



Looking forward in Mindanao by Carl Baker

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Recent developments in the Mindanao peace process serve as a reminder that the region remains volatile and fraught with unanticipated pitfalls. This disruption has created a critical juncture that offers two distinct paths. On the one hand, perhaps the path of least resistance, there is a return to violence and confrontation. The other path, which requires leadership on all sides, is to learn from mistakes and use them to chart a course of reconciliation that is transparent and takes into account the interests and grievances of all parties.

The latest scene in the drama began in early August with announcement that the long-anticipated signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) by the government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) would take place in Kuala Lumpur – but the government was not ready to sign the agreement. The day before the signing, the Philippine Supreme Court placed a temporary restraining order on the agreement, arguing that it was possibly unconstitutional – it would create a “sub-state” in Mindanao – and would lead to more sectarian violence rather than help solve the conflict.

Since that decision, violence has escalated dramatically along with accounts of brutal attacks by the so-called “lost commands” of the MILF led by Ameril Umbra Kato (Commander Kato) and Abdurahman Macapaar (Commander Bravo) and renewed accusations that those responsible have ties with Jemaah Islamiyah. These attacks have left over 60 innocent civilians dead and tens of thousands displaced. By the end of the month, the President’s Office announced that regardless of the Supreme Court decision, the GRP will not sign the MOA-AD. Citing “changed circumstances” following the attacks, the president has directed that future negotiations would be focused within the framework of disarmament, demobilization, and rehabilitation, meaning that the MILF will have to disarm before any progress can be realized on the ancestral domain issue.

Context of the MOA-AD

Despite some accusations, the agreement on ancestral domain did not just happen. It has been a fundamental part of the conflict in Mindanao from the beginning. In the context of the current peace talks, the agreement was to be the third step in implementing the June 2001 of the Tripoli Agreement on Peace between the GRP and the MILF. The first step was implementation of a ceasefire between the two sides in August 2001. Second, the two sides agreed in May 2002 on implementing guidelines for humanitarian, rehabilitation, and development aspects of the Tripoli agreement. The final stage was to have been a Comprehensive Peace Compact that would

outline the specific modalities of the relationship between the Bangsamoro Juridical Entity (BJE), the official designation of the proposed Bangsamoro homeland, and the GRP. The MOA-AD recognized that the powers and jurisdiction granted to the BJE would require a change to the Philippine Constitution and committed the two sides to negotiating the terms of the compact within 15 months after the signing of the MOA, which would have put its completion in November 2009.

All sides understood the significance and controversial nature of the ancestral domain issue. Exploratory talks began in February 2005 and formal talks on the topic have been underway since February 2006. The original agreement on the contents of the MOA was reached in November 2007 and the two sides had agreed to meet in Kuala Lumpur in December, only to have the GRP back away over concerns about its constitutionality. It was only after Malaysia threatened in April 2008 to withdraw its contingent of the International Monitoring Team that the two sides resumed talks in earnest on the ancestral domain issue. The three longstanding sticking points have been the size of area that would be included in the BJE, its degree of autonomy, and the need for Manila to reconcile that autonomy with the Philippine constitution.

Bangsamoro as a “First Nation”

Given the prolonged negotiations and issues involved, it is difficult to understand why the agreement was not made public until after the Supreme Court issued the temporary restraining order. Yet, that was precisely the objection of local officials – the lack of prior consultation with those immediately affected by the agreement. In fairness, the MOA-AD calls for a plebiscite regarding the acceptability of the BJE in the region within one year of its signing and prior to the signing of the comprehensive compact. Even more bewildering, in oral argument to the Supreme Court, the government lawyer stated that President Macapagal-Arroyo had not seen it either.

The primary burden for failure rests with the Philippine government. From the MILF perspective, the BJE is not unconstitutional – it is extra-constitutional. It argues that as a “first nation” people the Bangsamoro are beyond the bounds of the Philippine national constitution. This is something everyone knew and implicitly accepted at the outset of negotiations.

The key question is what was the Philippine government trying to do with the MOA-AD? One line of speculation is that the MOA-AD was really an excuse to change the constitution which would create an opportunity for President Macapagal-Arroyo to extend her political career beyond her term limit in 2010 – something political opponents have accused her of since she decided to seek the presidency in 2004. Although this sort of analysis only makes sense in the theater of the absurd that is Philippine politics, in truth the deal requires constitutional change: the only way the MOA-AD could be

implemented would be under a federal system that would allow for joint sovereignty similar to arrangements in other countries where the national government has recognized the sovereignty of “first nation” people. The obvious failure to develop a coherent government-wide policy on perhaps the most critical issue facing the country and the clear distrust of President Arroyo by other political elites will stymie any meaningful progress until she leaves in 2010.

Another line of speculation implicates the U.S. It is blamed for wanting to extend its presence in the region. Pointing to a contingent of U.S. Special Forces that has been providing “technical assistance” to the Armed Forces of the Philippines since 2002, some argue that the U.S. seeks to prolong the conflict to facilitate a permanent military presence. Although the U.S. insists the contingent is not there permanently and not engaged in any military operations, reports by civic groups have created a different perception by noting that the group is located in a compound guarded by U.S. soldiers and contractors inside a Philippine military installation and where there is a good deal of construction of what appears to be permanent facilities.

Others have argued that the U.S. actually wants to create a separate state in Mindanao to balance the improving relations between Manila and Beijing. Evidence to support the claim includes the involvement of the U.S. Institute of Peace and Ambassador Kristie Kenney in the peace process and both have publicly acknowledged Bangsamoro grievances in the conflict. The fact that Ambassador Kenney was present in Kuala Lumpur for the aborted signing of the MOA-AD is used as an indication that U.S. interests are not the same as those of the GRP.

Given the retrenchment of positions by both sides and potential for fresh violence in the region, dismissing these perceptions as wrong is a mistake. The U.S. should disband the Special Forces operation in the region or at least open it to scrutiny by all branches of the Philippine government, focus its development assistance efforts into multilateral channels to the extent possible, and ensure that its policies in the region are consistent with those of the Manila government.

The way forward

In fact, any peace settlement in Mindanao will require a serious rethinking of sovereignty in the Philippines and a lot of creative thinking about how to accommodate the interests of all parties. This includes the government of the Philippines, the MILF leadership, the Moro National Liberation Front leadership, traditional Moro chiefs (*datus*) who still hold power, the indigenous *lumad*, the Christian settlers, etc. Each of these parties has legitimate interests and grievances that must be addressed. This will require careful consultation with legal and constitutional experts that is transparent – not secret negotiations that exclude a large segment of the population.

Unfortunately, with the loss of confidence in the negotiation process, both sides are more inclined to opt to return to violence than build trust. Therefore, it is imperative that the international community, which has been engaged in economic development and building local capacity to improve governance, must stay the course. The GRP’s strategy of focusing on disarmament, demobilization, and reintegration

only makes sense in the context of a robust program of development assistance. Rogue MILF soldiers and commanders should be held responsible for their actions; this should be done through mechanisms agreed upon by both sides in the peace talks, not by conducting military offensives. While it is necessary for the MILF leadership to deal decisively with rogue elements, it would be a mistake to conclude that the fresh violence is linked to international terrorism or religious radicalism. The conflict in Mindanao is first and foremost political and only secondarily about religion or economics.

Needed now is a long-term vision and a roadmap at both the national and regional level for integrating the Bangsamoro nation into the Republic of the Philippines. It is incumbent upon the central government to make the necessary constitutional changes to accommodate a broader definition of sovereignty. Local leaders must accommodate the interests of all parties residing in the region. Integration of “first nation” people is not unique to Mindanao. A 2007 study by the U.S. Institute of Peace provides several excellent recommendations on how such a project could be undertaken. Military action, whether it be in the form of counterterrorism or civic action projects, is at best a band-aid approach to the problem. The real need is for post-conflict development along with programs to improve governance and the administration of justice. This will require strong leadership on all sides along with careful compromise and collaboration, not threats of violence and politically motivated secret deals.