



Interview with Lieutenant-Colonel Joven D. Capitulo PA

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Protracted conflicts are a major source of human suffering and can cause long-term displacement and development reversals. Although protracted conflicts can take many forms, they are generally characterized by their longevity, intractability and mutability. Authorities involved in situations of protracted conflict face complex challenges, particularly when it comes to ensuring that international humanitarian law (IHL) is respected by their armed forces.

The government of the Philippines has been involved in multiple non-international armed conflicts against insurgent groups for more than fifty years. In this interview, Lieutenant-Colonel Joven Capitulo, who works to implement the policies, activities and programmes of the Philippine Department of National Defense and Philippine Department of Defense initiatives on national legislation pertaining to compliance with IHL, shares the perspective of a State dealing with several protracted situations of non-international armed conflict. He tells the Review about some of the IHL considerations involved when a military is engaged in counter-insurgency on its own territory over a period of decades.

Keywords: protracted armed conflict, insurgency, NIAC, IHL.

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Tell us about your role at the Department of National Defense. What are the main activities of the Office of the Undersecretary for Defense Policy?

I've been in the Department of National Defense for almost nine years now. I work in the Office of the Undersecretary for Defense Policy where, as the military assistant, I assist and advise the undersecretary on military matters, particularly related to the Armed Forces of the Philippines. I am also currently heading the technical working group of the IHL Ad Hoc Committee, an inter-agency body which is being co-chaired by the Department of National Defense and the Department of Foreign Affairs.¹

Apart from heading the IHL Ad Hoc Committee, the Department of National Defense, through our office, also participates as an active member of the inter-agency committee created under Administrative Order No. 35 [AO 35].² The AO 35 Committee is an inter-agency body chaired by the Department of Justice that looks into issues of extrajudicial killings, enforced disappearances, torture, and other high crimes. This mechanism also covers violation of IHL under our national legislation enacting IHL into Philippine domestic law through Republic Act 9851.³ As one of the active members of the AO 35 mechanism, together with the Armed Forces of the Philippines Human Rights Office, we look into matters, review cases and make recommendations to the Committee regarding coverage under the AO 35 mechanism for issues such as enforced disappearances, torture, and other violations of IHL.

The Department of National Defense is also a member of the National Committee on Human Rights. This is also an inter-agency body, chaired by the Commission on Human Rights, which is an independent constitutional body. As part of that team, we work to ensure that human rights are respected.

The Department of National Defense is also spearheading a committee dealing with the protection of the red cross, red crescent and red crystal emblems. This is based on national legislation under Republic Act 10530, which criminalizes the misuse of these emblems and holds those offenders criminally liable under Philippine law. The law mandates the Department of National

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1 The IHL Ad Hoc Committee was created by Executive Order No. 134, 1999, available at: www.officialgazette.gov.ph/1999/07/31/executive-order-no-134-s-1999/ (all internet references were accessed in July 2020).

2 Administrative Order No. 35, "Creating the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons", 2012, available at: www.officialgazette.gov.ph/2012/11/22/administrative-order-no-35-s-2012/.

3 Republic Act No. 9851, "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", 2009, available at: www.officialgazette.gov.ph/2009/12/11/republic-act-no-9851/.

Defense to look into the protection of these emblems.⁴ The International Committee of the Red Cross [ICRC] is part of the consultative body that drafted the operational guidelines implementing Republic Act 10530, published in our own official gazette in 2019. The operational guidelines are intended to help the security, health and business sectors to understand what should be protected, what should not be done and why these emblems need to be protected. So, the challenge on our part is of course how to cascade this down to the lowest-ranking members of the Armed Forces of the Philippines, how to educate health workers and administrators and how we can cover the business sector despite the limited resources available.

Can you tell our readers a little about the situation in the Philippines, especially in Mindanao?

In Mindanao, there are several different armed groups that we are currently addressing. One is, of course, the secessionist movement in the Muslim-dominated part of the Southern Philippines. At present, we have a very important task with the secessionist movement in view the passage of the Bangsamoro Organic Law.⁵

The Bangsamoro Organic Law, which was signed by the President of the Republic, is geared towards the implementation of an autonomous region in some parts of the Southern Philippines. So, we are already at the normalization stage involving the security aspect and the subsequent decommissioning of the Moro Islamic Liberation Front forces and their weapons. It is in this context that socio-economic development programmes play a vital role in assuring that the governance of the region will be administered by its people.

Following the passage of the Law, the Bangsamoro transitional government is addressing concerns related to the secessionist movement in the Southern Philippines, including cultural, ethnic and religious differences in that region. Everybody looks forward to a smooth transition in governing that particular region of the Southern Philippines.

The passage of the Law was a primary effort of the government. Of course, the Armed Forces of the Philippines and the Department of National Defense are very supportive. We want to bring peace in that region because we've been addressing the armed conflict in that region for quite some time. So, with this Bangsamoro transitional government and the establishment of the autonomous Bangsamoro region, everyone is hopeful that there will be a lasting peace.

In the eastern part of Mindanao, we have another conflict involving the armed group of the Communist Party of the Philippines [CPP], the New People's

4 Republic Act No. 10530, "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", 2013, available at: www.officialgazette.gov.ph/2013/05/07/republic-act-no-10530/.

5 Republic Act No. 11054, "An Act Providing for the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao", 2018, available at: www.officialgazette.gov.ph/2018/07/27/republic-act-no-11054/.

Army [NPA]. Recently, the government, through our president, issued Executive Order No. 70 establishing a National Taskforce to End Local Communist Armed Conflict.⁶ The very purpose of the executive issuances made by the president is to localize the peace negotiation. As you all know, we have been trying to negotiate a peace accord with the top brass of the CPP, the NPA and National Democratic Front [NDF]. You can read in the papers that Norway is facilitating peace talks between the Government of the Republic of the Philippines and the CPP-NPA-NDF in the Netherlands, but unfortunately, for almost a year, these talks have largely been a failure. So the government came up with the decision to have peace negotiations at the local level, because there are complexities on the ground. What the government did is to come up with this executive order and introduce different programmes and approaches. The Department of National Defense is spearheading one of the programmes on the integration of combatants into society. As part of this programme, we are giving surrenderees reintegration packages, in the form of firearms remunerations, livelihood programmes and the like, whenever they decide to start their normal lives. Particularly, the government gives them some cash to sustain their livelihoods and has introduced capacity programmes to train them—for example, to start a business or learn a new way of farming. All of this is being addressed under Executive Order No. 70. Our hope is that in the very near future, we could address the NPA conflict with this programme.

The Philippines has a very volatile and porous boundary down south, and we did not predict that terrorism and terrorist groups would start spreading. They even tried to establish an Islamic regime under Daesh in that southern part of the region. We have several terrorist groups, the biggest of which is the Abu Sayyaf Group [ASG]. The ASG engages in various kidnap-for-ransom activities, bombings, beheadings, assassinations and extortion. The recent Marawi siege is the most serious militant action by this terrorist group. Isnilon Hapilon, an ASG leader who subsequently became the “Emir of all Islamic State Forces in the Philippines”, joined forces with the Maute Group in their lair in Butig, Lanao del Sur, and tried to occupy Marawi City. The occupation of Marawi City by the terrorist group was preceded by a joint law enforcement operation of the Armed Forces of the Philippines and the Philippine National Police when they attempted to serve a warrant of arrest and capture for Hapilon. The Marawi siege is a classic example of a complex military situation because during the military operation, the security forces found out that there were a lot of foreign fighters fighting along with Hapilon and the Maute Group. Thus, again, a big challenge on the part of the Department of National Defense in addressing this kind of conflict.

We have several strategic platforms for addressing all this. Cooperation among the neighbouring countries is key to addressing the problem and

6 Executive Order No. 70, “Institutionalizing the Whole-of-Nation Approach in Attaining Inclusive and Sustainable Peace, Creating a National Task Force to End Local Communist Armed Conflict, and Directing the Adoption of a National Peace Framework”, 2018, available at: www.officialgazette.gov.ph/2018/12/04/executive-order-no-70-s-2018/.

controlling this border. At present, we have a trilateral agreement with Indonesia and Malaysia, securing the border in the south. The agreement, through a joint patrol, seeks to address or mitigate the entry of some of these foreign terrorists into our territory.

How have things changed over time as the insurgency has become increasingly protracted?

I think the recent paradigm shift adopted by the Department of National Defense through the Armed Forces of the Philippines, which is implementing Development Support and Security Plan entitled “Kapayapaan”,⁷ is a big change in addressing the insurgency problem. *Kapayapaan* is a Filipino word for “peace”. The precursor of this plan was the Internal Peace and Security Plan entitled “Bayanihan”.⁸

The “Kapayapaan” plan considers that military operations alone cannot address the insurgency problem here in the Philippines. It should be a whole-of-nation approach. This was a paradigm shift that we adopted. Before, the security forces of the government focused more on military operations or campaigns, neutralizing the enemy, and dealt more with the technical aspects of military operations. Nowadays, we have incorporated development into the counter-insurgency campaign of the government. Under the whole-of-nation approach, we make sure that concerned government stakeholders like the Department of Social Welfare, the Department of Public Works and Highways and the Department of Agrarian Reform will be part of the team. Because after securing the countryside, we need to develop and sustain the community. Of course, the development phase or operation is no longer part of the mandate of the Department of National Defense. Development will be done by other concerned departments of the government. So, we make sure that everybody will be equipped and capacitated in order to sustain peace in the area. It is a lot of coordinative work, but we’re doing it, integrating the different government stakeholders one by one.

In your view, what are the main challenges in applying IHL in counter-insurgency situations like the ones that you see in the Philippines?

One of the main challenges that we encounter is ensuring that non-State actors appreciate and observe the principles of IHL. For this big challenge, we need someone to educate the non-State actors. Of course, the Department of National Defense or the Armed Forces of the Philippines cannot do it.

Another problem we are facing here in the Philippines is addressing terrorist groups such as the ASG in the regions of Sulu, Tawi-Tawi, Jolo and Basilan. How can

7 Armed Forces of the Philippines, *AFP Development Support and Security Plan “Kapayapaan” 2017–2022*, 2017, available at: <https://mronline.org/wp-content/uploads/2018/09/AFP-Development-Support-and-Security-Plan-Kapayapaan-2017-2022.pdf>.

8 Armed Forces of the Philippines, *Internal Peace and Security Plan “Bayanihan”*, 2010, available at: www.army.mil.ph/home/images/bayanihan.pdf.

we relate to them and educate them on the principles of IHL? It's a sad reality that these groups are not fighting for any political or socio-economic cause; they are simply big groups of bandits. So, again, how can we educate this armed group and teach them to respect and observe IHL principles? And who will educate these people about IHL? It's hard to think of who could influence them and how to incentivize their compliance with IHL. An independent organization or group will certainly play a significant role in educating these people. In my personal view, the ICRC can play a big role in this huge endeavour.

On the other hand, the continuous advocacy campaigns on IHL among members of the Armed Forces of the Philippines are still a challenge because of the huge number of such members. We have incorporated subjects on human rights and IHL as part of their regular military career courses. Other advocacy campaigns or programmes are also being undertaken, in partnership with the ICRC, considering that we have limited resources to manage.

The main challenge of the counter-insurgency campaign and the internal conflict is that it's a war among Filipinos. The victims of this war are not foreign individuals or groups – they are Filipinos. That's the saddest and hardest part. Of course, the counter-insurgency campaign is not just an issue of a military operation. It's an issue of how we Filipinos embrace the humanitarian side, and this could be achieved through peaceful means. Counter-insurgency has been going on for more than five decades now. It's a long war, and the victims are the Filipinos themselves.

What are some of the IHL-related lessons learned as the insurgencies in the Philippines have become increasingly protracted?

We have seen a paradigm shift insofar as the counter-insurgency campaign is concerned. We've realized that military operations alone cannot address the counter-insurgency. We need to invite other stakeholders from the concerned government agencies and NGOs to help us in this campaign.

The act of neutralizing the armed component of an insurgent group will not end the armed conflict. All they need to do is to recruit, train and organize, and then more insurgents will resurface. So, it's a never-ending campaign. The "Kapayapaan" plan aims to address the issue. Peace and order is just one of the components. Development should be incorporated, followed by capacity-building; this would certainly ensure lasting peace and development.

You mentioned advocacy campaigns to promote respect for IHL by the Armed Forces of the Philippines. What measures has the Philippines government put in place to ensure that its forces comply with IHL?

One way of doing this is being part of the IHL Ad Hoc Committee. The Committee often meets to discuss programmes and activities that will promote IHL. It is a participatory way to get the involvement of every member of the Committee.

Another way is through an annual oath by the security sector of the government – the Armed Forces of the Philippines, the Philippine National Police and the Philippine Coast Guard. We, the uniformed armed services, usually conduct an IHL oath every year, from the general headquarters, to the division or unit headquarters, and down to the battalion or similar unit level. Soldiers are required to take this IHL oath and re-dedicate themselves to observing the principles of IHL. Personally, I think one of the best practices that we’re doing is the constant reminders to our troops relative to these principles. So we make sure that all our troops take their IHL oath every year, for them to be reminded of the principles of IHL.

As I have said, apart from the oath, all members of the security forces are trained and educated to uphold the principles of IHL and human rights all throughout their careers. Upon their recruitment, we incorporate IHL principles and human rights subjects into their programme of instruction. These subjects and principles are being taught and incorporated into the training modules undertaken by the different military training schools; they are taught starting from the recruitment of the candidate soldier and all through their career. In the officers’ corps, we assure that all our officers have adequate knowledge as far as the implementation and principles of IHL are concerned. This is important because they lead these fighting armed men, so we need to capacitate and educate them.

This is over and above the advocacy activities undertaken by the Armed Forces of the Philippines Human Rights Office. We have Human Rights Offices in the Army, in the Navy, and in the Air Force – and down to the battalion level, we have a human rights officer, whose role is to monitor compliance with IHL and human rights.

The Department of National Defense is performing its role of relaying IHL principles to the troops. In fact, the Department is mandated by law, under Republic Act 10530, the Emblem Law, to act as the chair of an inter-agency committee for implementing the protection accorded in the usage of the so-called “Emblems of Humanity”.

Can you tell us more about the IHL Ad Hoc Committee? What are its main activities?

The IHL Ad Hoc Committee is an inter-agency body which has external participation from organizations such as the ICRC, the Philippine Red Cross and other civil society organizations who are also members of the Committee. All the different security sectors in the Philippines are also members of the Committee, including the Philippine Coast Guard and the Philippine National Police.

The IHL Ad Hoc Committee was initially created purposely to spearhead activities for the yearly IHL celebration that begins every 12th of August, “IHL Month”. The IHL Month celebration begins with an opening ceremony commemorating IHL Day on 12 August. The Committee is co-chaired by the Department of National Defense and the Department of Foreign Affairs, and

celebrations are held either in the Department of National Defense or the Department of Foreign Affairs.

The activities of the Committee have developed over time, and we make sure every year to innovate through a series of activities. Last year, members of the diplomatic corps, including the ICRC's head of delegation in Manila, were invited to attend the national commemorations on IHL.

Also last year, we tapped the services of one of the most famous people in Philippines show business, Piolo Pascual, to promote IHL in an infomercial focused on advocating for the principles of IHL. It was shown on our official IHL Facebook account and major social media platforms. By tapping some famous showbiz personalities, we can effectively influence individuals who are very fond of such personalities. Imagine that you could see Hollywood stars campaigning for IHL – that is the idea.

Also part of the advocacy campaign is a yearly IHL fun run. All members of the IHL Ad Hoc Committee are represented in this run for IHL. It builds team spirit, not only within the security forces but with other organizations that are part of the Committee, such as the ICRC.

With many activities being proposed by its members, the IHL Ad Hoc Committee realized that the activities cannot be achieved in only a month. So, the Committee agreed to conduct IHL-related activities for the whole year. Currently, we are preparing our advocacy campaign for arms bearers, as they are on the front lines in conflict-affected areas and are the ones that encounter IHL-related challenges while in the field. We need to continue capacity-building, starting from the lowest-ranking enlisted personnel and going right up to the officers' corps, to make sure that everyone has basic knowledge of the principles of IHL, the rule of law, and human rights issues.

How often do you work with the ICRC? What is your relationship with the ICRC like? What is the added value of the ICRC to your work?

With all the work on IHL matters, we have an open communication with the ICRC together with our national society, the Philippine Red Cross. In fact, we use social media platforms and have created a chat group to discuss IHL concerns, recommendations and proposed programmes. The advantage of using all this technology nowadays is that we can come up with decisions or recommendations that matter, without needing to physically meet; this saves both time and effort.

The ICRC's involvement is very much appreciated by the Department of National Defense. It has helped us in harmonizing our programmes and guidelines and managing our operational tempo, particularly in addressing both our counter-insurgency campaign and our other national security operations. The ICRC's perspective and views are being considered in the planning and execution of these campaigns. We are in constant coordination and are always consulting with the ICRC on IHL-related issues, thus establishing an open communication. Even in the middle of the night, they can text me or they can call me and bring

their concerns and try to address issues at our level. I think it is a 24/7 IHL open line on my part as well as on the part of the Department.

Do you have any other message that you would like to share with our readers?

As mentioned earlier, the counter-insurgency campaign is an internal conflict, which is a sad reality. I must reiterate this, because the counter-insurgency campaign is not a war against somebody else; it's a war among the Filipino people. Chances are, your enemy will be one of your friends or even relatives. We may have differences in political ideologies or beliefs, but at the end of the day and when the firefight is over, victims brought out from the battlefield are still Filipinos.

I think addressing the counter-insurgency must reach its final goal: ending the insurgency and having a lasting peace. The victims here are the Filipinos themselves. It's the country that suffers. It's the people who weep. That's what we are trying to address by offering a solution for lasting peace.