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International Humanitarian Law and Non-International Armed Conflicts in the Southern Philippines[1]

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The International Committee of the Red Cross (ICRC), the guardian of the International Humanitarian Law (IHL) for some 150 years now, defines IHL as the law of war or the law of armed conflict. It is a set of international rules that aims at limiting the effects of war and armed conflict by requiring the humane treatment of civilians, prisoners, the sick, those wounded, and those who are not or have ceased to be combatants. While these rules do not prevent the use of force by the state, these laws and customs do restrict the means and methods that can be employed in times of war.

Memorandum Order 9 issued on 7 August 1998 directed state security forces in the Philippines to implement the Comprehensive Agreement on Respect for Human Rights and the International Humanitarian Law (CARHRIHL), which the Philippine government signed with the National Democratic Front of the Philippines (NDFP) in March at The Hague, the Netherlands. Previous to this, the issue of human rights protection and the application of the rules under IHL were not clearly spelled out to all the parties involved in non-international armed conflicts (NIAC) in the Philippines. Yet, it would take six more years before the CARHRIHL could be implemented with the formation of the Government of the Republic of the Philippines – National Democratic Front (GRP-NDF) Joint Monitoring Committee.[2]

On 27 July 2009, Republic Act (RA) 9851 was promulgated as a special law which the Bicol judge and peace advocate Soliman M. Santos, Jr. hailed as "a breakthrough law for International Humanitarian Law enforcement in the Philippines."[3] For the first time, the prosecution of war crimes, genocide, and crimes against humanity could now be done under the national law. But how does this law apply in the context of the complex conflict in Mindanao?

As a matter of courtesy, United States (US) troops on the Joint Special Operations Task Force - Philippines (JSOTF-P) present themselves to the Western Mindanao Unified Command of the Armed Forces of the Philippines (AFP) headquarters in Zamboanga City. Many among these American soldiers came from previous overseas deployment—in Afghanistan, Iraq, and other international theaters of war—that required them to have a more than cursory orientation on IHL and its implications on the conflict there. In their exposure in Mindanao, however, they have come to describe the NIAC as particularly complex. Indeed, they ask, in a place where unlicensed firearms proliferate, where many local residents are assumed to be part-time insurgents, and kinship ties are suspected to serve as force multipliers, how could it be possible to distinguish civilians from armed insurgents?

Such is just one of the dilemmas posed by the NIAC in Mindanao in the process of enforcement of the IHL. Before engaging these other challenges to the implementation of RA 9851, however, the reader first needs a basic framework in understanding the nature of conflict in the Philippines. We begin with an organizational level of analysis of the NIAC. One finds that at the individual and operational levels of analysis, it is not so neatly delineated. For example, organizational identities in the southern parts of Mindanao are, unlike in the western part, highly temporal and fluid. Civilians could be recruited to work seasonally for an insurgent group and then quickly and seamlessly resume their civilian life after operations are completed. Adding to this complexity are the changing organizational labels that civilians seem to assume without much question. Security analysts observe that some civilians may work for one insurgent group that has a longstanding peace agreement with the government, then on the same day join a command structure of a known terrorist group, and then very quickly switch to supporting relatives and kin who belong to a group currently in peace negotiation with the government (AFP 2011).

NIAC in the Philippines

One possible explanation behind this is the fact that organizations in the Philippines revolve mainly around personalities rather than political or ideological positions (BrandLab, n.d.).[4] While the AFP strives to have interoperability among its various units and allies,

it confronts enemies for whom the same interoperability seems like second nature.[5] Moreovoer, NIAC in the Philippines is largely a homegrown phenomenon with some components heavily influenced by foreign elements. Conflicts rooted in ideologies outside the Philippines have been coopted to provide a philosophical justification for a grassroots-driven insurgency. As a way of showing this complexity, what this paper will do is focus on two major NIAC challenging the Philippines: the Communist Party of the Philippines (CPP) and the Muslim separatist movements. We will briefly trace their origins and describe their basic strategy and structure.

The CPP and its armed wing, the New People's Army (NPA), use Maoist ideology to justify armed struggle against the government. The communist threat is considered the biggest threat to the security of the Philippines because of its nationwide scope.[6] It is strongest in the northern region of the country, and in Mindanao its presence is strongly felt in northern and eastern Mindanao where it targets for recruitment peasants in the rural areas, workers in the mining industry, teachers, youth, women groups, and other segments of the population vulnerable to the Maoist ideological persuasion.

The Moro group—comprised of the Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MILF) and some elements in the Abu Sayyaf Group (ASG)—limits itself to the southern Philippines. Like the CPP-NPA, both are homegrown secessionist movements that had been struggling for independence for more than a century. The MNLF has since then signed a peace agreement with the Philippine Government in 1996, while the MILF is negotiating one. In the case of the MILF, Islamic ideology inspires its members to fight for self-determination and the recognition of their ethnic identity.

The CPP-NPA and the MILF both exploit conditions of poverty and marginalization to recruit people to their armed struggle. And there is a fairly large pool where one can dip one's fingers for recruits. According to the Asian Development Bank in 2008, about 26 million Filipinos out of 92 million live below the Asian Poverty Line (Ali 2008), living on about USD 1.35 per day. While the Maoist group targets people through their occupation, the Moro group on the other hand, appeals to ethnicity and shared history in their recruitment efforts. After all, the poorest of the poor, and the most marginalized are found in Muslim Mindanao. This fuels their already-simmering grievance against the government and the Christian majority.

The Maoist Group

The CPP-NPA is the longest-running Maoist insurgency in the world.[7] In August 2002, the US designated it as a foreign terrorist organization and three years later, in November 2005, the European Union likewise adopted the same label (PNA 2010). The CPP-NPA, together with its coalition arm, the NDFP, seek to overthrow the Philippine government through armed struggle.[8]

The CPP was established in 1968 as part of a larger global wave that took the world by storm: the rise of student activism in the 1960s and 1970s and the Vietnam War that precipitated massive protests worldwide. Many scholars however also argue that the roots of the organization could be traced all the way back to the *Hukbalahap*—a contraction of *Hukbong Bayan Laban sa mga Hapon* or "People's Anti-Japanese Army,"—the armed unit created by the CPP's predecessor, the *Partido Komunista ng Pilipinas* (PKP) (ACED 2000). The *Huks*, as they were known, were mobilized initially against the Japanese during World War II, and consisted of farmers from Central Luzon, the region north of Manila. In the early 1940s it had about 15,000 to 20,000 active members and 50,000 in reserve.

After World War II, the Huks decided to continue their guerilla war, but this time against the US and the newly established Republic of the Philippines (RP). It experienced a major defeat in the late 1950s and by the early 1960s, it began to wane and become fractured partly as a result of the Sino-Soviet split. The CPP leadership would come out of the younger generation of PKP who were expelled by the leadership for demanding a thorough review of the Party's past mistakes and for calling for the Party to conform more to the Maoist tenets than the USSR's inordinate focus on Leninism. The expelled cadres soon after re-established the CPP, and in 1969 reached out to comrades inside the Huks who shared their views, and created the NPA. The current strength of the NPA is estimated to be around 4,200 (AFP 2011), as it has been forced to rebuild itself after it made major strategic mistakes in the late 1980s, split into different contentious factions after that, and managed to get back into the political arena after one faction—the Maoist cadres—were able to recover control at the top level of leadership.

The CPP-NPA believes that violence is necessary to protect ordinary citizens from human rights abuses perpetuated by the government and local politicians, as well as to overthrow government and fundamentally reformat society. Pursuit of this strategy involves engaging in a protracted people's war that would bring about the downfall of the status quo and the birth of a socialist republic of the Philippines.

The Party's *modus operandi* in recent years involves the targeting of foreign investors and businesses for extortion, in the name of raising "revolutionary taxes." NPA units have attacked mining concessions, banana plantations, and telecommunication installations for refusing to pay. The ultimate goal is to drive these investors out of the area and eventually out of the country thereby further bankrupting the economy. The NPA also admits to assassinating individuals, such as politicians, members of the media, and other personalities who allegedly stand in the attainment of its revolutionary objectives.

It has been observed that the general trend in the rise and fall of the CPP-NPA membership coincides with the level of violence associated with each presidential administration (Morales 2005, 43-45). During the Marcos era (1965-1986), rampant human rights abuses fueled the rise in membership in the CPP-NPA. Followers of Marx and Mao in colleges and universities formed student organizations protesting against the plight of farmers in the countryside and the urban poor. Anti-government activism became quite fashionable in the 1970s with college students carrying copies of Mao Tse Tung's infamous *Little red book*, which they used as a reference when they discussed the ideology of China's Great Leader and the possibilities of a classless society in the Philippines and elsewhere.

In 1972, Marcos declared martial law and for the next thirteen years the dictatorship became the "best recruiter" for the CPP. But the trend shifted in the late 1980s when Marcos fell and was succeeded by the extremely popular Corazon "Cory" Aquino, the mother of the current president Benigno Simeon Aquino. Cory Aquino became the country's first woman president and also the first president installed in power through a popular uprising. She anchored her six-year presidency on a promise to restore democracy in the Philippines. Early into her term, she declared a ceasefire with the NPA, released all political prisoners including top CPP leaders, and held peace talks with the CPP-NDF-NPA.[9] However, the talks collapsed in 1987, with the situation worsening when security forces violently dispersed and killed some peasants rallying for land reform one year after Aquino assumed power.[10] The NPA returned to arms soon after (Sarmiento 2005), and Cory Aquino, acting under the advice of the US and in response to pressures from the Philippine military, responded by launching a total war against the CPP-NPA.

Sustained military offensives successfully reduced the communist forces from 25,200 in 1987 to 14,800 in 1991. The two-pronged strategy used could be described in current counterinsurgency parlance as hard power or military offensive and soft power or socioeconomic development. To aid matters along, there were also brutal purges within the CPP that further demoralized its rank and file (Abinales 2008, 77-98). And although the CPP-NPA most likely will not win a military victory against government forces, its presence will persist in the countryside where poverty, injustice, and the lack of social services provide conditions for marshalling the people's grievance against the government.

The Moro Group—Three Forms of Struggle

In contrast to the CPP-NPA, the secessionist Moro insurgency —now identified mainly with the MILF—largely limits its armed struggle to the southern portion of the country where the majority of Muslim Filipinos reside.[11] Like the CPP-NPA, the perception of marginalization drives the underlying anger that fuels the Moro armed struggle. For three centuries under Spanish rule and nearly fifty years of US dominance in the Philippines, the Moros were never conquered as a group. However, they feel that they have to live under the Filipino Christian rule of the central government and abide by its non-Islamic way of governance. All these came to a boil and brought about the most sustained armed Moro resistance against the government after President Marcos declared martial law in 1972.

The Filipino-Muslim academic Macapado M. Abaton (1994) neatly summarizes the six key elements in the Moro grievance: economic marginalization and destitution; political domination; physical insecurity; threatened Moro and Islamic identity; a perception that government is the principal culprit; and a perception of hopelessness under the present order of things. Indeed, on the matter of economic marginalization and destitution, the regions in Mindanao where most Muslims reside remain the poorest in the country. Unemployment, illiteracy, and poverty rates are highest in Muslim Mindanao (HDN 2005), and Muslims in Mindanao still feel that they do not have a voice in the central government.[12] Tremendous gains may have been made over the past several years to reduce the extremist hold in the various

islands in Mindanao, but the condition for physical security is still not where it should be. There is more to be done in order to encourage business investments in Mindanao and change the perception of rampant lawlessness in the islands.

Secessionist Moro groups have been insisting on the notion of a Moro and Islamic identity as justification for their right to have some form of self-determination. The MILF has given up fighting for independence after a series of defeats in the battlefield in the early part of the decade was followed by the failure of a plan it jointly prepared with the government of then President Gloria Macapagal Arroyo to recognize Moro ancestral domain which the Supreme Court ruled unconstitutional. Today, it is asking to become a substate of the Philippines with a political structure similar to that of the federal system of the United States.[13]

Abaton's fifth and sixth elements relate to Moro identity and the perception among Muslims of the inability of the central government to understand Muslim Mindanao, as well as the general apathy of most politicians in the north to matters concerning the south. Muslim Mindanao's marginalization has always been an effective rallying cry for those who seek to manipulate Moro grievance for ultimately extremist causes and the perception of hopelessness partly provides the moral justification for launching an armed struggle.[14] These six elements of Muslim grievance have been used in one form or another in the rhetoric of the MILF and other Moro insurgent groups, particularly the ASG.

Of the three major Moro insurgent groups, only the MILF could truly be considered as an NIAC (ICRC 1977, 89-101). It has a clear leadership and organizational structure to implement whatever agreements it may forge with the state. It also has the appropriate military structure that it can call to pursue its belligerent agenda. The MNLF, on the other hand, already signed a final peace agreement with the government in 1996, although it argues that such has not been fully implemented. For its part, the ASG lacks command and control and in many ways, like the MNLF, is no longer a formidable fighting might. The MILF remains today to be the largest fighting force that has an agenda of carving a distinct territory in southern Philippines.

The MNLF and the Origins of the MILF

Nur Misuari, who was very much influenced by the Maoist ideology when he was still at the University of the Philippines (UP), founded the MNLF in 1972 at around the same time the CPP-NPA was formed. He started an underground youth movement in Mindanao and charged it with the goal of freeing the Muslims from the terror, oppression, and tyranny of Filipino colonialism and securing with them a free and independent state for the *Bangsamoro* (McKenna 1998, 164).

Bangsa means country or nation. Moro, on the other hand, is derived from the term Spanish colonizers used to refer to the Moors they had known in the Iberian Peninsula. This over time stuck as the collective word used to call all the various Muslim ethnic groups they found in Mindanao. Muslims in Mindanao would later turn this pejorative term into a badge of honor. Hence Bangsamoro now means Moro Nation.

Claiming the Moro to form a distinct nation with a specific Islamic history and heritage and thereby entitled to the right for self-determination, the MNLF tasked itself with the duty and the obligation to wage *Jihad* against the Philippine government (Singh 2007, 34-35). It led the armed resistance of all Muslims in Mindanao during the first years of martial law and became the organizational vehicle that symbolized the Moro cause of thirteen disparate Islamized ethnolinguistic groups in Mindanao seeking for the establishment of an independent Moro nation, the Bangsamoro.

Four years of intense fighting in Mindanao prompted the Organization of Islamic Conference (OIC) to pressure the MNLF to accept some form of political autonomy in lieu of secession and independence. The MNLF thus signed the Tripoli Agreement in 1976, but frustrations over its implementation a year later led Misuari to revert back to armed struggle. Meanwhile, along the way, his Vice Chairman Salamat Hashim broke away from the MNLF to establish the second Moro secessionist group, the MILF, in 1984 (Singh 2007, 35).

The MNLF-MILF split was largely based on differences in political strategy and ideological orientation. The MILF could be described as Islamic revivalist while the MNLF is more secular-nationalist. Hashim initially wanted to push for the peace process under the Tripoli Agreement, countering the MNLF's position that the use of violence similar to the CPP's was the only means to achieve peace in southern Philippines.[15]

Until the 1996 Final Peace Agreement was signed, the MNLF largely concerned itself with fighting for independence. The MILF, on the other hand, wants to govern the Moro homeland under the ideals of Islam and the Shari'ah law. Religion is central to the workings of the MILF, as could be seen in the active involvement of the *Ulama* or Islamic scholars in the leadership and internal workings of the organization.

The leadership style of the MILF is consultative where a central committee drives the organization's agenda, while the MNLF is centralized where decisions revolve around the leader. In addition, the MILF is mostly dominated by the Maguindanaons from central Mindanao, while the MNLF is largely composed of ethnic Tausugs, the warrior class, from the Sulu Archipelago. Traditionally, these two Muslim tribes have a history of ethnic tensions.

Observers note that the rise of the MILF coincided with Misuari's descent. The MNLF became increasingly fragmented in 1982, and it ceased to be a formidable fighting force when it inked the Final Peace Agreement with the Government of the Philippines in 1996. Under that peace pact, some of the MNLF rebels were integrated into the armed forces and national police, and some of them joined various livelihood programs to help them reintegrate back into society. The United States Agency for International Development (USAID) and the United Nations Development Program (UNDP) sponsored many of these livelihood programs, and these have been very successful. Fisheries, seaweed farming, and various other livelihood programs benefited identified resident communities of former MNLF rebels in the Sulu Archipelago.

The MILF Today

The 12,000-strong MILF is the largest Muslim guerrilla group today and the most potent security threat in Mindanao. It is mainly based in central Mindanao, although it has presence in Palawan, Basilan, and other islands in the Sulu Archipelago. Since 1997, it has been pursuing what can be described as an on-and-off peace negotiation with the government. During this period, however, several lost commands and breakaway groups continue to engage government forces in armed conflicts. To date, about 120,000 people have been killed, and about two million people were displaced from their homes over MILF-led encounters with government forces (Rodil et al. 2010).

The latest major conflict was in 2008 when the Government of the Philippines initialed the Memorandum of Agreement on Ancestral Domain (MOA-AD) that gives the MILF its own distinct territory, with a governing body called the Bangsamoro Juridical Entity (BJE).[16] However, before the signing was finalized, certain non-Muslim leaders in central Mindanao got hold of a copy of the embargoed MOA-AD and went on a campaign to dissolve the agreement, claiming that part of the distinct territory mentioned in the MOA-AD included areas that were never under Muslim leadership. A Christian Vice Governor of a Mindanao province declared that if the MOA-AD would be signed, there would be bloodshed. Other non-Muslim leaders in other parts of Mindanao filed a separate petition asking government to cease and desist from signing the MOA-AD.

The non-Muslim groups managed to put enough political pressure to prompt the Supreme Court to issue a Temporary Restraining Order (TRO) on the signing of the MOA-AD. Thwarted when the signing ceremony did not take place, MILF renegade commanders went on a rampage and attacked villages in northern and central Mindanao.[17] Hundreds died and about 390,000 people were displaced in the hostilities that ensued. The Supreme Court eventually declared the MOA-AD to be unconstitutional (Rempillo 2008), and government forces went after the three renegade MILF commanders. One of those commanders, Amiril Umra Kato, recently broke away from the MILF and spoke of taking up arms if the current peace process fails again or gets endlessly delayed.[18]

The MILF leaders have put in significant effort in bringing in an international audience into its peace negotiations. The International Monitoring Team (IMT), composed of representatives from Malaysia, Brunei, Libya, Japan, Norway, and European Union, oversees the ceasefire agreement between the MILF and the Government of the Philippines (GPH).[19] Facilitated or pressured by this international audience, over seventy agreements have been reached between the MILF and the Philippine government since 1997.

Alliance with the ASG

One Moro group that remains without any form of ceasefire agreement with the government and is not considered by the ICRC as an NIAC is the ASG. However, the ASG does have tactical alliances with the MILF and in its early years, one could argue that it could be considered as an NIAC.

The inspiration of the al Qaeda-linked ASG came from radical Islamism—notably the Jihad against the Soviet invasion of Afghanistan in 1979. Around the time that the MNLF was engaged in peace negotiations with the Philippine government in the late 1980s and early 1990s, an underground movement of disenchanted youth began to be mobilized by a charismatic preacher in Basilan, Abdurajak Abubakar Janjalani.

Like Misuari and the MILF twenty years earlier, Janjalani wanted an independent state for the Muslims in Mindanao. Academics continue to debate whether Janjalani in fact fought during the Afghanistan war. Whether he did or not, the primary driving force behind ASG's formation is rooted in a Jihadist war that the MNLF failed to follow through according to the perception of many idealistic Muslim youth. The disenchanted Muslim youth felt that the older cadres abandoned the spirit of the Bangsamoro's struggle against the government in the 1970s. They felt that the MNLF leaders betrayed their cause and acquiesced to the Philippine government when it entered into peace negotiations.

Vitug and Gloria (2000, 204-206) trace the roots of the ASG when Janjalani returned from his schooling at an Islamic *dakwah* in Libya. Preaching in the Basilan mosques where he grew up, he spoke for the establishment of an Islamic state where the only goal is "the rule of the Koran, not autonomy, not the Tripoli Agreement, not independence." Ressa (2003, 26) writes that Janjalani justified his Jihad based on the following arguments: (1) The Philippine government with the help of its Christian allies, notably the US, severely oppressed the Bangsamoro people; (2) This oppression came about because of the unwelcome intrusion of Christians into the Muslim homeland; (3) To defeat this oppression, the struggle for the cause of Allah must be waged against the Christian invaders; and (4) It is the personal obligation of every Muslim to carry out this Jihad, and failure to do so would be a sin against Allah.

Obviously, many of the ideals espoused by ASG overlap with those held by the MILF, and thus the movement of members from one group to the other tends to be seamless. Many members also have blood ties.

Driven by its secessionist and extreme Islamic ideology, the ASG quickly became internationalized with the involvement of the Jemaah Islamiyah (JI) whose goal is to establish a Muslim caliphate throughout Southeast Asia. However, with the death of Janjalani in

1998 and the demise of several key ASG leaders, the ASG's Jihadist ideological fervor has died down, particularly among the rank and file. Many argue that the ASG has now descended into criminality.[20]

To raise funds, kidnapping has always been a staple for ASG (Vitug and Gloria 2000, 205), prompting many observers to argue that Janjalani's Jihad has become a cloak to justify the criminality of the ASG. While the oldtimers remain loyal to the cause, the financial pressures, lack of loyalty among the rank and file, and the US-backed military offensives against the ASG have degraded these Moro fighters into fragmented bands of armed and dangerous elements (AFP 2011).

Challenges in Implementing the Rules of the IHL and Related International Laws

For over forty years, the two concurrent NIACs in southern Philippines have largely contributed to exact an exorbitant toll in terms of the lives lost, destruction of property and government resources, and economic opportunities lost due to prolonged wars. The social cost of the conflict—in terms of damaged social cohesion and the diaspora of Muslims in Mindanao—is arguably much bigger a price.

During the early years of the conflict, there were indeed some human rights violations committed by the major players—the government forces, the Moro rebels, and communist insurgents. Most of the abuses blamed on the government forces happened during the martial law years from 1972 to 1981. The seemingly uninterrupted involvement of state security forces in these protracted conflicts,[21] however, lends the notion that violations of human rights committed by government troops were widespread and continuing.

In fact, during the early years of the Moro secessionist and the Maoist communist insurgencies, NIAC rules were not at all clear to state security forces. The Cold War period was characterized by wars of national liberation or internal wars. The Geneva Conventions I-IV were made in 1949 as an offshoot of World War II,[22] while the Additional Protocols I and II were made only in 1977.[23] These international laws governing warfare, the United Nations Programme of Action, and various international treaty laws would emerge after respective forerunners of either front had already initiated hostilities

with the state forces. It would be reasonable to assume that adherence to these rules was not among the primary considerations of these parties to armed conflict.

The AFP has been involved in Internal Security Operations (ISO)[24] since President Ferdinand E. Marcos declared Martial Law in September 1972. Since then, the AFP and the Philippine National Police (PNP) had been performing law enforcement and combat operations against insurgent groups. For lack of a legal framework, the Human Rights Law (HRL) and the IHL rules got mixed up in these two types of missions.

The nature of the NIAC in the Philippines today and the operational strategies they employ pose serious challenges to the enforcement of the IHL rules. Discussed below are some of the finer points of these challenges.

On the Principle of Distinction

The Principle of Distinction requires that combatants be distinguished from noncombatants. This distinction is hard to make in the case of militias employed by the Maoist group who can be farmers during the day and fighters at night. Habitually also, the Maoist group uses unarmed civilians as couriers or messengers, as early warning system, and bearers of logistics for their fighters. When arrested at these support functions to insurgency, these civilians invoke their human rights to be distinguished as noncombatants. Note that most cases of such arrests are carried out by government troops based only on intelligence information. And while no arrest is made until the intelligence information had been corroborated by informants or captured enemy personnel, such information will not hold in court without physical evidence that, in most cases, could not be supplied.

Adding to the difficulty in distinguishing noncombatants from combatants is the fact that regular communist guerillas and Muslim secessionist groups usually carry guns similar to those issued to state security forces. When disguised in regulation uniforms and bearing arms, the insurgents can deceive civilians enough to avoid detection and get inside police stations or military detachments to successfully conduct raids.

In their operations, communist guerillas—as well as ASG and MILF breakaway forces, for that matter—are known to mingle with civilians. They move around villages to do propaganda work and to solicit foodstuffs. When government troops come upon them in the villages, civilians could get caught in the crossfire. Also, within NPA camps, civilians who are mostly relatives of the rebels are utilized as cooks, errand persons, or lookouts. So while these camps are situated well away from civilian villages and pose no problem at targeting with artillery or airdropped bombs, extreme caution should be employed against endangering the civilians within. Civilian casualties from military attack on known insurgent lairs could become a human rights issue that the Maoist group's mass organizations and propaganda desks could exploit.

For the MILF, on the other hand, their camps are also their communities. It is not uncommon for MILF villages to be fortified with trenches, firing positions, outposts, guard posts, and other defense structures. Usually within these camps, Muslims build a mosque or *madrasah*[25] around which their houses are clustered. During ceasefire, the families of MILF members stay in the camps to farm and to do other chores.

The AFP does not have precision-guided munitions in its inventory, thus its system of targeting is not very accurate. The AFP's bombs or artillery rounds sometimes hit civilian objects. To address this limitation, the AFP has established a Rule of Engagement (ROE) whereby a Forward Air Controller (FAC) or a Forward Observer (FO)[26] is required to first engage a target with indirect fires.

Most MILF members are part-time farmers and part-time fighters. During engagement with military forces, they shift easily from civilians to fighters. They also have women members who serve as auxiliary and are employed to carry their ammunition, food, and medical supplies.

Military operations cause internal displacements especially to the families of MILF. It is required therefore that before offensives are initiated, evacuation areas should be coordinated with the local government to ensure the safety of the internally displaced persons (IDP), many among whom are likely to be family members of the MILF active fighters. This humanitarian consideration could work to the advantage of the MILF members. Food and medical supplies distributed to the IDP have been known to end up with the MILF fighters, legitimately raising the need to control the distribution of relief goods to ensure they are not passed on by the IDP to the MILF combatants.

On the Principle of Proportionality and Limitation on the Use of Methods and Means of Combat

The principle of proportionality is generally defined by AFP ROEs issued by higher authorities to operational commanders. It is, for example, generally prohibited to use artillery or bombs to attack an NPA camp unless it is well fortified since the NPAs only have a few mortars and light machineguns to defend their positions. To avoid creating fear among the civilians living nearby, bombs are likewise not used.

In the case of the MILF that has well-fortified camps in or around their communities, it is sometimes necessary to use artillery or bombs to neutralize these strongholds. Care is taken during the early stages of the hostilities, however, to avoid targeting the center of the camp where the houses are clustered on the assumption that civilian family members might still be occupying these houses.

On Children Involved in Armed Conflict

Both the Maoist group and the MILF use children as child soldiers (Pacoy 2010, 2). There have been many incidents of Philippine troops capturing child soldiers, both male and female, in the aftermath of violent engagements. Official figures from the Philippine Army's 10th Infantry Division show that from January to August 2011, there were a total of 302 NPA combatants who surrendered. Among these were seventeen minors, nine females and eight males, who were listed as "rescued minors." They are turned over to the Department of Social Welfare and Development (DSWD) that, in turn, is tasked to reunite them with their families and provide psychosocial support in their reintegration back into mainstream society.

On the Use of Landmines

Landmines of various kinds continue to be used by rebel groups—particularly by the NPA, MILF, MNLF, and the ASG. Some uses are in accordance with IHL while others are not. In the period 2000-2006, the total number of casualties from landmines and improvised explosive devices (IED), both killed and wounded, was 362, of which 299 were soldiers and policemen while sixty-three were civilians, some of them children (AFP 2011). In addition, unexploded ordnance (UXO) or explosive remnants of war (ERW) left in the battlefield pose danger to IDPs returning to their homes and farms in conflict-affected areas.

That is why during the cessation of hostilities, the AFP makes an extra effort to recover these UXOs and ERWs (LCMM 2011).

The Maoist group commonly uses improvised command-detonated antipersonnel mines (APM) and anti-vehicle mines (AVM). In recent years, they have extensively used improvised Claymore mines in command-detonated mode, using scrap metal in lieu of steel balls. Because of the CARHRIHL, the CPP-NPA-NDFP or CNN made certain commitments that generally adhere to IHL rules on the use of landmines.

On the Proliferation of Small Arms and Light Weapons

Small arms and light weapons (SALW) proliferate in the Philippines, complicating the armed conflicts especially in southern Philippines. An estimated one million firearms in the country are licensed, and more than two million firearms are illegally acquired in Mindanao alone (Santos et al. 2010). The proliferation of SALW contributes to the formation of private armed groups and warlordism, as well as to the frequency and intensity of lawlessness and clan wars in Mindanao.

Addressing NIAC in the Southern Philippines

Two parallel peace tracks are currently underway in connection with NIAC in southern Philippines. The Philippine government is pursuing peace negotiations with both the CPP-NPA and the MILF.

Localized conflicts such as clan wars hold the potential to drag major players in NIAC into an escalation of hostilities. The vigilant international media are quick to pick up on brewing confrontations that may signal the breakdown in the fragile peace talks, oftentimes straining the delicate balance of control at both sides of the negotiating table. Also, small grassroots movements and extremist cells throughout the world have capitalized on social media networks to gain the sympathy of an international audience all too willing to impose their moral values and judgments on the legitimacy of non-international armed conflicts. In the case of the Philippines, however, one could argue that these two NIACs with deep roots to the past largely remain outside the reach of an increasingly globalized world. These NIAC appear to be propagated in the hearts and minds of people who simply refuse to let go of past

grievances and patterns of armed resistance while the conditions of poverty, marginalization, and lack of access to basic services remain.

And yet, there is hope for the future generation where the fatigue of war and the rhetoric of grievance no longer inspire the same intense anger. In our experience of working with various communities in promoting peace as another way to defeat the enemy, we have learned that people will behave according to the way they are viewed: If you treat them as an enemy then they will become one; if you treat them as partners then they will respond in kind. With all their complexities, non-international armed conflicts in Mindanao could be viewed simply as a cry for human security—the need to have a dignified way of life where the basic necessities of survival become a fundamental right for each and every individual.

In discussions with the security sector on the challenges of these new legal developments, it is observed that many combat commanders are resistant to the IHL and other human rights instruments as they misconstrue these to be a law against war, a stricture that impedes their ability to fight off threats to national security and sovereignty. The enactment of RA 9851 requires the AFP to undertake a program of education to make soldiers cognizant of the law of war, as well as all other related prohibitive and regulatory laws applicable to armed conflict. The recently created AFP Human Rights Office[27] has published and circulated a handbook that could have been more effective at guiding the warfare conduct of the troops if it was written in Tagalog or Visayan so that foot soldiers could easily understand. Foot soldiers who have yet to be educated on human rights and the IHL often do not know that their conduct in combat or law enforcement may constitute a violation of these. At mission briefing, therefore, combat commanders especially need to emphasize the rules of engagement which, guided by the IHL, spell out the basic rules for law enforcement and combat operations, respectively.

Notes

1 Expanded from the speech delivered by Lieutenant General Raymundo B. Ferrer during the Conference on Non-International Armed Conflict on 22 July 2011 at the US Naval War College, Newport, Rhode Island.

2 In December 2005, the NDFP Human Rights Monitoring Committee published a primer on CARHRIHL that summarizes the points of the agreement. The primer is also available on the Internet (NDFP HRMC 2005).

3 Portion in quote appears as the subtitle to the R.A. 9851 primer released in 2010 by Santos and his colleagues in the Civil Society Initiatives for International Humanitarian Law (CSI-IHL).

4 This source is a commissioned research recently completed for a restricted audience.

5 Case in point is the 18 October 2011 encounter in Al Barka, Basilan where nineteen Special Forces (SF) soldiers were killed. Air support and ground reinforcement was delayed for the embattled unit. The enemy force, on the other hand, was swiftly aided by suspected MILF, ASG, and lawless elements in the vicinity. See Ilagan (2011a).

6 See AFP (2011). This is a restricted source used in this paper for figures on enemy strength and operational strategies employed by armed threat groups.

7 The Maoist insurgency was born in 1968. Details are traced in this section.

8 The NDFP serves as the umbrella for various mass organizations of Maoist persuasion.

9 The current trend for referring to the CPP-NDF-NPA is to drop the hyphens and collapse it as CNN.

10 Editor's Note: This event came to be known as the Mendiola massacre, a turning point that dampened the optimistic enthusiasm of many reformed Maoists for better political conditions under Cory. For a more comprehensive discussion of the impact of the Mendiola massacre on Corazon Aquino's fledgling government, see JLP (2008).

11 In 1984, the MILF spun off from its founding organization, the MNLF.

12 Positive changes may yet emerge to improve political participation with the ongoing peace process and the political will of the current president to address the Moro problem.

13 The substate proposal of the MILF is also proving to be a thorny issue that has yet to be resolved by the ongoing talks between the GPH-MILF peace panels. See Arguillas (2011).

14 The current President however appears to be trusted by many Muslims, and the attempt of Manila to extend various social services into the far reaches of Mindanao may yet defeat the perception of hopelessness in many Muslim sectors in southern Philippines.

15 Hashim's commitment to peace negotiations remains to be one of the defining points of the MILF, even after his death in 2003.

16 For a discussion of the proposed BJE, see Mastura (2007, 91-118).

17 Data used in this section are from a policy study commissioned by the GOP-UN Act for Peace Programme on the issue of internally displaced persons (IDP) in selected areas of Mindanao as implemented by the Mindanao Development Authority and the Autonomous Region in Muslim Mindanao in 2010. The policy study provides an overview and analysis of the IDP situation in these selected areas to contribute to a better understanding and awareness of its complexity and generate policy recommendations that will guide future actions and programs for the IDP (Rodil et al. 2010).

18 See *The Philippine Star* (2011)

19 The acronym preferred by the Noynoy Aquino Administration to stand for the Government of the Philippines. The Ramos Administration used the acronym GOP while the Estrada and Arroyo Administrations used GRP to stand for Government of the Republic of the Philippines.

20 Community residents in Jolo and Basilan where ASG presence had been and continues to be strongest pick up such perception of the ASG's transition from revolutionary to criminality. See Ilagan (2011b). Vitug and Gloria (2000), however, argue that criminality had figured in ASG operations since its beginnings.

21 In the southern Philippines, the conflicts were made more complicated by the proliferation of arms. Also, civilian armed group and vigilante groups are utilized to serve the personal interests of political warlords. See Santos et al. (2010).

22 These cover rules for the amelioration of the condition of the wounded and sick combatants, treatment of prisoners of war, and the protection of civilians in times of war.

23 These additional protocols specify rules for the protection of victims of international and non-international armed conflicts and the adoption of an additional distinctive emblem.

24 Combat operations against organized non-state armed groups that are identified to be threats to national security or sovereignty.

25 An Islamic school.

26 A Forward Air Controller (FAC) directs air support, such as for bombing runs. A Forward Observer (FO) directs artillery fire at the target.

27 The AFP directive for the activation of the AFP Human Rights Office (HRO) pursuant to General Order 251 dated 06 March 2007 was disseminated on 08 November 2010. This directive prescribes the policies and guidelines on the organization of the HRO and the designation of Human Rights officers down to the battalion level or its equivalent in other major services to further strengthen the AFP's resolve and to enhance its campaign in ensuring observance of human rights, IHL, and the rule of law.

References

Abaton, Macapado M. 1994. *The Moro armed struggle in the Philippines: The nonviolent autonomy alternative*. Marawi City: Mindanao State University.

Abinales, Patricio N. 2008. Shifting tactics: Politics and the power of the local in the Philippines. *Tambara* 25. Davao City: Ateneo de Davao University.

ACED (Armed Conflict Events Data). 2000. The Huk rebellion in the Philippines 1946-1954. Wars of the world. In http://www.onwar.com/aced/data/papa/philippines1946.htm. Retrieved 17 October 2011.

AFP (Armed Forces of the Philippines). 2011. *First Semester 2011 Intelligence Report of the Deputy Chief of Staff for Intelligence*, J2. Quezon City: Armed Forces of the Philippines.

Ali, Ifzal. 2008. *Launch of key indicators 2008: Introducing the Asian poverty line*. N.p.: Asian Development Bank. In http://beta.adb.org/news/podcasts/launch-key-indicators-2008-introducing-asian-poverty-line?page=5. Retrieved 08 September 2011.

Arguillas, Carolyn O. 2011. "Heaven and earth," says MILF on GPH proposal; "Not too far apart," says GPH. *MindaNews*, 24 August. In http://www.mindanews.com/top-stories/2011/08/24/"heaven-and-earth"-says-milf-on-gph-proposal-"not-too-far-apart"-says-gph/. Retrieved 08 September 2011.

BrandLab. n.d. *The Mindanao-Sulu power game: An ethnography of emergent players*. N.p.: BrandLab.

HDN (Human Development Network). 2005. *Philippine human development report 2005*. Manila: Human Development Network.

ICRC (International Committee of the Red Cross). 1977. *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 8 June 1977*, 89-101. *International Humanitarian Law—Treaties and documents*. Geneva: International Committee of the Red Cross. http://www.icrc.org/ihl.nsf/INTRO/475?OpenDocument. Retrieved 19 October 2011.

Ilagan, Gail T. 2011a. Bloodsport...game over...reboot. In http://www.mindanews.com/mindaviews/wayward-and-fanciful-by-gail-ilagan/2011/12/06/wayward-and-fanciful-blood-sport...gameover...-reboot/. Retrieved 08 December 2011.

Ilagan, Gail T. 2011b. *The Mindanao resilient communities project report*. Davao City: Alternative Forum for Research in Mindanao and the United States Embassy – Manila.

JLP Law Offices. 2008. The Mendiola massacre: What happened according to jurisprudence. *Philippine e-Legal Forum*. Quezon City: Jaromay Laurente Pamaos Law Offices. In http://jlp-law.com/blog/the-mendiola-massacre-what-happened-according-to-jurisprudence/ Retrieved 19 October 2011.

LCMM (Landmine and Cluster Munitions Monitor). 2011. *Mine action. Philippines Country Report*. Ottawa, Canada: Landmine and Cluster Munition Monitor. In http://www.the-monitor.org/custom/index.php/region_profiles/print_theme/1287 Retrieved 08 September 2011.

Mastura, Datu Michael O. 2007. A time for reckoning for the Bangsamoro struggle. *Tambara* 24. Davao City: Ateneo de Davao University.

McKenna, Thomas M. 1998. *Muslim rulers and rebels: Everyday politics and armed separatism in the Southern Philippines*. Berkeley: University of California Press.

Morales, Ricardo C. 2005. Transforming, not reforming the AFP. *Tambara* 22. Davao City: Ateneo de Davao University.

NDFP HRMC (National Democratic Front of the Philippines Human Rights Monitoring Committee). 2005. *Praymer hinggil sa CARHRIHL, Joint Monitoring Committee (JMC) at Joint Secretariat ng JMC*, 2d. ed. Booklet Number 5. Quezon City: National Democratic Front of the Philippines Human Rights Monitoring Committee. In http://www.scribd.com/doc/19432075/Primer-on-the-Carhrihl-by-the-NDFP. Retrieved 08 September 2011.

Pacoy, E. 2010. Reintegrating child soldiers in the Philippines: Agenda for education and governance. *JOAAG* 5, no. 1. In http://www.napsipag.org/PDF/5_1__Article_1_Pacoy.pdf. Retrieved 17 October 2011.

The Philippine Star. 2011. Rogue MILF commander forms new separatist group 19 August. http://www.philstar.com Article.aspx?articleId=718241&publicationSubCategoryId=. Retrieved 16 October 2011.

PNA (Philippine News Agency). 2010. NPA transforms into terrorist group, says AFP. 28 March. http://balita.ph/2010/03/28/npa-transforms-into-terrorist-group-says-afp/. Retrieved 08 September 2011.

Rempillo, Jay B. 2008. SC declares MOA-AD unconstitutional. 14 October. http://sc.judiciary.gov.ph/publications/benchmark/2008/10/100811.php. Retrieved 08 September 2011.

Ressa, Maria. 2003. *Seeds of terror: An eyewitness account of al-Qaeda's newest center of operations in southeast Asia*. New York: Simon and Schuster.

Rodil, Rudy Buhay, Saturnina S. Rodil, Violeta M. Gloria, and Grace S. Andrada. 2010. *Internally displaced persons: A policy study*. N.p.: Government of the Philippines – United Nations ACT for Peace Programme. Unpublished final report.

Santos, Soliman S., Paz Verdades M. Santos, and Octavio M. Dinampo. 2010. *Primed and purposeful: Armed groups and human security efforts in the Philippines.* Quezon City: South-South Network for Non-State Armed Group Engagement and the Small Arms Survey.

Sarmiento, Rene V. 2005. Facilitating dialogue with armed insurgents in the Philippines. Conciliation resources. In http://www.c-r.org/our-work/accord/engaging-groups/facilitating-dialogue-philippines.php. Retrieved 17 October 2011.

Singh, Bilveer. 2007. *The Talibanization of southeast Asia: Losing the war on terror to Islamist extremists.* Westport, Connecticut: Greenwood Publishing Group.

Vitug, Marites Dañguilan and Glenda M. Gloria. 2000. *Under the crescent moon: Rebellion in Mindanao.* Quezon City: Ateneo Center for Social Policy and Public Affairs and the Institute for Popular Democracy.