

# International Humanitarian Law

## Implementation in the Philippines: Updates and Current Challenges

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I. INTRODUCTION

The Philippines is no stranger to armed conflict and has in fact experienced decades of non-international armed conflict in various parts of the country.<sup>1</sup> Consequently, International Humanitarian Law (IHL), or the rules governing armed conflict, has become very much relevant in the country.

The cost of war in the Philippines is a cause for serious concern, and the humanitarian impact is staggering.

In 2008, the Philippines had the largest number of internally displaced people in the world due to fights in Mindanao.<sup>2</sup> 600,000 Filipinos were displaced in the southern part of the country, beating Sudan and the Democratic Republic of Congo for the top spot.<sup>3</sup> The Marawi siege of 2017 had a death toll of more than 1,000 individuals from the government security forces, non-state armed groups (NSAGs), and civilians.<sup>4</sup> According to the Department of National Defense and the Armed Forces of the Philippines, the total cost of war during the five-month Marawi conflict amounted to

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1. The Rule of Law in Armed Conflicts (RULAC) project, Non-international armed conflicts in the Philippines, *available at* <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-the-philippines#collapse1accord> (last accessed Aug. 15, 2020).
  2. Refworld, Philippines: Displacement in Mindanao – Humanitarian Snapshot, *available at* <https://www.refworld.org/pdffd/4acc54ef0.pdf> (last accessed Aug. 15, 2020) (citing Internal Displacement Monitoring Centre, Internal Displacement: Global Overview of Trends and Developments in 2008, *available at* <https://www.internal-displacement.org/sites/default/files/publications/documents/2009-global-overview2008-global-en.pdf> (last accessed Aug. 15, 2020)).
  3. Refworld, *supra* note 2.
  4. Neil Jerome Morales, A year after siege, Marawi families seek closure, *available at* <https://news.abs-cbn.com/news/05/23/18/a-year-after-siege-marawi-families-seek-closure> (last accessed Aug. 15, 2020).

approximately ₱6 billion.<sup>5</sup> Damage to Marawi was estimated at ₱100 billion.<sup>6</sup> More than two years after the Marawi siege, the United Nations Office for the Coordination of Humanitarian Affairs reported that there are still 66,000 displaced people living in temporary shelters or with host families in the cities surrounding Marawi.<sup>7</sup>

Armed conflict is defined as a situation wherein there is resort to armed force between States, protracted armed violence between governmental authorities and organized armed groups, or between such groups within a State.<sup>8</sup> There are two main types of armed conflict: (1) international armed conflict and (2) non-international armed conflict.<sup>9</sup> International armed conflict is a conflict that is at least between two States or international organizations.<sup>10</sup> Non-international armed conflict is a conflict between governmental security forces and organized armed groups in the same territory or between such groups within a State,<sup>11</sup> an example of which is the protracted fighting between the Philippine government and the New People's Army.

With the reality of local armed conflict, it is crucial that the country take stock of the gains and challenges in IHL implementation, the developments,

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5. Jee Y. Geronimo, *Gov't spent over P6 billion for Marawi crisis – DND*, RAPPLER, Nov. 17, 2017, available at <https://www.rappler.com/nation/188733-government-spent-6-billion-marawi-crisis> (last accessed Aug. 15, 2020).

6. *Id.*

7. This figure is based on consolidated data from estimates of different government agencies. Reliefweb, Philippines Humanitarian Country Team, 2019 Marawi Humanitarian Response, Early Recovery and Resources Overview for the Displacement Caused by Conflict in Marawi City (revised September 2019) at 2, available at [https://reliefweb.int/sites/reliefweb.int/files/resources/260924\\_Marawi%20HRRO%202019%20Final.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/260924_Marawi%20HRRO%202019%20Final.pdf) (last accessed Aug. 15, 2020). *But see* Drieza A. Lininding, OUR MARAWI: Pre-Sombak 2019 (State of the Marawi Bakwit), available at <https://www.mindanews.com/mindaviews/2019/07/our-marawi-pre-sombak-2019-state-of-the-marawi-bakwit> (last accessed Aug. 15, 2020) The news report claims that the figures reported have yet to include renters and late homeowners and sharers. *Id.*

8. Prosecutor v. Dusko Tadić, Case No. ICTY-IT-94-I-AR72, Decision, ¶ 70 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

9. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 2 & 3, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 287.

10. *Dusko Tadić*, Case No. ICTY-IT-94-I-AR72, ¶ 70.

11. *Id.*

and setbacks. This Article seeks to discuss updates on IHL implementation in the Philippines over the last 10 years, including enacted legislation, treaty ratifications, and established State mechanisms. It will also look into some of the challenges in the implementation and prosecution of IHL violations in the Philippines.

*A. What is International Humanitarian Law?*

Most people are under the impression that there are no rules in war and that parties to the armed conflict are free to do whatever they wish in the field of combat — *kill whomever they wish, and target whichever structure they want, using weapons of their own choosing*. This is a mistaken impression as there are rules to be followed in war.

IHL is known by two other names: laws of war or the law of armed conflict.<sup>12</sup> Essentially, IHL is the law that limits armed conflict.<sup>13</sup> It provides for rules that parties to the conflict must adhere to in the conduct of their operations.<sup>14</sup> More importantly, IHL protects those who are not engaged in the fighting — civilians, medical and religious personnel, wounded and sick fighters, and captured fighters.<sup>15</sup> It is a war crime to attack protected persons, an example of which is targeting a civilian or medical personnel.<sup>16</sup> IHL also regulates the use of weapons and methods of warfare.<sup>17</sup>

IHL is different from the concept of human rights since it only finds application in situations of armed conflict, while the concept of human rights is applicable in both peace and war time.<sup>18</sup> Moreover, IHL binds both

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12. International Justice Resource Center, International Humanitarian Law, available at <https://ijrcenter.org/international-humanitarian-law> (last accessed Aug. 15, 2020).

13. *Id.*

14. *Id.*

15. International Committee of the Red Cross, The Geneva Conventions of 1949 and their Additional Protocols, available at <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols> (last accessed Aug. 15, 2020).

16. See The Geneva Conventions of 1949 and their Additional Protocols, *supra* note 15.

17. International Justice Resource Center, *supra* note 12.

18. International Committee of the Red Cross, What is the difference between IHL and human rights law?, available at <https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law> (last accessed Aug. 15, 2020).

parties, whether State or non-State armed groups, whereas human rights hold State agents accountable.<sup>19</sup>

### *B. History of International Humanitarian Law*

Modern IHL emerged when Henry Dunant, a Swiss merchant, was travelling in Solferino, Italy in 1859.<sup>20</sup> During Dunant's travels, he witnessed the Battle of Solferino and saw the grim effects of armed conflict.<sup>21</sup> Dunant saw that wounded and sick fighters from both sides were not receiving proper treatment and were left dying on the battlefield.<sup>22</sup> After returning to Geneva, Dunant recounted his experiences and wrote a book entitled *A Memory of Solferino*, which was published in 1862.<sup>23</sup> The book also covered Dunant's two key ideas: (1) there should be rules in war; and (2) there should be a neutral organization that assists those affected by armed conflict.<sup>24</sup> The book gained attention and found widespread support.

In 1863, the International Committee of the Red Cross (ICRC) was established, following Dunant's idea of a neutral organization dedicated to assisting those affected by armed conflict.<sup>25</sup> Then, in 1864, the Swiss government, at the prompting of the five founding members of the ICRC, convened a diplomatic conference.<sup>26</sup> Attended by 16 States, it resulted in the

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19. *Id.*

20. International Committee of the Red Cross, What are the origins of International Humanitarian Law?, *available at* <https://blogs.icrc.org/ilot/2017/08/07/origins-international-humanitarian-law> (last accessed Aug. 15, 2020).

21. *Id.*

22. *Id.*

23. Humanrights.ch, The History of International Humanitarian Law, *available at* <https://www.humanrights.ch/en/standards/international-humanitarian-law/history> (last accessed Aug. 15, 2020).

24. British Red Cross, The beginning of the Red Cross, *available at* <https://www.redcross.org.uk/about-us/our-history/the-beginning-of-the-red-cross> (last accessed Aug. 15, 2020).

25. International Committee of the Red Cross, History of the ICRC, *available at* <https://www.icrc.org/en/document/history-icrc> (last accessed Aug. 15, 2020).

26. International Committee of the Red Cross, International Humanitarian Law: Answers to your Questions at 8, *available at* [https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0703.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_0703.pdf) (last accessed Aug. 15, 2020).

adoption of the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.<sup>27</sup> This marked the birth of modern IHL.

## II. INTERNATIONAL HUMANITARIAN LAWS AND TREATIES

The Philippines is one of the most active Southeast Asian countries in participating in IHL treaties and in enacting laws relating to armed conflict. The Philippines is a party to the four Geneva Conventions.<sup>28</sup> It is also a State party to various IHL related treaties such as the Anti-Personnel Mine Ban Treaty,<sup>29</sup> Convention on Certain Conventional Weapons,<sup>30</sup> and Biological Weapons Convention.<sup>31</sup> The Philippines is also a signatory to important IHL treaties and is still in the process of accession or ratification to these treaties. In fact, “[t]he Philippines has signed and ratified more treaties relating to [IHL] than any other country in [Southeast] Asia.”<sup>32</sup>

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27. *Id.*

28. See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 135; & Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 287.

29. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, *opened for signature* Dec. 3, 1997, 2056 U.N.T.S. 211.

30. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II, and III), *opened for signature* Apr. 10, 1981, 1342 U.N.T.S. 137.

31. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, *opened for signature* Apr. 10, 1972, 1015 U.N.T.S. 163.

32. International Committee of the Red Cross, Philippines: more protection for victims of international armed conflicts, *available at* <https://www.icrc.org/en/doc/resources/documents/news-release/2012/philippines-news-2012-03-06.htm> (last accessed Aug. 15, 2020).

### A. Ratified Treaties

#### 1. Additional Protocol I to the Geneva Conventions

The Philippines only ratified Additional Protocol I to the Geneva Conventions in June 2012,<sup>33</sup> 35 years after signing it. On the other hand, Additional Protocol II was ratified by the Philippines in 1986<sup>34</sup> and Additional Protocol III was ratified in 2006.<sup>35</sup>

Additional Protocol I provides for the rules of war applicable in international armed conflict.<sup>36</sup> Additional Protocol II then provides for the rules in non-international armed conflict situations,<sup>37</sup> while Additional Protocol III introduced the third emblem of protection, the *Red Crystal*, which has the same status as the Red Cross and Red Crescent emblems.<sup>38</sup> The additional protocols strengthen the protection of victims and place limits on the way wars are fought. The Geneva Conventions and its Additional Protocols are considered the main treaties on IHL as many of its provisions have reached customary law status.

#### 2. Convention on Cluster Munitions

The Convention on Cluster Munitions<sup>39</sup> is the most recently ratified treaty by the Philippines, becoming its 106th State party. “President Rodrigo [ ]

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33. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

34. Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II), *opened for signature* June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II].

35. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adopting of an Additional Distinctive Emblem (Protocol III), *opened for signature* Dec. 8, 2005, 2404 U.N.T.S. 261 [hereinafter Protocol III].

36. Protocol I, *supra* note 33.

37. Protocol II, *supra* note 34.

38. Protocol III, *supra* note 35.

39. Convention on Cluster Munitions, *opened for signature* May 30, 2008, 2688 U.N.T.S. 39.

Duterte signed the Instrument of Ratification on 16 October 2018<sup>40</sup> and formally deposited the same in January 2019.<sup>41</sup> The convention entered into force in the Philippines on 1 July 2019.<sup>42</sup>

According to the International Committee of the Red Cross (ICRC),

[a] cluster munition is a weapon that disperses or releases explosive submunitions: small, unguided explosives or bomblets (each weighing less than 20 kilograms) that are designed to explode prior to, on[, ] or after impact. Depending on the model, the number of submunitions dispersed or released by a cluster munition can vary from several dozens to over 600.<sup>43</sup>

In armed conflicts, cluster munitions are designed to have a devastating impact in battle — they scatter large numbers of explosive submunitions over vast areas in order to destroy mobile or multiple military targets.<sup>44</sup> After the end of armed conflicts, a high proportion of submunitions, estimated at two to 20%, which have been dispersed fail to detonate as intended, and contaminate large areas with deadly explosive ordinance.<sup>45</sup> Their presence makes farming and other essential activities hazardous. Children, intrigued by the shape and color of submunitions, are often tempted to pick them up. This can result in serious injury, disability, or death among civilians.<sup>46</sup> Many countries that are affected include, among others, Lao People's Democratic Republic, Cambodia, Iraq, Democratic Republic of Congo, Sudan, Vietnam, Yemen, and Syria.<sup>47</sup>

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40. Department of Foreign Affairs, PH Becomes State Party to the Convention on Cluster Munitions, *available at* <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/19241-ph-becomes-state-party-to-the-convention-on-cluster-munitions> (last accessed Aug. 15, 2020).

41. *Id.*

42. *Id.*

43. International Committee of the Red Cross, 2008 Convention on Cluster Munitions (An Advisory Service on IHL), *available at* <https://www.icrc.org/en/doc/assets/files/2014/2008-convention-on-cluster-munitions-icrc-eng.pdf> (last accessed Aug. 15, 2020).

44. Legacies of War, Cluster Bomb Fact Sheet, *available at* <http://legaciesofwar.org/resources/cluster-bomb-fact-sheet> (last accessed Aug. 15, 2020).

45. *Id.*

46. *Id.*

47. Cluster Munition Coalition, Global problem, *available at* <http://www.stopclustermunitions.org/en-gb/cluster-bombs/global-problem/affected-countries-and-territories.aspx> (last accessed Aug. 15, 2020).



By ratifying the Convention,

the Philippines [has] committed to never use, produce, stockpile[,] or transfer cluster munitions. The Philippines acknowledges the harmful effects of cluster munitions to both military personnel, combatants[,] and civilians[,] and is in solidarity with other countries and communities that have suffered or are suffering from the adverse effects of these weapons.<sup>48</sup>

### *B. Treaties Pending Ratification*

There are three IHL treaties that were signed by the Philippines, but are still pending ratification, specifically: (1) Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict<sup>49</sup> and its Additional Protocols, (2) Treaty on the Prohibition of Nuclear Weapons,<sup>50</sup> and (3) Arms Trade Treaty.<sup>51</sup>

The Convention for the Protection of Cultural Property in the Event of Armed Conflict was signed by the Philippines on 14 May 1954, the first day it was opened for signature.<sup>52</sup> The Nuclear Weapon Ban Treaty and the Arms Trade Treaty were signed on September 2017 and September 2013, respectively.<sup>53</sup>

#### 1. Treaty on the Prohibition of Nuclear Weapons

In a 2014 study by the United Nations Institute for Disarmament Research, *An Illusion of Safety*, it was found that “there are inadequate specific

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48. Department of Foreign Affairs, *supra* note 40.

49. Convention for the Protection of Cultural Property in the Event of Armed Conflict, *opened for signature* May 14, 1954, 249 U.N.T.S. 215 [hereinafter Protection of Cultural Property].

50. Treaty on the Prohibition of Nuclear Weapons, *opened for signature* Sep. 20, 2017. The certified true copy of the treaty and its current status may be found at the United Nations Treaty Collection website. United Nations Treaty Collection, Treaty on the Prohibition of Nuclear Weapons, *available at* [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-9&chapter=26](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-9&chapter=26) (last accessed Aug. 15, 2020).

51. United Nations Treaty Collection, Arms Trade Treaty, *available at* [https://treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch\\_XXVI\\_08.pdf](https://treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch_XXVI_08.pdf) (last accessed Aug. 15, 2020).

52. Protection of Cultural Property, *supra* note 49.

53. Treaty on the Prohibition of Nuclear Weapons, *supra* note 50 & Arms Trade Treaty, *supra* note 51.

procedures and systems appropriate to nuclear weapon detonation events as these differ from civil nuclear accidents in significant ways. Protection of humanitarian personnel is highlighted as a particular issue of concern.”<sup>54</sup> A similar assessment was made by the ICRC.<sup>55</sup> Suffice to say, the world is not ready to respond in the event of an intentional or accidental detonation of nuclear weapons.

A study by Chatham House (the Royal Institute of International Affairs), a world-leading policy institute,<sup>56</sup> “documented 13 incidents of ‘near use’ of nuclear weapons resulting from computer errors, miscalculation, miscommunication[,] and breakdowns in command and control systems.”<sup>57</sup>

The Philippines is one of the first signatories of the Treaty on the Prohibition of Nuclear Weapons, having actively participated in the two United Nations Conferences in March and June 2017 to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination.<sup>58</sup> The treaty was adopted by the United Nations Conference on 7 July 2017 and was opened for signature by the Secretary General of the United Nations on 20 September 2017.<sup>59</sup>

The treaty has 17 articles and includes a comprehensive set of prohibitions on participating in any nuclear weapon activities.<sup>60</sup> These

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54. Heather Williams, et al., *The Humanitarian Impacts of Nuclear Weapons Initiative: The ‘Big Tent’ in Disarmament at 10*, available at [https://www.chathamhouse.org/sites/default/files/field/field\\_document/20150331HumanitarianImpactNuclearWilliamsLewisAghlani.pdf](https://www.chathamhouse.org/sites/default/files/field/field_document/20150331HumanitarianImpactNuclearWilliamsLewisAghlani.pdf) (last accessed Aug. 15, 2020) (citing JOHN BORRIE & TIM CAUGHLEY, *AN ILLUSION OF SAFETY: CHALLENGES OF NUCLEAR WEAPON DETONATIONS FOR UNITED NATIONS HUMANITARIAN COORDINATION AND RESPONSE* xi (2014)).

55. See International Committee of the Red Cross, *Urgent action needed to reduce the risks of nuclear weapons*, available at <https://www.icrc.org/en/document/nuclear-weapons-icrc-statement-unidir-2017> (last accessed Aug. 15, 2020) [hereinafter *ICRC Nuclear Weapons*].

56. Chatham House, *About Chatham House*, available at <https://www.chathamhouse.org/about> (last accessed Aug. 15, 2020).

57. *ICRC Nuclear Weapons*, *supra* note 55.

58. See United Nations, *United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination*, available at <https://www.un.org/disarmament/tpnw> (last accessed Aug. 15, 2020).

59. *Treaty on the Prohibition of Nuclear Weapons*, *supra* note 50.

60. *Id.*

include undertakings not to “[d]evelop, test, produce, manufacture, [ ] acquire, possess[,] or stockpile nuclear weapons or other nuclear explosive devices.”<sup>61</sup> The treaty also prohibits the deployment of nuclear weapons on national territory<sup>62</sup> and the provision of assistance to any State in the conduct of prohibited activities.<sup>63</sup> It also obliges State parties to provide adequate assistance to individuals affected by the use or testing of nuclear weapons, as well as to take necessary and appropriate measures of environmental remediation in areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons.<sup>64</sup>

Interestingly, none of the nuclear weapon-bearing countries participated in the negotiations and neither did any of them sign the treaty. Despite this, the international community warmly welcomed the treaty, as it will reinforce the stigma toward the use of nuclear weapons, support commitments to nuclear risk reduction,<sup>65</sup> and be a disincentive for proliferation.<sup>66</sup>

After signing the Treaty on the Prohibition of Nuclear Weapons, the Philippines “call[ed] on Member-States that possess the world’s largest nuclear arsenals to sign on to the treaty.”<sup>67</sup> Further, “the world will only be safe if [countries] eliminate all weapons of mass destruction[,]”<sup>68</sup> and “[the] signing of the treaty today affirms [the Philippines’] unequivocal commitment to put nuclear weapons firmly on the path of extinction, a

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61. *Id.* art. 1 (1) (a).

62. *Id.* art 1 (1) (g).

63. *Id.* art 1 (1) (f).

64. *Id.* art 6 (1)-(2).

65. Helen Durham, The Treaty on the Prohibition of Nuclear Weapons one year on: Reflections from Hiroshima, *available at* <https://blogs.icrc.org/law-and-policy/2018/09/20/one-year-treaty-prohibition-nuclear-weapons-reflections-hiroshima> (last accessed Aug. 15, 2020).

66. International Committee of the Red Cross, Bringing the era of nuclear weapons to an end in the name of humanity, *available at* <https://www.icrc.org/en/document/speech-icrc-president-nuclear-weapons-prohibition-treaty-negotiations> (last accessed Aug. 15, 2020).

67. Department of Foreign Affairs, PH Signs Nuclear Weapons Ban Treaty, *available at* <https://www.dfa.gov.ph/newsroom/dfa-releasesupdate/14020-ph-signs-nuclear-weapons-ban-treat> (last accessed Aug. 15, 2020).

68. *Id.*

cause of the highest priority embodied in [the Constitution].”<sup>69</sup> In May 2017, the Senate also issued Senate Resolution No. 47, expressing full support to the prohibition of nuclear weapons at the global level.<sup>70</sup> The resolution affirms that it is consistent with the national interest of the Philippines to adopt and pursue a policy of freedom from nuclear weapons, as provided for under Article II, Section 8 of the 1987 Constitution.<sup>71</sup>

## 2. Convention for the Protection of Cultural Property in Armed Conflict

The convention was adopted in 1954 in the aftermath of the massive destruction of cultural heritage during World War II.<sup>72</sup> It is the first international treaty that focuses exclusively on the protection of cultural heritage in situations of armed conflict.<sup>73</sup> “The protection of cultural property during armed conflict is based on the principle that damage to the cultural property of any people means ... ‘damage to the cultural heritage of all [humankind].’”<sup>74</sup> There are 131 State parties to the convention.<sup>75</sup>

The treaty “covers immovable and movable cultural heritage, including monuments of architecture, art or history, archaeological sites, works of art, manuscripts, books[,] and other objects of artistic, historical or archaeological

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69. *Id.*

70. S. Res. No. 47, 17th Cong., 1st Reg. Sess. (2017).

71. *Id.* whereas cl. 1 (citing PHIL. CONST. art. II, § 8).

72. *See* Protection of Cultural Property, *supra* note 49.

73. United Nations Educational, Scientific and Cultural Organization, 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, *available at* <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-hague-convention> (last accessed Aug. 15, 2020).

74. International Committee of the Red Cross, Protection of cultural property in the event of armed conflict, *available at* <https://www.icrc.org/en/doc/war-and-law/conduct-hostilities/cultural-property/overview-cultural-property.htm> (last accessed Aug. 15, 2020).

75. United Nations Educational, Scientific and Cultural Organization, Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. The Hague, 14 May 1954, *available at* <http://www.unesco.org/eri/la/convention.asp?KO=13637&language=E&order=alpha> (last accessed Aug. 15, 2020).

interest, as well as scientific collections of all kinds regardless of their origin or ownership.”<sup>76</sup>

Under the convention, each State must act to safeguard its own cultural property against armed attack.<sup>77</sup> Likewise, parties to the armed conflict are not allowed to direct hostilities against cultural property and must avoid incidental damage to cultural property.<sup>78</sup> Use of cultural property for military purposes is prohibited,<sup>79</sup> such as using a cultural property as a base or hideout.

The need to ratify such a treaty is demonstrated by the destruction brought about by the 2017 Marawi siege. Aside from traditional houses and religious structures, many of the Maranao archives were destroyed when insurgents occupied the city of Marawi.<sup>80</sup> Mosques and Islamic schools, which house archives and libraries, were left in ruins after occupation by non-State armed groups and airstrikes by the military.<sup>81</sup> Also destroyed were “ancient documents written in Jawi, a pre-Spanish form of writing derived from the Arabic alphabet then prevalent in ... the Islamic areas of the Philippines.”<sup>82</sup>

The National Heritage Act of the Philippines<sup>83</sup> provides insufficient protection for cultural property because it simply provides that “[i]n times of

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76. United Nations Educational, Scientific and Cultural Organization, *supra* note 73.

77. Protection of Cultural Property, *supra* note 49, art. 3.

78. *Id.* art. 4 (1).

79. *Id.* See also International Committee of the Red Cross, *supra* note 74.

80. Regine Cabato, Trying to save the stories of a Philippine culture, one scan at a time, WASH. POST, July 7, 2019, available at [https://www.washingtonpost.com/world/asia\\_pacific/trying-to-save-the-stories-of-a-philippine-culture-one-scan-at-a-time/2019/07/06/296595cc-86co-11e9-9d73-e2ba6bbf1b9b\\_story.html](https://www.washingtonpost.com/world/asia_pacific/trying-to-save-the-stories-of-a-philippine-culture-one-scan-at-a-time/2019/07/06/296595cc-86co-11e9-9d73-e2ba6bbf1b9b_story.html) (last accessed Aug. 15, 2020).

81. *Id.*

82. Edgar Allan M. Sembrano, *ARMM weeps for loss of cultural heritage properties in Marawi*, PHIL. DAILY. INQ., July 31, 2017, available at <https://lifestyle.inquirer.net/269579/armm-weep-loss-cultural-heritage-properties-marawi> (last accessed Aug. 15, 2020).

83. An Act Providing for the Protection and Conservation of the National Cultural Heritage, Strengthening the National Commission for Culture and the Arts (NCCA) and its Affiliated Cultural Agencies, and for Other Purposes [National Cultural Heritage Act of 2009], Republic Act No. 10066 (2009).

armed conflict, natural disasters[,] and other exceptional events that endanger the cultural heritage of the country, all national cultural treasures or national historical landmarks, sites[,] or monuments shall be given priority protection by the government.<sup>84</sup> Likewise, Republic Act No. 9851, or the Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity<sup>85</sup> (IHL Act), only prohibits intentionally directing attacks against historic monuments.<sup>86</sup> No other specific protection is indicated in the law.

Ratification of the Convention for the Protection of Cultural Property in times of armed conflict will facilitate enactment of much needed domestic legislation that will provide specific protection for cultural properties in the Philippines, marking of such properties, and prohibition for parties to the conflict to utilize cultural properties for military purposes.

### 3. Arms Trade Treaty

“In 2006, the United Nations General Assembly recognized that the absence of common international standards for the transfer of conventional arms contributes to armed conflict, the displacement of people, crime[,] and terrorism, and that these in turn undermine peace, reconciliation, safety, security, stability[,] and sustainable social and economic development.”<sup>87</sup>

The Arms Trade Treaty was adopted in 2013 and entered into force in December 2014.<sup>88</sup> The treaty is part of the international response to the tremendous human suffering caused by the widespread and poorly regulated availability of conventional weapons.<sup>89</sup>

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84. *Id.* § 7 (d).

85. An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes [Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity], Republic Act No. 9851 (2009).

86. *Id.* § 4 (c) (10) (2009).

87. INTERNATIONAL COMMITTEE OF THE RED CROSS, UNDERSTANDING THE ARMS TRADE TREATY FROM A HUMANITARIAN PERSPECTIVE 10 (2017).

88. Arms Trade Treaty, *supra* note 51.

89. Peter Maurer, President, International Committee of the Red Cross, Statement at the First Conference of the States Parties to the Arms Trade Treaty, Cancun, Mexico (Aug. 24, 2015).

[The treaty] regulates international transfers of conventional arms, as well as their ammunition, parts[,] and components, with a view to reducing human suffering. The [Arms Trade Treaty] makes arms transfer decisions subject to a humanitarian standard by forbidding transfers when there is a defined level of risk that war crimes or serious violations of international human rights law will be committed.<sup>90</sup>

The purpose of the treaty is to “[contribute] to international and regional peace, security, and stability[, and to reduce] human suffering.”<sup>91</sup> It also has the objective of “establish[ing] the highest possible common international standards for regulating or improving regulation of international trade in convention arms [as well as] prevent[ing] and eradicate[ing] the illicit trade in conventional arms and prevent[ing] their diversion.”<sup>92</sup>

The Philippines signed the Arms Trade Treaty in September 2013, the first country in Southeast Asia to sign the treaty.<sup>93</sup> It also participated actively in the negotiating process leading to the adoption of the treaty.<sup>94</sup> “The Philippines signed the [Arms Trade Treaty] to fulfill [the] country’s commitment to promoting international peace and security. The proliferation of conventional arms has contributed to violence and instability in many parts of the world including the Philippines[,] and there is a need to address this serious concern[.]”<sup>95</sup>

Ratification of the three treaties and the eventual enactment of much needed domestic legislation implementing these treaties will develop IHL further and strengthen its implementation in the country.

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90. International Committee of the Red Cross, 2013 Arms Trade Treaty – Factsheet, *available at* <https://www.icrc.org/en/document/2013-arms-trade-treaty-factsheet> (last accessed Aug. 15, 2020).

91. Arms Trade Treaty, *supra* note 51, art. 1.

92. *Id.*

93. Department of Foreign Affairs, Philippines Signs Historic Global Arms Trade Treaty, *available at* <https://www.dfa.gov.ph/phl-embassies-and-consulates-news/891-philippines-signs-historic-global-arms-trade-treaty> (last accessed Aug. 15, 2020).

94. *Id.*

95. *Id.*

### III. DOMESTIC LEGISLATION ON INTERNATIONAL HUMANITARIAN LAW

The Philippines has enacted a number of domestic laws that implements the IHL treaties it is a State party to.

#### *A. Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity (Republic Act No. 9851)*

The Philippine Act on Crimes Against International Humanitarian Law, Genocide and other Crimes Against Humanity, or the IHL Act, is the most important IHL domestic law enacted by the Philippines. It shows the Philippines' compliance with its obligations under the Geneva Conventions of 1949 to ensure that IHL is respected within its jurisdiction.

The IHL Act was signed into law in December 2009 and came into effect in 2010.<sup>96</sup> The law punishes IHL violations from both international and non-international armed conflicts, whether the same was committed by State or non-State armed groups.<sup>97</sup> Those found guilty of an act that has caused death, serious bodily harm, or those found guilty of rape can be given the highest sentence of *reclusion perpetua* with a fine ranging from ₱500,000 up to ₱1 million.<sup>98</sup>

Interestingly, the IHL Act is considered as a *backdoor* to the International Criminal Court (ICC). The provisions of the IHL Act are almost a mirror copy of the provisions of the Rome statute and was enacted even before the ICC statute was ratified by the Philippines in 2011.<sup>99</sup>

#### 1. Cases Under Republic Act No. 9851

To date, there has only been one case that has been successfully prosecuted under Republic Act No. 9851. The case is from the recent Marawi siege and involves a case of sexual slavery. Branch 70 of the Regional Trial Court of Taguig City found Junaid Awal, a Maute group member, guilty of violating

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96. Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, § 21.

97. *Id.* § 4 (a) & (b).

98. *Id.* § 7.

99. As of the writing of this Article, the Philippines is no longer a party to the Rome Statute. Coalition for the International Criminal Court, The Philippines' membership in the ICC comes to an end, *available at* <http://www.coalitionfortheicc.org/news/20190315/philippines-leaves-icc> (last accessed Aug. 15, 2020).



the IHL Act when he made a minor his sexual slave and repeatedly raped her during her five months in captivity.<sup>100</sup> There is another recent case filed by the government against the New People's Army for the cruel and inhumane treatment of a civilian, relating to an attack carried out by NPA fighters in Sitio Aurora, Barangay Santo Niño, Manolo Fortich town in May 2019.<sup>101</sup> The case is currently pending at a designated IHL court in Cagayan de Oro City.<sup>102</sup>

## 2. Creation of International Humanitarian Law Courts

In August 2018, the Supreme Court, through A.M. No. 18-07-25-SC, designated IHL courts all over the country.<sup>103</sup> Eleven IHL Regional Trial Courts were designated as IHL courts, which are tasked to hear, try, and decide cases involving crimes punishable under the IHL Act committed in their territorial jurisdiction.<sup>104</sup> The IHL courts are spread as follows: two in the National Capital Region (Taguig City), three in Luzon (Pampanga, Lucena, Ilocos Norte), one in Bicol (Albay), two in Visayas (Cebu and Tacloban), and three in Mindanao (Zamboanga City, Cagayan de Oro City and Davao City).<sup>105</sup>

Designation of IHL courts all over the country is provided for under Section 18 of the IHL Act.<sup>106</sup> The designation of IHL courts will facilitate the proper identification of judges, prosecutors, and public attorneys who should be given specialized training in IHL.

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100. Kristine Joy Patag, *Maute member convicted for rebellion, crime against International Humanitarian Law*, PHIL. STAR, Mar. 15, 2019, available at <https://www.philstar.com/headlines/2019/03/15/1901732/maute-member-convicted-rebellion-crime-against-international-humanitarian-law> (last accessed Aug. 15, 2020).

101. Jigger Jerusalem, Army files 'landmark' case vs. NPA for IHL violation, available at <https://www.pna.gov.ph/articles/1086570> (last accessed Aug. 15, 2020).

102. *Id.*

103. Supreme Court, Designation of Special Courts to Specifically Hear, Try, and Decide Cases Involving Crimes Punishable Under Republic Act No. 9851, A.M. No. 18-07-25-SC (Aug. 7, 2018).

104. *Id.* at 2.

105. *Id.*

106. Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, § 18.

### 3. International Humanitarian Law Training for Judges, Prosecutors, Military, and Law Enforcers

Under Section 18 of the IHL Act, “[t]he State shall ensure that judges, prosecutors[,] and investigators, especially those designated for purposes of this Act, receive effective training in human rights, [i]nternational [h]umanitarian [l]aw[,] and [i]nternational [c]riminal [l]aw.”<sup>107</sup> Implementing this provision, the Philippine Judicial Academy (PHILJA), in partnership with the Department of Justice and with support from the ICRC, has been conducting Multisectoral IHL Training for Judges, Prosecutors, Military[,] and Law Enforcers.<sup>108</sup> The activity brings together judges, prosecutors, military, police, and investigators from the Commission on Human Rights in one venue to discuss and understand principles of international criminal law, legislations relating to IHL and how to implement it in the Philippines. The multisectoral IHL training has been ongoing since 2016 and has been brought to different cities of the Philippines.

### 4. Existence of Armed Conflict in the Philippines

One of the challenges in the implementation of IHL in the Philippines is the lack of formal declaration of armed conflict in the Philippines or the absence of documentation that clearly acknowledges the existence of armed conflict in the country. This is a problem because, for a violation to fall under the IHL Act, it must be committed in the context of armed conflict.<sup>109</sup> The absence of clear documentation acknowledging the existence of armed conflict and who are the parties thereto is causing confusion among the law implementers as to what armed conflicts are ongoing in the country. This makes it difficult to determine which particular incidents were conducted under the context of armed conflict and would therefore constitute violations of IHL. Moreover, the different pronouncements and statements of government officials as to the status of existing armed groups in the country are adding to the confusion.

To illustrate, one only needs to look at the Comprehensive Agreement for Respect of Human Rights and International Humanitarian Law

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107. *Id.*

108. International Committee of the Red Cross, Philippines: Multisectoral training on IHL domestic legislation, *available at* <https://www.icrc.org/en/document/multisectoral-training-ihl-domestic-legislation> (last accessed Aug. 15, 2020).

109. *See* Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, ch. III.

(CARHRIHL), a signed agreement between the government and the Communist Party of the Philippines–New People’s Army–National Democratic Front of the Philippines (CPP–NPA–NDFP).<sup>110</sup> In this agreement, the government and CPP–NPA–NDFP have agreed, among others, to respect human rights and IHL.<sup>111</sup>

Consequently, it can be inferred that agreeing to abide by IHL would mean that there is a recognition of the existence of an armed conflict in the Philippines between the Government of the Philippines and the CPP–NPA–NDFP. However, in June 2018, the Philippines delivered a statement in the United Nations 1st High Level Conference of the Heads of Counter-Terrorism Agencies of Member-States, underscoring the “threat of the Communist Party of the Philippines and New People’s Army terrorists, an equally dangerous local terrorist group also fueled by foreign ideology. The CPP–NPA has terrorized [the Filipino] people for 50 years.”<sup>112</sup> “CPP–NPA terrorists use their ‘legal blanket’ — particularly international solidarity networks and multilateral organizations — to conceal their true nature and agenda and to secure funding.”<sup>113</sup> Likewise, in January 2020, the Davao Region Peace and Order Council issued a resolution approving the classification of the CPP–NPA–NDF as an “organized crime group.”<sup>114</sup> In fact, Police Regional Office XI Director, PBGen. Filmore Escobal stated that “the killings, arsons, extortions, and harassments they perpetrated over the past and recent years have transformed the [CPP–NPA–NDF] into an organized crime group whose clear intention is to advance their criminal objectives[.]”<sup>115</sup>

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110. National Democratic Front of the Philippines, Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), *available at* [https://ndfp.org/wp-content/uploads/1998/03/hr\\_intl\\_law.pdf](https://ndfp.org/wp-content/uploads/1998/03/hr_intl_law.pdf) (last accessed Aug. 15, 2020).

111. *Id.* part. 1, art. 7.

112. Hermogenes C. Esperon, Jr., National Security Adviser, Philippines, Statement at the 1st High-Level Conference of the Heads of Counter-Terrorism Agencies of Member States (June 28, 2018) (transcript *available at* <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/S2-Philippines.pdf> (last accessed Aug. 15, 2020)).

113. *Id.*

114. Frances Mae G. Macapagat, RPOC XI classifies CPP/NPA/NDF as organized crime group, *available at* <https://pia.gov.ph/news/articles/1032923> (last accessed Aug. 15, 2020).

115. *Id.*

Interestingly, contrary to pronouncements of the government, in November 2019, the government filed a case against the NPA for violation of IHL under the IHL Act.<sup>116</sup>

According to the ICRC's classification of armed conflict in the Philippines, there are several non-international armed conflicts that are ongoing in the Philippines, specifically: (1) government vs. New People's Army; (2) government vs. Moro Islamic Liberation Front; (3) government vs. the Moro National Liberation Front; (4) government vs. Bangsamoro Islamic Federation Front; and (5) government vs. Islamic State Ranao (Maute Group).<sup>117</sup>

The different pronouncements and the lack of clear documentation acknowledging the existence of armed conflict in the Philippines create confusion among those implementing the law in initiating the proper cases and effectively prosecuting the same.

#### 5. Absence of Rules and Regulations Implementing Republic Act No. 9851

Unlike other special laws in the country, the IHL Act does not require Implementing Rules and Regulations (IRR) and does not outline specific elements for each of the crimes listed in the law.<sup>118</sup> The absence of specific elements to the crimes punishable under the IHL Act creates a challenge for those charged to implement that law as to what they specifically need to prove and also the evidence they need to gather in order to successfully prosecute violations. To address the gap, PHILJA, in consultation with other pillars of justice, is currently spearheading the creation of an IHL Manual that will be used by various government agencies involved in the administration of justice.<sup>119</sup> The IHL Manual aims to improve the

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116. Apipa P. Bagumbaran, 1st IHL violation case vs. NPA filed in Northern Mindanao, *available at* <https://pia.gov.ph/news/articles/1030506> (last accessed Aug. 15, 2020).

117. Rulac, *supra* note 1.

118. Soliman M. Santos, Jr., R.A. No. 9851 – breakthrough law for IHL enforcement in the Philippines, *available at* <https://www.preda.org/2010/r-a-no-9851-breakthrough-law-for-ihl-enforcement-in-the-philippines> (last accessed Aug. 15, 2020).

119. See Philippine Judicial Academy, PHILJA Bulletin: In Pursuit of Judicial Excellence at 1, *available at* <http://philja.judiciary.gov.ph/files/bulletin/Bul83.pdf> (last accessed Aug. 15, 2020).

understanding of IHL among the pillars of justice and support the implementation of the IHL Act in the country.<sup>120</sup> The IHL Manual is expected to be completed by middle of 2020.<sup>121</sup> The IHL Manual will hopefully address such concerns and will encourage the prosecution of IHL offenses.

*B. Act Defining the Use and Protection of the Red Cross, Red Crescent, and Red Crystal Emblems, and Providing Penalties for Violations*

Republic Act No. 10530, or the Act Defining the Use and Protection of the Red Cross, Red Crescent and Red Crystal Emblems and Providing Penalties for Violations (The Red Cross and Other Emblems Act of 2013),<sup>122</sup> provides for the guidelines in the use of the protective emblems — Red Cross, Red Crescent and Red Crystal — in times of armed conflict.<sup>123</sup> It aims to ensure that only those authorized are using these protective emblems, and that protected structures, transportation, and personnel are uniformly marked and identified.<sup>124</sup> The law further provides that religious personnel of both the military and the civilians are allowed to bear the Red Cross emblem during times of armed conflict.<sup>125</sup> Likewise, all members of the Red Cross and Red Crescent Movement are authorized to use the emblem in the conduct of their activities.<sup>126</sup>

The law provides for the same penalties as that provided for under Republic Act No. 9851. The highest penalty for misuse of the emblem that results to serious bodily harm or death is *reclusion perpetua* with a fine of up to ₱1 million.<sup>127</sup>

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120. *Id.*

121. *Id.*

122. An Act Defining the Use and Protection of the Red Cross, Red Crescent, and Red Crystal Emblems, Providing Penalties for Violations Thereof and for Other Purposes [The Red Cross and Other Emblems Act of 2013], Republic Act No. 10530 (2012).

123. *Id.* part 2.

124. *Id.* § 9.

125. *Id.* § 4.

126. *Id.* § 8.

127. *Id.* § 12.

The Implementing Rules and Regulations of Republic Act No. 10530 were finalized in 2018.<sup>128</sup> The IRR clearly indicate that the Red Cross emblem will be used in the Philippines.<sup>129</sup> It also requires the Department of National Defense and Department of Health to issue specific regulations detailing use of the Red Cross emblem for the military, police, and hospitals (private and public), for their personnel, structures, and transport.<sup>130</sup>

*C. Act Providing Special Protection for Children in Situations of Armed Conflict*

Republic Act No. 11188, or the Act Providing Special Protection for Children in Situations of Armed Conflict, was signed in January 2019.<sup>131</sup> Known as the CSAC law, it provides “special protection to children in situations of armed conflict from all forms of abuse, violence, neglect, cruelty, discrimination[,] and other conditions prejudicial to their development, taking into consideration their gender, cultural, ethnic[,] and religious background.”<sup>132</sup> The law also clearly identifies that it is the policy of the State to “[t]ake all feasible measures to prevent the recruitment and use of children in armed conflict”<sup>133</sup> and “continue to recognize its primary role in providing[ ] effective protection and relief to all children in situations of armed conflict.”<sup>134</sup> The State acknowledges its responsibility “to end impunity and to prosecute those responsible especially for grave child rights violations in armed conflict.”<sup>135</sup>

The CSAC law raised the penalties for violations against children’s rights in armed conflict situations.<sup>136</sup> Prior to the CSAC law, the IHL Act provided the penalty of *reclusion perpetua* and a fine of up to ₱1 million for

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128. Rules and Regulations Implementing the Red Cross and Other Emblems Act of 2013, Republic Act No. 10530 (2017).

129. *Id.* § 7.

130. *Id.* § 13.

131. An Act Providing for the Special Protection of Children in Situations of Armed Conflict and Providing Penalties for Violations Thereof [Special Protection of Children in Situations of Armed Conflict Act], Republic Act No. 11188, § 2 (2019).

132. *Id.* § 2.

133. *Id.* § 2 (e) & (g).

134. *Id.* § 2 (g).

135. *Id.* § 2 (h).

136. *Id.* ch. IV.

IHL violations that result in death or serious physical injury or rape.<sup>137</sup> Conscripting, enlisting, or recruitment of children, or using children to participate actively in hostilities only merited a penalty of *reclusion temporal* and a fine ranging from ₱100,000 to ₱500,000.<sup>138</sup>

With the new CSAC law, the penalty for violations that involve killing, torture, intentional maiming, rape, and other sexual violence committed against children will merit a punishment of life imprisonment and a fine not less than ₱2 million but not more than ₱5 million.<sup>139</sup> Moreover, instances of grave child rights violations involve:

- (1) Cruel, inhuman[,] and degrading treatment or punishment committed against children. For purposes of this Act, cruel, inhuman[,] and degrading treatment or punishment shall include those acts enumerated in Section 5 of the 'Anti-Torture Act of 2009';
- (2) Abduction of children;
- (3) Causal maiming of children;
- (4) Taking children as hostages or using them as [a] human shield;
- (5) Recruitment, conscription[,] or enlistment of children into government forces and other armed groups;
- (6) Acts of gender-based violence against children;
- (7) Refusal or denial of humanitarian access or assistance to children;
- (8) Use or involvement of children involved in armed conflict in any capacity as defined in Section 5(i) of this Act; and
- (9) Attack on schools, hospitals, places of worship, evacuation centers and settlements[,] and other public places such as recreation parks, playgrounds and malls.<sup>140</sup>

Those found guilty of the abovementioned shall suffer penalty of imprisonment of not less than 14 years but not more than 20 years and a fine of not less than ₱1 million but not more than ₱2 million.<sup>141</sup>

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137. Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, § 7.

138. *Id.*

139. Special Protection of Children in Situations of Armed Conflict Act, § 9 (a).

140. *Id.* § 9 (b).

141. *Id.*

Clearly, with the new penalties for violations against children in situations of armed conflict, the new CSAC law demonstrates the government's seriousness in implementing the State policy to protect children in situations of armed conflict. It manifestly raised the penalty for recruitment of children to join armed groups from *reclusion temporal* to 14 up to 20 years imprisonment and raised the fine up to ₱2 million,<sup>142</sup> probably in response to the acknowledged reality of the recruitment of minors for participation in armed conflict, as noted in the 2019 Senate Report —

With these disheartening narratives and personal recounts of the former insurgents, it becomes imperative for the Government to intensify its remedial and interventional measures in order to finally put an end to this reprehensible cycle of deceptive recruitment of the student sector and save our young people from the hands of the [CPP-NPA-NDF] and other radical groups.

*Admittedly, the problem of youth insurgency is not new. It has been plaguing [ ] society for years. However, efforts to completely curb this social ill have prove[n] to be futile.* Through the years, many of these young people have lost their lives in combat against the military. Meanwhile, those who chose to spend their lives with the NPAs[ ] are nowhere to be found and have remained to be incognito to their own families, the police[,] and the military.<sup>143</sup>

The CSAC law also removed the criminal liability of minors who have committed grave child rights violations.<sup>144</sup> Sections 28 and 31 of the law provides that criminal cases against children involved in armed conflict shall immediately be dismissed, and thereafter, the child shall be referred to the local social welfare and development office.<sup>145</sup> Furthermore, persons who have been convicted and are serving sentence who were below the age of 18 at the time of the commission of the offense they were convicted of shall also benefit from the retroactive application of the law.<sup>146</sup> The provisions of the law removing criminal liability for minors that have committed violations against fellow minors raise concerns that such might make children more prone to recruitment by armed groups since no criminal liability will

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142. *Id.*

143. S. Res. No. 38, Committee on Public Order and Dangerous Drugs & Committee on National Defense and Security, Peace, Unification and Reconciliation, S. Rep. No. 10, at 23, 18th Cong., 1st Reg. Sess. (2019) (emphasis supplied).

144. Special Protection of Children in Situations of Armed Conflict Act, §§ 28 & 31.

145. *Id.*

146. *Id.* § 31.



attach to minor offenders. Interestingly, the Implementing Rules and Regulations of the CSAC law tried to remedy the concern resulting from Sections 28 and 31. Rule 19 of the IRR provides —

Rule 19. Acts Committed by Children Involved in Armed Conflict (CIAC). Children are not criminally liable for crimes they committed as children involved in armed conflict and shall be treated as victims in accordance [with] Section 7 of the Act, *Provided* that, when the acts committed are grave child rights violations as found in the Act or are committed not as a child involved in armed conflict then the provisions of Republic Act No. 9344 or the 'Juvenile Justice and Welfare Act,' as amended, applies.<sup>147</sup>

Under Rule 19 of the IRR, criminal responsibility can only be considered for children involved in armed conflict who committed *grave child rights violations* under Section 9.<sup>148</sup> Therefore, children who were indirectly involved and children affected by armed conflict should not be held criminally liable under the CSAC law.

Effectively, Rule 19 provides for criminal responsibility for minors who are in violation of Section 9 of the CSAC law or those who have committed grave child rights violations *when no such exception appears in the main law*.<sup>149</sup> In the case of *Conte v. Commission on Audit*,<sup>150</sup> the Supreme Court ruled that

[c]onstitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.<sup>151</sup>

From the foregoing, it appears that Rule 19 of the IRR has gone beyond the intention of the CSAC law to remove criminal liability for minors. The inconsistency between the CSAC law provision and its IRR

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147. Rules and Regulations Implementing the Special Protection of Children in Situations of Armed Conflict Act, Republic Act No. 11188, rule 19 (2019).

148. See Special Protection of Children in Situations of Armed Conflict Act, § 9.

149. Rules and Regulations Implementing the Special Protection of Children in Situations of Armed Conflict Act, rule 19.

150. *Conte v. Commission on Audit*, 264 SCRA 19 (1996). This decision was upheld in *Department of Health v. C.V. Canchela & Associates, Architects*, 475 SCRA 218 (2005).

151. *Conte*, 264 SCRA at 21.

has the potential to cause implementation challenges if not remedied and harmonized by the implementing agencies.

#### IV. CONCLUSION

Unlike human rights, IHL is a concept that still has very limited understanding in the Philippines. In a study commissioned by the ICRC in 1999,<sup>152</sup> in celebration of the 50th year of the Geneva Conventions, the following were found:

Consciousness of the Geneva Conventions is low. Only 12% of Filipinos surveyed have heard of them and few have any specific ideas of what they are about.<sup>153</sup> Of those who are aware of the Conventions, many consider that these rules apply only to conflicts between countries and not to the conflict taking place in the Philippines.<sup>154</sup>

Nearly half of respondents (46%) do not cite any action that combatants are not allowed to do in conflict, meaning that they are unaware of what constitutes illegal acts during armed conflict situations.<sup>155</sup>

Combatants view themselves as the defenders and protectors of their communities. As revealed in the focus group discussions and in-depth interviews, combatants see their actions as being governed by the need to defend their people by whatever means necessary. They believe it is justifiable to take action that may put civilians in danger as long as it is done in the defense of their community.<sup>156</sup>

Taking into consideration the reality of limited understanding and knowledge of IHL, the Philippines established a State mechanism in the same year to promote IHL to the parties to the conflict and also to the general public. Pursuant to Executive Order No. 134,<sup>157</sup> every 12th of August is designated as *International Humanitarian Law Day* in the Philippines,

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152. International Committee of the Red Cross, *The People on War Report*, available at <https://www.icrc.org/en/doc/assets/files/other/globalreport.pdf> (last accessed Aug. 15, 2020) [hereinafter *The People on War Report*].

153. *Id.* at 18.

154. *Id.*

155. *See* *The People on War Report*, *supra* note 152, at 63.

156. *Id.* at 34.

157. Office of the President, *Declaring August 12, 1999 and Every 12th day of August Thereafter as International Humanitarian Law Day* [E.O. No. 134, s. 1999] (July 31, 1999).

the day when the four Geneva Conventions were signed. All departments and agencies of the government are enjoined to observe International Humanitarian Law Day and to actively support and participate in programs to commemorate the day.<sup>158</sup> Under the Executive Order, a budget is set aside for the conduct of said activities.<sup>159</sup> International Humanitarian Law Day has been commemorated and celebrated in the Philippines since 1999 and has grown from a one-day event to a year-long set of activities. Events pursuant to said Executive Order include IHL trainings or lectures, film showings, promotional videos, art contests, human IHL formation, and the annual International Humanitarian Law Day Run.<sup>160</sup> The activities are conducted in different parts of the country by government agencies, universities, and even non-governmental organizations.<sup>161</sup> Through said activities, understanding of IHL has improved over time, especially in armed conflict affected areas in the Philippines.

Moreover, in the last 10 years, the Philippines has manifested its intention to promote, uphold, and respect IHL. It became a State party to key and important IHL conventions and has enacted the IHL Act — a domestic legislation that punishes violations of the rules of war. The country has also shown efforts to promote understanding and implementation of the law by conducting trainings for the pillars of justice, designating IHL courts all over the country, and drafting an IHL manual. By enacting the CSAC law, it has also shown its intention to ensure that children are protected in armed conflict and not recruited to take part in the fighting.

Nevertheless, there is much work ahead for the Philippines to fight impunity and ensure that those who fail to respect IHL are punished. Despite experiencing years of armed conflict and a decade since the enactment of the IHL Act, there is only one successful prosecution of an IHL violation and only three cases filed under the said law. It points to the sad reality that IHL violations in the Philippines go largely unpunished despite years of fighting. Hopefully, the coming years will paint a better reality that IHL is respected in the country.

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158. *Id.*

159. *Id.*

160. Department of Foreign Affairs, DFA Spearheads Series of Activities in Celebration of the International Humanitarian Law Day, *available at* <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/13634-dfa-spearheads-series-of-activities-in-celebration-of-the-international-humanitarian-law-day> (last accessed Aug. 15, 2020).

161. *Id.*