Successful External Mediation of Insurgent Conflict

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Abstract
Although insurgencies may begin their rebellion with an expressed desire for outcomes unacceptable to opposing governments, the desired insurgent outcomes sometimes undergo modification, creating conditions such that governments become more amenable to external mediation. In certain separatist conflicts, there is a greater likelihood of external mediation, if the political “redefinition” of the state insisted upon by the insurgents undergoes a revision, from secession to self-determination, understood as a variant of autonomy. In the same vein, although it may not happen concurrently, insurgent movements become more amenable to external mediation if and when opposing governments revise the preferred conflict outcome from a military defeat of the insurgents to a “containment” of the movement. These two developments, a revised demand from the insurgents for how the state should be defined, and an altered military strategy adopted by the government, can serve as “objective referents” helping external parties to identify a ripe moment in the conflict, and initiate mediation. But the implementation of an agreement ending separatist conflict may not occur if the government fails to submit the proposed territorial bounds of autonomy to prior review by constituents.

key words: insurgency; mediation; discrimination;
I. Perspective

This paper seeks to extend the understanding of how certain types of civil wars, separatist insurgencies, may be brought to an end, or nearer to an end, through external (international) mediation. An effort is made to establish which conditions in a domestic conflict, if present, will make it more likely that an international mediation will be brought to bear on a domestic conflict, and then make more likely a settlement or resolution will be reached, and implemented. One of the prevalent approaches to an understanding of how the resolution of protracted internal conflict can occur through the intervention of a third party is “ripeness theory,” an approach first promulgated by I. William Zartman in the mid-nineteen eighties, and since utilized as an analytic tool by many others (Hancock, 2001; Haass, 1990; Kriesberg, 1987; Lieberfeld, 1999; Stedman, 1991).

Ripeness theory posits that if a “mutually hurting stalemate” is reached in a protracted conflict, the likelihood of mediated negotiation is enhanced (Schrodt, et. al., 2003; Zartman, 1985). The mutually hurting stalemate concept holds that mediation of a protracted conflict is most likely to occur when the parties are embroiled in a conflict from which they cannot achieve victory and where the “unending” nature of the conflict delivers pain to both of them (Lieberfeld, 1999; Zartman 2001: 228). Further, the idea proposes that a ripe moment occurs when both sides begin to see “a way out” of the conflict, and that a formula can be devised that is “just and satisfactory to both parties” (Mitchell, 2001; Pruitt, 1997; Zartman, 1989: 291).

One of the major criticisms of ripeness (the theory has received its fair share of criticism), is based on the belief that at its base the idea is tautological; that is, a mechanism that can only mount an explanation by reference to itself (e.g., A is A because it is A). A number of scholars have rendered this comment on the concept (Kelly, 2007; Kleiboer, 1994; Rothstein, 2007). One author puts the “tautological” criticism in the following words.

“The way ripeness has typically been used reduces the concept to a mere tautology, and theories that relate to it end up being unfalsifiable claims. It is hard to differentiate the concept from parties consent to mediation and successful outcomes. Ripeness is a necessary, if not sufficient, factor for initiation and success of negotiations [citing Zartman, 2000]. If mediation was successfully initiated or finalized, in other words, the moment had to be ripe “(Schrodt, et. al., 2003).
Zartman, the progenitor of the concept, has come to its defense.

“Ripeness is only a condition, necessary but not sufficient, for the initiation of negotiations. It is not self-fulfilling or self-implementing. It must be seized, either directly by the parties or, if not, through the persuasion of a mediator. Thus, it is not identical to its results, which are not part of its definition, and therefore is not tautological… Although ripeness theory is not predictive in the sense that it can tell when a given situation will become ripe, it is predictive in the sense of identifying the elements necessary (even if not sufficient) for the productive inauguration of negotiations” (emphasis added) (Zartman, 2001).

Although it may be desirable for ripeness theory to maintain a stronger “predictive” capability, in my judgment even in the absence of that more “robust” capability, the theory still has utility, in the sense of being able to identify those elements of ripeness which either the parties to a conflict, or an external mediator, would be able to recognize and act upon. Ted Gurr has noted that “disputes over self-determination are best settled by negotiation and mutual accommodation” (2000a: 58). In the case of separatist conflicts, Gurr notes that it is best if the mutual accommodation occurs “after an initial show of forceful resolve rather than after prolonged warfare” (2000a: 57). Clearly, this does not always happen, and in the two cases of protracted conflict presented here, it has been a matter of the insurgency realizing they are “strategically overmatched,” and the government concluding “it is cheaper to negotiate regional and cultural autonomy and redistribute some funds than it is to fight endless insurgencies” (Gurr, 2000a: 57). Gurr appears to be affirming Zartman’s contention that the parties can sometimes recognize when negotiation rather than endless war offers a better alternative. The concentration in this paper is on how external intervenors may be able to recognize and then proffer a willingness to mediate, or respond positively to a request by at least one of the conflict parties to take such a role.

If ripeness is indeed a condition, which at some point violent conflicts may enter into, and once this occurs, a condition which can be discerned by the parties to that conflict or by an external actor, the question arises as to how this recognition, or perception can come about. It has been postulated that there are objective “elements” or “referents” of ripeness which can sometimes be identified (Pruitt, 2005; Zartman, 2001). If this recognition occurs, then it is likely the level of subjectivity imbued in conducting an analysis of a conflict, which relies on the notion of ripeness, could be reduced.

It is key that included within this recognition of ripeness is a sense by the parties that “a way out” has presented itself that will not bring greater dishonor or material costs than that which would be incurred by remaining embroiled in the conflict (Kriesberg, 1987). “Ripeness is a matter of perception, and as with any subjective perception, there are likely to be objective facts to be perceived. These can be highlighted by a mediator or an opposing party when they are not immediately recognized by the party itself…” (Zartman, 2003). But concluded mediated agreements directed toward ending separatist conflicts can be rejected by the constituents of one of the parties, particularly on the government side. Constituent accountability has been noted as a potentially important factor in bargaining when the negotiating team is responsible for dividing a “tangible” good (Druckman, 1994: 528). That has occurred in the Philippines, one of the cases studied here. To explain why reaching agreement to end certain separatist conflicts through mediation can become more likely, but implementation uncertain, this paper posits:
If the state alters its military strategy from offense to defense against an insurgency, and the insurgents revise their demand from secession, to self-determination through homeland autonomy, achieving a mediated agreement becomes more likely, but implementation uncertain, if self-determination is defined in territorial terms prior to adequate constituent review.

**Conflict Settings**
The states that are studied here (Indonesia and the Philippines) have both experienced protracted insurgencies. In these cases the insurgencies have largely been concluded through mediated negotiations, although recently a prospective settlement in the Philippines has undergone a setback (ICG, 2008a; Jacinto, 2008). It will be contended herein that “ripe moments” occurred and were exploited by external mediators (as well as the parties) in Indonesia and the Philippines, although to a lesser extent in the latter case, because of a failure to implement the concluded “agreement in principle.”

In lieu of regime change (with the installation of a government controlled by the insurgent group), or outright secession and the creation of a separate state, over the course of a conflict what insurgents may seek is a more equitable distribution of government revenues, a greater share in natural resource exploitation, an end to discrimination/repression, or a measure of autonomy (Lapidoth, 1997; Gurr, 2000). The demand for autonomy will usually mean there will be a significant “devolution” of authority from the national government to a lesser jurisdiction, *defined in part by territory* (Chattopadhyay, 2002). To gain one or more of these aims, short of a military defeat of government forces, some level of discussion with the state is usually necessary. But the question is whether the parties will recognize that negotiation with the other “side,” could provide advantages greater than the advantages associated with continuing hostilities (Druckman, 1994; Bercovitch, et. al. 1997).

An insurgent decision to revise their demand for self-determination, and a government decision to alter its military objective, may be examples of the observable “objective referents” that have been put forward by some observers as a means of detecting ripeness in certain protracted insurgent conflicts (Pruitt, 2005). Gurr has noted that the parties in certain separatist wars have recognized that the costs of accommodation are probably less that the costs of continued conflict, but when this recognition is lacking, such wars can become protracted (2000b).

This paper is directed at answering the question of what shape accommodating behavior might take, and on how international mediators can help governments negotiate with insurgencies, “providing both sides with incentives for choosing autonomy rather than secession” (Gurr, 2000a: 62). But mediation success includes the implementation of concluded agreements. Negotiating teams must wield authority sufficient to gain the approval of those agreements from the respective teams’ “constituencies” (Druckman, 1994: 528). Constituent approval may not always occur, however, due to the contours of self-determination that are agreed upon in negotiations.

**II. Philippines**

**Insurgency Genesis**
There have been multiple insurgencies in the Philippines, but the insurgent conflict under study here is between the Government of the Republic of the Philippines (GRP) and the Moro Islamic
Liberation Front (MILF), a former faction of the Moro National Liberation Front (MNLF). From the 18 July, 1997, signing of the Agreement for General Cessation of Hostilities (AGCH) (reached with the Fidel Ramos administration), to the 27 July, 2008, issuance of the Memorandum of Agreement on Ancestral Domain (MoA-AD), the MILF and the GRP have reached “agreements” or “understandings” on a range of issues which include but are not limited to, the geographical extent of a Moro “homeland,” the allocation of the designated region’s resources, and obviously, the governance of that homeland. The latter pertains to what has been termed the devolution of legal and political authority from the central government to the Moro homeland, generally understood as the island of Mindanao and certain other peripheral territories (chiefly Palawan and the Sulu island chain) in the southern portion of the larger Philippine archipelago. It is this matter of the relationship between the Philippine state on the one hand, and a proposed political entity in the south, “distinct” from the Philippine state, an entity where the MILF presumably would have a major role in governance, that remained heavily contested between the two parties until late 2008.

A lack of progress in negotiations with the MILF moved the government of President Joseph Estrada to launch an “all-out war” against the MILF in April, 2000 (Santos, 2004). This campaign, mostly intended to wrest control of certain swaths of Mindanao territory away from the MILF, resulted in the temporary halt of the GRP-MILF negotiations (Bacani, 2005). The negotiations between the (GRP) and the MILF only resumed with the installation of the Macapagal-Arroyo government in January, 2001, followed by the signing of the Agreement on the General Framework for the Resumption of Peace Talks in March, 2001.

The latter document prepared the ground for the Agreement on Peace between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front (Tripoli Peace Agreement of 2001), and became the “background” document establishing general principles for much of the subsequent negotiations between the parties (GRP-MILF, 2001). Embedded in this phase of the GRP-MILF negotiations was the request by the GRP (from President Arroyo herself) for the intervention of the Malaysian government as a facilitator in the talks between her government and the MILF (Bacani, 2005).

In this time period Malaysia was acting not as a mediator, i.e., an intervening actor able to suggest proposals and counter-offers to the parties, but rather only as a facilitator, i.e., providing a locale for the talks and serving as a “go between” (Martin & Tuminez, 2008). Facilitation can be understood as helping groups find a solution to conflict without imposing an outcome (Harish, 2006). Facilitation is closely associated with the “good offices” concept where: “a third party acting with the consent of the disputing states serves as a friendly intermediary in an effort to induce them to negotiate between themselves without necessarily offering the disputing states substantive suggestions of settlement” (Bledsoe & Boczek, 1987: 290).

A key principle or idea of the Tripoli Agreement (not to be confused with the 1976 Tripoli Agreement between the GRP and the Moro National Liberation Front (MNLF), was the explicit recognition that a “Bangsamoro homeland” could exist without sacrificing the sovereignty of the Philippine state (GRP-MILF, 2001; Bacani, 2005). In that Agreement the parties stated their belief that “normalization” in “conflict affected areas” could be achieved.

The question then became how the idea of an ancestral domain, i.e., homeland, could be realized, when the parties maintained clearly differing views on what the idea of “self-determination” would mean, for the Moro population of the Mindanao region. Self-determination was first offered to the MILF by the GRP in March, 2007, and at the time, was regarded as a
“breakthrough” by the MILF, because it would allow self-governance (although not independence) for Moros within their ancestral domain territory (Gopalakrishnan, 2007). There were several “rounds” of negotiations between the MILF and the GRP between the June, 2001 Tripoli Agreement and the release of the GRP’s Draft Final Peace Agreement in February, 2003. When this draft did not receive a warm reception from the MILF, the Arroyo government suspended negotiations and launched the Buliok offensive in February, 2003 (IISS, 2005).

**Expressed Preferred Outcome**

Negotiations did not recommence until the Armed Forces of the Philippines (AFP) withdrew from the Buliok “camps” in early 2004, and the MILF renounced ties to the terrorist groups Abu Sayaf and Jemaah Islamiyah shortly thereafter, a pre-condition required by the GRP. The Malaysian government continued to maintain its role as facilitator into 2004 (Bacani, 2005; Santos, 2004: 21). The MILF continued to insist on its ultimate goal of independence in some form, although the group had decided to hold that demand in “abeyance” in order to pursue talks on the rehabilitation of the areas in Mindanao most adversely affected by the fighting (Gershman, 2001). On its part, the GRP held fast to the view that any agreement reached on the geographical expanse and political structure of a Moro ancestral domain, could only do so absent any harm or threat of harm to the sovereignty and territorial integrity of the Philippine state. But as one observer has put it, there seemed to be a tacit recognition by both parties that a Bangsamoro homeland was not “necessarily” incompatible with Philippine territorial integrity and sovereignty (Bacani, 2005).

Importantly, in its withdrawal from the Buliok camps, the GRP had determined that in the best interest of promoting success in the negotiations, the AFP would shift its overall strategy from seeking a defeat of the MILF, to one of maintaining a “defense” against the insurgent group. In a press release President Arroyo stated: “Today the peace panels of our government and the MILF have agreed on a mutual cessation of hostilities. I am directing the Armed Forces to downgrade our operational status from punitive operations to active defense” (Office of the Press Secretary, 2003). The fact that this introduction of a “restraint” in military strategy was linked to a reciprocal ceasefire notwithstanding, such a strategy alteration is notable.

There appeared to be an understanding between the parties that the concept of ancestral domain implied the Bangsmoro were a people defined in large part by religious belief and cultural history, distinct from the majority population of the Philippines, with the former residing mostly in the geographically defined territory of Mindanao (GRP-MILF, 2001). There also was agreement between the negotiating parties on the need to expand in jurisdictional, and not just geographical terms, the bounds of a Moro homeland, or ancestral domain. The parties agreed in the new Memorandum of Agreement on Ancestral Domain (MoA-AD) agreement that the territorial expanse of ancestral domain was to include not only the ARMM (Autonomous Region of Muslim Mindanao) created in 1989 by the Organic Act for the ARMM (Republic Act 6734), but also 712 additional villages, many of which contained populations not comprising a Moro majority (BBC News, 2008a).

This understanding is articulated in the MoA-AD under the title “Governance.” The MoA-AD refers to a Comprehensive Compact (yet to be written) which would “flesh out” and finalize the former, and also refers to a future Bangsamoro Juridicial Entity (BJE), a term which is meant to convey the sense that Moro self-determination will lead to a self-governing polity, with a defined territory, distinct from the Philippine state (GRP-MILF, 2008). Paragraph four
under the “Governance” title of the *MoA-AD* states that “a period of transition shall be established in a Comprehensive Compact specifying the relationship between the Central Government and the BJE.”

It is the “specification” of the relationship between GRP and a future BJE (a surrogate for which is now the MILF) that has severely disrupted the peace process aimed at a resolution of the conflict in Mindanao. The GRP made clear that throughout the discussions leading to the promulgation of the *MoA-AD*, there was never an intent on the part of the government to grant independence (in the sense that Philippine territorial integrity would be diminished) to a Moro homeland. In a public address, a Presidential advisor in the peace process noted that the “granting of independence is not and never was the intent of the talks between the government and the Moro Islamic Liberation Front (MILF) in [pursuing] the peace process in Mindanao” (Esperon, 2008).

The MILF had earlier in the negotiations rejected the possibility of autonomy, particularly if such a prospect was to be based on the model provided by the ARMM that had been recognized by the MNLF as a prospectively viable entity by signing a Final Peace Agreement with the GRP in 1996 (Tuminez, 2007). An offer by the Arroyo government in 2003 for “enhanced autonomy” (first put forward by the Estrada administration) was also rebuffed by the MILF (GMA News, 2007). Prior to a fresh attempt to end the conflict by meeting with the GRP in Kuala Lumpur in 2004, the MILF reiterated its aversion to an autonomy solution (Philippine Daily, 2004). In the *MoA-AD*’s final formulation (August, 2008), however, both the GRP and the MILF agreed that “the core of the BJE (Bangsamoro Juridical Entity) shall constitute the present geographic area of the ARMM” (*MoA-AD*, 2008).

The *MoA-AD*’s formulation generated certain expectations on the part of the MILF and the Moro population, not the least of which was that members of the Philippine Congress and non-Muslim segments of the general population opposed to further expansion of the ARMM could be circumvented.

In the new framework, a GRP-MILF peace would govern the enabling law for the Moro homeland, thus preventing Congress from emasculating Moro gains from negotiations. ARMM enlargement and the creation of a genuine Moro autonomy could theoretically happen without being held hostage to the obstreperous and obstinate opposition of Congress or local anti-Moro groups (Tuminez, 2007).

These expectations were not confirmed. Under the heading “Governance” in the *MoA-AD* the following statement on territory can be found. “The ultimate objective of entrenching the Bangsamoro homeland as a territorial space is to secure their identity and posterity, to protect their property rights, and resources as well as to establish a system of governance suitable and acceptable to them as a distinct dominant people” (*MoA-AD*, 2008). But this agreement between the negotiating parties that self-determination understood as self-governance required a territorial “set-aside” of a certain expanse, did not find acceptance with particular Congressional members, or certain segments of civil society.

**Intervention**

In July, 2004, President Arroyo asked the Malaysian government to expand its role as an intervenor in the conflict from facilitation to mediation. This meant that Malaysia would move
from acting as a “referee” in the talks, to being encouraged to suggest alternative solutions (Camilleri, 2007; Santos, 2004). In the talks mediated by the Malaysian government which led to the creation of the *MoA-AD*, the following interpretation, at least in part, of what is meant by self-governance was inserted into the document (para. 8 under governance) on ancestral domain:

The Parties agree that the BJE shall be empowered to build, develop and maintain its own institutions, inclusive of, civil service, electoral, financial and banking, education, legislation, legal, civil, economic, and police and internal security force, judicial system and correctional institutions, necessary for developing a progressive Bangsamoro society, the details of which shall be discussed in the negotiation of the Comprehensive Compact (GRP-MILF, 2008).

But it has been the “details” which have proven, as of this writing (fall, 2008) to be insurmountable for members of the Philippine Congress and particular groups in civil society. In August, 2008, the Arroyo government stated that the *MoA-AD* had been cancelled, partly because of skirmishes which had occurred in several provinces (Jacinto, 2008). The unilateral “cancellation” of the MOU-AD also came about because of strong objection, from legislative members, as well as civil society, to several of its provisions (Asia News, 2008). Opposition to signing the *MoA-AD* was sufficiently cohesive enough to lead to a petition to the Supreme Court asking for an injunction against the signing which had been slated for August 5, 2008 (ICG, 2008a). The injunction was granted, and in subsequent arguments before the Court, the petitioners from civil society and the legislature won a favorable decision, resulting in a declaration by the Court in October 2008, that the *MoA-AD* was unconstitutional (ICG, 2008a; Zamboanga, 2008).

The Malaysian government remains involved in the effort to find a resolution to the conflict. The Malaysian ambassador to the Philippines has stated that his country “will continue to play a key role in the peace process” (Sy, et. al., 2008). Although the Organization of the Islamic Conference (OIC) has indicated that the talks should be re-instituted in the context of Philippine territorial and sovereign integrity” (Sy, et. al., 2008), for the moment the talks remain in suspension.

**III. Indonesia**

**Insurgency Genesis**

There has been more than one insurgency in Indonesia, but my focus is on the province of Aceh, where the insurgency was waged by the Free Aceh Movement (Gerakan Aceh Merdeka or GAM) between 1976 and 2005. The dispute between Aceh and the state was in one sense a central government versus “peripheral areas” dispute over natural resources and state revenues (Miller, 2008). At the outset of the conflict GAM sought independence from the government in Jakarta, greater control of natural resources residing in Aceh, and a greater share of state revenues, particularly those generated by Aceh’s natural gas deposits (Sims, 2000).

Beginning in 1976, the Acehnese rebellion was generated by several grievances, one of which was historical, in that the Aceh population believes it had achieved a degree of territorial control, if not outright sovereignty, in the pre-colonial period over what is today the northernmost province of Indonesia on the island of Sumatra (Barnes, 2009; Kingsbury, 2007). While petitions for autonomy to the Sukarno and Suharto governments were initially given sober consideration, neither government followed through with concrete positive steps in the direction of autonomy (Schulze, 2007a). Even though the Acehese were able to mount a guerilla resistance early in the
Dutch occupation eventually contributing to the Dutch withdrawal from the region, after independence in 1949, the Indonesian state incorporated Aceh (Barnes, 2009). After the rebellion was initiated the Indonesian government instituted an exceptionally harsh counter-insurgency policy, which itself generated further demands for separation from the state (Schulze, 2007c). But probably the most important motivation for the inception of the insurgency was the discovery of immense deposits of oil and natural gas (particularly the latter) in the region, and the failure of the central authorities to return an equitable share of the revenues from the exploitation of these natural resources (Schulze, 2007a; Barnes, 2009). It is true that the Aceh provincial government had pressed in the years following independence to be allowed to implement *shari’ah* (Islamic law) more widely, and after a plebiscite in 2000, the Aceh local government was allowed to do so. But GAM itself is not an Islamic movement as such, and there is some evidence that the central authorities in Indonesia allowed the wider application of *shari’ah* as a counter to GAM influence (Kingsbury, 2007a; Siregar, 2008). GAM is a movement that has attempted to mobilize the population based on Acehnese nationalism, rather than fidelity to Islam (Brown, 2004; Perlez, 2002; Tan, 2007).

With the end of the Suharto regime in 1998, and the ascension of Abdurrahman Wahid to the presidency in October, 1999, a short-lived cease-fire between GAM and the Wahid government reached in May, 2000, quickly collapsed (Schulze, 2007a). A new President, Megawati Sukarnoputri, entered office in July, 2000, and GAM was able to enter into a new agreement in December, 2002, (*Cessation of Hostilities Agreement* or *CoHA*) with the new national leadership (Aspinall & Crouch, 2003). This agreement between the parties was assisted by the mediation of the Henry Dunant Centre of Geneva (now known as the Centre for Humanitarian Dialogue or HDC), a Geneva-based non-governmental organization (Huber, 2008; Aspinall & Crouch, 2003). The purpose of the *CoHA* was to provide a “space” to negotiate a resolution of the conflict, but the attempt failed, at least in part because of an inability of the parties to reconcile two juxtaposed positions. Article 1(b) of the *CoHA* noted that the purpose of the Agreement was “to continue the confidence building process … to enable … the peace process to proceed to the next phases” (GOI-GAM, 2003). The government offered “special autonomy” as a status for Aceh, while at this stage GAM continued to insist on independence, which seemed to require creation of a separate sovereign entity (Aspinall & Crouch, 2003). But during the negotiations in the *CoHA* interim, the government insisted on GAM disarmament (Kingsbury, 2007b; Schulze, 2007c). This was a step that GAM refused to take; consequently, the talks ended, and hostilities began anew in May, 2003 (BBC, 2003; Huber, 2004).

On December 26, 2004, a massive earthquake in the Indian Ocean generated a devastating tsunami which swept over Banda Aceh, killing at least 230,000 residents, and leaving hundreds of thousands homeless (Center of Excellence, 2005). Up to this point the hostilities had been ongoing since the breakdown of the *CoHA* talks. The humanitarian disaster placed enormous pressure on both parties to place their struggle with each other in a subservient position in order to secure passage of disaster aid to the stricken region (Barnes, 2009). It was this goal, ensuring the delivery of international aid to the tsunami victims, through which provided the impetus for an external mediation of the conflict to come about (Aglionby, 2005).

**Expressed Preferred Outcome**

It has been argued that factors other than the tsunami held a prominent role in prompting the mediation (Schulze, 2007b). But there is evidence indicating the humanitarian crisis generated by
the tsunami was paramount. On January 28, 2005, pre-negotiations, or “talks about talks,” between the GOI and GAM were initiated in Helsinki (CMI, 2006; Djuli & Rahman, 2008). The pre-negotiations were concerned with the scope of the human cost inflicted on Aceh by the tsunami, and the responsibility of the parties to the conflict in the region to respond to the humanitarian disaster. Thus, the first two days (pre-negotiations) of what came to be the first of five sets of negotiations between the parties were devoted to humanitarian needs in the aftermath of the tsunami (Center of Excellence, 2005).

Just prior to the pre-negotiations the head of the Indonesia military, Tentara Nasional Indonesia (TNI), announced the suspension of attacks against GAM forces in Aceh province (Center of Excellence, 2005). Once the military had ceased to pursue offensive actions against GAM, the question becomes whether the government had determined the humanitarian crisis to be the opportune moment to act on a recognition that GAM could not be defeated decisively, and thus decided to employ a “containment” strategy. This observation has been made (Schulze, 2007b). But even if the government decision to forego offensive maneuvers was taken more on humanitarian grounds, this does not detract from the importance, for successful mediation, of implementing the shift in military strategy from offense to defense: “the [Yudhoyono] administration adopted the strategy of not crushing GAM but rather co-opting it into the establishment and rendering it harmless,” (Matsui & Sato, 2007).

Intervention
GAM had stood fast with its demand for undiluted independence since the inception of the insurgency in 1976. Then in January, 2005, twenty months after the previous formal talks with the government, and four to five weeks after the December 26 tsunami, a statement was issued from the talks that a discussion of the “special autonomy” concept had begun, although the term preferred by GAM was “self-government” (Joyo Indonesia, 2005; Djuli & Rahman, 2008). But this declaration by GAM had been preceded by the work of Damien Kingsbury, an Australian scholar, and Indonesian Vice-President M. Jusuf Kalla, under the new President Susilo Bambang Yudhoyono, in the fall, 2004. With the help of CMI in taking a facilitating role, Kalla had been making preliminary contact with GAM prior to the 26 December tsunami (Huber, 2008). After the tsunami, Kalla had made contact with Kingsbury to inquire as to whether GAM had “softened” its position regarding independence (Matsui and Sato, 2007). Kingsbury had gained the position of political advisor to GAM, and had been able to “sound out” the movement on the question of independence.

When considering the option of a negotiated peace accord in Aceh, GAM’s political leadership was asked by the author whether it was prepared to accept anything less than full independence. This was predicated upon the first principle question of what independence was intended to achieve. Once having established what purpose independence was intended to serve, it was then possible to ask whether that purpose could be achieved by means other than independence (Kingsbury, 2007a).

In this discussion, which took place in October, 2004, GAM let it be known that a solution to the conflict other than independence could be considered. This softening of the GAM position was made known to Vice-President Kalla after the latter made contact with Kingsbury, and informally with senior GAM officials in Malaysia, in the aftermath of the tsunami disaster.
(Matsui & Sato, 2007; Schulze, 2007c). It was at this point that Kalla asked CMI to formally mediate the negotiations between GAM and the GOI (Huber, 2008).

IV.

Intervention Outcomes

Indonesia

The offer by CMI, supported or “underwritten” by the EU, was accepted by both parties, and led to what became known as the Helsinki Peace Process (Herrberg, 2008). The first of the five “rounds” of negotiations, mediated by CMI, began on January 28, 2005. A final draft of an agreement was reached on July 17, 2005, and a Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (MoU) or Aceh Peace Accord, was signed on August 15, 2005, formally ending the conflict (GOI-GAM, 2005). The Agreement mandated a withdrawal of “non-organic” military and police forces from Aceh by the GOI, and a decommissioning of armaments and demobilization of troops by GAM, with these obligations carried out in a “parallel” fashion. The EU would be responsible for the formation of the Aceh Monitoring Mission (AMM) to observe and help manage the Agreement’s implementation (CMI, 2006). The peace that ensued has held, with parliamentary elections initially scheduled for April, 2009, and with GAM fielding candidates for local office in Aceh in 2006 (ICG, 2008b).

The insurgency in Aceh, Indonesia, has ended (Barnes, 2009; Schulze, 2007a). The Finnish led Helsinki Peace Process resulted in the MoU between the Indonesian government and GAM, which among a number of issues, in Article 1(2)I stresses the need for “Aceh-based political parties” to be incorporated into the political process in a timely manner. The EU led AMM took the responsibility for the decommissioning of weapons, the cantonment of forces, and monitoring the level of human rights violations for an extended period after the MOU was consummated (Herrberg, 2008). Substantial movement toward a resolution of the issues giving rise to the insurgency, giving particular emphasis to GAM political participation, appears to have occurred in Indonesia.

Of obviously critical importance, however, is that the MoU negotiated by GAM and the GOI, and mediated by CMI, has not been rejected by the national legislature or Indonesian civil society. In contrast to the actions taken by the Philippine Congress, the Indonesian Parliament in 2006 enacted the Law on Governing Aceh (Law No. 11). This act of parliament specified that “Aceh constitutes a special provincial administration,” that is “granted a special authority to manage and administer its local governance” (UNORC, 2006). In large part this language appears to have been a function of how the province of Aceh had been well defined politically since enactment of Law No. 24/1956, which re-formed and granted to Aceh the status of “special territory,” after the Indonesian central government had dissolved Aceh in 1950 (Siregar, 2008). The Acehnese form the clear majority, and unlike in the Philippines, with massive in-migration of non-Muslims into Mindanao, there has been no significant in-migration of non-Acehnese into the province (Bacani, 2005; Martin & Tuminez, 2008).

Philippines

Clearly, with the summer, 2008, onset of the impasse between the Arroyo administration and the Congress, there was a “disconnect” between the two branches regarding what was meant to be an accurate understanding of the term “self-determination.” Particularly after legal challenges were mounted against the MoA-AD, the administration made clear that its understanding of the term
did not connote “separateness,” or independence. That is to say, the administration was prepared to accept devolution of powers, to a degree, but insisted Philippine sovereignty over the full territorial expanse of the state should remain intact.

When the government initially offered the concession of self-determination in the spring, 2007, the MILF seemed to see it as a significant step forward (PIA, 2007). “It can be a breakthrough. We appreciate this development; we feel it is an advancement in the search for peace” (Gopalakrishnan, 2007). But in the government view the concept of self-determination was a limited one, in that it would not include regional control of external defense, foreign affairs, or the monetary system, among other things. Most importantly, partly in response to a court challenge to the MoA-AD initiated by non-Muslim legislative members and other non-Muslim elected office holders, the GRP decided to retain the idea (from the 1976 Tripoli Agreement) that any application of self-determination would be contingent on “constitutional processes” (ICG, 2008a).

The matter of constitutional processes has mostly to do with Article 10 of the Philippine Constitution, which stipulates that “no province, city, municipality, or barangay [village] may be created, divided, merged, abolished or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected” (Bacani, 2006). It was on the basis of this language in the Constitution that the petitioners to the Philippine Supreme Court gained a hearing and eventually an injunction (temporary restraining order) on August 4, 2008, which effectively blocked the formal signing of the MoA-AD (Jacinto, 2008). Subsequently, on October 14, 2008, in David v. Macapagal-Arroyo, the Supreme Court ruled for the petitioners and declared the MoA-AD unconstitutional (Philippine Supreme Court, 2008).

Without a ratified MoA-AD, movement toward a Comprehensive Compact could not take place. As provided in the MoA-AD, “any provisions of the MoA-AD requiring amendments to the existing legal framework shall come into force upon signing of a Comprehensive Compact and upon effecting the necessary changes to the legal framework with due regard to non-derogation of prior agreements…” (GRP-MILF, 2008). An important argument of the petitioners to the Court seemed to be that a plebiscite (offering 737 villages not already part of the ARMM, inclusion in the Bangsamoro entity) should occur before any ratification of the MoA-AD, not “within twelve months following the MoA-AD’s signing” (ICG, 2008a).

In any case, after the issuance of the Court’s injunction, the Arroyo government stated it was abandoning the MoA-AD and decided to cease negotiating. The GRP decision to “walk away” from the MoA-AD almost certainly had as much to do with domestic electoral politics as it did with the Court’s injunction (ICG 2008a). The MILF said it considered the MoA-AD to be binding, a “done deal,” and would not re-negotiate (Jacinto, 2008). Although not approaching full-scale combat, hostilities on a limited basis between the GRP and the MILF did re-commence after the Court issuance of the temporary restraining order. This fighting was apparently instigated by “renegade” MILF commanders in the field (ICG, 2008a). The GRP then announced that it would pursue these units with vigor and would not join new negotiations until the renegade leadership had been eliminated (Philippine Institute, 2008b). In response to the violence perpetrated by renegade MILF units, the Arroyo government “cancelled” the MoA-AD (Asia News, 2008).

The Malaysian Ambassador to the Philippines, Dato Ahmad Rashidi Bin Hazizi, stated that his government would continue its role as mediator between the MILF and the GRP as long as the
parties continued to request Malaysian and Organization of Islamic Conference (OIC) assistance (Philippine Institute, 2008a). However, the Malaysian contingent of the International Monitoring Team (IMT) quit the country on November 30, 2008. It was believed that only a resumption of talks between the parties would have moved Malaysia to keep their IMT personnel in the field (ICG, 2008c). Because that did not happen, the Malaysian government withdrew its component of the IMT (GMA News, 2008).

The resumption of talks is almost a certainty, but how much time may elapse before that occurs is not clear, given the current GRP stance. On its website the MILF has issued the following statement. “For the MILF, there is no way to settle the Moro problem except through the Memorandum of Agreement on Ancestral Domain (MoA-AD), which is the framework agreement for the discussion of the solution to this problem and the armed conflict. It determines war and peace in Mindanao… It is a prescription for genuine Moro self-rule without severing ties with Manila” (Luwaran, 2008). But after seven years of mediated negotiations between the parties (MILF and the Arroyo government), it is the nature of the “ties to Manila,” which remains unsettled.

V. Inferences

In the GAM insurgency, the “prerequisites” for obtaining an offer to mediate and for a high likelihood of mediation success were in place before CMI intervened. The Indonesian government, prompted in part by the tsunami humanitarian disaster, made the strategic decision to forego defeat of the GAM insurgents, in favor of containment. Prior to and during pre-negotiations GAM made clear its willingness to engage in talks with GOI within the framework of “special autonomy,” i.e., self-government. Kalla then contacted GAM privately through the intermediaries of CMI. After becoming certain that GAM’s stance had softened (at least partly as a consequence of the tsunami), with the aid of Kingsbury, the GAM advisor, the Vice-President began full-scale negotiations (Matsui and Sato, 2007).

As one of the parties to the Indonesian conflict, (the GOI) made the approach to CMI in a manner similar to Arroyo’s overture to the Malaysian government, although the GOI approach seems to have been conducted much more privately. But a key distinction between the two third party interventions occurred in the period just prior to the onset of external mediation. In the Indonesian instance, GAM become open to a form of self-governance that was less than full independence, and the TNI ceased offensive operation against the GAM. In the Philippine case, the Philippine military had adopted a defensive posture toward the MILF. Although the MILF had ceased insisting on a need for a separate state, it had not abandoned self-determination as a demand; not at least in the “self-governance” sense of the term, which meant a “homeland” with a territory delimited by cultural, demographic, and historic factors (Bacani, 2005; Martin & Tuminez, 2008; Tuminez, 2007).

Clearly, for a separatist insurgency, the matter of territory is critical. But for GAM the issue of delimiting the territory over which the movement would exercise self-determination had been established in 1956. In that year the Indonesian Parliament enacted Law No. 24/1956, which re-constituted Aceh as a distinct entity apart from North Sumatra, to which Aceh had been amalgamated in 1951, following Indonesia’s transformation in 1950 from a federal to a unitary state (Siregar, 2008; Kingsbury, 2007a). Law No. 24/1956 granted Aceh the status of “special
territory,” and in 1959 the national government designated Aceh as having a “special administrative” status (Kingsbury, 2007a). In 2002 the Parliament passed Law 18/2001 on Special Autonomy for Aceh. But the Special Autonomy Law contained a major flaw in that members of insurgent groups faced restrictions in their ability to participate in elections (McGibbon, 2004). One of the keys to gaining agreement on the MoU was that it lifted this restriction. As a consequence, GAM members won significant victories in the 2006 Aceh provincial elections, including winning the governor’s office (Aspinall, 2008).

The larger point is that the insurgent conflict in Aceh was not a struggle over competing claims to contested territory. The Aceh conflict was concerned with the degree of sovereignty, or authority over an agreed upon fixed territory, which the national government would be required to relinquish in order to gain an end to the hostilities, and for the Acehnese people to gain self-determination. Prior review of the MoU did not occur because Vice-President Kalla stated the Parliament didn’t “need to know;” the conflict was internal, not external war, and according to Kalla, Parliamentary approval was not necessary under Indonesian law (Kalla, 2008). The accuracy of the Vice-President’s views notwithstanding, prior review by the GOI’s constituency was not imperative because of wide agreement regarding the territorial expanse of an Acehnese homeland.

The Mindanao conflict in the Philippines was concerned with a devolution of authority as well. But for the MILF, self-determination for the Moro population could only be achieved through a recognition by the state of territorial claims synonymous with a homeland shaped by historic, cultural and religious experience. For the MILF, gaining a homeland required the acquisition of an expanse of territory in Mindanao which would bring recognition of, and promote Moro distinctiveness, but (after 2001) not necessarily “separateness” (Gershman, 2001). The notion of “homeland” inherently connotes not just geographical division, but differences in political and cultural behavior by the population therein, apart from the population outside the homeland. This behavior has been labeled “territoriality,” which:

-describes not [a] simple designation of space, but the behavior patterns which emerge from the political use (the occupation) of territory. Territoriality thus requires territory to be definitively bounded rather than loosely so, and thereby creates the conditions for the physical exclusivity of people. … [Territoriality] requires the control of territory as the very basis of legitimacy (Bishai, 2004: 62).

When the GRP granted the MILF additional territory beyond the ARMM with greater autonomy, it risked the creation, in the view of certain segments of the general population, the creation of “a state within a state,” or what has been referred to as an “insurgent state” (McColl 1969). Such an entity claims or demands partial sovereignty, or a devolution of authority over its autonomous area of governance. Self-governance for the MILF included claiming a certain expanse of territory in Mindanao beyond the existing ARMM with a significant Muslim population. In the MoU-AD the Arroyo administration conceded the expansion of the ARMM into this territory to become part of the “Bangsamoro homeland.”

Such a concession may be in contrast to experimental laboratory evidence suggesting that negotiators “accountable” to constituents are no more likely to compromise than negotiators not so accountable (Breaugh & Klimoski, 1977). But it is not clear in this instance whether the GRP
negotiating team fully understood the degree to which it was accountable to a national constituency, although it has been noted that the GRP negotiators were not oblivious to potential constitutional challenges to provisions in the MoU-AD granting an expanded Moro ancestral domain or homeland (Tuminez, 2007). Ultimately the Philippine Supreme Court determined this was a concession the Arroyo government did not have the authority to grant under the Constitution.

Conclusion

The impasse in the MILF-GRP conflict remains, while the GAM-GOI conflict has been reduced to political argument conducted within electoral processes (ICG, 2008b). It should be noted that GAM candidates fared quite well in the December, 2006, municipal and district elections (Aspinall, 2008). The mediators conducting the Indonesian conflict were able to seize an opportunity created when the GOI altered its military strategy, while GAM revised its primary political demand, in the aftermath of natural disaster.

In the Philippine conflict the GRP also amended its military strategy. But the MILF’s alteration of its primary demand was conditional. With the aid of the Malaysian mediation, the MILF revised its central demand from secession, to self-determination understood as self-governance. The GRP and the MILF were able to agree on this view of self-determination in the form of the MoU-AD. But a significant (non-Muslim) portion of the electorate and members of the Philippine Congress raised objections to that agreement, and petitioned the Supreme Court to effectively void the agreement by ruling it unconstitutional. That petition was granted. An opportunity for a more thorough advance review of the MoU-AD by the GRP negotiating team’s constituency may have avoided this outcome.

There was a growing concurrence that compounding the Aceh population’s suffering with additional casualties from combat should be avoided (Aglionby, 2005). Thus, GAM was prepared to discuss something less than complete independence as an outcome to the conflict. The recognition by the adversaries of the humanitarian disaster’s scope, and the mutual recognition by the parties of the “hurtful” nature of the disaster to their own goals, led to the objective referents of an altered GOI military strategy and a revised primary political demand from GAM. Neither party wished to be viewed as having taking actions which at the least prevented the most effective disaster response, and perhaps even added to the magnitude of the human cost. Each party had been vying for the support of the population, with GAM espousing nationalist motivations for the rebellion, and the GOI advocating a more fundamentalist Islamic practice for the population (Kingsbury, 2007a).

Either party’s continuation of hostilities in the face of the humanitarian disaster would risk losing substantial popular support. In the perception of both adversaries, the aftermath of the tsunami was a moment affording “a way out” (Zartman, 1995). The lead mediator in the GOI-GAM peace process appears to have said as much. “Certainly the conflict was more ‘ripe’ in 2005 than in 2000… With all the skill in the world, I cannot make a mediation process ‘pregnant’ in the sense of bearing the fruit of peace. The parties themselves must do this” (Ahtisaari, 2008).

Our investigative thesis has received limited support. In both cases examined, in order to gain an agreement, it was critical for the government to make a strategic decision to abandon offensive operations against the insurgents, and for the insurgents to adopt self-determination as their primary goal, instead of independence. But for separatist movements self-determination has a
territorial component. To make implementation of the agreement more likely, national constituents should achieve a prior appreciation of the territorial component’s extent.

References


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