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INSURGENT CONFLICT

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ABSTRACT

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An 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. 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. A mediation effort 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.
**BIOGRAPHICAL INFORMATION**

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THE IMPETUS FOR TERRITORY FROM COMPETING POPULATIONS

The underlying theoretical question in this paper is whether the pursuit of self-determination by specific inhabitants of a territory, can be separated from their claims to that territory. When a specific population contends such a separation cannot be made, in certain instances the state to which the territory is attached may make an effort to impose, or create that separation. One method of creating a separation between self-determination and claims to territory is to weaken the claim to territory. One approach to weakening a claim to territory is to dilute the population density in the territory of the inhabitants making the claim.

The pursuit of self-determination is often mounted by a minority population within a state that may constitute, or once constituted, a majority within the contested, or claimed territory. Particular states have adopted the practice of transferring members of the majority population (nationally) into the contested region, diluting the minority population density in the region, and thereby weakening (it is believed) the latter population’s claim to that territory. Once having achieved a weakened minority population density in the region, the state is then able to argue that self-determination cannot legitimately be based on claims to the contested territory. The state is then in a position to deny the legitimacy of secessionist movements, or even “strong” forms of autonomy, i.e., territorial self-determination.

But denying legitimacy to efforts claiming a territorial base within which a minority population can pursue self-determination, risks creating a mobilized minority population, from which an insurgency can take form. Because an insurgency, pursuing territorially based self-determination, can initiate activity threatening the sovereignty or territorial integrity of the state, defending the use of violence on the part of the state to curtail the latter efforts toward self-determination becomes more tenable.

The question at hand can be posed as whether the territory of the state can be regarded as a “divisible good,” which can be “divided at any point along a continuum (infinite divisibility) or in discrete units (finite divisibility), without destroying its value” (emphasis added). A divisible good that is being contested by two disputants has the potential ability to offer benefits to both, instead of resorting to a winner-take-all solution. Even if territory is possibly divisible, sovereignty is probably not, and the “intractability” of many territorial disputes may reside in this point. Drawing on literature from international law, political philosophy, as well as area studies within comparative politics, the following discussion will try to discover if sovereignty has been divisible in the cases of Sri Lanka and the Philippines.

The objective of this article is to assess the likelihood of a negotiated resolution of insurgent conflict, within states maintaining a program of population transfer into a region of the state contested by an insurgency. The 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.\(^2\)

If self-determination is defined at least in part in territorial terms, then 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.\(^3\)

**Preserving Distinctiveness Through Self-determination**

The self-determination sought by populations within existing states with which this inquiry is concerned, is that which occurs when states have failed to put into practice, at a minimum, policies of tolerance and non-interference in the internal political, cultural, and social affairs of a minority population, such that the continued existence of the population as a distinct group, is not endangered.\(^4\) The two cases examined in the article are instances where the physical and cultural existence of a territorially concentrated group, as a discrete population, has been threatened by a state’s violation (population transfer) of the claim made by the minority population for a “homeland”. Inherent in this assertion is the quest for ethnic homogeneity in the claimed territory; whether this claim is “sufficient” to justify secession or autonomy under international law has received substantial debate\(^5\).

To be clear, the instances of insurgency presented in this study have not been generated by mere ascription, that is, simply by virtue of the fact that the Muslims in Mindanao, and the Tamil population in Northern and Eastern provinces of Sri Lanka, are distinct minorities, and as such are inherently “due” a significant measure of self-determination, often understood as a degree of self-government.\(^6\) These minority peoples hold that the national government has, by virtue of a population (an “alien” population) transfer program, engaged in an unjust appropriation of territory. This appropriation was unjust, even though the territory in question is nominally at least, under the sovereign control of the national state, because the minority population has a prior claim (occupancy) on the contested territory.\(^7\) The minority population (forming a majority in the contested territory, or having once done so) wishes to dilute that control; the national government wishes to strengthen it through the population transfer program. This unjust appropriation is the primary grievance presented by the minority population.\(^8\).

In the theoretical literature this vein of minority population territorial challenges to the state pursued through secession, or some variant of autonomy, has been
labeled “just cause” or “remedial right” theory, in contrast to theory labeled “choice” or “primary right”. Choice theory posits that a “people” or “nation”, as such, have the right to assert some degree of separation from the state solely by virtue of their distinctiveness as a nation; no demonstration of injustice delivered against the nation is necessary to support this assertion. Just cause theory, in contrast, upholds minority efforts to separate from the state based on a belief that a state generated injustice against the minority population has occurred, and in the instances discussed here, the injustice is the insertion of settlers into the minority’s homeland. This insertion is a discriminatory re-distribution of territory by the state, and as such, “voids the claim by the state of territorial sovereignty” over the homeland claimed by the minority population (emphasis added).

Lea Brilmayer has proposed that one important test regarding the validity of a minority population’s claim for outright secession is “the extent to which the disputed territory has been settled by members of the dominant [nationally] group”. If this “encroachment” by members of the dominant population into the territory claimed as a homeland by a minority population is substantial, then a real and large threat to the cultural survival of the minority population is likely to be posed. This can be understood in the following sense. The continued survival of a distinct population as a nation (and a nation is defined in more than simple lineage terms) may require that members of the majority population be restricted from settling permanently in the minority homeland territory. This is so because if majority population members did take up permanent residence there is almost a certainty the latter would support policies establishing conditions degrading or threatening the existence of the minority population’s culture. Consequently the preservation of the minority population’s distinctiveness as a people would face eradication, or at a minimum, suppression.

The strength of the minority population’s claim to the contested territory has been expressed in the following terms.

The people who inhabit a certain territory form a political community. Through custom and practice as well as by explicit political decision they create laws, establish individual or collective property rights, engage in public works, [and] shape the physical appearance of the territory.

[…] All of these activities give them an attachment to the land that cannot be matched by any rival claimants. This in turn justifies their claim to exercise continuing political authority over that territory (emphasis in original).

It is only through gaining political authority, i.e., achieving self-government, that the minority population has some assurance their nation will endure. Although it is an obvious oversimplification, the initiation of a settler program inserted into contested territory, could be seen as “just cause” for the commencement of a campaign by the minority population to negate an effort by the state to extinguish prior minority claims to that same territory.

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. On the presumption that the population demanding a homeland is a minority nationally, an important question for negotiations would be whether non-minority group members would be prohibited from immigrating into the territory once the autonomous unit was created.

**ROLE OF A SETTLER PROGRAM IN THE GENESIS OF AN INSURGENCY**

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. 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 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., an assertion of state sovereignty over the contested region by supporting the settler program with sustained economic support and, if necessary, military protection. This phenomenon of ostensible economic development programs undergoing an adaptation did occur in Sri Lanka, such that the rural areas in the Northeast region of the country became “militarized.” In these cases the settler program ceases to be only a part of a development policy, and could be categorized, at least in part, as a component of a counterinsurgency strategy.

It may not be 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 belief, language choice, historical origin, or lineage (ethnicity). A settler program may be initiated in part as a response 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. The “outposts” of the state may very well have been put in place in defense of settler communities. But once in the field, military outposts in defense of settlers may initiate pursuit of insurgent units. It would be very difficult, if not impossible to ascertain when “insurgent pursuit” by the national military ceased being part of a defensive mission only, and when that pursuit would be transformed into outright counter-insurgency.

The divide between offensive and defensive operations for a national military may become narrow. In any case, a potential sequence of events is for an insurgency to coalesce “around”, or respond to, a settler program. That is to say, the insurgents could simply refuse to recognize the state’s authority to make a decision instituting a development program in the contested region of the country. Something on this order occurred in the Philippines where in a series of Commonwealth Acts instituted in the decades before WWII, the Manila government declared Moro ancestral lands to be public property, thus negating the Waqaf Islamic tradition whereby land holdings were bequeathed to heirs of the owner, absent written documentation. Muslim populations in the Mindanao region of the Philippines have consistently challenged the above Commonwealth Acts.

Following the commencement of negotiations between an insurgency and the state, it is not always 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 the latter 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 that territorial integrity would be enhanced if the program was maintained. 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.

**Inadmissible Settlements in 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, a significant proportion of whom 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. The 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.

“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…” (emphasis added). A national government receiving a “petition” for a homeland in a particular region of the state will often insist that the region 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, in contrast, will often demand 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 into 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.

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. The MoU-AD’s most pivotal element included an expansion of the Autonomous Region of Muslim Mindanao (ARMM), an administrative 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 712 (Category A in ARMM terminology) Muslim majority villages or towns in Mindanao, but also left open the possibility that roughly 1459 (Category B) mixed “conflict affected area” Muslim-Christian towns were to be given the option of joining the expanded ARMM after a period of 25 years. One observer of the Mindanao conflict has interjected that an enlargement of the ARMM and the creation of genuine autonomy for the Moro population could happen, at least in theory. This enlargement of the ARMM would have maintained the Muslim majority, and would have rendered the Christian population subject to the authority of a Muslim dominated autonomous region governing entity.
The prospect of possibly increasing the size of the ARMM to such an 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.\textsuperscript{30} That petition was granted, and the \textit{MoU-AD} has been rendered unconstitutional.\textsuperscript{31} 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 \textit{MoU-AD} termed the Bangsamoro Juridicial Entity (BJE).\textsuperscript{32} This concern was explicitly recognized in the negotiations leading to the formulation of the MoU-AD.\textsuperscript{33} 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”.\textsuperscript{34} “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”.\textsuperscript{35}

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”.\textsuperscript{36} “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 \textit{Bangsa} (nation) to form \textit{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 (with the indigenous Lumads comprising the bulk of the remainder), although within the ARMM, Muslims still constitute a majority.\textsuperscript{37} Relative population densities between Muslim and non-Muslim populations in Mindanao have thus turned decidedly in the latter’s favor.

\textit{Christian, Opposed to Muslim, Concentrations in Mindanao}

In negotiations to end an insurgency where a settler program in the insurgents’ “homeland area” is ongoing, a potential issue 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. At issue 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.
Chaim Kaufman is concerned with the security dilemma faced by minority population “pockets”, sited along side of, or possibly amongst, “enclaves” of the dominant population, both located in a contested region of the state, where the majority population predominates. In certain regions in particular instances, the majority population nationally is a regional minority, and the minority population at the national level is a regional majority. 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”. He goes on to say that “… until or unless the security dilemma can be reduced or eliminated, neither side can afford to demobilize”.

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 (emphasis added).

But a major focal point in negotiations to end insurgent conflict is, or should be, an effort to reduce the motivation for attack by one community on the other, and consequently make the need for defense less of an overriding concern. Two instances of insurgent conflict where negotiations were initiated in an effort to minimize the need of opposing populations for military defense have been 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. My argument holds that state insertion of settlers into the contested territory (either prior to or after the negotiation inception) complicates the negotiations and probably makes the likelihood of a successful negotiation outcome less probable. But the settler programs discussed here make the situation “on the ground” such that settler repatriation is virtually impossible; thus, some accommodation for the settlers must be found.

**Defining Issues by Reaching Agreement in Principle**

The MoU-AD in the Philippines 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 had extensive language referring to future negotiations.
Under the heading “Territory”, the document stipulated that “the Parties will endeavor to complete the negotiations and resolve all outstanding issues...within fifteen (15) months from signing of the MoU-AD”. Under the heading “Governance”, the document addressed 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.

Although the relationship between the national government and the BJE was to be “associative”, the MoU-AD left 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. 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.

The “shape”, and consequently the demographic composition 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 in Mindanao, 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 recognition 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 the agreement provisions for a future plebiscite. Christian civil society groups declared they had not been adequately consulted by government negotiating teams regarding the BJE. “The inclusion of North Cotobato 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”.

With the MILF accepting the potential future incorporation of a large number of towns with a significant number of 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 March, 2010, MILF head negotiator Mohager Iqbal noted that the MILF had shifted its chief demand (put to
the outgoing Arroyo government) from independence to what was termed “an asymmetrical state and sub-state arrangement”. In February, 2011, in the initial negotiating session between the MILF and the Aquino government, Philippine government (GoP) chief negotiator Marvic Leonen noted that his government saw a need to “address historical injustices done to Muslims in Mindanao”.

Subsequently, in April, 2011, in response to a draft Comprehensive compact submitted by the MILF to the GoP Panel just prior to the second round of exploratory talks between the MILF and the GoP, Leonen commented that he saw in the document “the possibility of Filipino citizenship with a Bangsamoro identity”, (emphasis added). Thus, “movement” by both the MILF and the GoP became perceptible in the first half of 2011. However, aided by the Malaysian facilitator Tenkgu Dato AB Ghafar Tengku Mohamed, and joined in the process by the International Contact Group (UK, Turkey, Japan, and Saudi Arabia), the GoP remains “seized” by the issue of contiguity in an expanded ARMM, driven by concern for whether Christian settler enclaves would remain contiguous with predominately Christian territory.

In early 2011, a spokesperson explained how the government “hoped to persuade the MILF that it should accept a more limited, contiguous territory in exchange for a more manageable governance structure”. A major reason for this concern was produced by Category B from the MoA, the 1459 “conflict affected areas” (areas not physically secure) which were to be given the option of joining the ARMM in 25 years via a plebiscite. “Governance” in this context incorporates state responsibility for security. “The delivery of basic services such as health and education, ensuring the safety of the citizenry from criminal elements and rebel groups… administration of local justice etc. are but intrinsic functions of the state”. GoP security concerns are not to be dismissed, as is demonstrated by the military actions of several “renegade” MILF units against predominately Christian settler communities in Maguindanao and Lanao del Norte, after the Court abrogation of the MoU in late 2008. Muslim animosity for the settlers has not been eradicated.

COMPETING CLAIMS OF SOVEREIGNTY IN SRI LANKA

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 some portion of the region’s population. 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, as was clearly the case in Sri Lanka. 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.

Violence by Tamil insurgents was targeted explicitly toward Sinhalese settlers residing in a proclaimed Tamil homeland at least as early as the mid-1980s. 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 (national) 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 (emphasis added).57

The belief was that a turn in population ratio in favor of a minority population would buttress the insurgent argument for self-determination, due to the resulting increased homogeneity of the homeland resident population.

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.58

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.59

**Demography in Sri Lanka’s Northeast**

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’.60

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.61
Sinhalese political leaders have invoked this latter 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.”\(^{62}\) LTTE apprehension regarding an alleged Sri Lankan government (GoSL) plan to “Sinhalese” the Eastern province has been persistent, and may have some justification.

Located at the intersection of the eastern and northern provinces, Trincomalee 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.\(^{63}\)

National governments have seized 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.\(^{64}\) In most modern states of course, this condition is decidedly not the case, with most states anything but homogenous. 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 national majority population.

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.\(^{65}\) Ultimately the GoSL 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’.\(^{66}\)

A military “solution” to the conflict has in fact been attained in Sri Lanka in the sense that the LTTE has been defeated in the field. But the underlying causes of the conflict have not 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.\(^{67}\)
The LTTE offer of the ISGA received only a very guarded reception by the GoSL. Because the LTTE insisted that re-starting 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, in that the government refused to initiate talks solely on that basis. The government was prepared to discuss the concept of an ISGA only in the context of a finding a “permanent settlement” to the conflict.

The 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 Authority, which prevents the re-opening of direct negotiations.

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”. The brevity of this notation suggests that the LTTE was only willing to 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 had made it known 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 an 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 sustain the view that the LTTE had dispensed with the notion, or principle, of homogeneity in the “North-East”.

In September, 2003, the GoSL tendered an offer for an “interim administration in the northeast” (which appeared to suggest the topic of an island wide federal structure was open for discussion) to allow negotiations for an agreement on the final status for the Northern and Eastern provinces to go forward. This offer was in part a response to a September, 2002, LTTE announcement that it would settle for internal self-determination in the areas of “historical habituation of the Tamil-speaking peoples”. But the internal self-determination concept was incorporated in the ISGA put forward in October, 2003, and thereby received minimal consideration.

A MILITARY SOLUTION TO THE SOVEREIGNTY QUESTION

After a Cease Fire Agreement (CFA) negotiated in Oslo was reached in February, 2002, a break in formal negotiations occurred from April, 2003 through February, 2006. In early 2006, the newly elected (November 2005) government, with Mahinda Rajapapase as President, began a “two-track” peace process, which included a more
aggressive military strategy, as well as a narrowly conceived negotiating agenda; namely, how to more effectively implement the CFA.\textsuperscript{74} The February, 2006, discussions produced no new initiatives, and the last session, conducted with the urging of Norwegian mediators in October, 2006, in Geneva, failed in the face of the deteriorating ceasefire in the field.\textsuperscript{75}

Clearly, the GoSL’s “interim administration” proposal did not contain an acceptance of “interim self-rule” (effectively what the ISGA mandated) for the North and East. An April, 2007, Rajapaske government devolution proposal for the North and East did not produce a positive LTTE response. “Overall, the Rajapaske proposals encourage centralization (and continuance of unitary state structure) under the guise of a dubious devolutionary system”.\textsuperscript{76} The lack of congruence in proposals helped produce the October, 2006, end to the formal peace process.\textsuperscript{77}

The pivotal event leading to the eventual end to the peace process in Sri Lanka was the decision by the LTTE to close the Mavil Aru sluice gates in the Trincomalee district of the Eastern province, and the military response of the GoSL to this LTTE action of 22 July, 2006.\textsuperscript{78} Although there was some indication the LTTE took this action (producing a humanitarian emergency for farmers,\textit{predominately Sinhalese}, in the region) because of a shortage of irrigation water available for Tamil farmers residing in the area, there is a lack of clarity about the LTTE motivation.\textsuperscript{79} The SLMM noted the government response was severe: “Following the closure of the Mavil Aru sluice gates on 22 July, 2006, the government embarked on a major military offensive operation between the Parties in the Trincomalee area severely endangering the civilian population”.\textsuperscript{80}

Extensive government military operations were initiated, and continued past the point when the gates were re-opened, which in August resulted in a forceful transfer of territory from the LTTE to government forces on Sampoor peninsula. Such a transfer of territory by force was a violation of the CFA.\textsuperscript{81} Still, the government pressed ahead with its offensive throughout 2007, to the point that it gained full control of the Eastern province by July, 2007.\textsuperscript{82}

Despite purported government intimations it was open to resuming negotiations with the LTTE, a message that was transmitted to U.S. Secretary of State Condoleezza Rice,\textsuperscript{83} the SLA began a major push into the Northern province in the latter half of 2007. This effort met with sufficient success such that the government unilaterally abrogated the CFA, and the Status of Mission Agreement (SOMA) establishing the SLMM, in January, 2008, a step which ended the activities of the SLMM.\textsuperscript{84} By the summer, 2008, the SLA had advanced to a close proximity with an international humanitarian “safe area” known as the “Kilinochchi box,” within which the town of Kilinochchi served as the LTTE administrative headquarters.

In January, 2009, Kilinochchi was captured by the SLA, and the latter enclosed the remaining LTTE leadership, LTTE cadre, and a large number of civilians in an area of a few square kilometers along the shore of the Bay of Bengal.\textsuperscript{85} As the fighting continued, three progressively smaller “No Fire Zones” (NFZs) were established by the SLA, ostensibly to provide for the safety and well-being of the trapped civilians,
although there is evidence a substantial number perished. The LTTE reportedly forcibly detained many civilians from leaving the NFZ. The SLA finally converged on the remaining LTTE leadership in May, 2009, and announced the death of LTTE leader Velupillai Prabhakaran, and the end of the war on 19 May, 2009.

In his 2005 inaugural address President Rajapaksa noted that his approach to the problem of the North and East would be to reach a national consensus wherein the sovereignty, territorial integrity, and the “unitary structure of the State, would be preserved” (emphasis added). There is little evidence that the Rajapaksa government ever deviated from a belief in a unitary system for Sri Lanka; there is ample evidence that the LTTE never wavered from its insistence on a devolution of powers away from the center to the North and East, in order to gain self-determination. Despite years of effort, the peace process in Sri Lanka was unable make Tamil self-determination compatible with a unitary national government.

CONCLUSIONS

In each case presented here, the argument between the national government and the insurgency is one where the latter seeks 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 a contiguous 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 majority population contiguity. 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 part, the self-determination demands presented by the MILF and the LTTE, raise the possibility of state territorial “contraction”, in the sense proposed by Ian Lustick, and whether such a contraction was “good” or “necessary” for the preservation of the state. In effect, Lustick asks whether the consideration of self-determination demands can be transformed from a question of state survival to a “policy” question. Michael Keating has suggested the issue of self-determination be understood as a matter of re-constituting the nation-state such that the latter is seen as being subject to certain political claims from civil society professing “inherent rights”, and requiring negotiation. Self-determination is at variance with sovereignty (state authority), and Keating proposes that states not make claim to a monopoly of “original” authority, but recognize competing sources of authority, and be prepared to accept limits on their authority, i.e., sovereignty. But Keating seems to be suggesting that sovereignty is divisible. As suggested earlier in this article, it seems clear that in some cases it is not.

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 instance taken up in this inquiry, minority populations have sought to reverse the respective state’s decision to “embark on or (continue) all-too-familiar “nation-building” programs designed to obliterate minority group identities”. In each contested region of the two states considered here, the state has worked quite diligently to alter the demographic circumstances “on the ground”. In the Philippines, the Moros had become a minority in Mindanao (outside the ARRM) 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 two examples is that the minority population density in the contested region 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 government in Sri Lanka ever accepted this principle. In the Philippines, there is reason to believe the GoP has at least been moving in that direction. This may, at least in part, account for the failure of negotiations Sri Lanka, and while taking note of the civil society objections to a negotiated agreement in the Philippines, the “abridged” negotiation success in the latter state.

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. No generalities can be drawn from only two cases. Any attempt to do so would be overreaching. But in the two cases presented, the presence of a settler program does appear to have reduced the likelihood that negotiations to end insurgent conflict could have, or will, succeed. There is evidence that the insurgent conflicts in the two cases have been generated in significant part because of a settler program. In Sri Lanka, a negotiated agreement proved unattainable, and in the Philippines, implementation of an agreement has remained beyond reach.

ENDNOTES


10 M. Moore (note 6) p. 167.


Tigno (note 20) pp. 28-9.


34 Aquino (note 21) p. 44; Salah Jubair, A Nation Under Tyranny (Lahore, Pakistan: Islamic Research Academy 1997) p. 82

35 Aquino (note 21) p. 44.

36 Tuminez (note29) p. 80.


39 Ibid. p.148.

40 Ibid. p.148.

41 Memorandum of Agreement (MoU), (note 28).

42 Ibid.

44 Ibid. p. 335.


46 Philippine Supreme Court (note 31).


51 International Crisis Group (note 27) p. 5.


53 McIndoe (note 26) p. 1.

54 International Crisis Group (note 16) p. 4; Tigno (note 20) p. 28.

55 Oberst (note 8) pp. 33-5.


58 Korf and Fünfgeld (note 18) p. 8.

59 Aquino (note21) p. 49.

60 Lewer and William (note 14) p. 3.


64 Kelman (note 2) p. 334.


67 International Crisis Group (note 16) p. 27.


70 S. Chandrasekharan, (note 68).


77 Ubayasiri (note75) p. 1.

79 Kronstadt and Vaughn (note 72) p. 25; International Crisis Group (note 74) p. 11.


81 Ibid. p. 2.


83 Kronstadt and Vaughn (note 72) p. 28.


85 Ibid. p.5.

86 U.N. Secretary-General (note 82) p. 23.

87 International Crisis Group (note 84) p. 5.


91 Ibid. 381.