

The Samar ambush and rules on landmine use

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THE 14 DECEMBER 2010 Samar ambush by New People's Army (NPA) rebels resulting in the killing of 10 Armed Forces of the Philippines (AFP) soldiers and one nine-year old boy in Bgy. Sta. Fe, Las Navas, Northern Samar, two days before the current Christmas season ceasefire started, and apparently involving the use of landmines, has generated some debate regarding both NPA sincerity with the ceasefire and NPA use of landmines in this particular case. We deal here only with the latter issue, i.e. whether there was any violation of the rules of war or international humanitarian law (IHL).

On one hand, Philippine Army (PA) spokesperson Col. Antonio Parlade was reported to have condemned the NPA attack and use of landmines which, he said, had been banned by international organizations or various international warfare conventions. On the other hand, Communist Party of the Philippines (CPP) media officer Marco Valbuena maintained that "the NPA ambush was carried out according to international rules of war... The NPA unit legitimately and responsibly employed command-detonated explosives, as opposed to pressure-triggered landmines, to subjugate the AFP unit in consonance with the Ottawa Treaty and other international treaties concerning the conduct of war."

Before dealing with those rules on landmine use, notable is the CPP media officer saying , "It [the Samar ambush] was a legitimate act of war, carried out in self-defense in response to an active enemy offensive operation." Ambush is generally considered an offensive military operation but it is framed here by the CPP as a defensive measure by the NPA against an AFP offensive military operation. This sounds somewhat like the basketball so-called "wisdom" about offense being the best defense. The NPA counterpart of this is the launching of tactical offensives within the strategic defensive. Question: was the Samar ambush not a tactical offensive? as such, could it also be characterized as a defensive measure? It seems that there are different levels of offensive and defensive involved here.

The INQUIRER editorial "Twisted faith" (12/19/10, p. A12) had its own incisive ordinary person's take about the NPA's claim of "self-defense," by commenting: "But based on news reports from the field, it appears that the encounter took some preparation (e.g. landmines were planted) and was initiated by the NPA rebels." But we digress.

In dealing with the rules on landmine use as applied to the Samar ambush, we are handicapped by a lack of established facts about the incident that probably only an impartial and competent investigation, as well as incontrovertible evidence, can dig up or reveal. The AFP, according to the news reports, says that the ambushed 12-man AFP squad were traveling on foot on their way back to barracks. The CPP says that the ambushing NPA unit "employed command-detonated explosives." Based on many past similar incidents, these are likely improved Claymore mines which are actually command-detonated anti-personnel mines (APMs). The evidence of command-detonation is usually in the form of electrical detonating cords that may be found among the remnants of the explosion or in the vicinity of the ambush site. The evidence of the anti-personnel, as distinguished from anti-vehicle, character of the landmine can be gleaned from the body injuries of the killed and wounded

soldiers, as may be determined from their competent autopsies or medico-legal examinations. It may be that their injuries were from the explosive blast, gunshots or both, since the NPA often employs rifle fire to follow through on a command-detonated landmine or improvised explosive device (IED) blast which initiates an ambush.

The 1997 Ottawa Treaty deals only with victim-activated APMs, particularly the total ban on their use, production, stockpiling and transfer. This is the only internationally banned type of landmines. It does not appear that the banned victim-activated APMs were employed by the NPA rebels in the Samar ambush.

Other types of landmines like command-detonated APMs, and both victim-activated and command-detonated anti-vehicle mines (AVMs) are not similarly banned but only restricted or regulated in their use by certain basic rules under customary IHL: (1) When landmines are used, particular care must be taken to minimize their indiscriminate effects; (2) A party to the conflict using landmines must record their placement, as far as possible; and (3) At the end of active hostilities, a party to the conflict which has used landmines must remove or otherwise render them harmless to civilians, or facilitate their removal. These basic rules are also found and elaborated in the 1996 Amended Protocol II on mines, booby-traps and explosive devices of the 1980 Weapons Convention which Protocol mandates the taking of all feasible precautions, including effective advance warning, and protective measures when using these weapons, so as to protect civilians or exclude them from the effects of these weapons.

Again, the news reports on the Samar ambush are unfortunately not clear on where exactly was the nine-year old boy when he was killed in the crossfire. Like, was he in the company or near vicinity of the ambushed AFP soldiers so as to have been himself vulnerable to the NPA landmine or explosive blast? The CPP Information Bureau press releases say that the boy was then swimming in a river nearer where the NPA rebels were in ambush positions than where the ambushed soldiers were actually ambushed, and that he may have been felled by the ambushed AFP soldiers' return fire against the NPA positions. This does not, however, seem likely, given what looks like the near-annihilation by the NPA unit of the 12-man AFP squad, with the NPA unit gathering as much as 11 firearms from the fallen soldiers.

It is not yet clear, at least from the news reports and the partisan statements from both sides, whether the boy, just like the "Samar 10" AFP soldiers, were killed by the explosive blast, gunshots or both — again, can only be determined from their competent autopsies or medico-legal examinations. If the boy was killed by the explosive blast, then questions may be raised about whether the ambushing NPA unit exercised the requisite particular care and all feasible precautions so as to protect or exclude such a civilian from the effects of the explosive blast (and of course also the subsequent rifle fire). In any case, regardless of such care and precautions, civilians also have an absolute right "not to be subjected... to the use of landmines" under the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP).

And so, it is not only international rules of war that are the terms of reference here but also the peace agreements between the warring parties. These are all at least mutually acceptable terms of reference, unlike domestic criminal law for rebellion, murder or illegal possession and use of explosives, which the GRP as a matter of course seeks to enforce over the objections and non-recognition thereof by the NDFP.

We have been dealing here largely with the legal, particularly international rules of war and landmine use. But of course there are also the political and moral in the whole or holistic equation.

As has often been said in other contexts, what is legally correct is not necessarily politically or morally correct in the circumstances.

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