



The Politics of the Bangsamoro Basic Law

Dr. Rizal G. Buendia



Yuchengco Center
De La Salle University
Manila



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Prepared by Jeffrey P. Bernido

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Photos on cover retrieved from: (center image)

<http://www.internationalpolicydigest.org/2015/01/29/philippines-can-peace-mindanao-ever-achieved/>; (back cover) <http://static8.bigstockphoto.com/thumbs/2/7/4/small2/4723478.jpg>

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ISBN: 978-621-8018-16-7

Please address all inquiries to:

Yuchengco Center

2nd Floor, Don Enrique T. Yuchengco Hall

De La Salle University

2401 Taft Avenue, Manila 0922

Philippines

E-mail: yuchengcocenter@dlsu.edu.ph

Fax: (632) 525-3457

URL: <http://yc.dlsu.edu.ph>

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List of Abbreviations

AHCBBL	Ad Hoc Committee on the Bangsamoro Basic Law
ARMM	Autonomous Region in Muslim Mindanao
BAR	Bangsamoro Autonomous Region
BBL	Bangsamoro Basic Law
BIAF	Bangsamoro Islamic Armed Forces
BIFF	Bangsamoro Islamic Freedom Fighters
BJE	Bangsamoro Juridical Entity
BLBAR	Basic Law for the Bangsamoro Autonomous Region
BMILO	Bangsa Moro Islamic Liberation Organisation
BMLO	Bangsa Moro Liberation Organisation
BTC	Bangsamoro Transition Commission
CAB	Comprehensive Agreement on the Bangsamoro
CSO	Civil Society Organization
DGICCP	Declaration on the Granting of Independence to Colonial Countries and Peoples
DOJ	Department of Justice
FAB	Framework Agreement on the Bangsamoro
FPA	Final Peace Agreement
GRP	Government of the Philippines
HB	House Bill
HOR	House of Representatives
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICJ	International Court of Justice
IPRA	Indigenous Peoples Rights Act
LGU	Local Government Unit

MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MOA-AD	Memorandum of Agreement on the Ancestral Domain
NBI	National Bureau of Investigation
NGO	Non-Governmental Organization
NICC	National Islamic Command Council
NPS	National Prosecution Service
OIC	Organization of Islamic Conference
PAG	Private Armed Groups
PNP	Philippine National Police
PSC	Philippine Supreme Court
SAF	Special Action Force
SOP	Senate of the Philippines
SPCPD	Southern Philippine Council for Peace and Development
UDHR	Universal Declaration of Human Rights
UN	United Nations

The Politics of the Bangsamoro Basic Law

Dr. Rizal G. Buendia¹

Introduction

The Bangsamoro Basic Law (BBL) otherwise known as the Basic Law for the Bangsamoro Autonomous Region, also referred to as the *Batayang Batas para sa Rehiyong Awtonomo ng Bangsamoro* in Filipino has become a contentious political issue. This is not only because of the controversial provisions pertinent to the concepts of constitutionalism but also, and more importantly, on the complex political repercussions it will generate in defining the future of Muslim secessionist movement in the Philippines – the longest armed separatist movement in Southeast Asia and most serious threat to the country's political stability.

The political complexity of the BBL lies not merely on its conformity or non-conformity with the legal requirements of the Constitution. Neither is it the satisfaction nor non-satisfaction of the demands and aspirations of the Moro Islamic Liberation Front (MILF) in which the government had forged a peace agreement. The political intricacies of the law rest on its capability to conclusively address the long-standing armed conflict of Moro secessionism and substantial political autonomy claimed by key Muslim political organizations which have historically participated and struggled to realize their right to self-determination. Hence, the important role played by the Moro National Liberation Front (MNLF) in the 1960s cannot be ignored and overestimated in spite of ceasing its armed struggle in 1996. Although some other Muslim armed groups emerged in the process of advancing the cause of Muslim independence and autonomy, their participation had been either short-lived or historically less significant compared to the MNLF and the MILF.

It is against this backdrop that this paper attempts to unravel the crucial political issues behind the crafting of the BBL and examine the political dynamics between and among the main actors who performed vital

¹ Rizal G. Buendia, PhD is Independent Consultant/Researcher in Southeast Asian Politics and International Development based in London, United Kingdom. He is former Chair of the Political Science Department, De La Salle University-Manila, and Teaching Fellow in Politics at the Department of Politics and International Studies and Department of Development Studies, School of Oriental and African Studies (SOAS), University of London.

roles in shaping the political configuration of Muslim movement for self-rule and governance. Rather than exploring the legal implications of the BBL which shall be left for the Legislature and Supreme Court to decide, it shall instead probe the strategic political repercussions of the proposed law in addressing the fundamental quest of the Muslim minorities for self-determination as well as analyse the draft BBL's impact in resolving armed conflict and fostering peace in a multi-cultural society in the Philippines.

The BBL: Brief Background and Current State

The Bangsamoro Basic Law (BBL) is the culmination of 18 years of on-and-off and violence-interrupted peace negotiations between the MILF and government of the Philippines (GRP) that claimed tens of thousands lives and displaced millions of people. The recommended law which is currently under deliberation in both chambers of the Philippine Congress is founded on the Framework Agreement on the Bangsamoro (FAB)¹ and the Comprehensive Agreement on the Bangsamoro (CAB)² signed between the Philippine government and the MILF on 15 October 2012 and 27 March 2014 respectively.

Grounded on the CAB as the MILF-GRP final peace agreement under the presidency of Benigno Aquino III, an earlier version was forged between the government and the MNLF in 1996 under President Fidel Ramos that led the MNLF to relinquish its armed struggle and mounted Muslim autonomy within the framework of the Philippine nation-state.³ This eventually resulted in the integration of MNLF within the government's national structure of governance after an uncontested election of Nur Misuari (MNLF's Chairman) as third Governor (1996-2001) of the Autonomous Region in Muslim Mindanao (ARMM), one of the two autonomous regions created under the 1987 Constitution (Art 10, Sec. 18) ⁴. In concurrent capacity, Misuari chaired the Southern Philippine Council for Peace and Development (SPCPD)⁵ and its Consultative Assembly apart from being the ARMM Governor.

The presence of two (2) diverse "final" peace agreements forged between two separate Muslim armed groups and two different Presidents in less than two decades does not seem to conclude the political settlement of conflict in southern Mindanao given the dissatisfaction of some Muslim groups regarding proposed law. For instance and notwithstanding the three (3) factions within the ranks of the MNLF, two (2) factions censured the BBL as a violation of the 1996 Final Peace Agreement (FPA), while the other faction supports the BBL. In the case of former MNLF Chair Nur Misuari,⁶ he decried the BBL as farce not only because of the failure of the government to fully implement the provisions of the 1996 FPA ⁷ but also due to the non-

participation of the Organization of Islamic Conference (OIC)⁸ in facilitating the peace agreement (Mallari 2015).

Habib Jujahab Hashim's faction, the MNLF National Islamic Command Council (NICC),⁹ likewise opposed the BBL as it will effectively "abrogate" the 1996 FPA (Pareño 2015) and "repeal the ARMM in favour of the Bangsamoro region" contemplated in the proposed law (Marcus 2015). However, its third faction chaired by Abul Khayr Alonto¹⁰ urged the Philippine Congress to "pass the BBL... and stand together with the MILF" (Dioquino 2015). On the other hand a splintered group of the MILF, the Bangsamoro Islamic Freedom Fighters (BIFF)¹¹ opposed the GRP-MILF agreement and the BBL. Similar to the MNLF's Misuari and Hashim factions, BIFF opted to secure Muslim independence through armed struggle rather MILF's version of autonomy.

Brushing aside, short of undervaluing the ideological and organizational differences among different armed Muslim groups, Aquino pursued to seal a peace agreement with the MILF; the administration's centrepiece peace program in Mindanao. As a constitutional requirement, Aquino submitted the draft law to Congress (House of Representatives [HOR] and the Senate of the Philippines [SOP]) leaders on 10 September 2014 for appropriate endorsement. In the HOR, the draft law was tabled for examination and debate as House Bill (HB) No. 4994 while in the SOP, it was ascribed as Senate Bill (SB) No. 2408.

Mamasapano incident

The Mamasapano incident¹² abruptly suspended Congress's deliberation on the BBL, four (4) months after it was bequeathed to the lawmakers. The incident resulted in the death of around 70 people (44 members of the Philippine National Police [PNP] elite Special Action Force [SAF], 18 MILF fighters, 5 members of the BIFF, and some other civilians) on 25 January 2015. A PNP-SAF mission intended to serve arrest warrants to two high-ranking Jemaah Islamiyah-affiliated terrorists (Zulkifli Abdhir [also known as Marwan] and Abdul Basit Usman) led to an unexpected clash between government and MILF troops on the ground; an unfortunate event caused the Philippine Congress to halt the discussion on the BBL hence effectively endangered the peace process and conclusion of the GRP-MILF peace agreement.

The Mamasapano episode polarized Philippine society into several fissures. Self-declared pundits, political analysts/scientists, and opinion writers were quick to make commentaries and "analyses" on the Mamasapano encounter soon after it was brought to public attention. Likewise, some civil society organizations (CSOs) and non-governmental

organizations (NGOs) interpreted the bloody encounter based on their ideological, political, and organizational orientations. Expectedly, politicians and government officials viewed the fateful event based on their limited political interests and plans for the next elections, while some bloggers, journalists, and columnists had theirs on the basis of which side of the political fence they are protecting and benefitting from.

“Fact-finding” missions produced regrettably different facts and conclusions. The Philippine National Police (PNP) Board of Inquiry accused the MILF, BIFF, and private armed groups (PAGs) as culprits and placed the duty of identifying the particular assailants to the Department of Justice (BOI 2015). Subsequently, the Department of Justice (DOJ) recommended the filing of criminal charges to 90 members of the MILF, BIFF, and PAGs for the death of 35 of 44 PNP commandos (Merueñas 2015). For the remaining nine (9) others, DOJ’s investigating teams (National Bureau of Investigation [NBI] and National Prosecution Service [NPS]), found no suspects thus no case will be filed to anyone (Viray 2015; Aning 2015). Despite these findings, Aquino admitted that no convictions can be made nor the Mamasapano case be resolved until his term ends in June 2016 (Bacani 2015).

On the other hand, Senate’s Committee on Public Order and Dangerous Drugs chaired by presidential candidate, Sen. Grace Poe, who is opposed to President’s Aquino political party, blamed Aquino himself as the sole “responsible to the deaths of more than 60 people, including 44 police officers of the PNP Special Action Force” for allowing Aquino’s friend the then “suspended PNP chief Director-General Alan Purisima to be involved in overseeing Oplan Exodus,” (codename given to the Mamasapano police operation) (Legaspi 2015). The MILF’s Special Investigation Commission reported to the contrary. The MILF “did not fire the first shot,” but acted in self-defense according to MILF’s Bangsamoro Islamic Armed Forces (BIAF) chief Von Al Haq (Maitem 2015).

Markedly, reports were meant to serve and protect each other’s interests; those implicated in whichever report refused to accept its verdicts for obvious reason. What transpired was a “blame game,” accusations were exchanged between and among politicians and organizations (“revolutionary” and otherwise) who cannot accept the responsibility for the objectionable event. Focus has been on organizational politics rather than getting the job done, while the grieving families of victims remain frustrated, demoralized, and disgusted over the turn of events. The “facts,” conclusions and recommendations arrived at as well as the truth behind the killings were politicized.

What is more appalling, which is most important, is the timing. The bloodshed occurred at the period when the draft BBL is under consideration by the lawmakers in both chambers of the Legislature. The BBL, chiselled out for a year by government and MILF representatives through the Bangsamoro Transition Commission (BTC)¹³ after the final peace agreement, the CAB, was signed, is now the victim of the Mamasapano conflict. In military parlance, it became a collateral damage, after a legitimate police operation against two high-ranking Jemaah Islamiyah-affiliated terrorists (Zulkifli Abduhir [also known as Marwan] and Abdul Basit Usman).

Saving the BBL and the debate

In the attempt to resuscitate the BBL, facilitate its legislation, and save it from shredding it apart further by lawmakers horrified by the death of police commandos, President Aquino formed the Peace Council¹⁴ on 27 March to design a National Peace Summit tasked to deliberate and review the legitimacy of the BBL. Working on four (4) themes, namely: constitutionality; form and powers of government; economy and patrimony; social justice and human development; and peace and order and human security, the Council concluded in its 27 April 2015 Report that:

“Overall, we agreed that the BBL is overwhelmingly acceptable and deserves the support of all Filipinos...The exercise has brought home to us the conviction that the BBL should be passed (by the legislature); that to set it aside now would be imprudent and wasteful of previous efforts... There is enough goodwill on both sides to bring this agreement to its conclusion...” (Citizens’ Peace Council 2015, Cover Letter).

Nonetheless, the use of the nomenclature “Citizens’ Peace Council” was criticized by former Commission on Elections Chair Christian Monsod as the poor and the farmers were not properly represented in the council either in its cluster meetings and discussion or plenary sessions (Cabacungan 2015). A review of the 136 participants shows that most of them are clergies, business people, former high-ranking government officials, academics, NGO leaders, and an assortment of middle class professionals (Citizens’ Peace Council 2015, pp. 51-52).

In spite of the favourable endorsement of the Council, both chambers of Congress have not been convinced of its findings and conclusions. At the HOR, the Ad Hoc Committee on the Bangsamoro Basic Law (AHCBBL) was formed, chaired by Cagayan de Oro Rep. Rufus Rodriguez, and drafted a substitute bill known as HB 5811 or the “Basic Law for the Bangsamoro

Autonomous Region” (BLBAR). The bill was passed by the 98-member AHCBBL on May 20, by a vote of 50 in favor, 17 against, and one abstention, contained 28 “substantial amendments” (Arguillas 2015), stripping “48 unconstitutional provisions” (Gorit 2015) from the original draft BBL submitted by Malacañang on 10 September 2014 (then classified in the HOR as HB 4994). The proposed amendments were likewise approved by the House Committee on Appropriations and the Committee on Ways and Means which were endorsed to the plenary.

At the SOP, the original SB 2408 was revised and later known as SB 2894 or the Basic Law on the Bangsamoro Autonomous Region (BAR). Chaired by Senator Ferdinand “Bongbong” Marcos, Jr. of the Senate Committee on Local Governments, the substitute bill was submitted on 10 August for Senate’s plenary discussion and interpellation. The bill amended almost 80% of the original draft BBL, with 115 “major and minor” changes (Rappler 2015). Signed by 17 out of 24 senators, Marcos argued in his sponsorship speech that the Senate’s version protects national interest and reserves powers enshrined under the Constitution to the national government. Further, he stated:

“The basic law addresses the first and most important prerequisite to peace – the definitive end to armed conflict – by providing an efficient, verifiable program of disarmament and demobilization, overseen by an independent monitoring body, and providing the needed financial and social assistance to former fighters to become peaceful and productive members of society.” (Mendez 2015).

The revised proposed bills, HB 5811 and SB 2894, have yet to pass the plenary sessions of the HOR and SOP respectively before these are finalized, thereafter consolidated and unified into a single draft bill (ironing out the differences between the HOR and SOP versions) through the Bicameral Conference Committee, and submitted to the President for his signature before it becomes a law. However, given the limitation of time with the primary concern of both chambers to prioritize the country’s national budget for 2016 before the end 2015 and the brewing local and national elections in May 2016, it is highly unlikely that the draft bills will become a law at the conclusion of 2015.

Moreover the Speaker of the HOR, Feliciano Belmonte Jr., admitted that the low turnout of the 291 members of the HOR hence the lack of quorum to make the deliberation on the proposed bill valid, impeded any

substantial discussion and debate. The HOR's Majority Leader Neptali Gonzales II even confessed that a number of lawmakers were "purposely absenting" themselves to derail any action on the amended legislative measure (Rillon 2015). Marcos on the other hand, conceded that the ratification of the legislature's drafted BBL will have to wait until the next administration (Morong 2015). He further concluded that the "BBL is dead and has no chance to be passed in the Senate and the House" (Gorit 2015).

Considering the drawn amendments made by both chambers of Congress on the original draft of the BBL, it has been mangled beyond recognition. The MILF opined that the HOR's AHCBBB version was "50% bad" (Rappler 2015), while the Senate's revisions "severely revised the original proposal... setting almost completely the original BBL, which was crafted on the basis of the letter and spirit of the Framework Agreement on the Bangsamoro (FAB) and the Comprehensive Agreement on the Bangsamoro (CAB)" (Gorit 2015).

Lawyer Naguib Sinarimbo, a co-convenor of the Cotabato City-based Bangsamoro Study Group (BSG) argued that:

"The proposed amendments change the framework of the agreement of the parties on changing the status quo and of redefining the relation between the Central Government and the Bangsamoro to a point that the Bangsamoro has been reduced into the category of an LGU (local government unit)." (Arguillas 2015).

Despite the almost failure of lawmakers to consider the BTC draft BBL that was subsequently endorsed by Malacañang, MILF's chief peace negotiator and BTC chair Mohagher Iqbal remains hopeful that the proposed law, a product of "17 years of long, hard, and harsh negotiations" be passed as it embodies the "solution to ending the internal armed conflict in Mindanao and promoting peace and national unity among Filipinos." (Abubakkar 2015).

The Bangsa Moro and Philippine Nation-State

Beyond the debate over the constitutionality of the BBL lies the fundamental and deep conflict between two modes of building the Philippine nation-state. This contradiction, evidently, is outside of the mind frames of constitutionalists and legal experts to resolve. Neither could it be addressed legally nor understood within the confines of existing statutes. Addressing the political rather than the legal issue in building or busting a nation-state is an essential question in politics. This task is relevant and

important to comprehend the multifarious uncertainties and insecurities behind the BBL.

At the onset, it is to be recognized that general concept of Philippine statehood, i.e., notion of territorial jurisdiction, centralized government, system of governance, and political relationship between majority and minority peoples has been largely defined by centuries of colonial rule. The state as a political embodiment of the community, requires a hierarchy of institutions and structures as well as loyalty, discipline, and sacrifice from its constituents to protect and preserve state's interests that go beyond and may not imperatively coincide with peoples' culture and identities.¹⁵

Since the post-colonial years the Philippine unitary state has worked towards the integration, assimilation, and transformation of multiple ethnic identities into a single national identity—a downward exertion of state nationalism. A nationalism undertaken through the assimilation and integration of minorities into the majority's culture, system of governance, and socio-economic structure; a state's nation-building conceived as a kind of super-ethnicity that supersedes all pre-existing ethnic identifications (in case permitted to persist, they are considered as variations on the national theme).¹⁶ Hence, while nationalism proclaims the intrinsic value of equality of people, the state compels them to succumb to the innate inequalities of statehood. The nation-state does not reconcile the contradictions but hides them.

State's nationalism is henceforth resisted by those groups who do not see themselves as part of the Philippine nation. They feel strongly against the erosion of their self-identity and see it as a gross violation of their political, economic, and cultural rights. Sub-national independence movements view their struggle as a type of safeguarding and defending their identity from the political transgressions, oftentimes undue centralist policies, of the state. It is a proclamation of the intrinsic value of egalitarianism, declaration of peoples' right to live as a cohesive national community in accordance with their own culture, religion, and belief system as a sovereign political entity, and affirmation of an entitlement to statehood for the nation to prosper.

For the former, "nation-building" is the process of strengthening state power while the latter sees it as the mode of empowering the "nation" to create its own "state," thus a course towards "state-building." From the statist outlook, the state defines the sort of nation it needs in contrast to the nationalist stance that configures the state it requires.

Inasmuch as "nation" is an ethnical concept while "state" is a politico-legal one, compound word "nation-state," a product of more than

200 years of European experience but a relatively new concept among decolonized countries in Asia, Africa, and Latin America, implies unity and oneness of “nation” and “state.” However, given the heterogeneity of the world’s population, having about 8,000 identifiably separate identities and cultures in less than 200 independent states, (Gellner 1983, pp 43-50) conflict and violence rather than unity and peace has characterized the relationship between “nations” and “states.” In fact, it is seldom that state’s geo-political boundaries coincide with the nation’s geo-cultural frontiers.

In this context, the diametrically opposing standpoint between the Philippine sovereign state and national liberation movements, either ethnic- or religious-based, flows from the inherent contradiction in the idea of a nation-state. The conflict generated by diverging perspectives has resulted in spiralling and unabated armed confrontation, hostilities, and violence between the forces of the state and separatist movements.

The clash of political interest seems difficult to reconcilable with the former asserting its right to protect state’s territorial integrity and the latter upholding its claim as a “nation” under the principle of the right to self-determination; rights that are equally valuable and recognized by the international community.

The violent reaction of ethnic minority groups in general, apart from the Muslim minorities, against these policies is comprehensible as they endangered their collective survival. Accordingly, the undertaking to secede from the state becomes an inescapable recourse on the contention that separatists do not see a fair chance that their fundamental aspiration and interest, i.e., to be a part of the nation, would be hitherto accommodated under the state’s political system. The issue boils down, basically, to political and economic equity and social justice.

While state has, for a time, forged national unity, some of its initiatives have triggered political and social conflict and rebellion. State reform measures do not necessarily empower challenging groups but co-opt them into collaboration within the state power system itself. These actions undermined the process of nation building. The ossification of state power unmindful of some fundamental interests and aspirations of groups or communities engenders conflict. The contestation for power is further prolonged as the state intensifies its centralism and uses its coercive force for unifying purpose. As the state extends and deepens its centripetal measures the more it is challenged by centrifugal forces.

Nonetheless, conflicts are not always zero-sum discords. Oftentimes, they provide lessons for future settlement. The engagements of the state with

politicized communal groups or movements have transformative effect on the social and political bases of the state. They relate, interact, and affect each other in a shared manner similarly renovating their respective autonomy, capacity, and legitimacy in a political setting equally promoting and advancing their institutional as well as collective interests.

The right to self-determination

The concept and definition self-determination is broad and encompasses both external and internal dimensions. External self-determination usually refers to the right of people to secede its conceived territory from an existing state while internal self-determination concerns the choice of a system of governance and the administration of the functions of governance according to the will of the governed.

In both respects, self-determination is an acknowledged principle of the basic human right of individuals to participate in democratic governance. This includes the individual's right to engage in the political, economic or cultural system of the state. Secondly, it is a collective right of groups as national, religious, ethnic or linguistic minorities to express, practice, and promote their own culture, life-ways, language, and religion which require protection from the state. Thirdly, it is a right of people to their homeland or claimed territory which embodies their identity, culture, and political autonomy. Finally, the right to self-determination, especially the claim to one's territory, has to enjoy the state's consent.

While people are entitled to their territory, this does not necessarily extend to a free determination of the international legal status of the territory. The right is bounded by the endorsement or rejection by the state concerned taking into account the physical or geographical and demographical changes that have occurred in the area that people have "historical claim."¹⁷

Nonetheless, the right of a group with a distinctive politico territorial identity to determine its own destiny is the political translation of aspirations in the demands for self-determination. Judge Hardy Dillard of the International Court of Justice (ICJ), writing in his Individual Opinion in the 1975 Western Sahara Case, says that: "It is for the people to determine the destiny of the territory and not the territory the destiny of the people" (ICJR 1975: 144).

One of the most vital reasons for people in exercising control over a piece of territory is that it reifies power. Tillich points out:

“Being means having space or, more exactly, providing space for oneself. This is the reason for the tremendous importance of geographical space and the fight for its possession by power groups. The struggle is not simply an attempt to remove another group from a given space. The real purpose is to draw this space into a larger power field, to deprive it of a centre of its own” (Tillich cited in Williams 1988: 217).

Articles 1 (2) and 55 of the United Nations (UN) Charter have embodied the principle of self-determination as one of its guiding philosophies. The Universal Declaration of Human Rights (UDHR) states that self-determination is not simply a principle but a right of everyone to “liberty.” The International Covenants on Human Rights—The International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)—specifically provide in Article 1 of the respective covenants that:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” (UNHR 1978).

On the other hand, the principle of upholding state’s territorial sanctity remains an international norm. The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (DGICCP) in the form of a General Assembly Resolution is instructive. It confirms the right to self-determination in relation to colonialism and denies some forms of the right’s wider application. It appreciates the inevitable tension between the exercise of the right to self-determination and the parallel set of rights associated with territorial integrity of existing and emerging sovereign states. Thus, it reiterates Article 1 of the ICESCR and ICCPR in its Operative Provision 2 but at the same time qualifies such right in its Provision 6 which reads:

“Any attempt at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.” (UNGA Resolution 1514, December 1960).

Provision 6 of the DGICCP culminated in the adoption of the influential Declaration of Principles Concerning Friendly Relations and Co-

operation Among States in 1970 as the UN General Assembly Resolution 2625. The resolution accepted the principle of the right to self-determination that is linked to the notion of “equal rights of peoples” but cautioned that the right shall not be construed as:

“... authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ... and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.” (UNGA Resolution 2625, 24 October 1970).

The assurance of territorial unity is now made contingent on the government being representative of the whole people and institution of fairness which pursues non-discriminatory policies in relation to “race, creed, or color,” and full right to self-determination (including secession) pertains only in colonial situations. It is intended and administered in a way that is consistent with the territorial designs and administrative practices imposed by the colonizers rather than the “people determin(ing) the destiny of the(ir) territory ” as Dillard assumes.

Dillard’s dictum indicates that accidents of geography and of historically established territorial divisions are not limitations to peoples’ collective free will and decision to shape their destiny. This presupposes that if the formation of the state is a product of peoples’ collective action, then they also have the power and right to undo it. Hence by logical extension, groups and peoples living within an existing state must also be able to assert their will by deciding to leave it, carve a new sovereign unit out of an existing one, or re-claim a state which had existed before the advent of colonial rule or “modern” state.

Contrary to Dillard’s maxim, peoples’ will can only apply within the political, not cultural boundaries that have been colonially demarcated. Weller argues that:

“Self-determination is not aimed to restore ethnic or tribal links among populations that were artificially divided by the colonizers. Instead, the ‘people’ entitled to self-determination are those who happen to live within the colonial boundaries

drawn by the colonial powers. Self-determination action is taken in a way that does not fully overcome, but merely reshapes, facts on the basis of the reality of colonial administration. And it is the territorial shape of that administration that defines the self-determination entity, not the will of the people” (Wellner 2005, p. 11).

The UN General Assembly Resolution 2526 (XXV) on the Declaration of Principles of International Law proclaims that the principle of equality of rights and self-determination of peoples cannot be interpreted to connote the recognition of the dismemberment and fragmentation on ethnic and religious grounds. Affirming the doctrine of territorial integrity, ethnic, religious, and sub-national cultural entities and groups can only claim territorial and political autonomy within the new state boundaries. Hence, external self-determination is an act that cannot be taken up more than once. When a colonial territory has exercised the option of independence, ethnic groups living in the new state boundaries cannot invoke the right to self-determination against the newly declared independent state. It is therefore not a continuing action against the state.

An exception to this rule, as noted by Wellner (2005, p 29), would relate to a self-determination entity that does not opt to become independent but decides to associate, not integrate, with another state. In such case, self-determination status of the entity is maintained or transformed into a situation wherein the right to self-determination can be asserted within the provisions of the state’s constitution. However, there is very little practice of this kind.

Since the early 1990s, the legitimatization of the principle of national self-determination has led to an increase in the number of conflicts within states, as sub-national groups seek greater self-determination and full secession, and as their conflicts for leadership within groups and with other groups and with the dominant state become violent (Griffiths 2003). The international reaction to these new movements has been uneven and often dictated more by politics than principle.

Self-determination movements remain strong in some areas of the world. Some areas possess *de facto* independence, such as Taiwan, North Cyprus, Kosovo, and South Ossetia whose independence is disputed by one or more major states. Significant movements for self-determination also persist for locations that lack *de facto* independence, such as Kurdistan, Balochistan, Chechnya, and the State of Palestine.

Evidently, there are two main views pulling in opposite directions in the literature on self-determination. The first is the more restrictive which limits the exercise of the right to self-determination within the confines of the territorial jurisdiction of existing states; the right cannot be invoked if the territorial unity of the state will be transgressed. The second is expansionary which acknowledges and, to varying degrees, validates state-busting practice in a reformulated legal approach. The latter view takes due note of the degree to which non-sovereign territories of the Soviet Union (12 out of 15 republics seceded from the former USSR), Yugoslavia, and Czechoslovakia were given diplomatic recognition and admitted to the UN as sovereign states, i.e. Croatia, Slovenia, Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, and Kosovo of the former Yugoslavia; and the Czech Republic and Slovakia of the former Czechoslovakia.

The controversy on the principle and right to self-determination has led peoples and states to armed conflict. Struggles for autonomy and secession on the defense of peoples' national rights are politically and militarily confronted by the state, invoking its right to protect the inviolability of its territory. Peoples of the world are told they have the right to self-determination. Nevertheless, if this right is suppressed by a sovereign state, the international community supports territorial integrity until a war of independence is successful. As in the past, the entire problem is settled on the battlefield. The conflict has been the source of tremendous human suffering and destruction in Asia, Africa, and Europe.

The creation and re-creation of the Bangsa Moro and Bangsamoro identity

The quest of Muslims in the Philippines to exercise their right to self-determination is no different from what has been happening in the rest of the world. The quest to create their own sovereign state is hinged on their continued definition and re-definition of their identity as a "separate" people from the majority of Filipinos in the country by virtue of history, culture, religion, and way-of-life, among others.

The "Moro"¹⁸ identity emerged and developed into a transcendent and self-conscious Philippine Muslim ethnic identity during the less than half a century of American colonial regime rather than the more than three centuries of Spanish regime (Saleeby cited in Mc Kenna 1998; Gowing 1983;). Markedly, the promotion of American type of education and institutionalization of public school system in the entirety of the Philippines hastened the growth and formation of Muslim identity as Muslim Filipinos. Likewise, the policy of secularization has led, to a significant degree, the rationalization of Muslim political system.

In McKenna's (1998) review of US policies towards the end of American rule, he says:

"... American colonial policies had the effect of ethnicizing Muslim identity in the Philippines. By 'ethnicizing' Islam I mean to say that American colonial rulers encouraged the development of a self-conscious Philippine Muslim identity among a generation of educated Muslim elite who were otherwise divided by significant linguistic, geographic, and, to some extent, cultural barriers. It was an identity founded upon the Spanish ascription 'Moro' (or Philippine Muslim), but, as the term 'Moro' remained a pejorative among Philippine Christians, the most common alternative denomination became 'Muslim Filipino,' connoting a Muslim citizen of the new (or soon-to-be) Philippine nation." (p. 132).

The pursuit of Muslim to self-governance commenced in 1921 when Muslim leaders of Sulu petitioned the US President that they be governed separately from the Commonwealth and the forthcoming independent Republic. This was followed by another petition in 1924 from Muslim leaders of Zamboanga addressed to the US Congress expressing their desire that Mindanao and Sulu be a territory of the US Federal Government or be declared as a separate Muslim Nation in the event the Philippines be granted of its independence (Gowing 1979, pp. 168-169; Tan 1993, p. 11). Both petitions were denied.

The rejection of their petitions and inevitability of Philippine independence after an American sponsored 10-year transition period under a Commonwealth Republic led Muslim leaders to reconfigure their *Moro* identity in line with imminent formation of the Philippine nation-state. Muslim politicians tried to project the image of a unified and revitalised populace in order to gain some power bases in a nation-state that will be controlled by Christian Filipinos. Leaders declared themselves as "Filipinos" and considered *Moro*— pejoratively associated with piracy, savagery, slavery, treachery, amok (*juramentado*), and other negative connotations—as a name that is unacceptable.

In the 1934 Constitutional Convention that framed the 1935 Philippine Constitution (used as the fundamental law of the Commonwealth and 1946 Republic of the Philippines), several elected Muslim Constitutional delegates, led by Alauya Alonto, called upon their fellow delegates not only

to cease from calling Muslims as Moros but also to accept Muslims as part of the Filipino nation. Alonto of Lanao henceforth declared:

“We do not like to be called ‘Moros’ because when we are called ‘Moros’ we feel that we are not considered as part of the Filipino people. You also know that the name ‘Moro’ was given to us by the Spaniards because Morocco had been under the rule of Spain like Mindanao and Sulu. So that I would like to request the members of this Convention that we prefer to be called ‘Mohammedan Filipinos’ and not ‘Moros,’ because if we are called ‘Moros’ we will be considered as enemies [of the state].” (Alonto 1935 as cited in Abinales 1998, p. 49).

Although Islamic education from early 1950s until late 1960s was geared towards the deepening of Muslim consciousness, it underscored the value of “good citizenship” and emphasised the importance of political participation of Muslims in the affairs of the Philippine Republic. Domocao Alonto of Lanao, a Muslim member of the House of Representatives, proclaimed before the First National Muslim Convention in 1955: “We need a thorough spiritual rejuvenation ... If we are good Muslims, we are automatically good citizens.” (MAP 1956, p. 31).

The quest for a separate Muslim nation-state was re-sparked less than 50 years later when about 28 out of less than 200 Muslim military trainees, mostly Tausug and Samal from Sulu and Tawi-Tawi who were undergoing guerrilla warfare training in Corregidor Island, were summarily executed on 18 March 1968 in what was known as the Jabidah massacre.¹⁹ This time, through a violent armed secession against the Philippine state.

The Jabidah massacre was perceived as the state’s assault against Muslims who offered their services to the Republic, but had been duped, subjugated, and perfidiously murdered by Christians acting on behalf of the state. Both Muslim political elite and traditional leaders have experienced the contradictions in their hyphenated identity (Filipino-Muslim) and felt the frustrations in their bid to be integrated in the body politic. They saw one last alternative: to separate themselves from those against whom they were judged unfavourably and in relation to whom they were materially disadvantaged. They must proclaim themselves as “a new people.” (Williams 1989: 429).

The new Muslim intellectuals renounced their identities as “Filipino-Muslim” and declared themselves “Moro” that denote the descendants of unsubjugated and uncolonized peoples and claimed their homeland as the *Bangsa*²⁰ Moro (Moro Nation) that has been “unjustifiably annexed by the Philippine state” (McKenna 1998, p. 208). Apparently, the notion of *Bangsa Moro* is quite new—less than 50 years old. It emerged only in 1968 in the wake of the Jabitah massacre. In like manner, *Bangsamoro* identity is a new political construct. Fr. Jun Mercado, OMI, expresses:

The Bangsamoro identity is a sequel to historical struggle of a people... The meaning and shape of the new identity continues to evolve as peoples take stock of the struggles in the Southern Philippines not only for identity but also for a nation and a homeland.... While the MNLF and the MILF have the major roles in shaping the said identity, the peoples in struggle shape its meaning.” (Mercado 2013).

The massacre gave birth to the Muslim (later renamed Mindanao) Independence Movement (MIM) led by Datu Udtog Matalam, then Governor of Cotabato province (the biggest in the country at that time). Matalam’s call for “secession” came in the wake of political violence in Cotabato that was then beginning to take shape as a Muslim-Christian conflict.²¹ However, he relinquished his idea of secession soon after then President Marcos co-opted him and later became the Presidential Adviser on Muslim Affairs.

Other Muslim politicians and traditional leaders came together to continue what Matalam had given up. Then member of the House of Representatives, Raschid Lucman formed the Bangsa Moro Liberation Organisation (BMLO) in 1971 but later dropped the name Moro, which remains unacceptable to many of the Muslims. Instead, it adopted the name Bangsa Muslimin Islamic Liberation Organisation (BMILO) in 1984 (Jubair 1999, p. 152). Generally composed of *Maranao* ethnic group, the BMILO was conceived to be the umbrella organisation of all Muslim liberation forces (Canoy 1980, p. 27). The BMILO braced itself for a protracted armed confrontation with the state in pursuit of its goal to craft a separate Muslim state from the Philippines.

Nevertheless, the BMILO was not able to sustain itself as an alternative to MIM when some of its key leaders tried to negotiate with then President Marcos for Muslim Mindanao’s political autonomy. This was perceived by the younger and more militant BMILO members as a sign of capitulation. The frustration and disgust caused by the leadership, by and

large composed of Muslim politicians and traditional elite of Muslim society, led Nur Misuari and Salamat Hashim together with a number of young intellectuals of the BMOLO to bolt out of the organisation and eventually established the Moro National Liberation Front (MNLF) in mid-1971.²²

Gaining lessons from the past Muslim independence movement beginning in the 1920s, Misuari assessed that the failures of previous movements were not wholly rooted in the callousness of the state in its treatment of Muslim minorities and discriminatory policies that favour the Christian majority but also partly caused by the “collaboration” of their own Muslim leaders with the Manila “politico-economic elite.” Hence, he conceived a rebellion that has two fundamental objectives: to set up a single independent homeland covering the 13 ethno-linguistic Muslim groupings in the Philippines²³; and to wage war against Muslim traditional politicians and aristocratic leaders who cooperated with the state (Mercado, 1984, p. 160).

Misuari’s vision of a secessionist war was emphatically secular in orientation rather than Islamic. It is neither ethnic nor religious. Its goal is to reclaim the *Bangsa Moro*, Muslims’ homeland “unjustifiably annexed by the Philippine state” (McKenna 1998, p. 208). What looked to be the state’s prejudices against the Muslims had found a national expression. Benedict Anderson (1983) points out that “nation” is an “imagined community—imagined as both inherently limited and sovereign” where people “not so much to kill, as willingly to die for such limited imaginings” (pp. 15-16). Ernest Gellner on the other hand, says it is more advantageous to set up a “rival nation” when entry into the dominant nation is difficult if not impossible (cited in Hutchinson & Smith 1994, p. 60).

The maiden issue of MNLF’s clandestine newsletter, *Mahardika*, stipulates the meaning of Moro identity and character of Moro struggle. It is national in scope and covers what it imagines to be the confines of the *Bangsa Moro*, neither is it ethnic nor religious:

“From this very moment, there shall be no stressing the fact that one is a Tausug, a Samal, a Yakan, a Subanon, a Kalagan, a Maguindanao, a Maranao or a Badjao. *He is only a Moro*. Indeed, even those of other faith [sic] who have long established residence in the *Bangsa Moro* homeland and whose good-will and sympathy are with the *Bangsa Moro* Revolution shall, for purposes of national identification, be considered Moros. In other words, the term *Moro is a national concept* that must be understood as all-embracing

for all Bangsa Moro people within the *length and breadth of our national boundaries*. (Gowing 1985, pp. 184-185 [*italics supplied for emphasis*]).

Misuari transformed the epithet “Moro” into a positive identity of the Muslims and symbol of unity and pride in the course of national resistance against the Philippine state. The ethnicising of Muslim identity was a consequence of the awakening of Muslim self-consciousness. The Moro struggle is an expression of a “reactive nationalism,” articulated by the new and non-traditional counter-elite on a reactive basis, and resonates with Muslim society which is undergoing some “crisis of self-confidence.” It demonises the threats of the state as the enemy and mobilises the masses to take collection action against such threats. It has to appeal to an educated Muslim middle class and is invariably populist, intended to induct the masses into politics.

From the time the MNLF was organized in mid-1971 until 1975, when it officially ditched its secessionist stance upon the prodding of some Muslim countries (notably Libya and Malaysia) and the Organization of Islamic Conference (OIC), the precise definition of “Moro” identity and vision of a nation-state have been the subject of an impassioned debate among MNLF leaders. The inability to resolve the issue, among other reasons, Salamat Hashim (a leading member of MNLF Central Committee) deserted MNLF in 1977 and formed a rival organization, initially the “New MNLF” which advocated for autonomy rather than independence, and later renamed it to Moro Islamic Liberation Front (MILF) in 1984. The MILF made Islam as its official ideology. Hashim challenged Misuari, a secular and nationalist, as the rightful leader of the Bangsamoro. He chaired the MILF from its inception until his death on 13 July 2003. Currently, Al Haj Murad heads the MILF who hopes to realize Moros’s vision of political autonomy and self-governance through the Basic Bangsamoro Law under the Aquino administration.

Factionalism is rife within the Moro secessionist movement. It has suffered no less than seven major splits from the time Matalam founded the MIM in 1968 (Buendia 2005, pp. 116-118); a major breakup occurs every six or seven years on the average. The latest was in 2008 with the formation of the BIFF, bolting out of the MILF after having dissatisfaction with the way the latter opted to pursue a peaceful political settlement after the Philippine Supreme Court declared the GRP-MILF Memorandum of Agreement-Ancestral Domain unconstitutional (The Province of North Cotabato vs. The Government of the Republic of the Philippines, G.R. No. 183591). Undoubtedly, more organizational rifts will transpire in the future unless an all-inclusive peace agreement has been forged by the state with the multi-ethnic multi-ethnic Muslim groups.

Historically, ruptures in the Muslim secessionist movement happen whenever the state accommodates some of the political demands or acquiesces partly to certain grievances advanced by a particular Moro revolutionary organisation to the exclusion of other stakeholders. The shifting loyalties and interests of leaders as well as their respective organisational strategies and tactics is more of a response to the vagaries of political priorities and constraints which the state presents. Likewise, reactions have been based on the changing configuration of the state and character of the regime that interacts with the Moro movement. Conceivably, Bangsamoro identities have been formed not only through the processes of self-definition but primarily according to the exigencies of power—the demands for political autonomy and independence as a consequence of state's domineering role.

It is also instructive to note that the three major rebel fronts that contested state's power since the Jabitah massacre of 1968 correspond to the three main ethnic groups among more than a dozen of Muslim ethno-linguistic groupings. The BMO was generally composed of the *Maranaos*, the MNLF by the *Tausugs*, and the MILF by the *Maguindanaos*. It was also reported that Moro rebels prefer to fight with their fellow ethnic groups, e.g., *Maranaos*, *Tausugs*, and *Maguindanaos*, rather than to be with ethnic groups other than their own (Gutierrez 2000). However, MNLF and MILF have been denying that a feeling of enmity and hostility exists between ethnic groups in their respective organizations. They continue to confirm that Moro multi-ethnic fighters who are generally united in pursuing their particular organisational objectives rather than divided by internecine ethnic identities.

Perceptibly, heads of major Moro organisations refer to the same “national past,” but the “national future” remains unresolved and blurred. The internal debate over the envisioned Bangsa Moro and strategy in achieving the vision of a separate state is far from being settled. The Moros speak of different Bangsas. The erstwhile secessionist MNLF says the Bangsa covers the 13 provinces (out of 25) and nine cities in Mindanao, Palawan, Sulu, Basilan, and Tawi-Tawi (as defined in the 1976 and 1996 GRP-MNLF Tripoli Agreement and Final Peace Agreement respectively), while the MILF declares that it shall comprise the geographical areas dominated by the Muslims (six provinces [Maguindanao, Lanao del Sur, Lanao del Norte, Basilan, Tawi-Tawi, Sultan Kudarat] and the city of Marawi). Other splinter groups have either nebulous or ill-defined territorial boundaries. Thus, there is no single idea of Bangsa Moro's geographical jurisdiction.

Ethnic ties have emotional, psychological, and religious depths that are not easily severed. These are human ontological factors which cannot be

subjected to authoritative controls; no amount of coercion or repression can contain Moros aspirations to self-determination in an extended period of time in spite of their difficulty to transcend their innate ethno-linguistic identity. They were seldom surrendered to the imposing power of the Philippine state. Hence, irrespective of ethnic identity, Bangsamoros continue to search for their Bangsa Moro.

The politics of BBL and power distribution

As stated at the beginning of this paper, the BBL is another attempt of Bangsamoros to exercise the right to self-determination through a peaceful political settlement of armed conflict after the MNLF struggled but failed to conclude it with the GRP-MNLF FPA in 1996. Similar but not the same as the MNLF's interest, MILF seeks to achieve political, economic, and cultural autonomy and freedom under the 1987 Constitution. A fulfilment of this right is contingent on the recognition and protection of Bangsamoro identity and conceived homeland.

The linkage between Moro identity and territory is intricately intertwined. Nicos Poulantzas (1980), emphasizing the importance of territory to the notion of group self-identity, refers to the "historicity of a territory and territorialisation of a history" (p. 114) –a territorial tradition concretized in the homeland. A territory by itself is a human construct which serves as the material basis in defining and redefining human, group, ethnic, and social relations. It is the source of one's social security, assistance, dependency, sociability, and intimacy. It assures the continuity of culture and endurance of collective memory of peoples. As such, the concepts of space and territory are of extreme importance in ensuring the tenacity of one's identity and survival as a people.

The absence of or restriction to such control may invariably threaten the fulfilment of the peoples' rights and imperil their identity to a particular territory. In this respect, the anxiety of the Bangsamoro over the future of their homeland simply infers their lack of full control over their lives. The right of a group with a distinctive politico territorial identity to determine its own destiny is the political translation of aspirations in the demands for self-determination.

Notwithstanding the ideological differences between the MNLF and MILF, as well as with some smaller groups in the Muslim autonomy movement, they see themselves as "one people." The consciousness of being one people distinct from the neighboring peoples, the Filipinos, Bangsamoro is articulated and self-ascribed, bound collectively on the basis of a common ancestry, history, society, institutions, territory, and more

importantly, religion; they are intractably united in terms of their identity and sense of nationhood.

Identities have not dissolved and primordial interests have been sustained. Although Moro identity is far from dense and vulnerable to political manipulation either by the state or non-state actors as witnessed by the formation of innumerable groups, some of them involved in criminal activities, using “Islam” as their protective shield, they are welded together by their common struggle to be self-ruled.

By and large, and as shown by history, Bangsamoros’ quest for self-governance and self-determination is fundamentally a question of territorial rights. In war and peace, the issue of one’s control over a physical space has been the persistent bone of contention between the Philippine state and Bangamo independence movements.

The latest attempt of the MILF to push for a legal recognition of the Philippine state of a Bangsamoro territorial domain prior to endorsing the draft BBL was in 2008. Through the Memorandum of Agreement on the Ancestral Domain (MOA-AD) aspect of the GRP-MILF Tripoli Agreement on Peace of 2001, it pursued for the establishment of a “Bangsamoro Juridical Entity” (BJE). Similar to the proposed BBL, it will supplant the ARMM and include as many as 737 Muslim majority villages (barangays) outside the ARMM as determined through plebiscites. Likewise, it laid out the possible future inclusion of 1,459 other “conflict-affected areas.” The expansive territorial coverage of the BJE lies in its definition of the Bangsamoro identity.

In addition, the BJE intends to provide greater autonomy than the ARMM arrangement, which will have an “associative relationship” with the Philippine government. However, the Philippine Supreme Court (PSC) ruled that MOA-AD is deemed unconstitutional. In October 2008, the court, in a split 8-7 decision, argued that the “associative relationship” is illegal as it implies the eventual independence for the BJE from the state.²⁴ It contended the BJE as “more of a state than an autonomous region” not allowed by the 1987 Constitution (par. 5) for the ARMM governing body.

The PSC also viewed MOA-AD as a violation of the 1997 Indigenous Peoples Rights Act (IPRA), which gave indigenous cultural communities and peoples the right to participate fully in matters which may affect their lives and destinies. By making “a sweeping declaration on ancestral domain, without complying with the IPRA ... respondents clearly transcended the boundaries of their authority” (Supreme Court 2008, p. 38).

In this case, the MILF regards ancestral domain as the issue which could give substance to the self-determination struggle. The government, on the other hand, considers it a question that can be answered within the bounds of the state's power and authority. This issue remains contentious and arguable not only in the history of Bangsamoro struggle but also in defining their future under the Philippine nation-state.

The negotiating panels' experience from the 2008 debacle led them to abandon the use of "associative relationship." Instead, it used "asymmetric (political) relationship" that links the national and Bangsamoro government together. Pertinent to this, part of the proposed BBL's Preamble says:

"... With the blessings of the Almighty, do hereby ordain and promulgate this Bangsamoro Basic Law, through the Congress of the Republic of the Philippines, as the basic law of the Bangsamoro that establishes the *asymmetrical political relationship* with the Central Government founded on the principles of subsidiarity and parity of esteem." (Preamble, Bangsamoro Basic Law) (*italics provided*).

The relationship is further defined in Secs. 1 and 3 of Article VI on Intergovernmental Relations as reflected in the following:

"Section 1. Asymmetric Relationship - The relationship between the Central Government and the Bangsamoro Government shall be asymmetric. This is reflective of the recognition of their Bangsamoro identity, and their aspiration for self-governance. *This makes it distinct from other regions and other local governments.* (*italics provided*).

"Section 3. General Supervision. Consistent with the *principle of autonomy and the asymmetric relation* of the Central Government and the Bangsamoro Government, the President shall exercise general supervision over the Bangsamoro Government to ensure that laws are faithfully executed." (*italics provided*).

Asymmetrical political relationship is a recognition of unequal political power between the state and the proposed Bangsamoro government. However, such inequality of power does not connote

discrimination between two political entities but an acknowledgment that they are simply different and distinct from each other especially in terms of exercising political power. The disproportionate in power relations does not mean inequitable and unfair power distribution either. It purports that each political entity has to exercise power within their degree of competence, capability, and expertise.

Given the imbalance in power distribution, the national and sub-national governments have to employ and carry out its power based not on the basis of equality but on proportionality. The concept of proportionality is used as a criterion of fairness and justice. It is intended to assist in discerning the correct balance between the function of the national and sub-national units of government. As a constitutional principle and as a general principle of administrative law, the principle of proportionality requires each decision and measure to be based on a fair assessment and balancing of interests, as well as on a reasonable choice of means. In other words, any action undertaken must be proportionate to its objective, hence government's action at whichever level must be no more than is needed to achieve the intended objective.

Corollary to the principle of proportionality is the concept of subsidiarity (see Preamble as quoted above). Subsidiarity aims to bring governments (national and local [including regional]) and its citizens closer by guaranteeing that action is taken at local level where it proves to be necessary. It intends to determine the level of intervention that is most relevant in the areas of competences shared between the national and sub-national governments. In its most basic formulation, subsidiarity holds that socio-economic and politico-cultural problems have to be dealt with at the most immediate (or local) level consistent with their solution. The fundamental idea behind subsidiarity is that a central authority should have a subsidiary, supporting rather than a subordinate government which performs only those tasks which cannot be accomplished or executed effectively at a more immediate or local level.

The principles of proportionality and subsidiarity are the foundations of asymmetrical political relationship between the Central and Bangsamoro governments. It is in this context that the proposed BBL articulated the "reserved powers" ²⁵ of the Central Government (Section 1, Article V), "concurrent powers"²⁶ of the Central and the Bangsamoro Government (Section 2, Article V), and "exclusive powers"²⁷ of the Bangsamoro Government (Section 3, Article V).

It should be noted however that such division and sharing of power between the national and sub-national government is characteristic and

typical of a federal structure of government rather than a unitary state such as the Philippines. Federalism denotes a system of government in which power is divided by constitutional right between national and local units of government in regions. Unlike unitary systems, powers of the local units of government are both granted and withdrawn by the national legislature inasmuch as sub-national governments are creatures of the national government. In short, the creature cannot be greater than the creator, so to speak. In contrast, under a federal system the local units of government have their own independent constitutionally guaranteed authority. However they remain sub-units of one overall state, and thus do not have national sovereignty and have no standing under international law.

Henceforth, the asymmetrical political relationship which is based on the principles of proportionality and subsidiarity, between the Central and Bangsamoro Government, that is akin to a federal set-up is a matter that will be decided by the Supreme Court. Notwithstanding the legal and constitutional requisites that must be satisfied by the proposed BBL, the political history and condition that led to almost half-a-century of struggle for Bangsamoro political autonomy and self-governance need to be considered in utmost importance.

Conclusion

As argued in the paper, the proposed Bangsamoro Basic Law is not simply a piece of legislative offer to the government. It is an embodiment of Bangsamoros' historical struggle for self-rule; an exercise of peoples' right to self-determination. Beyond the draft BBL to pass the legal and constitutional prerequisites of the state, the political engagement of the Moros in another challenging endeavour with the state has a higher significance in drawing lessons on conceivable utility or futility of achieving political power within the current political structure of government.

As the country's political history depicts, Moro conflict is sparked and protracted more by the centralism of the state and inadequate democratic space that limits the self-governing power of the minorities, particularly the Muslims in southern Philippines. The tenacity and seriousness of the conflict remains complicated with the unremitting inability of the state to substantially and decisively address, over a long period, its core causes insubstantial political autonomy; socio-economic grievances and deprivation; and perceived injustice, discrimination, and alienation of the people from the mainstream of Philippine political and economic development. The issue boils down to political and economic equity and social justice, the crux of the state's responsibility and kernel of nation's spirit.

It is essential therefore that Moros be politically drawn within the domain of the state and make them feel that they are part and foremost stakeholder of the Philippine nation. The sense of Moros' separateness as a people can be altered or modified. Perceptions are neither fixed nor permanent. They change as material conditions change; identities and communal interests also change and are equally malleable and pliant as they interact with the power of the state.

Yet, the process of reversing such outlooks and feelings of alienation and transcending ethnic boundaries also demand a strategic approach of sustained and indefatigable efforts and commitment on the part of the state towards greater democratisation, meeting the new challenges of mosaic democracy and heterogeneous development. It requires the state to redefine itself and adopt an institutional framework of governance that would allow the expression of democracy in kaleidoscopic forms.

The essence of democracy is violated when minority groups lack any reasonable chance to take part in the policymaking process in government on a more or less permanent basis without suffering from the "tyranny of the majority." In other words, the rule of the majority or "majoritarian democracy" in deeply divided societies is likely to be profoundly undemocratic.

The threat of national disintegration will continue until an appropriate institutional framework for political governance which can accommodate Bangsamoros' social and ethnic diversity is ensconced. Apart from re-engineering political institutions in Mindanao, there is a need to lay emphasis, at least at the local level, on good governance, the rule of law, improved civil-military relations, accountability of public officials for corruption, and human rights protection.

Considering that striving for external self-determination would be difficult, costly, and bloody, in spite of guarantees provided by international covenants, the better option is to seek substantial and meaningful political and cultural autonomy within the Philippine political system. While there is no assurance that meaningful Bangsamoro self-governance would transpire under a unitary system, new forms of co-governance may be tested to build the Philippine nation-state. Conferring a semi-sovereign status resembling a federal structure of governance to Muslim areas of Mindanao would be a promising alternative that the state can work on to further the nation-state building not only of the Philippines but also of the Bangsamoros.

A "unified approach" in bringing together various ethnic, religious, and national groups into the Philippine nation-state in general and

Mindanao in particular can be an auspicious politico- administrative instrument in dealing with the complexity of living in a physical environment where people of differing ethnicities, religious beliefs, and cultures thrive and prosper, and conflicts are resolved and justice claimed in a non-violent means.

Whether or not the state would be able to meet the challenges of nation-building and national unity through the promulgation or rejection of the BBL is difficult to surmise at this point. Definitely, there will be no quick fixes and no shortcuts. Wounds that have festered for a long time cannot be healed overnight, nor can confidence be built or dialogue developed while fresh wounds are being inflicted. It is a process that requires special and extra effort on the part of the state to guarantee human rights and uphold the rights of people to their own development.

In the final analysis, modern governance is a matter of democratic rule where multi-national people's sovereignty is respected rather than trampled upon and stifled. It is a question where power is ultimately held in the hands of the populace in so far as political leaders serve as representatives of the multitude and political institutions as instruments in advancing popular will for both the majority and minority peoples. If laws constrict such expression and practice of democracy, then people have the ultimate right and power to create more expansive laws that reflect the aspirations and hopes of the nation-state. Failure to do so will simply transform laws as tools of oppression rather than liberation.

Endnotes

¹ The Framework Agreement on the Bangsamoro (FAB) was a preliminary peace agreement which called for the creation of an autonomous political entity called *Bangsamoro*, that will replace the Autonomous Region of Muslim Mindanao (ARMM). It contains four Annexes, namely: Annex on Transitional Modalities and Arrangements (signed on 27 February 2013); Revenue Generation (signed on 13 July 2013); Power Sharing (signed on 8 December 2013); and Normalization (signed on 25 January 2014). For details, see Framework Agreement on Bangsamoro, 15 October 2012, Malacañang Palace, Manila.

² The Comprehensive Agreement on the Bangsamoro (CAB) is the final peace agreement between the Philippine government and the MILF that fleshed out the terms of the four Annexes under the FAB, and included the Addendum on the

Bangsamoro Waters and Zones of Joint Cooperation (signed on 25 January 2014). Under the CAB, MILF agreed to decommission its armed wing, the Bangsamoro Islamic Armed Forces (BIAF). In return, the government would establish an autonomous political entity, known as the “Bangsamoro.” (For details see the Comprehensive Agreement on the Bangsamoro, 27 March 2014, Malacañang Palace, Manila). Pending the creation of an autonomous Bangsamoro, a symbolic decommissioning of the BIAF was held on 16 June 2015 wherein MILF turned over 75 high-powered and crew-served weapons to the Turkey-led Independent Decommissioning Body and 145 members of the BIAF were decommissioned in exchange for a PhilHealth (Philippine Health Insurance Corp) card that gives beneficiaries access to nearly comprehensive package of health services, including inpatient care, catastrophic coverage, ambulatory surgeries, deliveries, and outpatient treatment for malaria and tuberculosis. Decommissioned MILF members likewise received P25,000 (approx. USD 540.00) cash assistance each to engage in livelihood endeavours.

³ The GRP-MNLF Final Peace Agreement (FPA), signed on 2 September 1996, laid down the process and framework for achieving peace and development in Southern Philippines. See 1996 GRP-MNLF Final Peace Agreement (Manila: Malacanang Palace Press, 2 September 1996).

⁴ The Autonomous Region of Muslim Mindanao region was first created on August 1, 1989 through Republic Act No. 6734. It was officially inaugurated on November 6, 1990. The region includes the provinces of Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi. In 2001, Marawi City (situated in Lanao del Sur province), and Basilan province opted to be part of ARMM after a plebiscite was conducted on 14 August 2001. ARMM through Republic A 9054 is currently the law that governs the region.

⁵ The SPCPD was established through Executive Order 371 issued on 2 October 1996. It acts as a transitory administrative arm under the Office of the President tasked to promote development in 14 provinces and 9 cities (as of 1996) in Mindanao and Sulu archipelago. The covered area is known as the Special Zone of Peace and Development (SZOPAD). In the 2001 plebiscite, SZOPAD’s coverage increased from 14 to 15 provinces and 9 to 14 cities as a result of the conversion of capital towns to cities and creation of new provinces by the central government between 1996 and 2001. The dissolution of the SPCPD under Executive Order 80 of 11 March 2002

transferred all its on functions, duties, and responsibilities to the new ARMM under Republic Act 9054. For details of the provisions, see EOs 371 and 80 and RA 9054 for details.

⁶ Nur Misuari remains to face rebellion charges and has a standing warrant of arrest for allegedly spearheading the armed incursion of the Zamboanga City Hall and declaring the establishment of the United Federated States of Bangsamoro Republik. The Misuari's MNLF on the other hand, accused government forces for disrupting a peaceful rally asserting the implementation of the 1996 "Final GRP-MNLF Peace Agreement" and simply defended themselves from government's armed forces. Known as the Zamboanga siege (9 to 28 September 2013), the conflict led to a series of gun battles between opposing forces resulting in the death of hundreds of combatants including civilians and displaced more than 100,000 people. See Medina 2013 and Rood 2014 for details.

⁷ The 1996 GRF-MNLF Final Peace Agreement (FPA) has two phases. The first phase covers a three year period after the signing of the peace agreement with the issuance of Executive Order establishing the SZOPAD, SPCPD, and Consultative Assembly (see note 5 above). The second phase involves an amendment to or repeal of the Organic Act (RA 6734) of the ARMM through Congressional action, after which the amendatory law shall be submitted to the people of the concerned areas in a plebiscite to determine the establishment of a new autonomous government and the specific area of autonomy thereof. Misuari alleged that the second phase never took place as he was ousted from power by his own senior comrade-in-arms who form the Council of 15. Misuari's Deputy Chairman, Hatamil Hassan was elected as the Council's Chair while MNLF's Foreign Affairs Committee Chair, Parouk Hussin, was elected new regional governor in November 2001. The Council proclaimed itself as the legitimate Central Committee of the MNLF. This was eventually acknowledged by the government and OIC's 10th Summit Meeting on 15 October 2003.

⁸ The Organisation of Islamic Conference (OIC), founded in 1971, comprises 57 nations (including the non-state, Palestine) spread over four continents. It is the second largest international body after the UN, and is aimed at protecting Muslim interests worldwide and to settle conflicts by peaceful means, mainly through mediation, negotiation, and arbitration. The OIC had been instrumental in forging the 1976 and 1996 GRP-MNLF Tripoli Agreement and Final Peace Agreement respectively.

⁹ The National Islamic Command Council (NICC) was formed in the early months of 1995, prior to the conclusion of the 1996 peace accord between the GRP and MNLF. It claims to have nearly 90 percent of the original 20,000-25,000 MNLF forces. The military, however, estimates its membership to few hundreds. In its formation, it declared establishment of an independent Islamic state in Mindanao through “mutual destruction” (see Buendia 2005, p. 114-115).

¹⁰ Abul Khayr Alonto was reported to have been installed as the new Chair of the MNLF Central Committee on 3 March 2014 after allegedly ousting Nur Misuari as Chair on 10 February 2014. The move was reported to have the approval of the OIC. Alonto had previously served as the MNLF’s first vice chairman before leaving the organization for a time in 1978 because of opposition to Misuari’s policies. (See Allan Nawal, “MNLF reorganized with Alonto as new chair; Misuari out.” *Inquirer Mindanao*, 17 Mar. 2014).

¹¹ The Bangsamoro Islamic Freedom Fighters (BIFF), also known as the Bangsamoro Islamic Freedom Movement, is an Islamist militant organization based in Mindanao. It is a breakaway group from the MILF founded by Ameril Umbra Kato in 2008 who wanted full independence after the Philippine Supreme Court nullified the Memorandum of Agreement on Ancestral Domain (MOA-AD) of the Tripoli Agreement of 2001 signed by the Philippine government and the MILF on 5 August 2008.

¹² Mamapasano is a 5th class municipality of the province of Maguindanao where a police operation, codenamed Oplan Exodus, took place to serve arrest warrants for high-ranking Malaysian terrorists and/or high-ranking members of the BIFF.

¹³ The Bangsamoro Transition Commission is a commission created by the virtue of Executive Order 120 signed by President Benigno Aquino III on 17 December 2013. Composed of 15 members (8 members including the chairman from the MILF and 7 chosen by the government. The members represent the Christian, Muslim and Indigenous People communities. It is tasked to come up with a draft on the Bangsamoro Basic Law (BBL), which would serve as the basis of a new Bangsamoro

political entity, in accordance to the Framework Agreement on the Bangsamoro. The BTC is deemed to be disestablished upon the enactment of a BBL. The draft of the law was submitted by President Aquino to Congress leaders on 10 September 2014.

¹⁴ The Peace Council was convened collectively led by Manila Archbishop Luis Antonio Cardinal Tagle, former Chief Justice Hilario Davide, Jr, businessman Jaime Augusto Zobel de Ayala, former Philippine Ambassador to the Holy See and Malta Howard Dee, and founder of Teach Peace, Build Peace Movement Bai Rohaniza Sumndad- Usman.

¹⁵ For more discussion on the relationship between nation and state, see Anderson 1983 especially pp. 66-103.

¹⁶ For more discussion see George de Vos 1975.

¹⁷ This doctrine is, however, displaced in certain circumstances, in cases of territorial change that are anticipated in historical arrangements such as the hand-over of Hong Kong (see Weller M 2005, "Self-determination trap," *Ethnopolitics* vol 4, no. 1, pp. 3-28).

¹⁸ The term Moro was the name used by the Spaniards to refer to Muslim inhabitants in the Philippines alluding to the Muslim Moorish occupation of the Iberian Peninsula (Spain and Portugal) and the northern coast of the African continent in 711 A.D. In 16th century, the Spaniards encountered the ferocious resistance of Muslims inhabiting the Southern Sultanates of the country in their attempt to colonize the archipelago. This reminded them of their ancient enemy, the Moors, thus called the Philippine Muslims, Moros. Hence, the term denotes a non-Hispanised Muslim inhabitant in the "unsubjugated" southern islands, in contrast to "Filipino" (collectively referred to as "indio" until 1872) which symbolises the Christianised, Hispanised, and subjugated people of the Philippines. For an account of the historical development of the Moro identity, see Phelan 1959 and Corpuz 1989.

¹⁹ The official story on the Corregidor Incident had two versions. The first one says that the execution happened in as part of the military's effort to contain "private armies and armed separatist movements" plan to invade Sabah after they were emboldened by the Philippines' position that Sabah was legitimately part of the country. This was relayed by Maj. Eduardo Martelino, the military officer who executed Oplan *Merdeka* (clandestine military operation to invade and re-claim Sabah), in his testimony before the Senate and Congressional hearings. The second version, as related by the lone survivor of the carnage (Jibin Arulu, a Tausug from Sulu) revealed that the training was part of the Philippine Army Special Forces' Oplan *Merdeka*. The massacre was uncovered by then opposition senator Benigno Aquino Jr. Ferdinand Marcos, serving as President (1965–1986), charged that the exposé was politically motivated and meant to discredit him. See Vitug & Gloria 1999, pp. 2-23 for details.

²⁰ The term "bangsa" or "bansa" is a Malay word that usually refers to nations, castes, descent groups or lines, races or estates. The composite term "Bangsa Moro," refers to the "Moro Nation." MNLF and MILF prefer to use it as one word, "Bangsamoro." For the purpose of this paper, "Bangsa Moro" shall mean the "Moro Nation" and "Bangsamoro" as the "people" and "movement" that embrace Islam as a religion and way of life especially those inhabiting southern Mindanao and Palawan provinces and Sulu archipelago.

²¹ Violence involving Muslims and Christians escalated and plunged Mindanao into a virtual war in the decades of 1960s and 1970s. Some analysts believe that this violence between Muslims and Christians has given rise to the mistaken notion that the so-called Mindanao conflict is a religious war.

²² There are conflicting versions on the founding of the MNLF. Jubair (1999, p. 150) said that the MNLF was founded in 1969 while Mercado (1984, p. 159) noted that its founding was in mid-1971. Interviews conducted by the author in 2000 among former MNLF leaders who were then government officials of the ARMM declare 28 March 1968, as MNLF's Foundation Day. The date was symbolically used by the MNLF as its Founding Day since it was the day of the Jabidah massacre. Mercado's version is closer to reality as it was in mid-1971 when Nur Misuari convened the "Top 90" guerrillas (first batch of Muslim rebels who underwent military training in Sabah, Malaysia) in Zamboanga City to repudiate the reformist tendencies of MIM

and BMLO leaders. This eventually led to the birth of the MNLF. Hence, 1971 is used in this paper as the year of MNLF's formation.

²³ The 13 Muslim ethnolinguistic groupings are the Maranao, Maguindanao, Tausug, Sama, Yakan, Sangil, Badjao, Kalibugan, Jama Mapun, Iranun, Palawani, Molbog, and Kalagan. Three of these are major groups occupying identifiable territories: Maranao in Marawi; Maguindanao in Cotabato; and Tausug-Sama in Tawi-Tawi and the Sulu group of islands.

²⁴ The Court argues that the concept of association in international law is generally understood as a "transition devise of former colonies on their way to full independence" (See *The Province of North Cotabato vs. The Government of the Republic of the Philippines*, 2008, pp. 41-42)

²⁵ Reserved powers retained by the Central Government are: 1. Defense and external security; 2. Foreign policy; 3. Coinage and monetary policy; 4. Postal service; 5. Citizenship and naturalization; 6. Immigration; 7. Customs and tariff subject to qualification that the Bangsamoro Government and the Central Government shall coordinate through the intergovernmental relations mechanism with regard to barter trade and countertrade with ASEAN countries and regulation of entry of haram goods; 8. Common market and global trade and; 9. Intellectual property rights.

²⁶ These are shared powers between the Central Government and the Bangsamoro, namely: 1. Social security and pensions; 2. Quarantine which refers to forced isolation of persons suspected of having been infected by communicable diseases; 3. Land registration; 4. Pollution control; 5. Human rights and humanitarian protection and promotion; 6. Penology and penitentiary; 7. Auditing; 8. Civil Service; 9. Coastguard; 10. Customs and tariff; 11. Administration of justice; 12. Funding for the maintenance of national roads, bridges and irrigation systems; 13. Disaster risk reduction and management; and 14. Public order and safety.

²⁷ Exclusive powers are matters over which authority and jurisdiction shall pertain to the Bangsamoro Government. There are 58 items under the list of exclusive powers,

which include, among others, matters on agriculture, environment, natural resources, land management, health, education, trade, manufacturing and public utilities, establishment of government-owned and controlled corporations (GOCC's). For full list, see Sec. 3, Art. V. of the proposed BBL.

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ABOUT THE AUTHOR



Rizal G. Buendia, PhD is Independent Consultant/Researcher in Southeast Asian Politics and International Development based in London, United Kingdom. He is former Chair of the Political Science Department, De La Salle University-Manila, and Teaching Fellow in Politics at the Department of Politics and International Studies and Department of Development Studies, School of Oriental and African Studies (SOAS), University of London.

He obtained his Doctor of Philosophy (Ph.D.) degree in Political Science at the National University of Singapore (NUS) in 2002 under the NUS by-research Ph.D. scholarship. He was a grantee of the TODA Institute for Global Peace and Policy Research's Doctoral Fellowship Program and of the Southeast Asian Studies Regional Exchange Program, Toyota Foundation and the Japan Foundation Asia Center's research fellowship Program. He earned his Master of Arts in Public Administration (MPA) with Highest Distinction at the University of the Philippines-Diliman (National College of Public Administration and Governance [NCPAG]).

Yuchengco Center

2nd Floor, Don Enrique T. Yuchengco Hall
De La Salle University
2401 Taft Avenue, Manila, 0922 Philippines

Tel: (632) 526-1253

Fax: (632) 525-3457

E-mail: yuchengcocenter@dlsu.edu.ph

URL: <http://yc.dlsu.edu.ph>