

Bangsamoro Self-Determinationⁱ

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This paper suggests that recognition of the fundamental right of peoples to self-determination opens a window of opportunity to resolve conflicts peacefully, whether or not they are explicitly stated as a struggle for self-determination. This is particularly true in the case of Mindanao, where the Bangsamoro liberation fronts assert sovereign rights in the same territory over which the Philippine government already exercises sovereign power. Implementing the right of self-determination of the Bangsamoro people can usher in peace in the Mindanao region.

Self-determination as a Right

The right to self-determination is the right of peoples everywhere to freely determine their political status and to freely pursue their economic, social and cultural development. The right to self-determination has political, economic, social and cultural aspects. For this right to be fully effective, the realization of the political, economic, social and cultural sovereignty of peoples is crucial.

Self-determination is a continuing process where people continue to make choices to achieve their security and to fulfill their human needs.

The right of peoples to self-determination is enshrined in many United Nations instruments, among which are:

- Article 55 of the United Nations charter, which provides that the world body shall create “conditions of stability and well-

being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . .”

- General Assembly resolution 1514 (XV) of 14 December 1960, which states that, “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”
- Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and repeated in Article 1 of the International Covenant on Civil and Political Rights (ICCPR), which makes this statement: “All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development.”

On the other hand, there are U.N. instruments that uphold the principle of territorial integrity of existing states. Whether people who claim right to self-determination and are living within the boundary of existing states are prohibited to disrupt the territorial integrity of a country is not clear in the U.N. Resolutions. The assertion of minorities to self-determination is usually not only a claim to determine the political status of a people but also includes a claim to territory. If minorities are defined as people and they decided to form their own states, this will result to dismemberment of existing states.

Article 2 (4) of the U.N. charter provides, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state...” This provision clearly applies only between states. It prohibits member states from using force to threaten the political independence and territorial integrity of any state.

United Nations General Assembly Resolution No. 2625 (Declaration of Principles Concerning Friendly Relations among States) advises that right of self-determination shall not be construed

as

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

However, this U.N. Resolution reiterating the territorial integrity of states is made contingent on the government being representative of the whole people and nondiscriminatory.

There is substantial debate as to the scope of “a government representing the whole people.” Hannun, for example, is for the “limited requirement of non-discrimination only on the grounds of race, creed or colour.” But Buchheit “sees it simply as a component of a larger theory based on the premise that oppression legitimizes secession.”ⁱⁱⁱ

Other commentators, like Musgrave,^{iv} interpreted Resolution No. 2625 as implying that “international law permits secession as a legal remedy in certain circumstances.” He also contends that secession is also permissible “by virtue of the ‘oppression theory’ when part of a population suffers gross oppression: in these circumstances secession is permitted primarily to prevent the abuse of human rights.” In Allen Buchanan’s^v remedial right theory of secession, separation would be acceptable if there are systematic violations of human rights or unjust annexation of territories.

There are attempts to resolve the conflict between demands for self-determination and the principle of the territorial integrity of states. Hannun (as quote in Musgrave, 1997) puts forward the idea of autonomy as a “less-than-sovereign self-determination.” Musgrave (1997) says that “Some jurists contend that autonomy is not a principle of international law but a matter which falls within the domestic jurisdiction of a state.” He opines that “autonomy within an independent state cannot be part of self-determination for the purposes of international law.”

The problem in understanding many formulations on the right to self-determination is it is being equated to secession. In making decision as to their political status, people may opt for separation from the parent state, but that is not always the case. Consequently, the assertions of a people to exercise their right to collectively determine their political status are always clouded by fear of states that their boundaries will be reconfigured once right of self-determination is granted to peoples even if they are entitled to it. The essential issue, which is the right of a people to choose their political status, and decide on their economic, social and cultural development, is placed at the margin.

Holders of the Right of Self-determination

According to the Report of the International Conference of Experts organized by UNESCO on November 21-27, 1998, the holder of the right of self-determination are a people (a group of individual human beings) who have some or all of the following common features: (1) common historical tradition; (2) racial or ethnic identity; (3) cultural homogeneity; (4) linguistic unity; (5) religious or ideological affinity; (6) territorial connection; and (7) common economic life.^{vi}

Additionally, the UNESCO experts stated that “the group as a whole must have the will to be identified as a people or the consciousness of being a people.” The people, according to the experts, must be of a certain number, which need not be large but must be more than “a mere association of individuals within a state.” The existence of “institutions or other means of expressing its common characteristics and will for identity” is also important.

Bangsamoro Right to Self-determination

The Bangsamoro people qualify as people who hold the right of self-determination because they have a common historical tradition and religious affinity and share many cultural practices. They occupy contiguous territory (maritime societies are connected by the sea) with rich natural resources.

Before the arrival of the Spanish colonialists, the Bangsamoro were already in the process of state formation, while Luzon and the Visayas were still in the *barangay* stage of political development. The Bangsamoro had their own government and engaged in trade and diplomatic relations with other countries. They had developed well-organized administrative and political systems; and strong maritime and infantry forces that defended the Bangsamoro territories from Western colonial intrusion, preserving the continuity of their independence.^{vii}

During the American occupation the Bangsamoro homeland was administered separately from the Philippines. When the U.S. later decided to grant independence to the Philippines, Bangsamoro leaders asked the United States not to include the Bangsamoro territories in the planned Philippine Republic.^{viii} Even when their territories were made part of the Philippines in 1946, the Bangsamoro people continued to assert their right to independence

Other than their historical experience in state formation, Bangsamoro liberation movements and people's movements cite the discrimination and oppression experienced by the Bangsamoro people under the Republic of the Philippines as justifications of their claim for self-determination. Often alluded to are the biases and prejudices of the majority population towards the Bangsamoro people; the minoritization of the Bangsamoro people in their own homeland due to government policies; government neglect; and failure of the government to protect the persons and properties of the Bangsamoro people.^{ix}

Whether the Bangsamoro people are entitled to self-determination or not is no longer debatable for the Government of the Republic of the Philippines (GRP) recognizes that. This was clear in one of the provisions of the Tripoli Agreement of Peace of 2001 between the GRP and the Moro National Liberation Front (MNLF), which states that "the observance of international humanitarian law and respect for internationally recognized human rights instruments and the protection of evacuees and displaced persons in the conduct of their relations *reinforce the Bangsamoro people's fundamental right to determine their own future and political status.*" (Italics supplied)

The recognition of the Bangsamoro right to self-determination was affirmed by Secretary Silvestre C. Afable, Jr., Chairman of the Government Peace Negotiating Panel in the talks with the MILF, in his letter to Mohagher Iqbal, Chairman of the MILF Peace Negotiating Panel, dated November 9, 2006, which stated that the GRP would like to explore with the MILF in the next round of talks, "the grant of self-determination and self-rule to the Bangsamoro people based on an Organic Charter to be drafted by representatives of the Bangsamoro people." In Tokyo last May 2007, he again reiterated the Philippine government position: "On the negotiating table, we have offered a political settlement based on self-determination that strives to unify the Bangsamoro people rather than divide them, for them to finally live in a homeland rather than a rented territory paid for in blood and suffering. We are crossing bridges of understanding that others have never ventured to do in the past."^x

The issue that concerns us now is the expression of the Bangsamoro right of self-determination that can lead to a democratic and peaceful resolution of the conflict between the Philippine government and the Bangsamoro people.

Determination of Political Status

The core issue in the right to self-determination is determination of a people political status. How is the political status of a people determined? The UNESCO experts were of the opinion that a people should be able to achieve self-determination through a fully participatory and democratic process. The experts said: "Self-determination is achieved by fully participatory democratic processes among the people who are seeking the realization of self-determination, including referenda where appropriate."^{xi}

To determine the wishes of the Bangsamoro people as to their political status, referendum has to be resorted to. This is also the position of the government. The above cited letter of Secretary Afable stated further that the Bangsamoro people will decide on their political status in a referendum to be held after certain period. What are the choices are not clear as of this writing. To avert the worry

of some that the referendum may turn into an all-out, winner-take-all contest the range of choices should include all possible political arrangements, such as independence, autonomy, free association, consociational arrangement, federal arrangement, and other power sharing arrangements.

In order for a referendum to be participatory and democratic process, it is useful to be preceded by lengthy political debate and dialogue within the given communities to ensure that citizens are aware of what the options are, are fully informed about their implications, and are as ready as possible to vote in a referendum. In Southern Sudan, the referendum will take place after the interim period of six years. The referendum on Bougainville's future political status will be held not earlier than ten years but not later than fifteen years after the signing of the agreement.

In the case of the Bangsamoro, I agree with the recommendations of the Bangsamoro People's Consultative Assembly and the Mindanao People's Peace Movement that the referendum be held not earlier than five years but not more than ten years after decision is made to give enough time for people to understand the pros and the cons of every proposition, and to provide the Philippine government time to demonstrate to the Bangsamoro people once again that they will be in better condition if they remain part of the Philippines.

Considering the bad experiences we always have in Philippine elections, the referendum will be credible if supervised by third party from the international community. The third party can be the United Nations, European Community, Organization of Islamic Conference (OIC), or joint efforts of the Association of Southeast Asian Nations (ASEAN) and other multilateral groupings.

Before a referendum is held, the issue of territory has to be resolved by the GRP and MILF negotiating panels because the area where referendum has to be conducted has to be definite. Likewise, the two panels have to decide on the mechanism on how to conduct the exercise that it has to be democratic and participatory. The political, economic and cultural arrangements during the interim

period preceding the referendum have to be agreed upon by the GRP and MILF peace panels as well. On the participation of the Indigenous Peoples of Mindanao, the principle of “free choice” has to apply.^{xii}

Window of Opportunity

Allowing people to enjoy the right to self-determination does not automatically result in the separation of the claimed territory from the parent state, as feared by those who put a high value on the sanctity of borders, although this may be one of the possible outcomes. Referendum on Puerto Rico’s political status was held in 1967, but 60% of the voters preferred continued commonwealth status. Leaders of the province of Nivis wanted to separate from the federation of St. Kitts and Nivis, but the citizens of the province voted to stay with the federation. Although not binding, the two referenda in Quebec illustrated that referendum does not inevitably translate to separation. On the contrary, denying a people the opportunity to exercise this right, or failing to make available the mechanism to exercise the right to self-determination, will make peaceful resolution of armed conflicts more difficult. Many of the conflicts today are taking place within and across states and the roots of many of these intra-state conflicts can be traced to the denial of state authorities of their citizens’ assertion that they have a right to self-determination.^{xiii}

Since undeniably the Mindanao problem is rooted in the Bangsamoro aspiration for self-determination, the implementation of this fundamental right of peoples to determine their political status will certainly open a window of opportunity to resolve the long-drawn conflict peacefully. As signatory to United Nations instruments on right to self-determination, the Philippines has the obligation to uphold, respect and promote this right. Constitutional and institutional barriers cannot be made the excuse to deny the Bangsamoro people this right. Sudan amended its Constitution to give way to a referendum in the South, and Papua New Guinea promised “to move amendments to the National Constitution to guarantee a referendum on Bougainville’s future political status” when it signed the Bougainville Peace Agreement in 2001.

The opinion of the UNESCO experts that “the peaceful implementation of the right to self-determination in its broad sense is a key contribution to the prevention and resolution of conflicts, especially those which involve contending interests of existing states and peoples, including indigenous peoples, and minority communities” is a wisdom that has to be seriously considered.

NOTES

- i Paper prepared for presentation at the International Roundtable Conference on Right to Self-determination of Peoples, scheduled for July 2007 in Makati City, Metro Manila, Philippines.
- ii The author is executive director of the Institute of Bangsamoro Studies based in Cotabato City, Philippines. He can be contacted in this email address: aslingga@yahoo.com.
- iii Quoted in Musgrave, Thomas D. 1997. *Self-Determination and National Minorities*. Oxford: Oxford University Press.
- iv Musgrave (1997: 209)
- v Buchanan, Allen. 2003. “Secession”, *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/secession/index.html>
- vi Van Walt van Praag, Michael C. and Onno Serro, eds. 1999. *The Implementation of the Right to Self-determination as a Contribution to Conflict Prevention*. Report of the International Conference of Experts held in Barcelona on November 21-27, 1998, organized by the UNESCO Division of Human Rights, Democracy and Peace and the UNESCO Centre of Catalonia.
- vii See Lingga, Abhoud Syed M. 2004. “Understanding Bangsamoro Independence as Mode of Self-determination.” *Mindanao Journal* XXVII.
- viii See “Petition to the President of the United States of America from the People of the Sulu Archipelago,” June 9, 1921; and “A declaration of Rights and Purposes Addressed to the Congress of the United States of America,” February 1, 1924” in Jubair, Salah. 1999. *Bangsamoro: A Nation Under Endless Tyranny*. Kuala Lumpur: IQ Marin SDN BHD, pp. 293-303.
- ix On the minoritization of the Bangsamoro people, see Rodil, B.R. 1994. *The Minoritization of the Indigenous Communities of Mindanao and the Sulu Archipelago*. Davao City: Alternative Forum for Research in Mindanao, Inc. Christian prejudices against Muslims were revealing in Filipinas Foundation, Inc. 1975. *Philippine Majority-Minority Relations and Ethnic Attitudes*. Makati, Rizal, and Philippine Development Network, Philippine Human Development Report 2005 (PHDR 2005).
- x Quoted by Abinales in his column, “The Separatist”, *Mindanews*, May 21, 2007. Also in *Philippine Free Press*, May 15, 2007.
- xi Van Walt van Praag, Michael C. and Onno Serro, eds. 1999.

xii The GRP and MILF Technical Working Groups arrived at a consensus during the 7th Exploratory Talks on April 18-20, 2005 affirming "the rights of non-Islam professing indigenous tribes to free choice."

xiii Harris, Peter and Ben Reilly, eds. 2003. *Democracy and Deep-Rooted Conflict: Options for Negotiators*. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance.