

Philippines, Application of IHL by the National Democratic Front of the Philippines

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, available at <http://www.ndfpmc.com/gob/sites/default/files/publications/Booklet%206.pdf> ^[2]]

NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977

5 July 1996

In accordance with Article 96, paragraph 3 of Protocol I, we, the National Democratic Front of the Philippines, hereby address ourselves to the Federal Council of the Swiss Government as official depositary of the Geneva Conventions of 1949 and the 1977 Protocol I additional thereto.

We are the political authority representing the Filipino people and organized political forces that are waging an armed revolutionary struggle for national liberation and democracy, in the exercise of the right of self-determination within the purview of Article 1, paragraph 4, of Protocol I against the persistent factors and elements of colonial domination and against national oppression, including chauvinism and racism, victimizing the entire Filipino nation and particular minorities in the Philippines.

Our revolutionary armed struggle is the continuation of the Philippine Revolution of 1896 against Spanish colonialism and subsequently against US imperialism. We are waging a people's war for national liberation and democracy against the semicolonial and semifeudal ruling system. The Government of the Republic of the Philippines (GRP), our current adversary in the armed conflict, continues to suppress the sovereign will of the Filipino people in order to perpetuate the interests of the foreign and domestic oppressors and exploiters, despite the US grant of nominal independence to the Philippines on July 4, 1946.

The persistent foreign domination and national oppression are carried out through the GRP as a puppet government in the service of the United States government, which controls and uses it by means of US strategic planning, command, personnel (including military advisors, trainers, intelligence and psychological warfare personnel and basic personnel for rapid deployment forces), supplies, extraterritorial access to the entire Philippines and other forms of US military intervention and extraterritorial privileges and by means of unequal treaties and agreements perpetuating in essence the factors of US colonial domination over the Philippine economy, politics, security and culture.

Since the beginning of the civil war, the GRP has in one essential respect maintained the character of the armed conflict as an internationalized internal conflict through subservience to US domination and GRP dependence on US military and other forms of intervention and assistance in the armed conflict. The civil war between the GRP and the NDFP involves the struggle for self-determination and the people's war for national liberation and comes within the purview of Article I, paragraph 4 of Protocol I and within the international customary law pertaining to armed conflicts.

[...]

[...] [The] revolutionary forces have been engaged in a civil war for a protracted period of time since March 29, 1969 against the Government of the Republic of the Philippines (GRP), a High Contracting Party to the Geneva Conventions and Protocol II. The great intensity of the civil war has been made manifest by the GRP's brutal use of the regular forces of the Armed Forces of the Philippines (AFP), the imposition of martial rule on the people from 1972 to 1986, the great magnitude of US military involvement in the form of military funds, materiel and personnel, and the continuing brutal campaigns of suppression under a policy of total war against the aforesaid revolutionary people and forces.

[...]

The people and forces represented by the NDFP have withstood the brutal military campaigns of suppression carried out by the enemy and have gained strength in the process. They have gained the status of belligerency by virtue of their just revolutionary armed struggle and hard work in building the organs of political power.

The aforesaid people and forces have established and developed a political organization that has sufficient governmental character. This political organization has sufficient control

over a substantial area, population and resources in the Philippine archipelago. If said political organization were left to itself, it has the capability of reasonable and effectively discharging the duties of a state. In fact, it has established organs of political power which comprise the people's democratic government and which administers the people's civil, political, social, economic and cultural life in significant portions of fourteen (14) regions, more than 500 municipalities and more than 60 provinces of the Philippines.

It has deployed the New People's Army in accordance with the civilized rules of warfare and has informed and trained it accordingly. Even before this declaration, it has complied with the rules of war under international law. It has consciously followed international humanitarian law, like Common Article 3 of the Geneva Conventions and Protocol II. It has declared accession to Protocol II since 15 August 1991 [...] and is now resolved to assume in good faith rights and responsibilities under the Geneva Conventions and Protocol I. The instruments of international humanitarian law must apply on the armed conflict between the GRP and the NDFP for the protection of the civilian population and combatants hors de combat because the NDFP has proven itself as a belligerent force and does not accept as applicable the GRP constitution and laws inasmuch as the GRP does not accept as applicable to itself the constitution and laws of the revolutionary movement.

In their ongoing peace negotiations, the GRP and the NDFP have acknowledged by mutual agreement since 25 June 1996 that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and principles of international humanitarian law. [...]

Being a party to the armed conflict, civil war or war of national liberation and authorized by the revolutionary people and forces to represent them in diplomatic and other international relations and in the ongoing peace negotiations with the GRP, we the National Democratic Front of the Philippines hereby solemnly declare in good faith to undertake to

apply the Geneva Conventions and Protocol I to the armed conflict in accordance with Article 96, paragraph 3 in relation to Article 1, paragraph 4 of Protocol I.

The NDFP is rightfully and dutifully cognizant that this declaration, upon receipt by the Federal Council of the Swiss Government, shall have in relation to the armed conflict with the GRP the following effects:

1. the Geneva Conventions and Protocol I are brought into force for the NDFP as a Party to the conflict with immediate effect;
2. the NDFP assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Geneva Conventions and Protocol I; and
3. the Geneva Conventions and this Protocol are equally binding upon all Parties to the conflict.

By virtue of this unilateral declaration of the NDFP, duly deposited with the Swiss Federal Council, the GRP is bound as before by the Geneva Conventions and henceforth by Protocol I in accordance with Article 96, paragraph 3(c) of Protocol I.

With the NDFP invoking and exercising the people's right of self-determination, both the GRP and the NDFP are likewise bound by international customary law pertaining to humanitarian principles, norms and rules in armed conflicts.

The NDFP undertakes to respect the provisions of the four Geneva Conventions of 1949 and Protocol I of 1977, regarding the conduct of hostilities and the protection of the civilian population and the combatants hors de combat in the armed conflict with the GRP and to regard its obligations under the aforesaid instruments of international humanitarian law as having the force of law among its forces and in the areas under its control.

The NDFP and the forces it herein represents accept the principle of command

responsibility for the system of discipline to ensure respect for the rules of international humanitarian law and punish those who break them.

The NDFP regards as legitimate targets of military attack the units, personnel and facilities belonging to the following:

1. The Armed Forces of the Philippines
2. The Philippine National Police
3. The paramilitary forces; and
4. The intelligence personnel of the foregoing.

Civil servants of the GRP are not subject to military attack, unless in specific cases they belong to any of the four abovestated categories.

The NDFP will treat any captured personnel of the military, police and paramilitary forces of the GRP as prisoners of war and demands that the GRP likewise treat as prisoners of war any captured personnel of the NPA and other forces represented herein by the NDFP.

The NDFP forthwith disseminates this declaration and the rules of the Geneva Conventions and Protocol I to its forces and asks for the assistance of the ICRC with regards to suitable materials. The NDFP will welcome any offer of services from the ICRC.

The NDFP calls upon High Contracting Parties to the Geneva Conventions and Protocol I to ensure that the GRP and the NDFP respect their obligations.

The NDFP hereby requests the Federal Council of the Swiss Government to circulate copies of this declaration to all parties to the Geneva Conventions and the Protocols additional thereto and to all organizations interested in the respect of human rights and international humanitarian law.

[...]

This declaration is forthwith transmitted to the Federal Council of the Swiss Government as official depositary of the Geneva Conventions and the Protocols additional thereto and likewise to the International Committee of the Red Cross as official guardian thereof.

Done on 05 July in the year 1996.

[...]

Discussion

1.
 - a. What is the nature of the armed conflict between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP)? Does the involvement of the United States in the conflict change its nature?
 - b. What is an internationalized internal armed conflict? Do you agree with the NDFP that the conflict is an internationalized internal one because of US involvement? Are internationalized internal armed conflicts a category of armed conflict recognized by IHL?
 - c. When does Art. 1(4) of Protocol I apply? How do you determine whether an armed conflict is one where a people is fighting colonial domination, an alien regime or a racist regime?
2.
 - a. On what rule does the NDFP base the declaration? Are other possibilities available for non-State armed groups willing to comply with the rules of IHL? (GC I-IV, Art. 3 ^[3]; P I, Art. 96(3) ^[4])
 - b. What are the advantages of applying the rules on international armed conflicts instead of the rules on non-international armed conflicts? Is it more advantageous for the NDFP to apply Protocol I instead of Protocol II? Does Protocol I offer more protection?

- c. Can any armed group declare that it is fighting colonial domination, an alien regime or a racist regime? Does an armed group need to fulfil conditions similar to those mentioned in Art. 1(1) of Protocol II in order for Art. 1(4) to apply? Does an armed group need to fulfil such conditions in order for Art. 96(3) of Protocol I to apply? (See Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV), October 24, 1970 [available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/25A1C8E35B23161C852570C4006E50AB> ^[5]])
3.
 - a. Can the NDFP invoke Art. 96(3) of Protocol I? Even though the Philippines is not a party to Protocol I? Does a State have to ratify a treaty for that treaty to apply? Or can the fact that “the GRP and the NDFP have acknowledged by mutual agreement [...] the application of the [...] principles of international humanitarian law” be used as a basis for Protocol I’s application?
 - b. Can the NDFP apply Protocol I unilaterally if the GRP is not bound by it? If Protocol I is not applicable, what law applies? Is Protocol II applicable to the situation?
 - c. Can the fact that the NDFP invokes Art. 96(3) of Protocol I cause the GRP to be bound by Protocol I as well, even though it has not ratified it? Does it automatically mean that the NDFP is also bound by the Geneva Conventions?
 4. What is belligerency? Why does the NDFP say that it has acquired belligerent status? How can a non-State armed group acquire belligerent status? What is the difference with Art. 96(3) of Protocol I?
 5. If the NDFP declaration was valid and the Geneva Conventions and Protocol I applied, what territory, under Convention IV, would the GRP or NDFP be able to claim as their own and what territory would be occupied by them?

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