

Population Transfer and the Mediation of Insurgent Conflict

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IPRA paper abstract

A mediated agreement ending civil war between an insurgent separatist group and the state can occur if the state accepts an *agreement in principle* that state sponsored population transfer into the insurgent "homeland" territory does not dilute the legitimacy of insurgent claims to the territory. Such an agreement becomes increasingly possible if the insurgents accept an *agreement in principle* that minority population homogeneity in the contested territory will not be pursued. This does not mean that the insurgents will agree to pursue heterogeneity in the homeland area as a goal. On the occasions where the insurgents will have been engaging in hostile acts toward the "settler" population that has arrived as part of a state sponsored population transfer program, the insurgents see their anti-settler campaign as a means of obtaining self-determination. The state sees the population transfer program as a method of strengthening its claim of territorial integrity. The *rate* of settler intrusion may reach a level where it becomes contentious. Successful conflict mediation by an intervening party will likely require a recasting of population transfer, so that further settler in-migration would be allowed, with the consent of the insurgents. The mediation would then have to gain an insurgency commitment to end the anti-settler campaign, so that it would be not seen as a threat to the territorial integrity or national sovereignty of the entire state.

I. Introduction

The question pursued herein is how to assess the likelihood of a negotiated resolution of insurgent conflict within states where there exists a program of state-sponsored population transfer into a region of the state contested by an insurgency. The current inquiry is interested in the circumstance where the state sponsored settler program, is posed against claims for self-determination or a "homeland," by an insurgent-led minority population in the contested portion of the state's *declared* territory. One useful definition of the term self-determination has been provided by Herbert Kelman. "At the group level, it is a condition for enabling people to fulfill their cultural aspirations and lead their lives in a way that is consistent with their collective values, as well as a condition for the protection of the rights of vulnerable groups against discrimination, exploitation, and repression" (1997: 332). A settler program may have the objective of rendering less likely a demand from an insurgency for a referendum to determine the disposition of the contested territory, because the likelihood of the referendum outcome, or plebiscite, being a minority victory would be diminished to such a large extent after the population transfer had been accomplished (Farley, 1986: 26).

The likelihood of a referendum actually occurring can be reduced in the altered demographic circumstances, because the minority population and the insurgents derived there from, being averse to losing, have become opposed to it. The state may then be able to take much stronger "positions" in subsequent negotiations with the insurgency regarding the shape of an agreement ending the conflict. If a referendum remains "on the table" in negotiations, in the face of a settler program, the state may be able to keep certain issues off the ballot, i.e., secession. This appears to have been the motivation of the Moroccan government when it instituted the 1975 "Green March" of Moroccan settlers into the

territory of Western Sahara, so that these individuals could take part in a projected referendum (to be conducted under Spanish auspices, as the former colonial power) deciding whether the territory would gain autonomy, remaining part of the Moroccan state, or become an independent sovereign state. Morocco contended that the "March" participants should be allowed to vote in the referendum, because the government of Morocco held them to be eligible to do so under certain rules. In the immediate aftermath of the Green March most of the participants were returned to Morocco, but a steady influx of settlers into Western Sahara ensued thereafter (Omar, 2008).

The *Frente Popular de Liberación de Saguía el Hamra y Río de Oro* (POLISARIO) insurgency had been contesting both Moroccan and Mauritanian claims of sovereignty over the territory, in conjunction with the government -in- exile, the Saharan Arab Democratic Republic (SADR), after the departure of the Spanish administration in 1975/76. This initial proposed referendum was never held because of Moroccan insistence that the question to be put on the ballot could not include the option of independence for the territory (Omar, 2008). Morocco and Mauritania annexed Western Sahara in 1975.

In 1988 the UN and the OAU reached agreement on a Settlement Plan for Western Sahara, which included the holding of a referendum through which the Sahrawi people could exercise their right to self-determination. POLISARIO came to believe that even if all challenged applicants for participation in a later referendum proposed by the UN and to be held under the auspices of the UN Mission for the Referendum in Western Sahara (MINURSO) were declared eligible on the Moroccan side, POLISARIO would still win the referendum vote (Theofilopoulou, 2006: 15). This second proposed referendum has never been held.

Self-Determination Other Than Secession

If self-determination is defined at least in part in territorial terms, it may be that how the territory in question is defined demographically becomes important.

From a theoretical as well as a practical point of view, people(s) can exercise self-determination internally, within an existing state, as well as through establishing a separate state. Moreover, a people would not opt for secession simply because they have the right to do so. Indeed, people are unlikely to opt for the usually difficult and costly struggle for secession, or the prospects of political and economic uncertainties of statehood, if an existing state respects their right to self-determination (An-na'im and Deng, 2006: 5).

If an insurgent movement seeks secession, or the creation of an entity with a certain level of autonomy, then a national government opposed to the creation of such an entity, could subsequently choose to begin a non-minority population movement into the territory in question (territory proposed as a homeland by the insurgents). The motivation for such a program would be that in negotiations, the state's argument against the creation of such an entity would thereby be strengthened on demographic grounds. The state could raise a number of questions regarding the legitimacy of a projected future autonomous entity.

One question would be whether non-minority group members would be prohibited from immigrating into the territory once the autonomous unit was created. A second question would be whether non-minority population members residing in the autonomous territory *prior* to its creation, could be expelled from the autonomous region after its creation. A third question would be whether the proportion of non-minority members relative to the minority population in the region (the latter in most

cases forming a majority *in the contested area*) could be held below a specific ratio or percentage. A likely key potential bargaining point in negotiations would be ascertaining whether the autonomous unit would have sole authority in determining the answer to the above questions, or whether these answers could only be provided jointly by the autonomous regional government with the participation of the national government.

In a sense, the more the autonomous entity could restrict or shape policy pertaining to migration into the region's territory, the more the entity gains self-determination, and the less "sovereign" the central government would be over the entire state. In this paper the disputes under study are those where the origins of the insurgency derive partly from disputes over the legitimacy of settlers' residence in the contested portion of the state. The matter of whether the authority of the national government, or that of the future sub-national government of the claimed insurgent "homeland," would take precedence in determining the "acceptable" population ratio between settler and minority population in the homeland entity, could become a focal point in the negotiations to end hostilities between insurgents and the state, and is an issue where a mediator may be most effective.

A hypothesis of this paper is that with ongoing negotiations to end insurgent conflict, the likelihood of a successful resolution of hostilities increases if the parties can agree to a particular level of *state* authority in determining the legitimacy of *prior* (arriving before autonomous unit creation) settlers. A second hypothesis is that the probability of successful resolution of hostilities increases when the question regarding the legitimacy of settlers arriving *subsequent to* autonomous unit creation, will be subject only to the receptiveness of the latter unit's governing authority. A third hypothesis is that the likelihood of a successful resolution of hostilities increases when it is agreed that the question of what

would be an acceptable “final” proportion of settlers to insurgent population members has to be concluded jointly between the parties.

One can easily envision the national government arguing that not only must the state’s territorial integrity remain intact, but also that only a stringently limited measure of sovereignty over the entirety of its territory will be relinquished in order to create an autonomous unit. To make clear that the central government retains “ultimate” authority over the country, the national government could argue that it must retain the power to rule on settler (those arriving before *and* those arriving after the creation of an autonomous unit) legitimacy, and the appropriate settler/minority population ratio. *But it is highly unlikely that an insurgent organization, if a major stimulus to its inception was the settler program in the first place, would agree to central government predominant authority over the status of subsequent (after autonomous unit creation) settlers in the contested homeland region, or of the final settler/minority population ratio.*

It has to be recognized, of course, that a majority, or plurality, held by the “grievance presenting” population in the contested territory may have been “lost” by virtue of the state’s population transfer program. Although merely producing a dilution of the insurgent population’s numbers in the contested territory may have been a sufficient objective initially, creating a numerical advantage for the dominant (majority) population would presumably be welcomed by the state. The state would almost certainly prefer a numerical advantage in the homeland region for the dominant population. But it is unlikely that the state could press for a one-to-one correspondence between on one hand, the size of the possible numerical advantage attained by the national majority population within the claimed homeland region, and limits on the “devolution of powers” between the central authorities and an autonomous unit, on the other.

II. Impetus for Population Transfers

Issues of Development

This paper seeks an answer to a key question: how often was it that the presence of a state sponsored settler program brought about, or contributed to, the failure of negotiations initiated to achieve a peaceful resolution of insurgent conflict. If the discussions proceed in the negotiations such that the insurgency and the national government agree to a referendum, my supposition in this paper is that population transfers would help to limit the contours of a possible referendum to matters of voter eligibility and level of autonomy, rather than a vote on an option for or against secession. In particular cases, the national government will often stipulate that a proposed referendum must not include a question on possible secession. But often in negotiations to end insurgent conflict, agreement between the parties on the matter of a referendum at all, or on the issues placed before voters in the referendum, is not in the offing.

This would be the case when either the state is not sure that population transfer has sufficiently turned population demographics in the contested territory in the state's favor, or where the insurgency is not sure that population transfer *hasn't* done so. It is worth reiterating, even if perhaps obvious, that the objective of a population transfer program is to render less likely a demand from an insurgency for a referendum held within the confines of the projected autonomous unit, because the likelihood of the outcome being a minority population victory would be diminished to such an extent after the population transfer had been accomplished. In this circumstance, a determination on the "final status" of the contested territory has to occur through the mechanism of across-the-table negotiations, where the referendum option has been taken "off the table."

What follows in the discussion below, will not be a presentation of particular case studies, as such. But the narrative will draw from certain instances of negotiations to end insurgent conflict in order to buttress the argument presented. These “cases in point” are: Morocco (Western Sahara), Sri Lanka (North and Northeast), and the Philippines (Mindanao). There is not space in this paper to present an extended analysis of the “larger” circumstances, and the history, between the state and the minority population in each case; such an effort would require a separate inquiry.

It is important to determine what it was that initially prompted a government settler program targeted toward an area claimed by a minority population as a homeland. Would the simple public statement of such a claim for a homeland by minority population leaders be sufficient to stir such a policy, or would the existence of an insurgency be necessary to initiate the latter step? In the distance between mere public statements of grievance by minority population spokespersons on one hand, and an outright insurgency on the other, it may be that what has been termed a “mobilized” minority population would be sufficient to provoke a settler program. It could of course be the case that a settler program would be initiated for reasons that are wholly, or nearly so, socio-economic in nature; that is, programs put in place for “development” ends. But the presumption here is that particular settler programs do not occur in a political vacuum. That is, more often than not, “development” settler programs have a parallel (not “secondary”) purpose: the weakening of popular support for anti-government sentiment *that has not yet become an insurgency*, through national government generated alterations in the existing demographic pattern of the contested territory.

It is possible that an insurgency could be initiated in response to a settler program that had no visible political intent, and was only designed to promote the economic and social development of a “backward” area of a state. But if such an insurgency emerges to counteract a “development” settler

program, the state is then forced into a response which by definition will have a political component, i.e., to assert state sovereignty over the contested region by supporting the settler program with sustained economic support and, if necessary, military protection. At this point the settler program would cease to be only a part of a development policy, and could be categorized, at least in part, as a component of a counterinsurgency strategy.

III. Role of settler program in insurgency genesis

It is not possible to determine if an insurgency came about, solely or chiefly, because of a government sponsored settler program, or for that matter, whether a settler program has been initiated, solely or chiefly, because of an insurgency. An insurgency may develop because of minority grievances resulting from discriminatory government policies, or social practices, pertaining to religious practice, language choice, historical origin, or lineage (ethnicity). A settler program may be initiated due to insurgency formation and claims made by the latter to "ownership" of a contested portion of the state's territory, supplemented by acts of violence against instruments of the state; e.g., military outposts, police stations, court houses, and the like.

Although national governments have sometimes claimed the motivation for a settler program was to promote the economic development of a particular region, the authenticity of such claims is often contested by insurgent groups. Insurgent groups have challenged the legitimacy of such programs on the grounds that the non-minority population settlers are generally granted "entitlements" to land not offered to minority population members (?). Even more fundamentally, however, is the challenge made to settler programs based on the unwillingness of the insurgents to recognize the right of the

national government to institute a development program in the contested region of the state at all. That is to say, the insurgents could refuse to recognize the state's authority to make a decision instituting a development program in the contested region of the country.

Migration Onset

Following the commencement of negotiations between an insurgency and the state, it should be possible to determine whether a settler program had been instigated during or prior to the onset of hostilities. This could be a key finding because successful negotiations would likely be more difficult if a significant motivation for the insurgency's existence was a settler program in the first place. The proposition suggested here is that in this circumstance, the insurgents would strike a "harder" bargain than otherwise, i.e., become more intransigent, regarding the disposition of the settler program, if the hostilities were to be brought to an end. That is, the insurgent emissaries to the negotiations might well take the position that for the hostilities to be brought to end, the settler program, in all of its manifestations, would also have to end.

Clearly, an agreement by the state to a termination of a settler program, would be an extremely difficult concession to make, on the grounds of territorial integrity. This is so in the sense that the state is usually reluctant (at least initially) to accept any diminishment of its authority over the territory within its declared borders. On the premise that an insurgency would base its claim to self-determination as flowing from a homeland occupied by a population "different" from the majority, if the state is able to show that the claim of a different population is demographically invalid, then the insurgency claim to self-determination is weakened. To be sure, there could be "gradations" of termination. One small

“measure of termination” would be an agreement to freeze further migrations of majority population members on a certain date, while allowing those who arrived before that date to remain. A large measure of termination would be an agreement that all irrefutably identified persons who migrated to the contested area by virtue of participation in the government settler program would have to be repatriated, regardless of their date of arrival in the contested area.

On its face it seems unlikely the state would agree to anything more than a small measure of termination, because conceding that “early arriving” settlers had to be repatriated would amount to agreeing that state policy had to be reversed. A reversal of instituted policy at the behest of a political opponent could be seen as an admission that the state has less than full sovereignty over the complete expanse of national territory. Thus, the likelihood of a state concession agreeing to the removal of in-residence settlers would seem low. But if the insurgency had been borne in significant part because of the in-migration and sustained residence of settlers, that insurgency might accept nothing less than the repatriation of in-residence settlers. This circumstance would appear to set the stage for an impasse between the negotiating parties.

The failure to end insurgent conflict through negotiation obviously cannot be attributed solely to the presence of settler programs. But if a small sampling of insurgent conflicts shows that settler programs are often present where negotiation has failed to end such conflict, then a possible relationship between settler programs and negotiation failure may exist. It may not be possible to assert that more than a mere association between settler programs and negotiations to end insurgency exists; specifying the relationship could be quite difficult. One pathway toward specification would be to ascertain whether the insurgency was spurred in part by the settler program itself.

POLISARIO existed for some years prior to the concerted propagation of settlers into Western Sahara after the departure of Spain in 1976 (Maddy-Weitzman, 1991). In point of fact, POLISARIO emerged as distinctly an anti-colonial movement fighting against the Spanish in the 1960s. It is clear that the POLISARIO insurgency did not originally emerge as a response to a settler influx. The history is quite different with Sri Lanka as well as the Philippines.

In the Philippines, the colonial government in the early decades of the twentieth century began to establish agriculture based communities in Mindanao. By and large these were Christian settlers, some of whom were self-motivated to enter a "frontier" area of the country in an effort to gain an improved standard of living (Tigno, 2006). But a high proportion of the settlers received assistance from the independent government of the Philippines after WWII, in the form of "resettlement projects." The pace of the migration was such that by the 1970s the settlers composed roughly 70 percent of the population of Mindanao. This settler influx from Luzon and other areas of the country brought about a significant displacement of Muslims, and this "marginalization" of the Muslim population coincided with a surge in armed resistance (Tigno, 2006; Gutierrez and Saturnino, 2004: 18).

In Sri Lanka, the conditions facing the Tamil population in the Eastern province illustrates negative response of the Tamils to what they termed the "colonization" of Tamil traditional homelands. In the 1950s, the Federal party (a predominately Tamil organization) issued a resolution at its annual convention to this effect. "The colonization policy pursued by successive Governments since 1947 of planting Sinhalese population in the traditional homelands of the Tamil-speaking peoples is calculated to overwhelm and crush the Tamil-speaking people in their own national areas," (Peebles, 1990: 38, citing Federal party document). By the 1980s the response of a burgeoning LTTE (Liberation Tigers of Tamil Eelam) to this infusion of Sinhalese settlers into a claimed Tamil "homeland" had become direct. "LTTE

attacks on Sinhalese settlers and army retaliation against Tamil villagers were common practice during these early periods of heightened confrontation (Korf and Fünfgeld, 2006: 398).

Insurgency Anti-settler Campaigns

On occasion an insurgency will engage in a campaign of purposefully directing violent acts toward members of the majority population residing in the contested region and identified as “settlers.” From the insurgent point of view such a campaign is meant to end or even reverse the settler program, thus strengthening the ratio of minority versus majority population in the “homeland” region, turning the ratio more in the former’s favor.

In 1985, during the peace conference in Thimpu, the United Tamil groups made it one of their four points to be acknowledged that because they were a nation of their own they had an exclusive right to their homeland in the North and East, *where none but they should be entitled to settle*. No new Sinhalese settlers should be allowed to cultivate the traditional Tamil areas, although those who were already there could remain. The militant groups underlined this demand with violent and bloody attacks on Sinhalese settlers in the Northeast who dared to defy their order to stay out (Hellman-Rajanayagam, 1990: 80) (emphasis added).

The belief is that a turn in population ratio in favor of a minority population would buttress the insurgent argument for self-determination, as the homeland region resident population would become more homogenous.

The following comment has been made regarding the movement of Sinhalese settlers into the Northeast part of the country:

When inter-ethnic violence increased in the 1980s, these settlement schemes became a theatre of inter-ethnic contestation and violence and became interwoven with military and political strategies of the major conflict parties. After the military contestation between the Sri Lankan army and the LTTE aggravated, some segments in the Sinhalese regime and the military used new "strategic" settlement schemes to weaken the basis of Tamil claims to a Northeast homeland. LTTE attacks on Sinhalese settlers and army retaliation against Tamil villagers were common practice during these early periods of heightened confrontation (Korf and Fünfgeld, 2006).

In a similar vein, an observation pertaining to the MNLF/MILF insurgency in Mindanao can be included here:

By the late 1960s and early 1970s, growing land conflicts further escalated into violent Muslim-Christian armed confrontations. Christian vigilante groups, known as the "LLagas," or "Rats," and Muslim private armies called "Black Shirts," and "Barracudas," emerged in the Cotabato and Lanao Provinces. At this point, the land issue had become the main reason for brewing Muslim-Christian conflicts and animosities that turned into brutal ethnic conflicts (Aquino, 2009: 49).

Interestingly, accounts of POLISARIO attacks against Moroccan settlers are virtually absent (Zunes, 2007). On the contrary, there are reports of attacks on native Sahrawi civilians in Western Sahara by Moroccan settlers (Bhatia, 2001). One explanation for the absence or paucity of POLISARIO attacks on Moroccan settlers is the extreme two to one advantage (at a minimum) in the ratio of settlers to native Sahrawi people in the Western Sahara brought about by the Moroccan population transfer policy ((Farah, 2003: 16). POLISARIO attacks on settlers would likely put the Sahrawi population at greater risk from retaliation by settlers, as well as the Moroccan military, with the latter estimated to be a force of possibly 200,000.

The existence of the 2500 km sand berm, or “wall” separating Western Sahara into two sections, one composing four-fifths of the territory controlled by the *Forces Armées Royales* (FAR), the Moroccan military, and the remaining one-fifth controlled by POLISARIO, has severely limited any *potential* desire by POLISARIO to mount sustained attacks against the settlers (Weitzman, 1991: 595). In recent years the civilian Sahrawi population has seemingly taken the lead in the self-determination struggle, producing a non-violent movement labeled an “*intifada*,” which has been seen as having two separate “eruptions,” in 1999 and again in 2005 (Stephan and Mundy, 2006).

Territorial Integrity and Settlers

“Population transfer is often carried out with the purpose or effect of destroying, in whole or in part, the affected group *as such*. This is done by a range of methods, from demographic manipulation of the group’s territory (self-determination unit) to eliminating the economic existence of the group...” (Shechla, 1993: 265) (emphasis added). The national government insists that the region must remain an integral part of the state, whether that be so in the unitary state sense, or through a grant of autonomy, to a greater or lesser degree. The insurgency demands that the region must regain its character as a homeland for the minority community, whether that homeland takes shape as an autonomous unit or as an independent entity.

Each claim is based partly on demographic grounds. The national government believes that by inserting majority population settlers in the contested area, the government’s claim for the preservation of the integrity of the state is strengthened, because the demographic composition of the contested area does not differ significantly from the demographic map of the country at large. This “insertion”

effort can be seen as an attempt to achieve *contiguity* in majority population presence nationally. The insurgency, on the contrary, holds that by limiting the insertion of settlers, the demographic “difference” (and therefore possibly linguistic, religious, or other differences) between the contested region and the state at large is maintained. Obviously then, majority population contiguity across the entire state is prevented.

What then sometimes ensues is indeed a “contest,” as in the Sri Lankan example. “The land colonization policy of successive Sri Lankan governments has caused much resentment. It has been Sinhalese policy to establish “colonies” of Sinhalese settlers (mostly farmers) in the Eastern province especially, an area traditionally viewed by Tamil nationalists as “theirs” (Lewer and William, 2002: 3). The Eastern province of Sri Lanka constitutes a part of what is called the “Dry Zone,” an area requiring extensive irrigation systems in order for agriculture to flourish. At independence the Sinhalese presence in the Dry Zone and in the Eastern province was quite small relative to the rest of the country, although there is belief among some Sinhalese that in past generations there was a much greater presence (Moore, 1985: 45).

Sinhalese political leaders have invoked this belief and utilized it as a basis (in part) for the settler program of the post-independence period. “The colonization of the Dry Zone by landless peasant cultivators from the Wet Zone remained one of the highest policy priorities for all governments until 1970” (Peebles, 1990: 37). LTTE apprehension regarding an alleged Sri Lankan government plan to “Sinhalese” the Eastern province has been persistent, and may have some justification.

Located at the intersection of the eastern and northern provinces, Tricomalee district has been the site of deliberate attempts by Sinhalese nationalists, with support from the government, to break the contiguity of a Tamil-speaking north east by settling additional Sinhalese. Due in large part to irrigation settlements, the ethnic balance shifted considerably over the last century, with

Sinhalese increasing from 4 per cent of the population in 1911 to a high of 33 per cent in 1981 and to their current figure of roughly 24 per cent (ICG, 2008b: 23).

National governments seize upon settler programs as a means of maintaining the territorial integrity of the state by choosing to define the state as a "*nation-state*," utilizing the original definition of the latter, as a political entity enclosing a territory wherein resides a relatively homogenous (whether based on religious, ethnic, linguistic, or other grounds) population (Kelman, 1997: 334). In most modern states of course, this condition is decidedly not the case, with most states anything but homogenous. But by maintaining fidelity to this ideal, a national government can then go further and say that the nation-state's territory must be defended by seeing to it that the territory encompassed by the state's defined boundaries is populated, or re-populated, as it were, with members of the majority (homogeneity not feasible in present circumstances) population. *But in negotiations with an insurgency, the state would presumably have to accept a counter proposal which insisted on different gradations of population density, that is, the creation of areas of the "self-determination unit," or contested region, where the density of the majority population would be less than the density of the minority population.*

Something akin to this sort of proposal was put on the table in the Philippines negotiations between the government of the Philippines and the Moro Islamic Liberation Front (MILF) which led to the agreement on the *Memorandum of Understanding on Ancestral Domain (MoU-AD)* in 2008 (McIndoe, 2010). The *MoU-AD* most pivotal element included an expansion of the Autonomous Region of Muslim Mindanao (ARMM), an administration unit created in 1989 under the Organic Act for the Autonomous Region in Muslim Mindanao, although an earlier autonomous unit had been created in 1979.

The *MoU-AD* stipulated that the ARMM would be expanded to more than 700 Muslim majority villages or towns in Mindanao, but also left open the possibility that roughly 1500 "mixed" Muslim-Christian towns were to be given the option of joining the expanded ARMM after a period of years. The

prospect of possibly increasing the size of the ARMM to such a large extent (decreasing the “reach” of the national government), motivated Christian legislators in the Philippine Congress to petition the Supreme Court to issue a stay on the creation of the expanded ARMM. That petition was granted, and the *MoU-AD* has been rendered unconstitutional. Of particular concern to non-Muslim civil society groups based in Mindanao was the perceived “vulnerability” of those Christians residing in the mixed population towns that would have been scheduled for inclusion in an expanded ARMM, which the *MoU-AD* termed the Bangsamoro Juridical Entity (BJE) (Martin, 2008). This concern was explicitly recognized in the negotiations leading to the formulation of the MoU-AD (Ibañez, 2006). But those Christian legislators which brought the petition to the Supreme Court asking for an injunction against the MoU-AD, apparently believed their concerns were not given sufficient voice in the *MoU-AD*.

Government sponsored migration of non-Muslim persons to Mindanao began “in earnest” at least as early as Legislative Act No. 4197 of 1935 (Quirino-Recto Colonization Act), under the colonial Commonwealth government. This Act was “the first law on land settlement in Mindanao under the Commonwealth government but became the turning point of [the] land settlement program” (Aquino, 2009: 44). “Colonization” began to be seen as the “lasting solution” to the problems in Mindanao. The law “facilitated a massive influx of settlers [to] Mindanao under the full sponsorship of the government” (Aquino, 2009: 44).

The growth of the non-Muslim population in Mindanao has been considerable. “A ten-fold growth in the Christian population—mainly settlers—between 1918 and 1960 led to non-Muslims outnumbering Moros two-to-one by 1960” (Tuminez, 2007: 80). “Moros” was the term applied (pejoratively) to the Muslim population by the Spanish, derived from the Spanish experience with “Moors” in North Africa. Philippine Christian communities have continued usage of the term, but it has been “appropriated” by

Muslim separatist groups, and coupled with the term *Bangsa* (nation) to form *Bangsamoro* or "Moro nation" as a positive symbol of identity. The Muslim population in Mindanao is currently estimated at roughly 20 percent of the total, with Christian settlers comprising 70 percent, although within the ARMM, Muslims still constitute a majority (Tigno, 2006; Peow, 2009). Relative population densities between Muslim and non-Muslim populations in Mindanao have thus turned decidedly in the latter's favor. *****

A Mediation Attempt

In Western Sahara the Sahrawi population refers to the 1975 Green March of 350,000 Moroccans into the territory as the *alghazu* or "invasion." Although most of those 350,000 marchers were not genuine migrants and ultimately returned to Morocco, over the decades the government of Morocco has promoted the migration of an estimated 150,000 settlers into Western Saharan territory (Farah, 2003: 23). It was these settlers that Morocco insisted should be allowed to participate in the UN sponsored referendum that was to be conducted under the auspices of the United Nations Mission for the Referendum in Western Sahara (MINURSO), after a September, 1991, ceasefire was reached between POLISARIO and the Moroccan government, and MINURSO personnel were dispatched in 1992, in conformity with UN Settlement Plan (Stephan and Mundy, 2006).

MINURSO spent several years vetting more than 200,000 applications from individuals seeking eligibility to participate in a referendum, and by the year 2000 eventually determined there were 86,386 qualified voters in Western Sahara (?). But the UN decided against the referendum, determining there was no means to guarantee the outcome (a likely vote for independence) in the event that "one of

the parties" was to not recognize the outcome (Mundy, 2006: 257). Former U.S. Secretary of State James Baker agreed to become the Secretary-General's personal envoy for the Western Sahara in 1997, and after meeting with all the parties, in 2001, presented a Framework Agreement (Baker Plan I) calling for a vote on limited autonomy after a five year period, with a one-year residence in Western Sahara as the criterion for voter eligibility (Migdalovitz, 2008). This meant that a large proportion of settlers would be eligible voters. Morocco would have retained sovereignty over the territory, while POLISARIO would have "competence" over local affairs. Not surprisingly, POLISARIO rejected the first Baker Plan, while Morocco accepted it, importantly because there was no independence option included in the proposal.

A second Baker Plan (Baker II) was proposed in 2003 (Peace Plan for the Self-Determination of the People of Western Sahara) which did contain an independence option (as well as options for integration with Morocco, or "greater" autonomy) in a referendum to occur after a four year period of "limited" autonomy (Mundy, 2006). Once again the Moroccan settlers would be allowed to participate in the vote as long as they met one of the following criteria: inclusion on a December, 1999, provisional voter list; inclusion on a UN Office of the High Commissioner for Refugees (UNHCR) repatriation list of October, 2000; or continuous residence in Western Sahara since December, 1999 ((Migdalovitz, 2008). On this occasion, POLISARIO accepted Baker II, but Morocco rejected it, stipulating that the government of Morocco would not allow the country's territorial integrity to be placed on the ballot.

James Baker subsequently resigned his post and was replaced by Peter van Walsum of Denmark as the Secretary-General's personal envoy. The dilemma of the UN as described by the Secretary-General's report of 16 October, 2006, was that the organization could not put forward a plan that called for a referendum, but did not include independence as a ballot option, while at the same time "claiming to provide for the self-determination of the people of Western Sahara" (Secretary-General, 2006). On 10

April, 2007, POLISARIO presented the Security Council a proposal entitled "Proposal of the Frente POLISARIO for a mutually acceptable political solution that provides for the *self-determination* of the people of Western Sahara" (emphasis added). On 11 April, 2007, Morocco immediately presented its proposal for Western Saharan *autonomy* entitled "Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region" (?) (emphasis added).

On 30 April, 2007, Security Council Resolution 1754 called for negotiations without preconditions between POLISARIO and Morocco, which would provide for the self-determination of the people of Western Sahara. Subsequently, a series of four negotiating sessions between POLISARIO and Moroccan government emissaries were held in Manhasset, New York, utilizing the good offices of the UN, in 2007 and 2008, with van Walsum consulting. Following these four sessions, Van Walsum was prompted to conclude in April, 2008, that "an independent Western Sahara was not realistic" (Migdalovitz, 2008:3). This statement spurred a negative reaction from POLISARIO, pointing to van Walsum's bias in favor of Morocco, and calling for his resignation. After not re-appointing van Walsum, the Secretary-General appointed Christopher Ross as his personal envoy. The Security Council then passed Resolution 1871 (?) which called upon Morocco and POLISARIO to find a mutually acceptable political solution providing for the self-determination of the people of Western Sahara and to negotiate in good faith and without preconditions. Ross then conducted an "informal" fifth round of consultations between POLISARIO and Morocco in February, 2010, but with little discernible progress being made toward a solution.

It should be noted that a majority of the "indigenous" Sahrawi population of Western Sahara fled the territory in 1975-76, and took up residence in Algeria near Tindouf, with the blessing of that government, where they have remained over the intervening decades (Stephan and Mundy, 2006). All available estimates suggest that the population of Sahrawis in Algeria (roughly 150,000) is probably

twice the size of the Sahrawi population in Western Sahara itself. It is not clear from the negotiations that have taken place to date, what concrete proposals have been put forward regarding the possibility of the repatriation of the "Tindouf" Sahrawis to Western Sahara, and then their potential participation in a future referendum on self-determination.

This latter issue is potentially significant, given the current demographic picture inside Western Sahara.

Since 1976, Morocco has transplanted large numbers of its own citizens, ethnic Berbers, Arabs, and Sahrawis into the territory. Their existence has been heavily subsidised by the state, with government salaries double in Western Sahara. Estimates of the total population in the Moroccan controlled Western Sahara range from 300,000 to 400,000. Given the results of the UN voter-identification effort, the number of ethnic Sahrawis native to Western Sahara is roughly 160,000. Thus Moroccans could easily dominate an autonomous Western Saharan government if it were democratically elected. Without a reduction of its settlers by as much as fifty to sixty per cent, it is unlikely that Western Saharan nationalists would consider autonomy (Mundy, 2006: 262).

Here then, is a case where the government of Morocco, despite a population ratio heavily in its favor (settlers to indigenous Sahrawi), is not prepared to submit the question of Western Sahara's future to a plebiscite, apparently because by doing so, a degree of validity would be appended to the notion that Western Sahara was possibly not an integral part of Morocco. It is in both the Western Saharan instance, and in the Philippines, where the settler program has created a circumstance in which the minority population (nationally) has become a minority *even in the territory the latter population claims as a homeland*, because of the national government sponsored settler program.

Population Densities

In negotiations to end an insurgency where a settler program in the insurgents "homeland area" is ongoing, an important question is whether the state would agree to homogenous "pockets" of majority population settlers in the contested territory, even though this might be regarded as conceding those areas outside the pockets or enclaves, of settlers, to the insurgency. A second question is whether the insurgents would agree to a completely integrated territory, in the sense where the distribution densities of each population would be relatively equal in the contested territory. Agreeing to such distributions could be regarded as foregoing the idea of a self-determination unit being demarcated demographically as a "separate" entity. The state seeks a recognition by the insurgents that majority population members must be able to reside "freely" in the contested territory, while the insurgency seeks an admission from the state that the residence of future (at least) settlers in the contested territory must receive insurgent consent.

Chaim Kaufman is concerned with the security dilemma faced by minority population "pockets," and possibly "enclaves" of the dominant population, residing in a contested region of the state. In the circumstances he investigates, the concern is about the ability of enclaves of the different communities to defend themselves, under the presumption that negotiations have not resolved the security dilemma. He then states that "offense often has an advantage over defense in inter-community conflict, especially when settlement patterns are inter-mingled, because isolated pockets are harder to hold than to take (Kaufman, 1996: 148). He goes on to say that "... until or unless the security dilemma can be reduced or eliminated, neither side can afford to demobilize" (1996, 148).

It is this security dilemma confronting minority and majority populations residing in a contested territory, which must be resolved through negotiations. Kaufman tells us:

When settlement patterns are extremely mixed, both sides are vulnerable to attack not only by organized military forces but also by local militias or gangs from adjacent towns or neighborhoods. Since well-defined fronts are impossible, there is no effective means of defense against such raids. Accordingly, each side has a strong incentive-at both national and local levels-to kill or drive out enemy populations before the enemy does the same to it, as well as to create homogenous enclaves more practical to defend (Kaufman, 1996:148).

But a major emphasis in negotiations to end insurgent conflict is, or should be, an effort to reduce the likelihood of attack by one community on the other, and consequently make the need for defense less of an overriding concern. There have been instances when negotiations have commenced in an effort to minimize the need for military defense. Three of those instances are given some attention here, and in these, the state has inserted majority population settlers into the region claimed as a homeland by a minority population. In these latter kinds of conflict, where the insurgency and the state have agreed to initiate negotiations in an effort to end the hostilities, the "point" of the talks is to make the need for "defensible" geographic positions on the part of both the majority and minority populations unwarranted. But state insertion of settlers into the contested territory complicates the negotiations and probably makes the likelihood of a successful negotiation outcome less probable.

Kaufman goes on to argue against the creation of "pockets" or "enclaves" of either population behind the other's "front," choosing to favor homogenous enclaves more easily defended.

Better but still bad, are well-defined enclaves with islands of one or both sides' populations behind the other's front. Each side then has an incentive to attack to rescue its surrounded co-ethnics before they are destroyed by the enemy, as well as incentives to wipe out enemy islands behind its own lines, both to pre-empt rescue attempts and to eliminate possible bases for fifth columnists or guerrillas (Kaufman, 1996: 148).

Kaufman considers cases where negotiations have either failed outright or not been seriously mounted. In the examples examined here, negotiations have been conducted at a high level and for extended periods. I would argue, despite the fact that the negotiations have failed to achieve a resolution of the conflict in each of the examples treated here, that the creation of non-homogenous enclaves, where one population is in the majority within the enclave, but where the other population has a not insignificant number of residents, could occur through negotiations.

This argument can be made for two reasons. First, the settler programs in each case make the situation "on the ground" such that repatriation of the settlers is virtually impossible, and thus some accommodation for the settlers must be found. Second, allowing non-homogenous settler enclaves to develop, although not mandating them, would satisfy insurgent demands that the minority population maintain a presence throughout the contested territory, while meeting national government requirements for territorial integrity based on demographic contiguity throughout the state generally.

There is an obvious proviso that must be made and acknowledged here. In Western Sahara the settlers from the majority population now outnumber the "indigenous" minority population in the contested "self-determination" unit or territory by a significant margin. But the whole impetus for the settler program was to accomplish this latter circumstance. It is now the case that the formerly majority population within the territory as a whole is now a minority in their proclaimed homeland area. Thus, in Western Sahara the discussion would likely have to be one which considers the possibility of Sahrawi enclaves in the territory, with a settler presence therein.

In Mindanao, the negotiations which concluded in 2008 took the position, pending the outcome of a future plebiscite, that 1500 mixed Christian-Muslim towns be given the option of inclusion in an enlarged ARMM, which would have maintained the Muslim majority within the ARMM, and which

would have made the Christian population subject to the authority of a Muslim dominated government entity . This would have been in addition to 712 Muslim communities that would have immediately been placed into the enlarged ARMM. This prospect was not warmly received by Christian civil society organizations, even though the Christian majority in Mindanao generally would remain intact. In Sri Lanka, the LTTE made it clear that Sinhalese enclaves in the Eastern province would not be made welcome. It is not clear how much, if any, of a Sinhalese presence would have been allowed in the LTTE proposed Interim Self-Governing Authority (ISGA) that was discussed in the 2004/2005 negotiations between the LTTE and the Sri Lankan government (GOSL, 2005). Ultimately the Sri Lankan government determined there would be no recognition of an ISGA, ended the ceasefire and negotiations, and sought a military solution to the conflict in Sri Lanka.

This step was taken despite the urging of mediators to continue negotiations. "Expressing their 'strong concerns,' the four co-chairs of the peace process – Japan, the U.S., the EU and Norway – repeated their conviction that 'there is no military solution to the conflict in Sri Lanka and reiterate[d] their support for a negotiated settlement.'" (ISG, 2008a: 3). A military "solution" to the conflict has in fact been attained in the sense that the LTTE has been defeated in the field. But the underlying causes of the conflict may not have been eradicated. "To date there is no decisive evidence of a government policy to bring in large numbers of new Sinhalese, just allegations and many worrying signs. Government officials have made no serious effort to respond to allegations of plans to Sinhalese the east, other than occasional pro forma denials" (ICG, 2008b: 27).

Agreements in Principle

The *MoU-AD* was, in effect, an agreement in principle, stipulating that the ARMM should be enlarged to meet the self-determination aspirations of Muslims in Mindanao, while leaving the details of a future BJE for subsequent negotiations. The *MoU-AD* has extensive language referring to future negotiations. Under the heading "Territory," the document stipulates that "the Parties will endeavor to complete the negotiations and resolve all outstanding issues...within fifteen (15) months from signing of the *MoU-AD*" (*MoU-AD* (2)(d)). Under the heading "Governance," the document addresses the key issue of how governing authority would be shared between the BJE and the national government.

The relationship between the Central Government and the BJE shall be associative characterized by shared authority and responsibility with a structure of governance based on executive, legislative, judicial and administrative institutions with defined powers and functions in the Comprehensive Compact. A period of transition shall be established in a Comprehensive Compact specifying the relationship between the Central Government and the BJE (*MoU-AD* (4)).

Although the relationship between the national government and the BJE shall be "associative," the *MoU-AD* leaves the details of that association to future negotiations. As Daniel Druckman has suggested can happen, the Philippine negotiations resulting in the *MoU-AD*, resolved conceptual differences, which led to an "acceptable definition of purpose," or an agreement in principle (Druckman, 1986: 335). Having reached agreement on conceptual issues, "the parties are ready to consider the shape of the eventual package. Persuasive debating is interspersed with bargaining as the negotiating teams begin to define and refine the issues. At this stage, details are worked out by exchanging concessions on tangible items, and by haggling over the wording of the agreement" (Druckman, 1986: 335).

The “shape” of an expanded ARMM, because it included a number of towns or villages with significant Christian residents opposed to inclusion in the ARMM, became the undoing of the *MoU-AD*. Although a majority nation-wide, this Christian population would have been a minority within the BJE, and they objected to this prospect. The formulation of the BJE was a recognition by the Philippine government that MILF demands for self-determination and a homeland were legitimate, despite the decades of government sponsored non-Muslim settler migration into Mindanao. This made agreement in the negotiations possible.

But the Philippine Supreme Court “cancellation” of the MoU-AD due to the lack of adherence to “constitutional processes” by the negotiating teams, came about because Christian civil society groups (including legislators representing Mindanao) mobilized against agreement provisions for a future plebiscite to determine if towns and villages outside the present ARMM boundaries would be included in the future BJE. Christian civil society groups declared they had not been adequately consulted by government negotiating teams regarding the BJE. “The inclusion of North Cotabato in the proposed plebiscite was unilaterally decided by the so-called ‘peace negotiators’ without proper consultations with the people and the leadership of the province” (ICG 2008c: 7). With the MILF accepting the potential future incorporation of a large number of towns with significant Christian residents into the BJE, the Muslim bargaining team appeared to be providing an implicit agreement in principle to accept Christian residency in the homeland region.

In Sri Lanka, the LTTE offer of an Interim Self-Governing Authority (ISGA) received only a very guarded reception by the Sri Lankan government. Because the LTTE insisted that restarting negotiations in 2005 had to take up the question of an ISGA as the sole issue for discussion, the possibility of an ISGA actually coming to fruition never rose in a serious manner, because the government refused to initiate talks

solely on that basis. **** The response of Norwegian intermediaries to the idea of an ISGA ... ??? The government was prepared to discuss the *concept* of an ISGA only in the context of a finding a “permanent settlement” to the conflict .

[t]he government has agreed to the concept of setting up an Interim Authority within the context of negotiating a permanent settlement to the ethnic conflict, on the basis that an Interim Authority will be useful in a transitional period from a situation of conflict to one of democracy. Agreeing to negotiate an Interim Authority in such a context is very different from opening negotiation solely on the basis of the LTTE demand of the Interim Self-Governing, which prevents the re-opening of direct negotiations (GOSL, 2005).

In the LTTE proposal for the ISGA, the only mention of the Sinhalese community in the Northern and Eastern provinces was under the heading “Composition of the ISGA” where it was noted that “the Muslim and Sinhala communities in the north-east shall have representation in the ISGA” (Chandrasekharan, 2004). The brevity of this notation suggests that the LTTE was only willing tolerate the presence of Sinhalese settlers arriving prior to the onset of the insurgency, not those who chose to migrate to the Northern and the Eastern provinces after the LTTE made it know they were not welcome. Thus, there does not appear to have been an agreement in principle on the part of the LTTE regarding the rights of settlers to continue intrusion into the Tamil homeland area. In the early period of the insurgency the LTTE came very close to suggesting that Tamil homogeneity in the Northern and Eastern provinces was the most desirable demographic condition. There was insufficient movement away from that belief even in the later years of the insurgency to hold the view that the LTTE had dispensed with the notion, or principle, of homogeneity in the “North-East.”

There has been no perceptible movement by the Moroccan government toward accepting the principle that its settler program does *not* dilute claims by POLISARIO and the Sahrawi people of a homeland in Western Sahara. Accepting that principle would undoubtedly lead to the placement of “independence as an option” on the ballot of any future referendum regarding the territory’s status. The

government of Morocco continues to rule out any referendum or plebiscite that would include that option (?).

Particularly since the construction of the multiple layered "wall," sealing off three quarters of the territory, there have been no grounds for POLISARIO to even mount an argument for homogeneity in Western Sahara. That is, conditions "on the ground" would make such an argument seem beside the point. Thus, POLISARIO has had little choice other than to accept the idea in principle that homogeneity in the territory is not feasible or desirable.

Conclusions

A referendum to determine the future status of Western Sahara will not occur until either POLISARIO allows the ballot to remain void of an independence option, or Morocco allows the ballot to contain that option. Negotiations to produce an autonomous Western Sahara province within Morocco will be unlikely to succeed because the current demographic map of that province would leave the Sahrawi population in a distinct minority. The LTTE never seemed to renounce either the idea of a homogenously Tamil (or nearly so) "northeast" in Sri Lanka, or the right of the LTTE to utilize violence to realize their idea . The MILF was prepared to accept, in principle, the notion of an expanded predominately Muslim ARMM (the BJE), even with a significant Christian settler population. That settler population, however, objected to their inclusion in the BJE.

***** In each of the three separate "cases in point" presented here, the argument between the national government and the insurgency is one where the latter demands self-determination in part based on the concept of a homeland having a distinct demographic quality. The state, on the other

hand, insists on maintaining national territorial integrity in part based on an achieved, or created, demographic character. Within the “self-determination unit,” the insurgency seeks minority population primacy. This may be achieved through expanding a favorable minority/non-minority population ratio, or by minimizing an unfavorable ratio. The state wants continuity in the presence of the majority population across the expanse of national territory. But it is not clear whether homeland self-determination can be achieved within, or along side of, national population continuity. Even more critical, is the matter of what densities of the minority and majority populations in the contested area, are tolerable to each community.

In terms of gauging the likelihood of successful negotiations, it matters whether, and if so, how hard the state has “pushed” for majority population demographic dominance (a population density ratio in its favor) in the homeland area. In each of the contested regions of the three instances canvassed here, the state has indeed worked quite hard to alter the demographic circumstances “on the ground.” In Western Sahara the Sahrawis have become a minority by a margin of at least two-to-one after the Moroccan government population transfer program; in the Philippines, the Moros had become a minority in Mindanao on the order of at least three-to-one by the time negotiations between the MILF and the Philippine government began in earnest; and in Sri Lanka, the Tamil population advantage in the Eastern province had been reduced to roughly two-to-one by the time the LTTE insurgency had gained a foothold.

It would not be overstating the case to say that what is common in the three instances is that the minority population density in the self-determination unit has been reduced significantly in each. Central to the success of negotiations, as proposed in this paper, is the notion that the dilution of minority population density in the contested area does not, or should not reduce the validity of the

insurgent claim of a right to self-determination in that region. There is little evidence which would produce a conclusion that the governments, except perhaps for the Philippine case, in each instance have accepted this principle. This may, at least in part, account for the failure of negotiations thus far in each case, while taking note of the civil society objections to a negotiated agreement in the Philippines. There was evidence indicating that POLISARIO in Western Sahara, and the MILF in the Philippines, had come to accept the inevitability of a settler presence in the contested region, while the LTTE had seemingly not reached an accommodation with this apparent inevitability. This may account, at least in part, for the outright failure of negotiations in Sri Lanka; the obtaining of an agreement but not the acquiescence of non-Muslim civil society in the Philippines, and regarding Western Sahara, the continuation of talks between POLISARIO and Morocco.

The absence of a settler program is no assurance that negotiations to end insurgent conflict will succeed, and the presence of a settler program is no guarantee that such negotiations will fail. But the presence of a settler program does appear to reduce the likelihood that negotiations to end insurgent conflict will succeed. This is particularly so when there is evidence that the insurgency has been generated in significant part because of the settler program.

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