of the CAB, even as the MILF itself views the BBL as based, by stipulation, only on the FAB and its Annexes. At any rate, the MNLF expressed openness to collaborate on efforts to build on commonalities.<sup>257</sup> The problem is that the MNLF stands firm on its views that the CAB is inferior to the 1976 Tripoli Agreement and the 1996 Final Peace Agreement, that the CAB is only a partial fulfilment of the requirements of both the earlier agreements, and that the CAB has provisions inconsistent with the same.<sup>258</sup>

This MNLF’s position is supported by a resolution<sup>259</sup> by the Organization of Islamic Cooperation (OIC). The OIC sees the CAB as “a major first step toward the implementation of previous agreements as they are binding international commitments.”<sup>260</sup> The OIC also mentions that the

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com/main/2011/01/30/the-hague-joint-declaration-2/ (last accessed Feb. 17, 2015)). *See also* Luis B. Jalandoni, Chairperson of the NDFP Negotiating Panel, The NDFP’s Stand on Peace Talks with Aquino Regime, Remarks at the Workshop of the Philippine Ecumenical Peace Platform Luzon-NCR (Nov. 11–12, 2010) (transcript available at <http://www.ndfpmc.com/beta/node/244> (last accessed Feb. 17, 2015)). The NDFP has criticized the failure to reach into agreeable terms of The Hague Joint Declaration as the GPH’s attempt to justify the shelving of the agreement with a view to change the established framework of the negotiations. *Id.*

253. *See* Olea, *supra* note 252.

254. *See* Roel Pareño, *MNLF leaders unite, recognize Misuari leadership*, PHIL. STAR, June 25, 2014, available at <http://www.philstar.com/nation/2014/06/25/1338888/mnlf-leaders-unite-recognize-misuari-leadership> (last accessed Feb. 17, 2015).

255. *Id.*

256. *See* Pareño, *supra* note 254.

257. *See* Echeminada, *supra* note 125.

258. *See* Francisco Tuyay, *No deal with MILF, MNLF says*, MANILA STAND. TODAY, June 22, 2014, available at <http://manilastandardtoday.com/2014/06/22/no-deal-with-milf-mnlf-says/> (last accessed Feb. 17, 2015) (citing Organization of Islamic Conference [OIC], *Question of Muslims in Southern Philippines*, OIC Resolution No. 2/41-MM (June 19, 2014) [hereinafter OIC Resolution No. 2/41-MM]).

259. *See* OIC Resolution No. 2/41-MM, *supra* note 258.

260. *Id.* ¶ 6.

1976 Tripoli Agreement and the 1996 Final Peace Agreement “continue to formulate the basis of any settlement of the conflict.”<sup>261</sup> It calls upon the Secretary General of the OIC to “find common grounds”<sup>262</sup> and to “narrow the gap between the positions of the leadership of the MNLF and the MILF ... in the framework of the Bangsamoro Coordination Forum (BCF) established between the two fronts at the Islamic Conference in Dushanbe.”<sup>263</sup> It has been four years since the 2010 Dushanbe Conference<sup>264</sup> and the GPH-MNLF-OIC Tripartite Implementation Review<sup>265</sup> (Tripartite Implementation Review) have since been overtaken by the GPH-MILF peace negotiations that have resulted in the FAB and its Annexes, the CAB, and the proposed BBL.

The Annex on Power Sharing<sup>266</sup> actually contains a provision that requires the BTC to perform an additional task —

As part of the [GPH’s] commitment in other peace agreements involving the Bangsamoro, the [BBL] may adopt specific powers contained in these agreements and in the ARMM Organic Law, as amended.

The [BTC] shall undertake an inventory of the powers and consider the proposed recommendations from the review process of the [1996 Final Peace Agreement] between the [GPH] and the [MNLF] for possible incorporation into the [BBL]. It shall also take into account the proposed amendments of the ARMM Regional Legislative Assembly to R.A. No. 9054.<sup>267</sup>

Hence, the BBL should also be scrutinized on this basis. The Tripartite Implementation Review came up with 42 common proposed amendments

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261. *Id.* ¶ 8.

262. *Id.* ¶ 3.

263. *Id.* ¶ 7.

264. 37th Sess. of the OIC Council of Foreign Ministers, Dushanbe, Tajikistan, May 18–20, 2010.

265. See OPAPP, Q&A on the Status of the Peace Process Between the GPH and MNLF as of 18 November 2013 (A Primer Released By the OPAPP Detailing the Status of the Peace Process Between the GPH and the MNLF) 1, available at [http://opapp.gov.ph/sites/default/files/Q%20and%20A\\_%20MNLF\\_%20asof%2018Nov2013\\_0.pdf](http://opapp.gov.ph/sites/default/files/Q%20and%20A_%20MNLF_%20asof%2018Nov2013_0.pdf) (last accessed Feb. 17, 2015) [hereinafter OPAPP, Primer on the GPH-MNLF Peace Process].

266. Annex on Power Sharing, *supra* note 7.

267. *Id.* pt. four, § 4.

to R.A. No. 9054.<sup>268</sup> However, three remaining contentious issues have stalled this process.<sup>269</sup> The contentious issues, as cited by the MNLF, are:

- (1) sharing of strategic minerals;<sup>270</sup>
- (2) provisional government;<sup>271</sup> and
- (3) plebiscite on territory.<sup>272</sup>

The issue of strategic minerals is well covered by the provisions on wealth sharing in the Annex on Revenue Generation and Wealth Sharing and in the proposed BBL.<sup>273</sup> In fact, the provisions on wealth and power sharing in the FAB and its Annexes make for a better deal for the Bangsamoro than do the 1976 Tripoli Agreement, the 1996 Final Peace Agreement, and even R.A. No. 9054. The Annex on Revenue Generation and Wealth Sharing also addresses the concern of normalization, including the decommissioning, disarmament, and demobilization of private armies.<sup>274</sup> The MNLF and 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 even if the said deal just enhances the existing level of Muslim autonomy under the constitutional status quo. As the Author has said, it is still a step forward even if it makes the road to peace longer.

But if there is a problem of mindset on the part of the MNLF, it must also be asked why the MILF has not been able to convince and get support from its fraternal liberation movement, the MNLF, despite the better deal that it has achieved. One must also consider the broad multi-stakeholder *Moro* support for the MNLF, especially in Sulu.<sup>275</sup> This would dwell on the question of the necessary level of *Moro* leadership and statesmanship that

268. See OPAPP, Primer on the GPH-MNLF Peace Process, *supra* note 265, at 1.

269. *Id.*

270. *Id.* at 2-3.

271. *Id.* at 2.

272. *Id.*

273. See generally Annex on Revenue Generation and Wealth Sharing, *supra* note 7, § VII. See also H.B. No. 4994, art. XII, § 32; S.B. No. 2408, art. XII, § 32; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XII, § 32.

274. See Annex on Normalization, *supra* note 7, §§ C & F. See also PRIMED AND PURPOSEFUL, *supra* note 91, at 139-84.

275. See Ritchie A. Horario, *Sultanate of Sulu backs up Misuari in case war erupts in Mindanao*, MANILA TIMES, July 29, 2013, available at <http://www.manilatimes.net/sultanate-of-sulu-backs-up-misuari-in-case-war-erupts-in-mindanao-2/24198/> (last accessed Feb. 17, 2015).

inspires trust, confidence, and allegiance of the Bangsamoro people. The next issue may be relevant to this.

The issue of a transitory mechanism and its provisional government is actually addressed in the FAB,<sup>276</sup> its Annex on Transitional Arrangements and Modalities,<sup>277</sup> and the proposed BBL.<sup>278</sup> All these provide that the BTA will act as the interim and provisional Bangsamoro government. But the BTA being pre-ordained as “MILF-led”<sup>279</sup> and “as the main mechanism for the MILF’s leadership in the Bangsamoro during the transition process”<sup>280</sup> naturally leads to perceptions of MILF domination or even exclusivity. This goes against MNLF Chairman Misuari’s overblown sense of pre-eminent leadership over the Bangsamoro struggle and the MNLF’s international status as the “sole legitimate representative of the Muslims in the [s]outhern Philippines.”<sup>281</sup> The MNLF and the OIC should wake up to the historical and political reality that the MNLF, particularly under Misuari’s 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 knee-jerk reactions of labelling critical voices as “spoilers of peace”<sup>282</sup> show some insecurity or intolerance towards dissenting opinions.<sup>283</sup> Such negative tendencies have to be immediately rectified, while still early, such as during a viable transition.

The bottom-line for the MNLF, as exemplified by Misuari, appears to be getting its share of power in the transitory mechanism and provisional government. There may still be a way of resolving this — that is through a unity government that has been employed in conflicts in other countries. In this regard, the MILF can be magnanimous in the same way that the MNLF

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276. See Framework Agreement on the Bangsamoro, *supra* note 6, § VII.

277. See generally Annex on Transitional Arrangements and Modalities, *supra* note 7, §§ I-II.

278. See H.B. No. 4994, art. XVI; S.B. No. 2408, art. XVI; & OPAPP Draft Bangsamoro Basic Law, *supra* note 1, art. XVI.

279. Annex on Transitional Arrangements and Modalities, *supra* note 7, § II, ¶ B (2).

280. *Id.* § II, ¶ B (3).

281. Organization of Islamic Conference (OIC), *Question of Muslims in Southern Philippines*, OIC Resolution No. 56/9-P (IS) (Nov. 13, 2000).

282. Jerome Aning, *Muslim intellectuals call for integration of MILF, MNLF peace accords*, PHIL. DAILY INQ., Jan. 28, 2014, available at <http://newsinfo.inquirer.net/570599/muslim-intellectuals-call-for-integration-of-milf-mnlf-peace-accords> (last accessed Feb. 17, 2015).

283. *Id.*

had previously accommodated MILF representatives as part of MNLF delegations to several OIC conferences.<sup>284</sup>

The issue of plebiscite, which is linked to the issue of territory, may prove to be irreconcilable, not so much between the MNLF and the MILF but between the MNLF and the GPH. The purported superiority of the 1976 Tripoli Agreement and the 1996 Final Peace Agreement stands on the flimsy ground that the area of the autonomous region stipulated in these two agreements includes 14 provinces and nine cities.<sup>285</sup> On the other hand, the area stipulated in the FAB covers five provinces, three cities, six municipalities, and 39 barangays.<sup>286</sup> But the area comprising 14 provinces and nine cities, as provided for by the 1976 Tripoli Agreement and the 1996 Final Peace Agreement, is a Misuari pipe-dream because most of these areas are already dominated by Christians who have consistently voted against their inclusion in a Muslim autonomous region — in the plebiscites of 1989 and 2001.<sup>287</sup> The FAB is more realistic in aspiring for the inclusion of areas, which are comprised of a Muslim majority, not yet under the existing ARMM. The undue focus by the MNLF and the OIC in expanding the territory of a Muslim autonomous region to provinces and cities, where the

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284. See generally Carolyn O. Arguillas, Nur brings Bangsamoro cause to OIC again; OIC appeals for MNLF, MILF unity, *available at* <http://www.mindanews.com/top-stories/2012/10/22/nur-brings-bangsamoro-cause-to-oic-again-oic-appeals-for-mnlf-milf-unity/> (last accessed Feb. 17, 2015) & Henelito A. Sevilla, Jr., The Philippines' Elusive Quest for OIC Observer Status, *available at* <http://www.mei.edu/content/philippines-elusive-quest-organization-islamic-conference-oic-observer-status> (last accessed Feb. 17, 2015).

285. See 1976 Tripoli Agreement, *supra* note 52, second princ. & 1996 Final Peace Agreement, *supra* note 52, § II, ¶ 3.

286. See Framework Agreement on the Bangsamoro, *supra* note 6, § 5, ¶ 1.

287. Compare R.A. No. 6734, art. II, § 1, ¶ 2 (which details the coverage of the November 1989 plebiscite to ratify R.A. No. 6734 and for inclusion in the ARMM), with Carolyn O. Arguillas, From RAG to ARMM to Bangsamoro: Salamat Hashim would have approved of Bangsamoro's proposed territory, *available at* <http://www.mindanews.com/peace-process/2012/10/11/from-rag-to-armm-to-bangsamoro-salamat-hashim-would-have-approved-of-bangsamoros-proposed-territory/> (last accessed Feb. 17, 2015) (which mentions that of the 13 provinces and nine cities subject of the November 1989 plebiscite to ratify R.A. No. 6734, only four provinces — Sulu, Tawi-Tawi, Maguindanao, and Lanao del Sur — and none of the cities voted for their inclusion in the ARMM). Compare also R.A. No. 9054, art. II, § 1, ¶ 2 (which details the coverage of the August 2001 plebiscite to ratify R.A. No. 9054 and for inclusion in the ARMM), with OPAPP, Primer on the GPH-MNLF Peace Process, *supra* note 265, at 1 (which enumerates the results of the August 2001 plebiscite to ratify R.A. No. 9054 and for inclusion in the ARMM).

Christian majority comprising them would not accept such expansion, is not only unrealistic but is also potentially trouble-stoking that may defeat the purpose of expansion.

It has been noted that

[w]hile from Misuari's point of view[,] another plebiscite throughout the entire territorial coverage of the 1976 Tripoli Agreement] is a reasonable demand, since [ ] 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?<sup>288</sup>

As it is, there are oppositors to a plebiscite for the ratification of the BBL in six separate Muslim-majority municipalities in Lanao del Norte.<sup>289</sup> The OIC also refers to the BBL as “governing the Bangsamoro Autonomous Region”<sup>290</sup> but “[a]s for the greater area outside this enclave, the [1976] Tripoli Agreement still applies.”<sup>291</sup>

## VI. THE BANGSAMORO UNITY PROCESS

The still potentially helpful role of the OIC may turn out to be no longer so in shaping the agenda of the Mindanao peace process as the parties themselves have taken up the cudgels and can still do this well enough. Rather, the OIC can help in honestly brokering MNLF-MILF unity in the peace process. Ironic, but it is the reality — that the OIC has to take the role of an external entity to mediate between the MNLF and the MILF. It appears that it is only the OIC that has the clout and the respect of both *Moro* liberation movements, as shown by the OIC-initiated BCF. Be that as it may, the two *Moro* liberation movements should be able to negotiate between themselves without an OIC mediator. There is also the 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 be treated as a goal in the peace process and part of solving the Bangsamoro problem.* It is now, more than ever, that “a new struggle to achieve Bangsamoro unity[,] to ensure lasting peace[,] has emerged among

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288. Rood, *supra* note 244.

289. See Diaz, *supra* note 221.

290. OIC Resolution No. 2/41-MM, *supra* note 258, ¶ 10.

291. *Id.*

*Moro* revolutionary groups.”<sup>292</sup> The better deal for the Bangsamoro people in the GPH-MILF peace process could come to naught if the opposition by the MNLF is not solved. It is better to address this problem early in the transition rather than at a later time. *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 begin with, there can be more inclusiveness in the congressional deliberations on the proposed BBL to make up for the previous lack of it during the negotiations between the GPH and the MILF that resulted in an “agreed version.”<sup>293</sup> It is notable that, in public deliberations of the House of Representatives, Cagayan de Oro City Representative Rufus B. Rodriguez, who sits as chairperson of the ad hoc Committee on the BBL, has invited MNLF Chairman Misuari and BIFF leader Ustadz Ameril Umbra Kato to present their views,<sup>294</sup> despite standing warrants of arrest issued against them.<sup>295</sup> The two *Moro* group leaders are said to have rejected such an invitation and have, thus, excluded themselves from this process.<sup>296</sup> Despite Misuari and Kato’s rejection, their agenda are of fair public articulation and should, thus, be considered during congressional deliberations.

There are those who say that it is better to forget both the MNLF and the BIFF and, instead, move ahead towards the BBL and its new Bangsamoro entity.<sup>297</sup> After all, if this entity succeeds in its aim of self-governance, then those forces will eventually come into the fold. But that does not always follow. The quality of governance, autonomy, peace, and development will all be strained by lack of cooperation, by lack of support,

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292. Ryan D. Rosauero, *New peace goal: Bangsamoro unity*, PHIL. DAILY INQ., Jan. 12, 2013, available at <http://newsinfo.inquirer.net/339563/new-peace-goal-bangsamoro-unity> (last accessed Feb. 17, 2015).

293. OPAPP, Agreed Version of the BBL, *supra* note 14.

294. See Marc Jayson Cayabyab, *Solon wants Nur Misuari, Umbra Kato to attend Bangsamoro bill hearings*, PHIL. DAILY INQ., Sep. 15, 2014, available at <http://newsinfo.inquirer.net/638119/solon-wants-nur-misuari-umbra-kato-to-attend-bangsamoro-bill-hearings> (last accessed Feb. 17, 2015).

295. *Id.*

296. See John Unson, *BIFF rejects invite to Bangsamoro law congressional hearing*, PHIL. STAR, Sep. 19, 2014, available at <http://www.philstar.com/nation/2014/09/19/1370864/biff-rejects-invite-bangsamoro-law-congressional-hearing> (last accessed Feb. 17, 2015).

297. See Jefry M. Tupas, *Peace adviser shuts door on Misuari, Kato factions*, MANILA TIMES, Sep. 19, 2014, available at <http://www.manilatimes.net/peace-adviser-shuts-door-misuari-kato-factions/127901/> (last accessed Feb. 17, 2015).

and, worse, by continuing armed hostilities.<sup>298</sup> Commonalities in agenda and a better peace deal will not be enough. Better fraternal organization relations and a sense of stakeholdership will be needed. MILF Peace Panel Chairperson Iqbal has said that “[what is] important is, at the end of the day, [they will] be able to handle all those issues and move forward until [they] settle them.”<sup>299</sup> 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 the MNLF, through its chairman, Misuari, and the BIFF, through its leader, Kato.

Misuari has again renewed, his call for independence.<sup>300</sup> Because he has reneged on his commitment so many times, one wonders whether this renewal is his usual sabre-rattling posturing or is real. More believable as real is the clamor of the BIFF not only for independence but also for an Islamic state, even though it has a much smaller military force.<sup>301</sup> BIFF spokesperson Abu Misry Mama said that “[e]ven if it is as small as a [*barangay*], as long as it is following Islamic law, [t]he [ ] Constitution will never accommodate [ ] Islamic law.”<sup>302</sup> As for its views on the peace deal of the MILF, BIFF spokesperson Misry was reported as saying that the MILF made compromises to obtain a deal.<sup>303</sup> However, the BIFF doubted that the agreement would be approved by Congress without further compromises.<sup>304</sup>

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298. See Germelina Lacorte, *Don't keep Misuari out of Mindanao peace deal*, PHIL. DAILY INQ., Sep. 22, 2014, available at <http://newsinfo.inquirer.net/639882/dont-keep-misuari-out-of-mindanao-peace-deal-duterte> (last accessed Feb. 17, 2015). See also *'Don't leave out MNLF'*, PHIL. DAILY INQ., Mar. 27, 2014, available at <http://newsinfo.inquirer.net/589383/dont-leave-out-mnlf> (last accessed Feb. 17, 2015).

299. See Lacorte, *MILF in 2016 elections*, *supra* note 19.

300. See Julie Alipala, *Nur Misuari back, declares independence anew*, PHIL. DAILY INQ., Aug. 28, 2014, available at <http://newsinfo.inquirer.net/633317/nur-misuari-back-declares-independence-anew> (last accessed Feb. 17, 2015).

301. See Carmela Fonbuena & Karlos Manlupig, *Military captures BIFF strongholds, extends operations*, available at <http://www.rappler.com/nation/49255-biff-camps-captured> (last accessed Feb. 17, 2015).

302. See Edwin O. Fernandez, *Kato men repulsed in village attack*, PHIL. DAILY INQ., Aug. 1, 2013, available at <http://newsinfo.inquirer.net/456943/kato-men-repulsed-in-village-attack> (last accessed Feb. 17, 2015).

303. See Nikko Dizon, *Gov't, MILF seal accord*, PHIL. DAILY INQ., Jan. 26, 2014, available at <http://globalnation.inquirer.net/97735/govt-milf-seal-accord/> (last accessed Feb. 17, 2015).

304. *Id.*

It seems ironic that the MILF believes that “the BBL is an antidote to secession[.]”<sup>305</sup> 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. From its own ranks will rise members who, like members of the MILF that the BIFF once were, will ask for fidelity to “the justness of the original position”<sup>306</sup> — like “Islamic” and “Liberation” in the very name of the MILF. There will be internal reckoning with the guidelines of the MILF Founding Chairman and ideologue Salamat Hashim, such as “the ultimate aim of [their] [*Jihad*] is to make supreme the word of Allah”<sup>307</sup> and that “[t]here is no way to solve the Bangsamoro problem except through independence[.]”<sup>308</sup> Hashim further considers independence as “the only viable solution but armed struggle should be the last recourse.”<sup>309</sup> On the other hand, the BIFF would fight for “independence ... through armed struggle.”<sup>310</sup>

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305. MILF, BBL Menu for Unity and Solidarity, *supra* note 81.

306. See Michael O. Mastura, Senior Member of the MILF Peace Panel, Bangsamoro History and Quest for Future Status, Speech at a Forum Organized by the Center for People Empowerment in Governance and the University of the Philippines (UP) Institute of Islamic Studies at UP Diliman, Quezon City (Mar. 23, 2011) (transcript available at <http://www.mindanews.com/for-the-record/2011/04/07/bangsamoro-history-and-quest-for-future-status/> (last accessed Feb. 17, 2015)). This is a favorite formulation of MILF peace process ideologue Datu Michael O. Mastura, which harks back to the original *Moro* aspiration of liberation from colonial conquest that took away *Moro* sovereignty. It also uses the words of MILF Founding Chairman and ideologue Salamat Hashim, which is a call “for the Bangsamoro people to regain their illegally and immorally usurped freedom and self-determination.” See MICHAEL O. MASTURA, BANGSAMORO QUEST: THE BIRTH OF THE MORO ISLAMIC LIBERATION FRONT 37-43 (2012 ed.).

307. SALAMAT HASHIM, THE BANGSAMORO MUJAHID: HIS OBJECTIVES AND RESPONSIBILITIES 4 (1985 ed.).

308. SALAMAT HASHIM, REFERENDUM: PEACEFUL, CIVILIZED, DEMOCRATIC AND DIPLOMATIC MEANS OF SOLVING THE MINDANAO CONFLICT 89 & 93 (2002 ed.) [hereinafter HASHIM, REFERENDUM] (citing Interview with Salamat Hashim, MILF Founding Chairman, in Camp Abubkar as-Siddique, Maguindanao (Feb. 1999)).

309. *Id.* at 52 (citing Written Interview with Salamat Hashim, MILF Founding Chairman, in Camp Abubakar as-Siddique, Maguindanao (1996)).

310. See Agence France Presse, *Bangsamoro Islamic Freedom Fighters senior leader vows to keep up fight*, PHIL. DAILY INQ., Mar. 30, 2014, available at <http://www.inquirer.net/help-philippines/articles/590225> (last accessed Feb. 17, 2015).

If one would study history, 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? As it were, the jury is still out on this. 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 envisions subsequent parliamentary struggle.<sup>311</sup> Whatever the ultimate goal is, even if it is an independent Islamic state, it may be asked if it “[w]ould [ ] be politically taboo if [one] aspire[s] for anything through democratic means?”<sup>312</sup> One can hardly argue with peaceful, civilized, diplomatic, and democratic means of solving the Mindanao conflict or achieving political objectives.

It will likely take years or even decades for the Filipino body politic to develop the culture and maturity to peacefully and civilly allow the Bangsamoro people to undertake the kind of credible democratic exercise, just like the Scotland<sup>313</sup> and Quebec<sup>314</sup> referenda. Incidentally, in both these referenda, the votes against secession won, but only by a thin margin.<sup>315</sup> But of course, the results could be different the next time around because of an increase in substantial support for independence in both cases. What is particularly notable and, perhaps, more important for such exercises was the maturity and respect shown by the people in favor of secession for the people’s will.<sup>316</sup> Perhaps, the Bangsamoro’s envisioned experience, in a chosen parliamentary or ministerial form of government based on genuine political parties, will produce good examples and lessons for the rejuvenation of the Philippine political culture.

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311. See Philippine Center for Investigative Journalism, Charter change is part of GRP-MILF peace deal, *available at* <http://pcij.org/blog/2012/10/08/charter-change-is-part-of-milf-deal> (last accessed Feb. 17, 2015).

312. Electronic correspondence between the Author and Salamat Hashim (on file with Author).

313. See Alan Cowell & Stephen Castle, *After Losing Scottish Independence Vote, Alex Salmond Will Resign*, N.Y. TIMES, Sep. 19, 2014, *available at* <http://www.nytimes.com/2014/09/20/world/europe/scotland-independence-vote-no.html> (last accessed Feb. 17, 2015).

314. See Clyde H. Farnsworth, *In Quebec, Referendum Hits Home*, N.Y. TIMES, Oct. 22, 1995, *available at* <http://www.nytimes.com/1995/10/22/world/in-quebec-referendum-hits-home.html> (last accessed Feb. 17, 2015).

315. *Id.* See also Cowell & Castle, *supra* note 313.

316. See Cowell & Castle, *supra* note 313.

At a time when the issue of the Islamic State of Iraq and the Levant — which the Abu Sayyaf Group and the BIFF have both pledged allegiance to<sup>317</sup> but which the MILF has offered to join the fight against<sup>318</sup> — is being tackled globally, there is more understandable fear about the Islamic agenda. The OPAPP released a primer about the FAB, which contains a pertinent portion —

Q: *Is the Bangsamoro an Islamic state?*

A: No. The Bangsamoro [g]overnment will be a *secular government where basic rights of all will be protected*.<sup>319</sup>

The answer seems to imply that the basic rights of all citizens will not be protected in a non-secular government. Thus, perhaps, unduly stoking fears about an Islamic government. What 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[?]”<sup>320</sup>

It is already of public knowledge that Islam is integral not only to the system or the way of life but also to the very identity, if not unity, of the Bangsamoro people. Part of this belief is that “religion is not separate but rather integral to every aspect of life: prayer, fasting, politics, law, and society.”<sup>321</sup> So why impose on them a “secular political unit”<sup>322</sup> hewing to

317. See Agence France Presse, *BIFF, Abus pledge allegiance to Isis*, PHIL. DAILY INQ., Aug. 16, 2014, available at <http://globalnation.inquirer.net/109452/biff-abus-pledge-allegiance-to-isis/> (last accessed Feb. 17, 2015).

318. See Agence France Presse, *Philippine Muslim rebels oppose Islamic State 'virus'*, PHIL. DAILY INQ., Aug. 28, 2014, available at <http://globalnation.inquirer.net/110079/philippine-muslim-rebels-oppose-islamic-state-virus/> (last accessed Feb. 17, 2015).

319. OPAPP, FAQs on the Framework Agreement on the Bangsamoro, available at <http://www.opapp.gov.ph/milf/faqs-framework-agreement-bangsamoro> (last accessed Feb. 17, 2015) (emphasis supplied).

320. PRIMED AND PURPOSEFUL, *supra* note 91, at 58.

321. John P. Hash, *Islamic Radicals and Terror Against the West (A Strategy Research Project Submitted to the U.S. Army War College)* 6, available at [www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA401861](http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA401861) (last accessed Feb. 17, 2015) (citing John L. Esposito, *Introduction: Islam and Muslim Politics*, in VOICES OF RESURGENT ISLAM 3-4 (John L. Esposito ed., 1983 ed.)).

322. Marvic Mario Victor F. Leonen, former GPH Peace Panel Chairperson, Closing Statement, Remarks at the Closing of the 27th Formal Exploratory Talks between the GPH and the MILF at Kuala Lumpur, Malaysia. (Apr. 24, 2012) (transcript available at <http://www.opapp.gov.ph/milf/news/joint-statement-gph-milf-27th-formal-exploratory-talks> (last accessed Feb. 17, 2015)).

the inviolable constitutional principle of separation of church and state?<sup>323</sup> 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 one should not be holier than what is truly acceptable to the Bangsamoro people.

#### VII. A FINAL NOTE

The Author has probably said more than enough in terms of unsolicited analysis and advice. The Author will leave it at that — for whatever help it might be to the Mindanao peace process. The current juncture in the short road map to peace is already playing itself out. The end of that short road in 2016 will, of course, be another important juncture. When that point comes, and even now that there is already an “agreed version”<sup>324</sup> of the proposed BBL being deliberated in Congress, it would help to have a more strategic direction for the longer road 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. The Author hopes that this Article can help set that direction, generate more strategic thinking, and stir action. In the end, everyone hopes for a better judgment of history and of future generations.

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323. See PHIL. CONST. art. II, § 6.

324. See OPAPP, Agreed Version of the BBL, *supra* note 14.