# COMMENTS ON THE GRP-MILF PEACE PROCESS

This paper seeks to analyze the rational, purpose and implications of the scrapped GRP-MILF Memorandum of Agreement on Ancestral Domain (MOA-AD),[1] identify the fundamental flaws of the agreement and the underlying negotiations, recommend appropriate pre-emptive and corrective measures for any revival of the failed process, and propose bold alternative consensus points, guided by the standard of the common good of all the people concerned.

**Brief re MOA-AD**

In sum, the letter and spirit of the MOA-AD between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) of 2008 unmistakably seeks to establish out of the present unitary state,[2] a federal state[3] comprised of at least two component states, i.e. a Muslim dominated state covering part of the Mindanao island and the whole of the Sulu archipelago, and impliedly a Christian dominated state covering the rest of the Luzon, Visayas and Mindanao archipelago. Naturally and necessarily, the fundamental provisions of the MOA-AD derogate against the national sovereignty, national territory and national patrimony of the present Philippine state as embodied in the present 1987 Constitution.

While there is essentially nothing wrong with advocating the establishment of a federal form of government, it is however peculiar and strange to note that the MOA-AD never used the term “federal” in the entire document. Instead, it focused on describing the numerous radical changes that would naturally or necessarily result from the contemplated revolutionary shift in the structure of the state and the government.

1 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008.
2 http://en.wikipedia.org/wiki/Unitary_state
3 http://en.wikipedia.org/wiki/Federation

# PART I: NORTH COTABATO V. GRP

In the case of *North Cotabato v. GRP*,[4] the Supreme Court by a slim majority vote of 8-7 held the MOA-AD as unconstitutional, while it justified its rendition of a ruling on the merits notwithstanding the evident mootness (after the Executive Secretary officially informed the Solicitor General that "no matter what the Supreme Court ultimately decides[,] the government will not sign the MOA[-AD]")[5] by invoking the doctrine of "capable of repetition yet evading review."[6]

Regarding the mootness of the petitions, in relation to the procedural doctrine of "capable of repetition yet evading review," the case of *North Cotabato* is possibly the only case in the judicial history of the modern world where an unsigned, unexecuted, imperfected and unequivocably scrapped agreement has been declared as unconstitutional. How in the world can a non-existent agreement in the form of a scrap of paper be violative of the fundamental law of the land? This incomprehensible aspect of the ruling is apart from the fatal "legal aberration," cited in the Dissenting Opinion of Justice Presbitero J. Velasco, Jr., where summons was inexplicably not served upon the MILF which is a real party in interest.[7]

As explained in the sober yet incisive Concurring and Dissenting Opinion of Justice Arturo D. Brion:

> 1. "Whether under the traditional or the expanded concept, judicial power must be based on an *actual justiciable controversy* at whose core is the existence of a case involving rights which are legally demandable and enforceable. Without this feature, courts have no jurisdiction to act. Even a petition for declaratory relief– a petition outside the original jurisdiction of this Court to entertain – must involve an actual controversy that is ripe for adjudication. In light of these requirements, any exception that this Court has recognized to the rule on mootness (as expressed, for example, in the cited *David v. Macapagal-Arroyo*) is justified only by the implied recognition that a continuing controversy exists.[8]
>
> 2. "The best example of the "capable of repetition yet evading review" exception to mootness is in its application in *Roe v. Wade,* the U.S. case where the American Supreme Court categorically ruled on the legal limits of abortion. Given that a fetus has a gestation period of only nine months, the case could not have worked its way through the judicial channels all the way up to the US Supreme Court without the disputed pregnancy being ended by the baby's birth. Despite the birth and the patent mootness of the case, the U.S. Supreme Court opted to fully confront the abortion issue because it was a situation clearly capable of repetition but evading review – the issue would recur and would never stand effective review if the nine-month gestation period would be the Court's only window for action.

4 Province of North Cotabato, et al, v. Government of the Republic of the Philippines, et al, G.R. No. 183591, 14 October 2008, J. Carpio Morales.
5 Memorandum of the Executive Secretary to the Solicitor General dated 28 August 2008, cited in North Cotabato supra page 29.
6 Id. page 30.
7 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Dissenting Opinion, J. Velasco, Jr., page 2.
8 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Concurring and Dissenting Opinion, J. Brion, page 3.

"In the Philippines, we have applied the "capable of repetition but evading review" exception to at least two recent cases where the Executive similarly backtracked on the course of action it had initially taken.

"The earlier of these two cases – *Sanlakas v. Executive Secretary* – involved the failed Oakwood mutiny of July 27, 2003. The President issued Proclamation No. 427 and General Order No. 4 declaring a "state of rebellion" and calling out the armed forces to suppress the rebellion. The President lifted the declaration on August 1, 2003 through Proclamation No. 435. Despite the lifting, the Court took cognizance of the petitions filed based on the experience of May 1, 2001 when a similar "state of rebellion" had been imposed and lifted and where the Court dismissed the petitions filed for their mootness. The Court used the "capable of repetition but evading review" exception "to prevent similar questions from re-emerging … and to lay to rest the validity of the declaration of a state of rebellion in the exercise of the President's calling out power, the mootness of the petitions notwithstanding."

"The second case … is *David v. Macapagal-Arroyo*. The root of this case was Proclamation No. 1017 and General Order No. 5 that the President issued in response to the conspiracy among military officers, leftist insurgents of the New People's Army, and members of the political opposition to oust or assassinate her on or about February 24, 2006. On March 3, 2006, exactly one week after the declaration of a state of emergency, the President lifted the declaration. In taking cognizance of the petitions, the Court justified its move by simply stating that "the respondents' contested actions are capable of repetition."...

"(T)he Court's actions in both cases are essentially correct because of the history of "emergencies" that had attended the administration of President Macapagal-Arroyo since she assumed office...

*"This kind of history or track record is, unfortunately, not present in the petitions at bar and no effort was ever exerted by the ponencia to explain why the exception should apply.* Effectively, the *ponencia* simply textually lifted the exception from past authorities and superimposed it on the present case without looking at the factual milieu and surrounding circumstances. Thus, it simply assumed that the Executive and the next negotiating panel, or any panel that may be convened later, will merely duplicate the work of the respondent peace panel.

"This assumption is, in my view, purely hypothetical and has no basis in fact in the way *David v. Macapagal-Arroyo* had, or in the way the exception to mootness was justified in *Roe v. Wade*... (T)he pronouncements of the Executive on the conduct of the GRP negotiating panel and the parameters of its actions are completely contrary to what the *ponencia* assumed."[9]

3. "Rather than complicate the issues further with judicial pronouncements that may have unforeseen or unforeseeable effects on the present fighting and on the solutions already being applied, this Court should exercise restraint as the fears immediately generated by a signed and concluded MOA-AD have been addressed and essentially laid to rest. Thus, rather than pro-actively act on areas that now are more executive than judicial, we should act with

9 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Concurring and Dissenting Opinion, J. Brion, pages 12-13.

calibrated restraint along the lines dictated by the constitutional delineation of powers."[10]

Regarding the constitutionality of the MOA-AD, the majority decision opined that the Governance provision[11] "is **inconsistent with the limits of the President's authority to propose constitutional amendments**, it being a virtual guarantee that the Constitution and the laws of the Republic of the Philippines will certainly be adjusted to conform to all the "consensus points" found in the MOA-AD. Hence, it must be struck down as **unconstitutional**."[12] Notably, this view or interpretation of the MOA-AD appears to have been shared even by some Justices who nonetheless voted for the dismissal of the petitions on procedural grounds.[13]

In any case, this paper disagrees.

Firstly, as held in the case of *Victoriano v. Elizalde*,[14] "(t)here are some thoroughly established principles which must be followed in all cases where questions of constitutionality as obtains in the instant case are involved. **All presumptions are indulged in favor of constitutionality**; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that **if any reasonable basis may be conceived which supports the statute, it will be upheld**, and the challenger must negate all possible bases; that **the courts are not concerned with the wisdom, justice, policy, or expediency of a statute**; and that a liberal interpretation of the constitution in favor of constitutionality of legislation should be adopted." (emphasis supplied)

Secondly, as ruled in the case of *Yu v. Trinidad*,[15] "(i)t may be said to an elementary, a fundamental, and a universal rule of construction, applied when considering constitutional questions, that **when a law is susceptible of two constructions one of which will maintain and the other destroy it, the courts will always adopt the former**. Whenever a law can be so construed to uphold it, it will be so construed although the construction which is adopted does not appear to be as natural as another construction." (emphasis supplied)

Thirdly, since the MOA-AD contains at least some *provisions that mandate compliance with the existing legal framework* (i.e. that "(t)he freedom of choice of the Indigenous people shall be respected;"[16] that "(v)ested property rights upon the entrenchment of the BJE shall be recognized and respected;"[17] that "the Government stipulates to conduct and deliver, using all possible legal measures … a plebiscite;"[18] that the establishment of the Bangsamoro Juridical Entity [BJE] is "subject to the

10 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Concurring and Dissenting Opinion, J. Brion, page 9.
11 "Any provision of the MOA-AD requiring amendments to the existing legal framework shall come into force upon signing of a Comprehensive Compact and upon effecting the necessary changes to the legal framework with due regard to non derogation of prior agreements and within the stipulated timeframe to be contained in the Comprehensive Compact."
12 Id. page 64.
13 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Separate Concurring and Dissenting Opinion, J. Leonardo-De Castro, page 2. North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Separate Opinion, J. Tinga, pages 13 and 21.
14 Victoriano v. Elizalde Rope Workers' Union, 59 SCRA 54, 13 September 1974, J. Zaldivar.
15 Yu Cong Eng v. Trinidad, 47 Phil. 385, 06 February 1925, J. Malcolm.
16 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Concepts and Principles.
17 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Concepts and Principles.
18 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Territory.

principles of equality of peoples and mutual respect and to the protection of civil, political, economic, and cultural rights;"[19] that "(t)he parties respect the freedom of choice of the indigenous peoples;"[20] that "(a)ny provision of the MOA-AD requiring amendments to the existing legal framework shall come into force … upon effecting the necessary changes to the legal framework;"[21]), in the face of the overwhelming pronouncements regarding "consensus points" involving revolutionary changes, then it necessarily follows that the rules of constitutional construction laid down in cases of *Victoriano v. Elizalde*[22] and *Yu v. Trinidad*[23] are squarely applicable to the case of *North Cotabato v. GRP*.[24]

Fourthly, since the MOA-AD recognized the need for "effecting the necessary changes to the legal framework,"[25] then it reasonably follows that the parties also acknowledged that the revolutionary concept of the BJE was inconsistent with the existing Constitution and the laws.

Fifthly, since the MOA-AD acknowledged the need "to conduct … plebiscite" by "using all possible legal measures,"[26] as well as the requirement for "effecting the necessary changes to the legal framework,"[27] but did not specify the manner by which such "plebiscite" will be conducted or such "necessary changes" will be effected, then it reasonably follows that the parties actually contemplated and purposely intended to follow the established processes for the constitution of autonomous regions[28] and for constitutional[29] and legislative[30] amendments under the "existing legal framework."

Sixthly, since the rules of evidence presume that "official duty has been regularly performed"[31] and that "the law has been obeyed,"[32] then it reasonably follows that the GRP or the President cannot be so lightly presumed to have intended the commission of patently unconstitutional acts beyond the lawful limits of its authority. In other words, instead of construing the MOA-AD as a "virtual guarantee" that the Constitution and the laws will be amended, it should have been more reasonably construed only as an undertaking to use "all possible legal measures," including the making of recommendations to Congress and the people, to effect the "necessary changes to the legal framework."

Seventhly, since as stated above the evidentiary rules presume that "official duty has been regularly performed"[33] and that "the law has been obeyed,"[34] then it also reasonably follows that the questioned clauses on non-derogation[35] should be more reasonably construed to mean only that the

---

19 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Territory.
20 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Governance.
21 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Governance.
22 Victoriano v. Elizalde Rope Workers' Union, 59 SCRA 54, 13 September 1974, J. Zaldivar.
23 Yu Cong Eng v. Trinidad, 47 Phil. 385, 06 February 1925, J. Malcolm.
24 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008.
25 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Governance.
26 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Territory.
27 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Governance.
28 1987 Constitution, Article X, Local Government, Section 18.
29 1987 Constitution, Article XVII, Amendments or Revisions.
30 1987 Constitution, Article VI, The Legislative Department.
31 Rules of Court, Rule 131, Section 3(m).
32 Rules of Court, Rule 131, Section 3(ff).
33 Rules of Court, Rule 131, Section 3(m).
34 Rules of Court, Rule 131, Section 3(ff).
35 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Territory, which provides as follows: "(w)ithout derogating from the requirements of prior agreements." GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Governance, which provides as follows: "with due regard to non derogation of prior agreements."

substance or content of the "necessary changes to the legal framework," which the GRP or the President has effectively undertaken to recommend to Congress and the people, should be consistent with the "consensus points" previously agreed upon by the parties. This is however understood to be without prejudice to the constitutional right of Congress and the people, to accept, modify or reject such recommendations emanating from the GRP or the President.

In sum, this paper believes that the judicially correct disposition of the case of *North Cotabato* should have been the dismissal of the petitions based on mootness as clearly explained in the Concurring and Dissenting Opinion of Justice Brion. Assuming for the sake of argument that the President acting through the Executive Secretary did not initiate and pronounce the unilateral scrapping of the MOA-AD by the GRP, and that therefore the petitions were not mooted, this paper nonetheless believes that the better view would have been to interpret the MOA-AD as merely an undertaking by the President to "effecting the necessary changes to the legal framework"[36], *in accordance with the processes and requirements mandated by the Constitution and the statutory laws*.

This opinion however does not necessarily mean that this paper agrees with the content, language and approach of the MOA-AD. The wisdom of the agreement is an entirely different matter,[37] separate and apart from the procedural rules and jurisprudence that should have governed the disposition of the case of *North Cotabato*. On the contrary, this paper almost entirely disagrees with the substance of the MOA-AD as more particularly explained below. While this paper feels saddened by the sudden derailment of the peace process, it cannot with all transparency sympathize with the loss of the MOA-AD. Instead, this paper takes counsel from the words of caution written by Justice Brion as follows:

> "*History teaches us that those who choose peace and who are willing to sacrifice everything else for the sake of peace ultimately pay a very high price; they also learn that there are times when violence has to be embraced and frontally met as the price for a lasting peace. This was the lesson of Munich in 1938 and one that we should not forget because we are still enjoying the peace dividends the world earned when it stood up to Hitler.* In Mindanao, at the very least, the various solutions to our multi-faceted problems should come in tandem with one another and **never out of fear of threatened violence**."[38]

36 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Governance.
37 Victoriano v. Elizalde Rope Workers' Union, 59 SCRA 54, 13 September 1974, J. Zaldivar.
38 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Concurring and Dissenting Opinion, J. Brion, page 9.

# PART II: DEFECTS AND REMEDIES RE MOA-AD

The MOA-AD and its underlying negotiation process certainly had its own merits, indicating at the very least the deep desire of the parties to achieve a just and lasting peace. Nonetheless, it also had its own demerits.

Since the MOA-AD has already been scrapped by the Office of the President,[39] and later declared null and void by the Supreme Court,[40] it is now imperative to look into the possible causes for its rejection by the people directly affected, as well as the possible measures to avoid the repetition of past mistakes in any future peace negotiations.

Based upon a review not only of the MOA-AD, but also of its underlying approach to the peace negotiations, the basic flaws that recur or stand out, and the pre-emptive and corrective measures that may possibly provide favorable results, appear to be the following:

1. It seeks to foster co-existence between the Muslim and Christian communities by institutionalizing the differences between them. Thus, *following the flawed approach of the 1987 Constitution*[41], the MOA-AD expressly seeks to establish a Muslim juridical entity or government authority known as the Bangsamoro Juridical Entity (BJE). Consequently although impliedly, it also sanctions the simultaneous establishment of a Christian juridical entity or government authority.

On the contrary, the parties should instead bring to the fore the commonalities between the warring communities. Where the differences between the communities cannot be avoided but must be confronted, best efforts should be exerted to explore the use of concepts and principles neutral to religion, to avoid suggestions or insinuations of a religious war. Thus, instead of referring to "Muslim Mindanao" or "Bangsamoro", the parties should instead refer to the same regions or juridical entities as "Sulu Region", "Maguindanao Region" or "Lanao Region" or "Sulu Regional Authority" or "Maguindanao Regional Authority" or "Lanao Regional Authority".

2. It leaves out of the negotiation process, the other real parties in interest, namely the Christian communities, the tribal communities, as well as the Muslim communities that do not identify themselves with the MILF. Necessarily, only the interests and grievances of the Muslim communities represented by the MILF are protected and addressed. The equally legitimate interests and grievances of the other equally important parties are sidelined.

Thus, to ensure that the prospective peace agreement will be anchored on solid ground, the other real parties in interest (left out in the MOA-AD negotiations) must be represented in any new GRP peace panel. In this regard, the new peace panel should explore all possible ways to accord the desired representation. For example, the Christian communities may be represented through their elected local chief executives who may then choose among themselves their common representative or nominee to the GRP negotiating panel. The tribal communities may at their option be represented by the national government office in charge of southern indigenous communities, or by an acceptable non-

39 Memorandum of the Executive Secretary to the Solicitor General dated 28 August 2008, cited in North Cotabato supra page 29.

40 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, J. Carpio Morales.

41 1987 Constitution, Article X, Sec. 15.

government organization, or by their tribal councils. The Muslim communities may at their discretion be represented by their elected local chief executives, or by the national government office in charge of Muslim affairs, or by an acceptable non-government organization, or by the southern sultanates.

3. Closely related to no. 2 above, or perhaps as a natural consequence thereof, the MOA-AD embodies a one-sided agreement in favor of the MILF, almost totally disregarding the equally legitimate interests of the Christian communities, tribal communities and Muslim communities not identified with the MILF. On hindsight, this lopsidedness apparently ensured the total and outright rejection of the MOA-AD by the other real parties in interest.

Thus, on one hand, the MOA-AD repeatedly pronounces the concededly legitimate right of self-determination and self-government of the "Bangsamoros", including the right to freely determine their political status and freely pursue their economic, social and cultural development, as well as the right against the dispossession of their lands, territories and resources. On the other hand however, the MOA-AD is conspicuously silent on the equally legitimate rights of the Mindanao tribal communities to their own self-determination and self-government[42], as well as their right against the dispossession of their ancestral lands which they occupied and possessed through indigenous custom since time immemorial[43]. It is also inexplicably silent on the equally legitimate rights of the Christian communities to peacefully establish human settlements in Mindanao, pursuant to and in accordance with the applicable laws[44].

In one notable instance of lopsidedness, the MOA-AD calls for the provision of "adequate reparation" to the Bangsamoros to compensate them for the "unjust dispossession of their territorial and proprietary rights".[45] The premise and conclusion of this supposed "consensus point" is erroneous and irrational.[46] If the dispossession arose from illegal land grabbing activities by the Christian groups (or business interests), then the fair and just remedy would be to restore the lands to the Muslim communities, and prosecute the guilty parties in accordance with the criminal laws. If however the dispossession (or perhaps marginalization) arose only from the peaceful establishment of settlements by migrant Christian communities pursuant to the public land laws[47], then the dispossession (or marginalization) cannot be deemed "unjust" so as to give rise to lawful demands for "adequate reparation". In other words, the performance of equally legitimate and unquestionably lawful acts cannot in fairness and justice form the basis of any claim for damages or reparation.

What about the dispossession of the settlements of the Christian settlers, and the villages of the tribal communities, brought about by the violence and intimidation employed by armed elements of the MILF and the Muslim communities? Should not the MILF and its constituency also provide for "adequate reparation" as a matter of fairness and justice?

At the end of the day, to enable the parties with equally legitimate grievances to move forward,

---

42 The Indigenous Peoples Rights Act of 1997, Rep. Act No. 8371. United Nations Declaration on the Rights of Indigenous Peoples, 07 September 2007.

43 Carino v. Insular Government of P.I., 41 Phil. 95. Aboag v. Director of Lands, 45 Phil. 18.

44 Public Land Act, CA No. 141.

45 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Territory.

46 Joint Statement of the Consensus Points of the Ancestral Domain aspect of GRP-MILF Tripoli Agreement on Peace dated 22 June 2001.

47 Public Land Act, CA No. 141.

all sides concerned must acknowledge that *outside the realm of evidently criminal activities, there lies a real conflict of equally legitimate rights and interests*. Thus, instead of making bold and one-sided pronouncements of "adequate reparation" for "unjust dispossession", the parties should instead humbly work on the sober and neutral "rehabilitation" of conflict areas. As the parties are fully aware, they can tap for this purpose not only Philippine government resources, but also the willing contributions of international organizations and third party states.

4. The MOA-AD adopts the false notion that the indigenous people or tribal communities are "Moros" or Muslims. It disregards the undeniable reality that upon the first establishment of human settlements in the Luzon, Visayas and Mindanao archipelago, there were no Muslims, no Christians, but only indigenous people who held animist beliefs. In other words, the animist indigenous peoples of time immemorial, as distinguished from the Islamized southern sultanates from the 13th century and onwards, constitute the true "First Nation" of the Luzon, Visayas and Mindanao archipelago. It will be a complete falsehood to say that the "Bangsamoros" comprised the "First Nation"[48]. Ironically, while the MOA-AD purports to derive legal authority from international instruments[49] and local laws[50] on indigenous peoples, it actually *violates its own cited sources of authority,* since "it erases by a mere declaration the identities, culture, customs, traditions and beliefs of 18 separate and distinct indigenous groups in Mindanao"[51].

At the end of the day, the classification of tribal communities as "Bangsamoros" is simply unacceptable and non-negotiable. It is a *deal breaker.*

5. Closely related to no. 4 above, or possibly as a natural consequence thereof, the MOA-AD distorts settled jurisprudence[52] which acknowledges the "native title" of "tribal communities" to their "ancestral lands" which they occupied and possessed through "indigenous custom" since "time immemorial". Briefly, the MOA-AD seeks to apply in favor of the "Bangsamoros", the doctrine of "native title" long held to be peculiar to the indigenous people or tribal communities, notwithstanding the obvious material differences in the factual settings between the two social groups. The reasons why this cannot be so are evident. Firstly, Islam (just like Christianity) is a "foreign religion" and NOT an "indigenous custom". Secondly, the Muslim communities (just like the Christian communities) are NOT "tribal communities". Rather, the Muslim communities were organized under sultanates. Thirdly, the establishment of villages or settlements by the tribal communities at a point in "time immemorial", ANTE-DATE the establishment of the southern sultanates during the 13th century at the earliest[53]. (In the same manner, the tribal communities ante-date the Spanish colonization of the islands starting in the 16th century.[54]) Notwithstanding the foregoing however, the MOA-AD nonetheless invokes the doctrine of "native title" in favor of the MILF constituency, based upon its prior declaration that the indigenous people are "Bangsamoros".

6. It acknowledges baseless claims to territorial waters and aerial domain. If it is any

48 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, J. Carpio Morales, page 15.
49 United Nations Declaration on the Rights of Indigenous Peoples, 07 September 2007. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
50 The Indigenous Peoples Rights Act of 1997, Rep. Act No. 8371.
51 North Cotabato v. GRP, et al, G.R. No. 183591, 14 October 2008, Concurring Opinion, J. Carpio, page 12.
52 Carino v. Insular Government of P.I., 41 Phil. 95. Aboag v. Director of Lands, 45 Phil. 18.
53 http://philippineatlas.com
54 http://philippineatlas.com

consolation, at least the MOA-AD limited its claims to the "atmospheric space"[55], and did not incorporate domain claims to outer space[56], based on a strained application of the doctrine of "native title" as in no. 5 above.

Regarding the source or basis of the claim to territorial waters and aerial domain, the MOA-AD notably refers to the "ancestral territoriality exercised originally under the suzerain authority of their sultanates" established in the 13th century at the earliest.[57] There is no showing however that the southern sultanates at that early time already claimed dominion over territorial waters and air space. On the contrary, the concept of territorial waters came about only in the 18th century among European and North American states, then set at 3 nautical miles (or 5.556 kilometers) which was the length of a cannon shot, hence a portion of the ocean that a sovereign state could defend from shore.[58] On the other hand, there is still no international agreement as of today on the vertical extent of sovereign airspace (the boundary between outer space - which is not subject to national jurisdiction - and national airspace), with suggestions ranging from the extent of the highest aircraft and balloons to the extent of the lowest short-term stable orbits.[59] In any case, whether it is about territorial waters or aerial domain, it is clear that there is no showing whatsoever that the southern sultanates had on their own at any point in time participated in these international developments.

Incidentally, by virtue of international law practice, claims to territorial sea have always been measured in terms of nautical miles (i.e. 12 nautical miles [equivalent to 22.224 kilometers]), rather than in kilometers which measure is not used in any law or treaty on the matter.[60] While the Philippine Fisheries Code of 1998 defines "municipal waters" in terms of kilometers (i.e. 15 kilometers),[61] the definition is made only in relation to the enforcement of "fishery laws, rules and regulations as well as valid fishery ordinances,"[62] and not with respect to the concept of territorial waters.

Regarding the implications of the claims to territorial waters and aerial domain, it is evident that these claims pose uncertainty to free maritime navigation and free air transportation.

In any case, even assuming for the sake of argument that the Philippines were a federal state with a component Bangsamoro state, dominion over the territorial sea and the aerial domain should naturally be vested with the federal state rather than with any of the component states. This is so because the Philippines is an archipelagic state. Accordingly, the "waters around, between, connecting

55 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Territory.

56 See Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. See http://en.wikipedia.org/wiki/Outer_Space_Treaty.

57 http://philippineatlas.com

58 http://en.wikipedia.org/wiki/Territorial_waters

59 http://en.wikipedia.org/wiki/Airspace

60 http://en.wikipedia.org/wiki/Territorial_waters

61 Republic Act No. 8550, Section 58, which provides: "*Municipal waters* -include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of the respective municipalities."

62 Republic Act No. 8550, Section 16.

the islands of the archipelago"[63] constitute a binding element of the Philippine national territory. Even in ancient times, the waters of the archipelago served to connect the islands,[64] as shown by the predominantly coastal settlements,[65] and the development and widespread use of outrigger boats known as *balangai.*[66]

7. The MOA-AD is clear about how the proposed Muslim juridical entity or government authority will derogate against the 1987 Constitution, but vague about the parties' compliance with existing constitutional processes in "effecting the necessary changes to the legal framework." While the instrument boldly proclaims the origin, the elements, characteristics, powers, functions and incidents of the proposed BJE, which in sum amount to the establishment of a sovereign component state of a larger federal state, the same instrument so coyly avoids making statements about the necessity for a constitutional amendment, to substitute the present unitary state with a proposed federal state. As noted above, the word "federal" does not appear in any provision of the MOA-AD. If the silence was actually deliberate, for the purpose of shielding the MOA-AD from the controversial issue of "charter change", it has now become evident that the deliberate silence did not serve its purpose.

Just like the baseless classification of tribal communities as "Bangsamoros," any suggestion or insinuation of non-compliance with the constitutional process in effecting changes is likewise unacceptable and non-negotiable. It is also a *deal breaker.*

(Incidentally, this brings to mind the unacceptable conduct of the Malaysian government, acting through its official representatives, in questioning the legal necessity for compliance with the constitutional processes in effecting changes. It was a most unfortunate and regrettable situation, which achieved nothing but to open old wounds between old enemies struggling to be friends. To ensure that this "derogatory" behavior will never be repeated, any new negotiations between the parties should no longer involve Malaysia in any leading capacity.)

63 1987 Constitution, Article I.

64 http://www.philippineatlas.com/ancient-archipelago/chinese-influence.html. Barangay - Sixteenth-Century Philippine Culture and Society, William Henry Scott, Page 5 (1994).

65 Barangay - Sixteenth-Century Philippine Culture and Society, William Henry Scott, Page 5 (1994).

66 Barangay - Sixteenth-Century Philippine Culture and Society, William Henry Scott, Page 4-5 (1994).

# PART III: PROPOSED CONSENSUS POINTS RE NEW PEACE AGREEMENT

Notwithstanding the unfortunate developments that led to the scrapping of the MOA-AD and the scuttling of peace negotiations, hope springs eternal for those who seek to achieve a just and lasting peace, guided only by the standard of the common good for all the people concerned.

In this regard, this paper recommends the development, negotiation and conclusion of the following proposed consensus points:

1. Delimitation of the homeland and settlements of the various ethnic groups (i.e. Iranun, Maguindanao, Maranao, Samal, Tausug, Yakan, etc.) the majority of whom has embraced Islam.- Acknowledging the basic Concepts and Principles of the MOA-AD, this paper believes that the establishment of a homeland and other territories will serve to "secure (the) identity and posterity (of the ethnic groups), to protect their property rights and resources, as well as to establish a system of governance suitable and acceptable to them as a distinct dominant people."[67]

In this regard, this paper proposes the classification of ethnic territory into at least two (2) categories.

The first category would be the core territory. This would cover the provinces and cities of the present Autonomous Region for Muslim Mindanao (ARMM). It may include the municipalities of Lanao del Norte that voted for inclusion into the ARMM, together with the municipalities of Maguindanao that voted to constitute themselves into a new province Shariff Kabunsuan (which constitution was subsequently voided by the Supreme Court[68]), provided that these municipalities constitute themselves into new provinces, subject to compliance with the requirements of the 1987 Constitution[69] and the Local Government Code of 1991.[70] It may also possibly include Lanao del Norte, Sultan Kudarat, Cotabato City and Iligan City, again subject to compliance with the constitutional and statutory requirements.

In any case, it is important to note that the constitutional and statutory requirements for the delimitation and realignment of territory may substantially and materially differ, depending on whether the purpose is for national government administration (at the regional level), local government jurisdiction (at the same regional level), or constitution of a component state in a larger federal state again (at the equivalent regional level). Among all the legal requirements, the most sensitive or critical appears to be the matter of a plebiscite. In this regard, a material differentiation of the plebiscite requirement may be summarized as follows:

(a) For purposes of exercising national executive functions at the regional level, provinces and cities may be covered, *without need for any plebiscite,* at the reasonable discretion of the President through the issuance of an executive order, or by action of Congress through legislative enactment,

67 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Concepts and Principles.
68 Sema v. Comelec, G.R. No. 177597, 16 July 2008, J. Carpio.
69 1987 Constitution, Article X, Section 10 re voting and statutory requirements .
70 Local Government Code, Rep. Act No. 7160, Section 460-461 re voting, income, territorial and population requirements.

subject only to appropriate justification based on geography and demography.

(b) For purposes of establishing a local government unit at the regional level, the inclusion of provinces or cities must be approved by the people affected in a *plebiscite* conducted in accordance with the 1987 Constitution.[71]

(c) For purposes of constituting a component state under a federal set-up, the necessary amendments or revisions to the Constitution must be approved by the requisite majority of all the people in a *plebiscite* for the purpose.[72]

The second category would be the extended territory. This would cover the rest of the Mindanao island group (that fall outside of the core territory), the province of Palawan and possibly other provinces administratively grouped with Palawan (i.e. Marinduque, Mindoro, Romblon). The necessity of a plebiscite for the establishment of this extended territory will again depend on whether the territorial delimitation is for purposes of national government administration, establishment of a local government unit, or constitution of a component state under a larger federal state.

At the option of the negotiating parties, there may also be a third category for ethnic settlements. This would cover *barangays* located in provinces and cities in the Visayas and Luzon island groups, but otherwise excluded from the second category, where a majority or possibly a reasonably significant percentage of the local population, is comprised of any or a combination of the ethnic groups described above.

2. Establishment of regional government offices for the various ethnic groups (i.e. Iranun, Maguindanao, Maranao, Samal, Tausug, Yakan, etc.) the majority of whom has embraced Islam.- Following the fundamental Concepts and Principles of the MOA-AD, this paper submits that the establishment of a strong regional office or authority under the national government will serve "to establish a system of governance suitable and acceptable to (the ethnic groups) as a distinct dominant people."

While this paper acknowledges that there are at least two other legal options to institutionalize regional governance, involving the alternative establishment of either: (a) a regional government in the form of a local government unit (such as the ARMM) under a unitary state set-up, vested with both local executive and local legislative powers; or (b) a state government of a component state under a larger federal state, vested with both state executive and state legislative powers; this paper is convinced that the best option at this time is a national government instrumentality[73] with full national executive powers coupled with limited territorial or regional jurisdiction.[74]

Firstly, the establishment of a national government instrumentality does not require the conduct

71 1987 Constitution, Article X, Section 18.

72 1987 Constitution, Article XVII, Section 4.

73 Administrative Code of 1987, Section 2(10).- "*Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This terms includes regulatory agencies, chartered institutions and government owned-owned or controlled corporations."

74 The Semi-Federal Alternative, Demosthenes B. Donato, 01 October 2002 (revised 17 January 2008). http://www.deszr.com/archives.htm

of a plebiscite. Accordingly, its creation may be lawfully committed by the GRP to the extent that it involves only the exercise of national executive powers, such as the issuance of executive orders and the submission of recommendations to Congress and the people.

Secondly, a national government instrumentality may generally be vested with full national executive powers, including the powers presently held by the line department secretaries. This is however understood to be without prejudice to constitutional powers of control and supervision vested with the President.[75]

Thirdly, the national government instrumentality contemplated will generally not require any additional substantial budgetary allocation. This is because it will only assume full control and supervision of the existing regional offices of the line departments that may be covered, and exercise the present powers of the line department secretaries. Thus, the only additional funding that may be required will be for the operations of the governing board and the secretariat.

Fourthly, the national government instrumentality contemplated will not create another layer of legislation. This approach therefore purposely and systematically avoids the unavoidable complication of the legislative system, if we were to create a new local government unit with a local legislative council (at the regional level) under a unitary state set-up, or a component state with a state legislature (at a similar regional level) under a federal state set-up. At the moment, we already have too much politics by simply having two separate chambers for the legislative branch of government.[76] Imagine the magnitude of politics that may be spawned if in addition to the two existing chambers, we also create regional legislative councils or state legislatures all throughout the Luzon, Visayas and Mindanao archipelago.

In consideration of the foregoing, this paper proposes that the powers, functions, territorial coverage and management organization of the proposed regional government office should depend on the category covered.

For the core territory under the first category, the *regional government office* may as a provisional measure be *initially created by the Office of the President* through the issuance of an executive order, as a national executive office (following, expanding and strengthening the concept of the Area Development Project Office[77] previously known as the Integrated Area Development Project Office[78]).

Consistent with the observation and recommendation above that "best efforts should be exerted to explore the use of concepts and principles neutral to religion, to avoid suggestions or insinuations of a religious war," three separate ethnic based regional government offices are proposed to be created, as follows:

---

75 1987 Constitution, Article VII, Section which provides: "The executive power shall be vested in the President of the Philippines."

76 American Bicameralism not Applicable to the Philippines, Demosthenes B. Donato, 30 November 2007 (revised 17 January 2008). http://www.deszr.com/archives.htm

77 See Executive Order No. 474 dated 12 August 1991 re South Cotabato/General Santos City Area Development Project Office.

78 See Executive Order No. 363 dated 17 July 1989 re Integrated Area Development Project Office.

(a) Lanao Regional Office (initially covering Lanao del Sur, and the municipalities of Lanao del Norte that previously voted for inclusion to the ARMM, provided that these municipalities constitute themselves into a new province);

(b) Maguindanao Regional Office (initially covering Maguindanao, and some of its municipalities that comprised the former Shariff Kabunsuan, provided that these municipalities reconstitute themselves into a new province);

(c) Sulu Regional Office (covering Basilan, Sulu and Tawi-Tawi).

For purposes of administrative control and supervision, the regional government office would be placed under the Office of the President. In compliance with the constitutional allocation and vesting of executive powers, it will be subject to the direct and ultimate control and supervision of the President, in the same manner and to the same extent that the present line department secretaries are subject to presidential control and supervision.[79]

To ensure that the regional government offices concerned will be of the ethnic groups, by the ethnic groups and for the ethnic groups, special organization mechanisms and qualification requirements may be incorporated into the executive order. Thus, a given regional government office may be set-up under the control and supervision of a board comprised of possibly a maximum of fifteen (15) members.[80] At least a simple majority or perhaps a higher qualified majority of the board, would have to come from the ethnic group concerned.

Accordingly, *special qualifications* may be imposed for a certain *minimum number of members* comprising a *majority of the board*, such as the following:

(a) that the nominee was born in _____ (province or city covered by the region);

(b) that the nominee resided in _____ (province or city covered by the region) for the past _____ (i.e. 5 or 10 years);

(c) that the parents of the nominee complies with (a) and/or (b) or both;

(d) that the children of the nominee complies with (a) and/or (b) or both; and

(e) that the nominee can speak, read and write (using the Roman alphabet and Arabic numerals), the vernacular or local language or languages of the _____ (i.e. Iranun, Maguindanao, Maranao, Samal, Tausug, Yakan, etc.) generally used in the region.

Furthermore, to address the probable concerns of the MILF constituency about the religious affiliation of the board members, the parties may consider the inclusion of a religion related qualification. Nonetheless, to avoid or at least lessen the legal risk of a possible taint of unconstitutionality, in view of the principle of separation of church and state[81], it is suggested that any religion related qualification be couched in terms of knowledge rather than belief. Thus, a sixth qualification may be as follows:

---

79 1987 Constitution, Article VII, Section 1.

80 See Corporation Code, Sections 10 and 14(6).

81 1987 Constitution, Article II, Section 6 and Article III, Section 5. Article II, Section 6 provides: "The separation of church and state shall be inviolable." Article III, Section 5 provides: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights." (underscoring supplied)

(f) that the nominee has a reasonable grasp and knowledge of Islam, to facilitate the interface with the local ethnic communities.

Finally, to address the concerns of the MILF for active participation in the organization and administration of the regional government office, the parties may agree upon a seventh qualification, although preferably on a temporary basis to avoid the permanent exclusion of non-MILF nominees, as follows:

(g) for the first _____ (i.e. 5 or 10 years ) after the creation of the regional government office, that the nominee shall be recommended by the MILF.

To ensure the permanence, budgetary support and operational autonomy of the regional government office (initially created through executive order as described above), a chartered institution in the form of a *regional government authority*[82] may *subsequently be created by Congress* through legislative enactment as successor-in-interest of the regional office. As chartered institutions, the former regional government offices may then be known as follows: Lanao Regional Authority, Maguindanao Regional Authority and Sulu Regional Authority.

For purposes of administrative control and supervision, the regional government authority would also be placed under the Office of the President. Again in compliance with the constitutional allocation and vesting of executive powers, it will also be subject to the direct and ultimate control and supervision of the President, in the same manner and to the same extent that the present line department secretaries are subject to presidential control and supervision.[83]

In any case, it is understood that the powers, functions, special qualifications and other incidents of the new instrumentality[84] would substantially incorporate the terms of reference of the original unincorporated regional government office. In the words of the MOA-AD, the successor regional government authority should be created "without derogating from the requirements of the prior agreements"[85] or "with due regard to non-derogation of prior agreements"[86] relating to the prior establishment of the predecessor regional government office.

For the extended territory under the second category, taking into consideration the demographic reality that they are now predominantly occupied by other ethnic groups (i.e. Cebuano, Boholano, Ilonggo, Waray, Tagalog, Ilocano, Pangasinan, Kapampangan, etc.) who have embraced Christianity and form part of the mainstream of society, this paper believes that their possible coverage under a new regional government structure should be prudently limited only to inclusion under a national government instrumentality. In other words, the social reality in the extended territory by itself provides an adequate ground for its exclusion from any expansion of the present ARMM, establishment of any new local government unit at the regional level, or constitution of a component state in a larger federal state.

In this regard, the proposed regional government offices/authorities for the extended territory,

82 The Semi-Federal Alternative, Demosthenes B. Donato, 01 October 2002 (revised 17 January 2008). http://www.deszr.com/archives.htm

83 1987 Constitution, Article VII, Section 1.

84 Administrative Code of 1987, Section 2(10).

85 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Territory.

86 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Governance.

would also be established in the same manner and vested with the same executive powers as provided above for the proposed national government instrumentality with territorial jurisdiction over the core territory.

Following the observation and recommendation above that "best efforts should be exerted to explore the use of concepts and principles neutral to religion, to avoid suggestions or insinuations of a religious war," the regional government offices or authorities proposed to be created for the extended territory may for example be as follows: Davao Regional Office/Authority, CARAGA Regional Office/ Authority, Cotabato Regional Office/Authority, MIMAROPA Regional Office/Authority, Northern Mindanao Regional Office/Authority, and Zamboanga Regional Office/Authority.

The *critical difference* between the regional offices/authorities in the extended territory as compared to those in the core territory, will be that the *minimum number of board seats* reserved for the *ethnic groups* (i.e. Iranun, Maguindanao, Maranao, Samal, Tausug, Yakan, etc.), will be in the *minority* and no longer the majority. The minority representation here may possibly be in direct proportion to the population of these ethnic groups in relation to the total population of the region concerned, based on the latest demographic data that may be provided by the National Statistics Office.

For the ethnic settlements under the third category, these territories would no longer fall under the jurisdiction of any new regional government office or authority that may be created pursuant to the peace agreement. Nonetheless, this paper suggests as a complimentary activity to the peace negotiations over the core and extended territories, the formulation and adoption by the parties of economic and social packages to promote the general welfare of the ethnic groups (i.e. Iranun, Maguindanao, Maranao, Samal, Tausug, Yakan, etc.) in the ethnic settlements. This activity would be significant in showing that the Muslim communities have the equally legitimate and lawful right to establish their own peaceful settlements; that they are free to practice and propagate their religion of Islam; and that they are entitled to preserve and develop their rich culture; in any place of their choice within the entire Luzon, Visayas and Mindanao archipelago.

3. Delegation of full executive powers to the regional government office/authority.- As provided in the Concepts and Principles of the MOA-AD, this paper believes that the delegation of full executive powers to the regional government office/authority under the national government will serve to secure the "posterity (of the ethnic groups), (and) to protect their property rights and resources."[87]

In this light, this paper proposes the delegation by the Office of the President of full executive powers in favor of the regional government office/authority, to authorize and regulate the exploration, development and utilization of all natural resources that belong to the State, including "(a)ll lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources,"[88] *within the framework of the Constitution and subject to the national sovereignty, national territory and national patrimony of the democratic, republican, archipelagic, dominium and unitary state*.

In drafting the executive orders and legislative bills for this purpose, it is suggested that the

87 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Concepts and Principles.
88 1987 Constitution, Article XII, Section 2.

language of the present administrative laws governing fisheries and aquatic resources,[89] forests,[90] lands,[91] mines,[92] protected areas and wildlife,[93] and energy resources,[94] be closely reviewed for possible *verbatim* adoption to the full extent applicable, and thereby minimize if not eliminate any legal doubt as to the extent of the intended full delegation.

In addition to the executive powers described above, it is also recommended that the executive powers presently held by the other department secretaries and their respective line departments, involved in the delivery of economic and social services, be similarly delegated in full to the regional office/authority.[95]

It is furthermore recommended, that the regional office/authority will be granted rule-making powers, for purposes of internal administration and the exercise of territorial jurisdiction, similar to the prevailing practice of the existing special economic and freetrade zones.[96]

However, notwithstanding the proposed delegation of general rule-making powers, it is suggested that the authority to issue *specialized* implementing rules and regulations for the specific *line activities* ordinarily performed by the line departments, be retained and centralized with the respective Department Secretaries. This is to avoid the fragmentation and complication of administrative rules, which may later develop into regulatory barriers to economic activities (i.e. investments, production, employment, consumption, taxation, etc.) that we are trying so hard to encourage. As we all know, if the regulatory environment eventually becomes mired with conflicting rules and regulations, this will in due course cause grave prejudice not only to the ethnic groups concerned but to all the people of the entire archipelago. This suggested centralization and standardization of specialized implementing rules and regulations, is in fact the prevailing law and the practice of the existing special economic and freetrade zones.[97] Learning from their experience, we can actually have the best of both worlds, i.e. uniform, standardized and simplified laws and rules for the *specialized line activities* applicable to the entire archipelago, and localized or fully decentralized implementation and execution.

4. Creation of special economic and cultural offices to promote regional government interests.- Consistent with the manifested desire of the ethnic groups to enter into "economic cooperation and trade relations with foreign countries,"[98] this paper submits that the creation of special economic and cultural offices under the national government to promote the interests of the regional government office/authority, will serve the purpose.

In view of the highly specialized and sensitive nature of foreign affairs, it is suggested that the economic and cultural offices, missions, attaches, delegations that may be created for the promotion of , regional government interests, be placed under the control and supervision of the Department of

89 Administrative Code of 1987, Executive Order No. 292, Book IV, Title IV – Agriculture.
90 Administrative Code of 1987, Executive Order No. 292, Book IV, Title XIV – Environment and Natural Resources.
91 Administrative Code of 1987, Executive Order No. 292, Book IV, Title XIV – Environment and Natural Resources.
92 Administrative Code of 1987, Executive Order No. 292, Book IV, Title XIV – Environment and Natural Resources.
93 Administrative Code of 1987, Executive Order No. 292, Book IV, Title XIV – Environment and Natural Resources.
94 Department of Energy Act of 1992, Republic Act No. 7638.
95 The Semi-Federal Alternative, Demosthenes B. Donato, 01 October 2002 (revised 17 January 2008). http://www.deszr.com/archives.htm
96 Bases Conversion and Development Act of 1992, Republic Act No. 7227, Section 14(a).
97 Bases Conversion and Development Act of 1992, Republic Act No. 7227, Section 13(3) and (9).
98 GRP-MILF Memorandum of Agreement on Ancestral Domain of 2008, Resources.

Foreign Affairs.[99]

To ensure that the specialized foreign affairs offices will be representative of the ethnic groups, it is recommended that the organization mechanisms and qualification requirements applied to the board members of regional government office/authority as described in no. 2 above, should similarly be applied to the organization of the said offices.

5. Adoption of new name for the country[100].- It is of common knowledge that the word "Philippines" is derived from the name Philip II, the King of Spain in the late 16th century.[101] The word thus connotes political subjugation by the Spanish colonizers and religious conversion by the Spanish friars. This being the case, it is not difficult to understand why the Muslim and tribal communities have no close affinity to the word "Philippines."[102] On the contrary, the reality is that the word "Philippines" callously disregards their strong cultural identity and long history of successful resistance against the Spanish colonizers and friars.

In fairness to the other ethnic communities (i.e. Cebuano, Boholano, Ilonggo, Waray, Tagalog, Ilocano, Pangasinan, Kapampangan, etc.) of the Luzon and Visayas island groups, who were colonized and converted to Christianity, the success of the Muslim and tribal communities in resisting colonization and conversion, does not necessarily mean the failure of the other communities.

Firstly, the other ethnic communities were not Muslims.[103] Thus, they had no strong reason to resist or reject conversion to Christianity. In fact, many ethnic communities freely converted to Christianity as part of new alliances forged with the Spanish colonizers.[104]

Secondly, the dispersed ethnic communities were politically independent, and sometimes even antagonistic, of each other.[105] They owed no loyalty to any singular unifying political leader, such as a sultan.[106] Thus, they had no organized military alliance or power necessary to defeat the technologically superior foreign colonizer.

Thirdly, the ethnic communities of Luzon and Visayas had a long history of slave raids from the southern communities based in Sulu and Mindanao.[107] Hence, they had a natural aversion to any alliance with these communities.

Fourthly, the Christianized ethnic communities, under the leadership of General Emilio Aguinaldo, actually fought and won a revolutionary war against the Spanish colonizers and friars, and successfully declared independence on 12 June 1898. While this uprising came centuries after the

---

99 Administrative Code of 1987, Executive Order No. 292, Book IV, Title I–Foreign Affairs.

100 1987 Constitution, Article XVI, Section 2 which provides: "The Congress may, by law, adopt a new name for the country, a national anthem, or a national seal, which shall be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum."

101 http://www.philippineatlas.com/

102 Barangay - Sixteenth-Century Philippine Culture and Society, William Henry Scott, Page 7 (1994).

103 http://www.philippineatlas.com/

104 http://www.philippineatlas.com/ancient-archipelago/toponyms-of-the-land.html

105 http://www.philippineatlas.com/

106 http://www.philippineatlas.com/

107 http://www.philippineatlas.com/people-and-places/ethnic-blends-and-variations.html. Barangay - Sixteenth-Century Philippine Culture and Society, William Henry Scott, Page 175 (1994).

southern Muslim communities first waged their own war of resistance against the Spanish colonizers, it was also a feat by itself. The Christian revolutionaries successfully established the first Philippine republic (although it was internationally unrecognized), and their military defeat of the Spanish forces was probably the first victorious military campaign by an Asian army against a European army in modern times.[108]

In any case, the previously separate paths of the Muslim, Christian and tribal communities, have now been joined, under a new republic known as the Philippines. In this context, this paper believes that all of the people of the Luzon, Visayas and Mindanao archipelago should henceforth join forces in completing the long journey in search of a common identity.

Acknowledging that the desired adoption of a new name for the country to replace the word "Philippines" will entail highly contentious (and sometimes senseless) debates, this paper will not recommend any specific name. Instead, this paper will only suggest for possible inclusion in the debate, the following words:

(a) "Ma-i" which is the recorded Chinese name for the islands, possibly referring to Manila,[109] so that the country would be known "Republika ng Ma-i" and the citizens as "Mamamayan"; and

(b) "Bayan" which is the generic name for country, so that the state would be known as "Republika ng Bayan" and the citizens as "Kababayan".

Considering that an essential component of any new peace agreement would be the establishment of internal security forces based in the core or extended territories of the ethnic communities concerned, possibly involving the integration of MILF fighters into the local police forces, national police forces, citizens armed forces geographical units, regular military forces, and internal security forces, this paper will also suggest for possible consideration the renaming of the various armed forces components or units, while retaining the present acronyms which have gained general acceptance, as follows:

(a) PA as "Pambansang Army" instead of Philippine Army,
(b) PN as "Pambansang Navy" instead of Philippine Navy,
(c) PMC as "Pambansang Marine Corps" instead of Philippine Marine Corps,
(d) PAF as "Pambansang Air Force" instead of Philippine Air Force,
(e) PMA as "Pambansang Military Academy" instead of Philippine Military Academy,
(f) AFP as "Armed Forces Pambansa" instead of Armed Forces of the Philippines,
(g) PCG as "Pambansang Coast Guard" instead of Philippine Coast Guard.

6. Grant of titles of royalty to the southern sultanates[110].- It is generally known that establishment of the southern sultanates in the islands began with the Sultanate of Sulu in the 13th century, and later followed by the Sultanate of Maguindanao and the Sultanate of Lanao. It is also known that these sultanates were highly developed political institutions which held the powers and embodied the characteristics of a modern state. Thus, the gracious reality is that these *southern sultanates form part of the proud history and cultural heritage of the country.*

---

108In the Russo-Japanese War, where the Japanese (Asian military) emerged victorious over the Russians (European military), transpired in 1904-05. http://en.wikipedia.org/wiki/Russo-Japanese_War.

109http://www.philippineatlas.com/ancient-archipelago/toponyms-of-the-land.html

1101987 Constitution, Article VI, Section 31 which provides: "No law granting a title of royalty or nobility shall be enacted."

Unfortunately for us, our past and present Constitutions have been burdened with proscriptions against the recognition of royalty, as purportedly prescribed by some puritan democratic and republican teachings of the Western world. Our framers so sadly ignored the experience of leading first world nation states, such as the United Kingdom and Japan, that have zealously and successfully preserved their royal history as they continue to conduct state affairs through their modern democratic institutions. Without anyone howling in protest, an overwhelming majority of the people have since acquiesced to the disparaging suppression of our own cultural heritage.

In deep acknowledgement of this constitutional and cultural anomaly, this paper calls for the proposition and approval of constitutional amendments, and later for legislative enactment, to reverse the policy against the recognition of the royal houses of the southern sultanates, and instead mandate their recognition *within the framework of the Constitution and subject to the national sovereignty, national territory and national patrimony of the democratic, republican, archipelagic, dominium and unitary state*.

(Incidentally, the legal recognition of the southern sultanates, specifically the Sultanate of Sulu, should work to strengthen its proprietary claims against Malaysia for the perpetual lease of Sabah. It should also strengthen the sovereign claim of the Republic of the Philippines against Malaysia for the territory of Sabah. While this paper does not advocate the aggressive pursuit of the sovereign claim, taking into consideration the political, economic and social realities now prevailing in Sabah, it nonetheless believes that this prospective development should serve Philippine sovereign interests for at least a limited extent. It will remind Malaysia that all is not well in Sabah, and that therefore their representatives should conduct themselves prudently the next time they interface with this country in relation to Mindanao affairs.)

7. Establishment of internal security forces under the regional government office/authority based in the core territory of the various ethnic groups (i.e. Iranun, Maguindanao, Maranao, Samal, Tausug, Yakan, etc.) the majority of whom has embraced Islam.- Based on the generally accepted principles of international law, "(t)he most fundamental among all the rights of a State is the right of existence."[111] "Closely related to the right of existence is the right of self-defense."[112] Applying these principles by analogy, this paper submits that the most important rights of the ethnic groups are their rights to exist and to self-defense. Regardless of what others may say, these rights in principle are *non-negotiable*. The only other matter that should be subject to further negotiations would be the mechanics for the implementation of these rights.

In this regard, this paper submits that the mechanics should include but not be limited to the following: retention of ownership, possession and licensing of certain classes of firearms as provided by the applicable laws; permits to carry firearms within the *barangay*, municipality, city, province, region as provided by the applicable laws; number, allocation and enrollment of integrees; qualification and training of integrees; turn-over of excess or excluded firearms and heavy weaponry (i.e. rocket-propelled grenades, mortars, etc.) to the appropriate government agencies (which may include the regional government office/authority); integration with the appropriate armed forces components, national police units, local police units, or internal security forces of the regional government office/authority; establishment of citizens armed forces geographical units for community defense; deputization of *barangay tanods* for local peace and order; establishment of reserve or auxiliary

111Public International Law, Jorge R. Coquia, Page 180 (1984).
112Id.

commands to provide assistance to the regular military and police forces; decommissioning of independent military or para-military commands; oath taking to the Constitution.

In view of the foregoing, the parties may consider for adoption, the formula and experience of the Moro National Liberation Front (MNLF), as well as of the Cordillera People's Liberation Army (CPLA), in the integration of their forces with the regular or reserve components of the Armed Forces of the Philippines, and with the Philippine National Police and the local police agencies.

The parties may also consider the mechanics and experience of the governing authority of the special economic and freeport zones, such as the Subic Bay Metropolitan Authority and the Philippine Economic Zone Authority, which entities have been authorized by law to establish their own "internal security forces."[113]

Finally, there is the experience of the ARMM in the organization, maintenance, supervision and utilization of local police agencies as provided by the Constitution.[114]

**Additional Proposed Consensus Points**

Upon the request of the MILF, and subject to the concurrence by resolution of the city or municipal council concerned, and of the regional government office or entity that may be established, the GRP may likewise undertake to recommend to Congress, and also to the people where Constitutional amendments or revisions are required, the following reform measures:

1. The exclusion of the core territory from the application of all the provisions of the 1987 Constitution which impose nationality requirements for economic and social activities, and for property holdings, as indicated in List A of the Foreign Investment Negative List issued under the Foreign Investment Act of 1991,[115] in order to promote beneficial foreign investments, break the entrenched monopoly or oligopoly of family based local vested interests, and promote a level field of free business competition, subject to the further concurrence of the National Economic Development Authority

113 Bases Conversion and Development Act of 1992, Republic Act No. 7227, Section 12(h) which provides: "The defense of the zone and the security of its perimeters shall be the responsibility of the National Government in coordination with the Subic Bay Metropolitan Authority. The Subic Bay Metropolitan Authority shall provide and establish its own internal security and firefighting forces."
The Special Economic Zone Act of 1995, Republic Act No. 7916, as amended by Republic Act No. 8748, Section 9 which provides: "The defense of the ECOZONE and the security of its perimeter fence shall be the responsibility of the National Government in coordination with the PEZA. Military forces sent by the national government for the purpose of defense shall not interfere in the internal affairs of any of the ECOZONE and expenditure for these military forces shall be borne by the national government. The PEZA may provide and establish the ECOZONE's internal security and firefighting forces."

1141987 Constitution, Article X, Section 21 which provides: "The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the national government." 1987 Constitution, Article XVI, Section 4 which provides: "The armed forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve as may be provided by law. It shall keep a regular force necessary for the security of the State." 1987 Constitution, Article XVI, Section 6 which provides: "The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law.

115 Republic Act No. 7042, as amended by Republic Act No. 8179.

(NEDA);

2. The exclusion of the core territory from the application of all national statutes which impose nationality requirements for economic and social activities, and for property holdings, as indicated in Lists A and B of the Foreign Investment Negative List issued under the Foreign Investment Act of 1991,[116] in order to promote beneficial foreign investments, break the entrenched monopoly or oligopoly of family based local vested interests, and promote a level field of free business competition, subject to the further concurrence of the NEDA;

3. The creation of a special economic and freeport zone covering either the entire Sulu archipelago, consisting of the island groups of Basilan, Sulu and Tawi-Tawi, or a portion or portions thereof,[117] in order to promote massive international trade and investments within the geographical area, and fast-track its social and economic development, subject to the further concurrence of the Department of Finance (DoF);

4. The exclusion of the core territory from the application of the minimum wage law,[118] in order to promote full employment, without prejudice to the application of all the other labor laws and social legislation, subject to the further concurrence of the Department of Labor and Employment (DOLE);

5. The exclusion of the core territory from the application of the provisions on retention limits, transfer restrictions, and compulsory acquisition under the agrarian reform laws,[119] in order to promote massive investments in agriculture, avail of economies of scale in food production, and enhance food security, without prejudice to application of all the other agrarian laws and programs, subject to the further concurrence of the Department of Agrarian Reform (DAR);

6. The enactment of a separate and simplified local government code applicable to the provinces, cities, municipalities and *barangays* of the core territory, subject to the further concurrence of the Department of Interior and Local Government (DILG), which shall:

(a) strengthen the political capability of local government units by merging the office of the local chief executive with the local legislative council,[120]

(b) avoid the concentration of political executive power in one individual, by vesting executive power in a collegial body, which for purposes of the exercise of executive power shall elect from among themselves a local chief executive who shall serve upon their trust and confidence;[121]

(c) eliminate the bias for "rich" and "famous" local candidates by replacing direct elections with indirect elections for local chief executive, where the voters elect only the council members, and the

---

116 Republic Act No. 7042, as amended by Republic Act No. 8179.

117 See Bases Conversion and Development Act of 1992, Republic Act No. 7227, re Subic Special Economic and Freeport Zone.

118 Wage Rationalization Act , Republic Act No. 6727.

119 Comprehensive Agrarian Reform Law of 1988, Republic Act No. 6657, as amended by Republic Act Nos. 7881, 7905 and 8532, Sections 4, 5, 6, 7, 8, 14, 15, 16, 17, 18, 27, 70, 71, 75. Presidential Decree No. 27, 21 October 1972. Presidential Decree No. 266, 04 August 1973.

120 *See by analogy* Three Basic Advantages of the Unicameral Parliamentary System, Demosthenes B. Donato, 30 November 2007. *See by analogy* American Presidentialism not Applicable to the Philippines, Demosthenes B. Donato, 30 November 2007. http://www.deszr.com/archives.htm

121 *See by analogy* The Proposed Revision of the 1987 Constitution by the Consultative Commission, Article VII, Section 1 which provides: "The legislative and executive powers shall be vested in a unicameral parliament except to the extent as otherwise provided in this Constitution." (underscoring supplied)

council members elect from among themselves the local chief executive;[122]

(d) strengthen local government autonomy by empowering the local legislative councils with wide discretion to determine and create the various executive positions that may be suitable for local governance, providing only for the minimum mandatory positions of local chief executive, treasurer and secretary;[123]

(e) simplify the classification of cities, by eliminating the difference between component cities and highly urbanized cities, so that there shall only be one class of cities which shall be independent of the province;[124]

(f) change the title of the *barangay* chief executive[125] to *datu* (which term has historical basis[126]), in lieu of *punong barangay* (which apparently has no historical basis[127]) and *barangay* captain (where the term "captain" is colonial in origin);

(g) abolish the *sangguniang kabataan,* and in lieu thereof, create elective sectoral representative positions for the youth in the local legislative councils, among other sectors, to promote the efficient use of limited government resources yet at the same time provide effective representation for the youth;

(h) repeal the rule against political partisanship, and allow instead open partisanship, at the *barangay* level[128] because: firstly, there is nothing inherently wrong, evil or immoral about partisan politics; on the contrary, partisan politics is the modern, civilized and peaceful manner of settling of political disputes; the alternative to peaceful partisan politics is violent mass action, sedition, subversion and rebellion; secondly, the prohibition is illusory, marked by widespread violation rather than by faithful compliance, inasmuch as the undeniable reality is that *barangay* officials actually serve as the frontliners of the various political interests in any electoral exercise or other matter of public concern; this reality is almost impossible and certainly impractical to avoid since the *barangay* officials serve as the grassroots point of contact between the government and people; thirdly, the prohibition ironically prevents transparency in the election of *barangay* officials, since it makes illegal the disclosure of the true albeit hidden political colors of the candidates; the political leanings of competing candidates certainly constitute a major factor that *barangay* voters always seek to ascertain in any electoral exercise.

7. The enactment of simplified income taxation laws, based on gross income[129] instead of net income,[130] applicable to all income derived from whatever source from within the core territory, including income generated from activities performed or properties located therein,[131] but excluding the usual exclusions,[132] in order to facilitate tax administration and broadening of the tax base, without prejudice to the application of all the other internal revenue laws, subject to the further concurrence of the DoF.

---

122*See by analogy* Three Basic Advantages of the Unicameral Parliamentary System, Demosthenes B. Donato, 30 November 2007. *See by analogy* Indirect Elections for President the Better Method of Representative Democracy, Demosthenes B. Donato, 30 November 2007. http://www.deszr.com/archives.htm

123Local Government Code of 1991, Republic Act No. 7160, Book III, Local Government Units.

124Local Government Code of 1991, Republic Act No. 7160, Book III, Title Three, Chapter 1, Role and Creation of the City.

125Local Government Code of 1991, Republic Act No. 7160, Book III, Title One, Chapter 2, Section 387-389.

126Barangay - Sixteenth-Century Philippine Culture and Society, William Henry Scott, Page 128 (1994).

127Id.

128 Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881, as amended, Article VI, Sec. 38.

129National Internal Revenue Code, Section 32(A).

130National Internal Revenue Code, Section 31.

131See National Internal Revenue Code, Section 32(A).

132National Internal Revenue Code, Section 32(B).

Upon the further request of the MILF, and subject to the similar concurrence by resolution of the city or municipal council concerned, of the regional government office or entity that may be established, and of the national government agency concerned as provided above, the GRP may also undertake to recommend to Congress, and likewise to the people where Constitutional amendments or revisions are required, the extended application of the foregoing exclusionary, initiatory and amendatory measures to the extended territory.

To ensure the cooperation of Congress in the implementation of the consensus points, taking into consideration the divided and separated structure of the political branches of the national government[133] and the resulting burdensome processes involved in taking unified and decisive political action under the premises, it is recommended that the President of the Senate and the Speaker of the House of Representatives, should be made witnesses to any new peace agreement that may be entered into by the GRP and the MILF.

Attached as Annex "A" is a draft outline of a proposed new Peace Agreement, that includes the basic premises for the undertaking and the general subjects for further negotiation.

As we are all aware, the journey to peace has been long and arduous. Just recently, the parties suffered a major setback which seemed to have brought them back to square one. Before we all get disheartened, let us remember that the path to a just and lasting peace is the one and only way to go. In other words, there is no other way for us because the only other route is endless fratricidal war. With this in mind, this paper makes its contribution, as everyone should make his or her own contribution, towards the resumption of the journey to peace, and the revival of the peace process, guided only by the standard of the common good of all the people concerned.

Demosthenes B. Donato
Makati City, Philippines
01 December 2008,
revised 11 March 2010

133The President as the holder executive power is separated from the legislative branch. *1987 Constitution, Article VII.* The legislative branch is by itself divided into two separate chambers, the senate and the house of representatives. *1987 Constitution, Article VI.*

**Annex "A"**

## DRAFT PEACE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE MORO ISLAMIC LIBERATION FRONT

Whereas, the parties acknowledge that all the people of the Luzon, Visayas and Mindanao archipelago comprise one and the same the ethnic Austronesian[134] family, bound by blood, related languages and culture;

Whereas, the parties further acknowledge that the original Austronesian people who populated the Luzon, Visayas and Mindanao archipelago commonly held animist or *anito* beliefs;

Whereas, the parties further acknowledge that the ancient cultural and trade ties of the local people with Malaysia, Indonesia and India brought Islam to the archipelago, so that Islam was established in the Sulu Archipelago by the 13th century, and spread from there to Mindanao, Visayas and Luzon, reaching the Manila area by the 16th century[135];

Whereas, the parties further acknowledge that Spanish colonizers brought Christianity to the archipelago during the 16th century, setting up settlements in the Visayas, and spread from there to Luzon and later to Mindanao[136];

Whereas, the parties further acknowledge that while Islam and Christianity spread throughout the Luzon, Visayas and Mindanao archipelago, the various tribal communities held on to their animist or *anito* beliefs;

Whereas, the parties further acknowledge that with the ensuing encounter of Islam and Christianity in the islands, the Muslim-Christian conflict which originated in Europe during their middle ages[137], spread to the Luzon, Visayas and Mindanao archipelago of Southeast Asia;

Whereas, the parties realize that the historical conflict between Christians and Muslims is **ironic,** because both of them believe in one and the same God, known as Yahweh in Hebrew, Allah in Arabic and Bathala in Tagalog;

Whereas, the parties further realize that the continuing conflict between Christians and Muslims is **senseless**, because it fosters nothing but eternal hatred, and reaps nothing but painful bloodshed, mass mourning, endless reprisals, more bloodshed and more mourning;

Whereas, the parties further realize that the indefinite prolongation of the conflict is **futile**, because centuries of war has clearly produced no victors but rather only victims;

Whereas, the parties agree that for the common good of all the people of the Luzon, Visayas and Mindanao archipelago, Muslims, Christians and tribal communities alike, peace must be achieved, based on the principles of justice, equity, equality, due process and freedom of religion;

---

134http://en.wikipedia.org/wiki/Austronesian_languages
135http://philippineatlas.com
136http://en.wikipedia.org/wiki/Miguel_Lopez_de_Legazpi
137http://en.wikipedia.org/wiki/Middle_Ages

Now Therefore, the parties enter into this PEACE AGREEMENT (Agreement), in Honor of God the Almighty, the Beneficent, and the Merciful:

I. *Subject and purpose*.- This Agreement shall cover the _____ between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF).

II. *Covenants of the Parties*.- The parties agree in principle that _____.

III. *Covenants of the GRP*.-

A. *Executive Action*.- The GRP shall perform the following executive actions:

_____

B. *Legislative Enactment*.- The GRP shall recommend to Congress the enactment of the following laws:

_____

C. *Constitutional Amendment*.- The GRP shall recommend to Congress and the people, the proposition and approval of the following amendments or revisions:

_____

IV. *Covenants of the MILF*.-

V. Effectivity.- This Agreement shall take effect upon its signing by the duly authorized representatives of both Parties hereto.

VI. *Compliance with Law.*-

A. This Agreement shall be subject to the laws of the Republic of the Philippines, which adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.

B. Should any dispute arise between the Parties in connection with this Agreement, they shall make their best efforts to resolve such dispute amicably amongst themselves. Upon the agreement of both Parties, they may also seek the assistance of a third party state or international organization for purposes of dispute resolution.

VII. *Amendments to Agreement.*- No alteration and modification of the Agreement shall be valid and effective unless agreed upon in writing and signed by duly authorized representatives of the Parties.

IN WITNESS WHEREOF, the parties' representatives have signed this Agreement at _____ on _____.

Name of Signatory
Position
**Government of the**
**Republic of the Philippines**

Name of Signatory
Position
**Moro Islamic Liberation Front**

Witnessed by:

Name of Signatory
President
**Senate**
Republic of the Philippines

Name of Signatory
Speaker
**House of Representatives**
Republic of the Philippines