

Analysis

Moro homeland pact becomes a ticking bomb

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MANILA, Philippines—When the Supreme Court stopped the signing on Aug. 5 of the draft agreement seeking to establish an expanded Bangsamoro homeland, Mohagher Iqbal, chief negotiator of the Moro Islamic Liberation Front, said that the last-minute cancellation made it clear to the international community that “the Philippine government does not possess the capability of entering into a peace conference.”

The abortion of the event became a diplomatic embarrassment as Ambassador Kristie Kenney of the United States, Ambassador Sayed Elm Masry of the Organization of the Islamic Conference, together with Ambassadors Makoto Katsura of Japan and Roderick Smith of Australia, had assembled in Kuala Lumpur to witness the signing.

As key stakeholders in the peace process in Mindanao, the presence of the diplomats signified the blessings of their respective countries to the agreement and implicit recognition of the pact. They were there to accord legitimacy to the agreement.

Iqbal’s remark may have told the truth of the political capacity of the Philippine government, but it also underscored the MILF’s contempt for constitutional processes, which the memorandum of agreement (MOA) on ancestral domain stayed by the high court’s temporary restraining order (TRO), gave short shrift as the defining framework of the proposed Bangsamoro homeland and, indeed, of the political settlement of the 40-year-old separatist war waged by the MILF.

Reflecting this contempt, the MILF’s vice chair for political affairs, Ghadzali Jaafar, maintained that the MOA was a “done deal” and had become binding after it was initialed by the government and MILF peace panels on July 27.

What is more insulting is his remark that the TRO was “purely an internal” problem of the government, implying that the MILF does not recognize whatever the court decides on the issues raised by local officials protesting the inclusion of their municipalities in the expanded Bangsamoro homeland.

Thus, the MILF has served notice that the court’s decision would not be binding to them.

The TRO reveals not only the political capacity of the government to enforce a peace package but also of the weakness of the executive department to bring into line countervailing departments—such as the judiciary and legislative—behind its diplomatic initiatives.

Dangerous mind-set

It is a reasonable assumption that the court was aware of these offensive remarks of MILF leaders and their implications for the system of checks and balances underpinning Philippine democracy. In issuing the TRO, the court was sending the message that this principle was not suspended by the MOA.

These remarks of the MILF rebels reveal a dangerous mind-set on the issues of the political capacity of the government to enter into binding agreements and of the primacy of the Constitution. They represent the land mines that the negotiations have to tread when the talks are resumed in Malaysia in the last two weeks of August.

These issues foreshadow that the MOA has set back the negotiations further away from a settlement than where they were before the MOA was initialed by the opposing panels. The revelation of the details of the MOA on the eve of scheduled signing after the government kept the agreement in secret for a long time is fortunate.

It revealed not only the antidemocratic mind-set of the MILF but also its contempt for and hostility to constitutional niceties. It provoked the timely intervention of the Supreme Court.

The intervention forced up the surface the hidden issues of the agreement. The petitions by the protesting parties against the agreement exposed it to scrutiny for its transparency.

Negotiated land grab

If the MOA had not been revealed in time, no one would have had the slightest idea that the area awarded by the memorandum to the expanded homeland represented the biggest negotiated land grab of national territory to a separatist group in the country's history.

The MOA added 700 villages in the provinces of Sultan Kudarat, Lanao del Norte, and North Cotabato, including parts of Palawan, to the area of the Autonomous Region in Muslim Mindanao to make up the expanded Bangsamoro homeland.

The MOA pictured the mutilation of Mindanao areas in the redistribution of territories to expand the Bangsamoro homeland. The dismantling was done in such a way that it appalled local residents.

When the mayor of Iligan City unfolded to his constituents in an emergency meeting a map showing that eight out of the city's 44 barangays would be absorbed by the proposed Bangsamoro Juridical Entity, the city residents, who were never consulted about the partition, were shocked to learn that the 44 villages comprised 82 percent of the city's territory.

The city erupted in protest. This illustrated the deceitful, let alone, the secretive way the redistribution was carried out.

Inflammatory issues

The unrest unleashed by the MOA over the territorial grab, the grant of sweeping powers that have the main elements of a sovereign state outside the compass of the Philippine Constitution has undermined the capacity of the Arroyo administration to deliver a peace pact.

Instead, the MOA has become a package of TNT, containing enough inflammatory issues that can easily ignite a new explosion in Mindanao. In its haste to conclude the pact, the administration has inherited a ticking time bomb.

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Analysis: Self-inflicted dismemberment

MANILA, Philippines—The Memorandum of Agreement (MOA) establishing the expanded Bangsamoro homeland sketches a map that defines the partition of the Philippines for the first time in its history.

The map presents a grotesque territorial truncation of the Republic. It adds to the Autonomous Region in Muslim Mindanao (ARMM) territory twice the size of the original area. The MOA seeks to enlarge the area to include the ARMM (Sulu, Maguindanao, Lanao del Sur, Tawi-Tawi, Basilan and Marawi City); six municipalities in Lanao del Norte, hundreds of villages in the provinces of Sultan Kudarat, Lanao del Norte and North Cotabato, which voted to become part of the ARMM in 2001. It also proposes to include in the Bangsamoro “ancestral domain” two municipalities of Palawan, Zamboanga del Norte and Zamboanga Sibugay.

These areas consolidate the resource-rich provinces on Mindanao Island under the jurisdiction of the proposed government of the Bangsamoro Juridical Entity, clothed by the MOA with vast powers, including setting up its own security force, the disposition economic resources in its territory, fiscal autonomy, its own system of banking and finance, civil service, education and legislative and electoral institutions and its own “basic law.”

The MOA is vague (probably on purpose) about whether the “basic law” is separate from the Philippine Constitution or subordinate to the Constitution. There is no single word in the MOA referring to the Constitution.

The map of the expanded Bangsamoro “ancestral domain” forms a crazy-quilt pattern of territorial distribution far worse than the gerrymandering of congressional districts. The powers granted by the MOA to the Bangsamoro Juridical Entity far exceed the wildest vision for the federalist structure proposed by Sen. Aquilino Pimentel along the lines of semi-autonomous regional governments and which follow the divisions of the 16 senatorial districts in the pre-martial law political system.

The MOA seeks to establish what amounts to a new state with “a defined territory” and “a system of governance suitable and acceptable to (the Bangsamoro) as a distinct dominant people.”

The territorial formation lays the ground for partition of the Philippines, a sort of political experiment in a negotiated establishment of a separate state. Its concepts have no precedents in the history of partitions of nations. They are different in the sense that the more celebrated partitions in history were mediated by the interventions of external powers, as in the partition of Poland or of British India into India and Pakistan.

Poland was partitioned three times in the second half of the 18th century by Austria, Prussia and Russia. The first partition was in August 1772, the second in January 1793, and the third in October 1795. A fourth partition took place in 1939, when Germany and the Soviet Union divided Poland under the Molotov-Ribbentrop Pact. The first three partitions changed the map of Central Europe. Poland as a state was wiped off the map of Europe.

By contrast, the partition sought by the MOA was not brought about by the armed intervention of foreign powers, although the negotiations over the Bangsamoro homeland were brokered by

Malaysia, which acted as host for the peace talks. The talks were pushed by President Macapagal-Arroyo to chalk up points for her embattled government in an effort to boost its legitimacy.

The territories ceded were the demands of the Moro Islamic Liberation Front. These were the territories of their choice, to which the government did not appear to offer resistance. The MILF appeared to have dictated their own terms on territorial expansion. The government negotiating panel agreed to an agreement in which it became a party to a self-inflicted dismemberment of the national territory.

Filipino officials in areas sought to be incorporated into the expanded Bangsamoro homeland are up in arms over the issue that the territories in which they live are being ceded without consulting them and without their consent. Their protest prompted them to file petitions with the Supreme Court for a temporary restraining order to stop the signing of the MOA.

The central and transcendental issue raised by the petition is the sovereignty of the Republic over the proposed Bangsamoro homeland. The heart of the sovereignty issue is the dispute over territorial cession without the consent of the inhabitants of ceded territories. This issue has resonance to the Filipino public. It is the source of the widespread public backlash of opinion against the MOA.

The Philippine negotiators did not seem to be aware of the fact that most wars in history arose from territorial disputes.

The question about secrecy in the negotiations involving national sovereignty and national territory is ultra-sensitive and inflammatory. But the key question is: Did the panel buy peace in Mindanao at the high price of compromising national sovereignty and dismembering the national territory?

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Analysis: Secret pacts vs open covenants

The Supreme Court nipped in the bud the process leading to the establishment of an autonomous Bangsamoro state in Mindanao when it issued on Monday a temporary restraining order (TRO) stopping the signing, scheduled for Aug. 5 in Kuala Lumpur, of an agreement seeking to create an expanded Bangsamoro homeland.

The checkmated Memorandum of Agreement initialed by the Philippine government's peace panel and representatives of the Moro Islamic Liberation Front ceded extensive portions of the national territory in Mindanao and neighboring islands, including Palawan, to the Bangsamoro homeland, and clothed its prospective government with broad political powers to govern its territory and control its rich economic resources.

Under the agreement, the planned Bangsamoro homeland would be governed by a so-called "Bangsamoro Juridical Entity." The new entity would have its own "basic law," its own police and internal security force, its own system of banking and finance, civil service, education, legislature and electoral institutions, as well as full authority to develop and dispose of its mineral and other natural resources. The new entity would also be empowered to send trade missions to foreign

countries and enter into executive agreements as well as delegations to international organizations, such as Asean. These powers and functions constitute most of the attributes of a sovereign state.

The high court issued the TRO in response to a petition filed by officials of Zamboanga City and North Cotabato, mostly Christian dominated areas. They asked to be excluded from the agreement that would incorporate some of their areas into the expanded Autonomous Region in Muslim Mindanao to be renamed Bangsamoro homeland. They claimed that they were not consulted in the negotiations over the agreement, which would dislocate the lives of their people in the course of adjusting to the new arrangements sought by the agreement. The agreement sought to expand the ARMM to include Palawan (which is defined as part of Luzon), South Cotabato, Zamboanga City, Sultan Kudarat, North Cotabato, Zamboanga del Norte and Zamboanga del Sur. The petitions criticized the secrecy surrounding the negotiations and challenged the government's claim that it was covered by executive privilege in conducting negotiations in secret to prevent the peace talks from being compromised.

The government opposed the petition for a TRO, invoking executive privilege to justify its refusal to reveal details of the agreement. The government peace panel, headed by former Armed Forces chief of staff, General Hermogenes Esperon, argued:

"These negotiations include definite military, national security and diplomatic concerns, and have involved the presence of a foreign mediator (Malaysia). This being so, the entire process—the negotiations involving the Memorandum of Agreement—is covered by the doctrine of executive privilege which prevents the disclosure of information that could subvert military or diplomatic objectives."

The petition lays squarely on the Supreme Court the issue of the limits of executive privilege in the conduct of foreign policy, especially when set against the circumstances that such secrecy results in agreements that undermine the sovereignty of the state and that seek to establish new entities which tend toward separatism.

Separatism leading to the establishment of an Islamic State carved out of the national territory has been at the center of the 40-year-old struggle by the Muslim rebels. Copies of the draft agreement were kept exclusively within the tight circle of military secrecy. They were distributed to retired generals at a forum on July 24 in the military general headquarters Camp Aguinaldo, where Esperon, the presidential adviser on the peace process, was guest of honor. The draft came to light and was published in the newspapers after a copy was leaked to the press.

The secrecy over the negotiations, invoked as an exercise of the right of executive privilege, collides with one of the more celebrated doctrines governing diplomatic negotiations pronounced by Woodrow Wilson in his famous 14 points for peace settlement after World War I. In his speech to the joint session of the US Congress on Jan. 8, 1918, Wilson said the first point in a program of peace for a postwar world was: "Open covenants of peace, openly arrived at, after which there shall be no private understandings of any kind but diplomacy shall proceed always frankly and in the public view." He added: "It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and unlikely at some unlooked-for moment to upset the peace of the world.

"It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has

in mind.”

Wilson’s 14 points became the basis for a peace program and, as one historical document notes, “It was on the back of the 14 points that Germany and her allies agreed to an armistice in November 1918.”

In the Mindanao peace process, the temporary peace agreement on the Bangsamoro homeland contains the ingredients that may scuttle the promise of an armistice.

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