

Protecting the child who bears arms: How the status of Zones of Peace for Children under Philippine Act No. 11188 distorts International Humanitarian Law

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Philippine Republic Act No. 11188 was passed recognizing the vulnerable status of children in situations of armed conflict. As a measure of providing special protection, R.A. 11188 commendably declares children, among others, as “Zones of Peace”—shielding children from all forms of abuse and violence and particularly declaring, in terms certain and succinct, that children can never be the object of an attack. However, this concept touches on and fundamentally challenges one of the foundational pillars of International Humanitarian Law: Distinction. It is submitted that R.A. 11188, in sweeping terms, ignores the continued reality of child soldiers and creates a civilian-soldier hybrid who can kill but cannot be killed in the eyes of the law, because as a “Zone of Peace”, children can never be lawfully targeted. In the day-to-day warfare situation where a soldier carries the responsibilities of eliminating combatants, saving civilians, and preserving his own life, making him second guess every interaction with a child, who no longer needs to feign innocence, imposes too heavy a burden on him to carry.

Keywords: Child soldier, Republic Act No. 11188, Zone of Peace

“The road to hell is paved with good intentions.” - *Abbot Bernard of Clairvaux*

1. Blurring the responsibilities of a soldier on the ground

Responsibility, and the consequences that accompany the same, is often measured and given based on the assumed capacity of the individual to make personal and conscientious decisions. This is why age, despite exceptions on discernment and in special cases, remains to be the most sensible indicator of

accountability because it proves that, all things considered equal, the individual most likely sought such a result after the development of his mental and emotional faculties.

Children are afforded special protection because they are not expected to think, anticipate, and perform in the same way as their older counterparts. They are never to be treated on the same level as adults and enjoy accountability appropriate for their age—that is and always has been society’s worldview on children.

There is one extreme instance, however, where the veil of protection afforded to children is removed in favor of the direness of the situation: Armed conflict. It is only in war, where lines as drawn along human judgment, are children acting as an adult consequently treated as such.

The concept of child soldiers offers a unique perspective to the often-avoided topic of child protection in times of armed conflict. Under International Humanitarian Law (IHL), there are both general and special protections afforded to children caught up in armed conflict. Nevertheless, it recognizes that children who take a direct part in international (IAC) or non-international armed conflicts (NIAC) consequently become (i) combatants and in the event of their capture are entitled to prisoner-of-war status¹ or (ii) those who lose their protected status as civilians. In either case, the moment a child directly participates in the conflict, his presence on the battlefield signals fair game within the bounds of IHL.

The Philippines is no stranger to the phenomenon of child soldiers. In 2021 alone, the UN General Assembly Security Council verified 55 grave violations against 46 children (27 boys and 19 girls) which included the recruitment and use of 27 children with several armed groups such as the New People’s Army, the Armed Forces of the Philippines, the *Abu Sayyaf* Group, and the *Dawlah Islamiyah-Maute* Group.² This prevalence was exactly what

¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, art. 77(1) (entered into force 7 December 1978).

² Report of the Secretary-General on children and armed conflict (A/76/871-S/2022/493) issued on 11 July 2022.

led Philippine lawmakers to pass legislation definitively prohibiting the use of children in armed conflict.

However, with the passage of Republic Act or R.A. No. 11188 or the Special Protection of Children in Situations of Armed Conflict Act in the Philippines, soldiers become unreasonably burdened to consider significantly more lives than what they are required of under customary IHL. By bestowing upon children the status of a “Zone of Peace”, R.A. 11188 places incredible pressure on soldiers to always consider the lives of children even in the likely event that they directly participate in hostilities. That is to say that even when a soldier is confronted with a child who bears arms and shoots at his allies, the former may not retaliate in fear of transgressing such Zone of Peace. In its worst form, it may lead armed groups to break their vows against the recruitment of children in favor of ending the conflict as quickly as possible.

This paper will discuss how the creation of zones of peace for children under R.A. 11188, as presently constructed, appears to be inconsistent with current principles of IHL. This will be examined in the following manner: First, a background on protected and unprotected persons including children under IHL; second, the standard of directly participating in the hostilities; third, the paradigm of treatment proposed under R.A. 11188; fourth, the inherent conflict in reconciling both bodies of law; and lastly, the unintended consequences of such admirable effort towards protecting children in times of armed conflict.

2. Laying down the IHL

Indispensable in the conduct of engagement is the application of IHL or the body of law applicable in times of armed conflict. Under IHL and relevant to this study is the conventional and customary principle of distinction, such that parties to the conflict must target only lawful military objectives and never civilians or civilian objects.³ An attack that does not target one or more lawful

³ Articles 48, 51(2), 52(2), Additional Protocol I.

military objectives is an indiscriminate attack.⁴ In other words, attacks shall be limited strictly to military objectives.⁵

Generally, civilians are not considered military objectives.⁶ Depending, however, on the characterization of the conflict and his/her participation in the same, it is possible that one loses his/her protective status. In times of an IAC, for instance, civilians who (i) become combatants⁷ or (ii) take a direct part in hostilities⁸ are considered to be legitimate military targets. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third [Geneva] Convention) are combatants.⁹ Combatant status implies not only being considered a legitimate military objective, but also being able to kill or wound other combatants or individuals participating in hostilities, and being entitled to special treatment when *hors-de-combat*, i.e. when surrendered, captured or wounded.¹⁰

On the other hand, should there be a NIAC, civilians are immune from direct attack “unless and for such time as they take a direct part in hostilities”.¹¹ This means that while civilians benefit from a general protection from attack,¹² this protection is lifted “for such time as they take a direct part in hostilities”¹³. During this time, a civilian who directly participates in the hostilities may be the proper subject of attack and may be attacked lawfully.

In the context of the Philippines where it has engaged and continues to engage in decades long conflict with non-State armed groups,¹⁴ it is fair to

⁴ *Id.*

⁵ *Id.*

⁶ Art. 51 (2), Additional Protocol I.

⁷ Article 43(2), Additional Protocol I.

⁸ Art. 51 (3), Additional Protocol I.

⁹ Article 43(2), Additional Protocol I.

¹⁰ *Id.*

¹¹ Article 13(3), Additional Protocol II.

¹² Art. 51 (2), Additional Protocol I.

¹³ Art. 51 (3) Additional Protocol I.

¹⁴ See International Crisis Group (ICG), *The Communist Insurgency in the Philippines: Tactics and Talks*, 14 February 2011, Asia Report N°202, available at: <https://www.refworld.org/docid/4d5a310e2.html> [accessed 6 July 2023].

assess such situation as a NIAC, whereby civilians who take a “direct part in hostilities” cannot be afforded protection under IHL.

3. What it means to “directly participate” in the hostilities

While there is no customary or treaty law definition of what constitutes direct participation in hostilities, it is often the view that participation should be understood to mean "acts which by their nature or purpose, are intended to cause actual harm to the enemy personnel and material."¹⁵ According to the International Committee of the Red Cross (ICRC), an impartial humanitarian body recognized by the Geneva Conventions,¹⁶ a specific act must meet the following criteria to qualify as direct participation in hostilities:

1. the act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and
2. there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation), and
3. the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).¹⁷

First, regarding the threshold of harm, the threshold is reached whenever the military operations or capacity of a party to an armed conflict are adversely affected, for example through the use of weapons against the armed forces, or by impeding their military operations, deployments, or

¹⁵ SCSL, *Prosecutor v. Sesay et al.* ("RUF-case"), "Judgment", SCSL-04-15-T, 2 March 2009, para. 104. See ICTY, *Prosecutor v. Perišić*, "Judgement", IT-04-81-T, 6 September 2011, para. 93.

¹⁶ Article 3(2), Geneva Convention I.

¹⁷ International Committee of the Red Cross (ICRC), Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law, May 2009, available at: <https://www.refworld.org/docid/4a670dec2.html>.

supplies.¹⁸ Where no military harm is caused, the threshold can also be reached by inflicting death, injury, or destruction on protected persons or objects such as the shelling or bombardment of civilian residential areas, sniping against civilians, or armed raids against refugee camps even though, in these scenarios, they would not necessarily cause a direct military harm to the enemy.¹⁹

Second, insofar as direct causation is concerned, acts that merely build or maintain the capacity of a party to harm its adversary in unspecified future operations do not amount to "direct" participation in hostilities, even if they are connected to the resulting harm through an uninterrupted chain of events and may even be indispensable to its causation e.g. the production of weapons and ammunition or general recruiting and training of personnel.²⁰

Lastly, in order to amount to direct participation in hostilities, the conduct of a civilian must not only be objectively likely to inflict harm meeting the first two criteria, but it must also be specifically designed to do so in support of a party to an armed conflict and to the detriment of another (belligerent nexus).²¹ That is to say that armed violence which is not designed to harm a party to an armed conflict, or which is not designed to do so in support of another party, cannot amount to "participation" in hostilities.²²

Thus, while members of organized armed groups belonging to a party to the conflict lose protection against direct attack for the duration of their membership (i.e., for as long as they assume a continuous combat function), civilians lose protection against direct attack for the duration of each specific act amounting to direct participation in hostilities.²³ This includes any

¹⁸ Nils Melzer, The ICRC's Clarification Process on the Notion of Direct Participation in Hostilities under International Humanitarian Law.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ International Committee of the Red Cross (ICRC), Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law, May 2009, available at: <https://www.refworld.org/docid/4a670dec2.html>.

preparations and geographical deployments or withdrawals constituting an integral part of a specific hostile act.²⁴

In order to avoid the erroneous or arbitrary targeting of civilians, parties to a conflict must take all feasible precautions in determining whether a person is a civilian and, if that is the case, whether he or she is directly participating in hostilities.²⁵ In case of doubt, the person in question must be presumed to be protected against direct attack.²⁶

4. Children, as a special protected class, under IHL

In reference to children in armed conflict and on top of the general principles of IHL,²⁷ there are specific rules related to the protection of Children.

Under IHL, children affected by armed conflict are entitled to special respect and protection.²⁸ The International Criminal Court (ICC) Appeals Chamber in the 2017 case of *The Prosecutor vs. Bosco Ntaganda* had the occasion to cite Additional Protocol I, to wit: “Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”²⁹ The Appeals Chamber went on to add that this, “...provision reflects the general principle that children continue to benefit from specific protective measures, even when associated with armed groups, as a result of their age.”³⁰

This emphasis on the special protection afforded to children are seen in a bevy of international instruments such as the Geneva Conventions, the Additional Protocols, the Convention on the Rights of the Child, and even the Statute of the International Criminal Court. While not remiss in their

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians under Articles 48 and 51 in API.

²⁸ Customary IHL, Rule 135.

²⁹ Case no ICC-01/04-02/06-1962 (Official Case No) ICL 1786 (ICC 2017).

³⁰ *Id.*

conveyance of general protection afforded to civilians, it was well within the intent of the framers to categorize children as a special protected class.

Under GCIV and the first Additional Protocol, for instance, in the event of an international armed conflict, children not taking part in the hostilities are protected by GCIV relative to the protection of civilians. By stating that "Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason",³¹ Protocol I explicitly lays down the special protection afforded to children.

Particularly, they are fundamentally guaranteed the principles of the right to life, the prohibitions on coercion, corporal punishment, torture, collective punishment, and reprisals.³² Moreover, protections covering evacuation and special zones,³³ assistance and care,³⁴ identification, family reunification and unaccompanied children,³⁵ education and cultural environment,³⁶ arrested, detained or interned children,³⁷ and exemption from death penalty³⁸ are also included.

API, and later the 1989 Convention on the Rights of the Child and its optional protocol, in recognizing the frequent participation of children in armed conflict, both by choice or by circumstance, adopted specific provisions banning their recruitment. API obliges States to take all feasible measures to prevent children under 15 from taking direct part in hostilities. It expressly

³¹ Art. 77, Additional Protocol I.

³² See Art. 27-34, Geneva Convention IV.

³³ Art. 14, 17, 24 (para. 2), 49 (para. 3) and 132 (para. 2) GCIV; Art. 78 API; Art. 4 (para. 3e) APII.

³⁴ Art. 23, 24 (para. 1), 38 (para. 5), 50 and 89 (para. 5) GCIV; Art. 70 (para. 1) and 77 (para. 1) API; Art. 4 (para. 3) APII.

³⁵ Art. 24-26, 49 (para. 3), 50 and 82 GCIV; Art. 74, 75 (para. 5), 76 (para. 3) and 78 API; Art. 4 (para. 3b) and 6 (para. 4) APII

³⁶ Art. 24 (para. 1), 50 and 94 GCIV; Art. 78 (para. 2) API; Art. 4 (para. 3a) APII

³⁷ Art. 51 (para. 2), 76 (para. 5), 82, 85 (para. 2), 89, 94 and 119 (para. 2) and 132 GCIV; Art. 77 (para. 3 and 4) API; Art. 4 (para. 3d) APII

³⁸ Art. 68 (para. 4) GCIV; Art. 77 (para. 5) API; Art. 6 (para. 4) APII

prohibits their recruitment into the armed forces and encourages parties to give priority in recruiting among those aged from 15 to 18 to the oldest.³⁹

Where the Philippines finds its relevance is in APII, which actually goes further, prohibiting both the recruitment and the participation – direct or indirect – in hostilities by children under 15 years of age.⁴⁰

This is why it does not come as a surprise that even under the Statute of the International Criminal Court, conscripting or enlisting children into armed forces or groups constitutes a war crime in both international and non-international armed conflicts.⁴¹

Similarly, bearing in mind the obligations under IHL to protect the civilian population in armed conflicts, the 1989 Convention on the Rights of the Child obliges States Parties to take all feasible measures to ensure protection and care of children who are affected by an armed conflict.⁴² This includes the obligation of States Parties to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.⁴³ In fact, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, to which the Philippines is a signatory to, raises the bar of protection even further by obligating State parties to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.⁴⁴

The world has taken great strides in affording special protection to children in times of armed conflict. Several military manuals all over the world incorporate the rule that civilians are not protected against attack when

³⁹ Art. 77, API.

⁴⁰ Art. 4, para. 3(c), APII.

⁴¹ ICC Statute, Article 8(2)(b)(xxvi) and (e)(vii).

⁴² Art. 38, *Convention on the rights of the child* (1989) Treaty no. 27531. *United Nations Treaty Series*, 1577.

⁴³ *Id.*

⁴⁴ UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000, available at: <https://www.refworld.org/docid/47fdfb180.html>.

they take a direct part in hostilities.⁴⁵ However, such protection must not be construed as clearance to extend such treatment broadly. It must be noted that nowhere is it stated in any of the international instruments mentioned that children are primordially afforded civilian status even when they take-up arms. In fact, the phrase “children not taking part in hostilities” in reference to the protection of children as civilians under GCIV and the general prohibition of recruitment and participation of children required amongst all member States suggests that children can directly participate in hostilities and therefore become lawful participants in war.

Of course, as René Provost puts it, “The conclusion that it is lawful to directly target child soldiers does not necessarily entail that it is lawful to target them as if they were adult soldiers”⁴⁶—owing to Article 35 and 52 of Protocol I in mandating that Parties should not employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and limiting military objectives to those the destruction of which brings a definite military advantage. That is to say that if available means and methods of warfare can achieve the same military advantage while causing a lesser degree of injury or suffering, then international humanitarian law requires that they be used.⁴⁷

Nevertheless, these restrictions speak only as to the means and ends of targeting a child soldier and not as to the predicate recognition that a child may still be a combatant or one who directly participates in hostilities after having fulfilled certain conditions.⁴⁸

⁴⁵ See, e.g., The Manual of the Law of Armed Conflict, Australian Defence Doctrine Publication 06.4, Australian Defence Headquarters, 11 May 2006. (Chapter 7, § 7.8), Law of Armed Conflict Manual DSK AV230100262 in Germany, Federal Ministry of Defense, 11 May 2013. (Chapter 3, § 303).

⁴⁶ Provost, R. (2016, January 9). Targeting child soldiers. EJIL: Talk! <https://www.ejiltalk.org/targeting-child-soldiers/>

⁴⁷ *Id.*

⁴⁸ See the ICRC’s Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law wherein it states, “Accordingly, even civilians forced to directly participate in hostilities or children below the lawful recruitment age may lose protection against direct attack.”, p.60.

5. What R.A. 11188 did right

In 2019, the Philippines was lauded by the United Nations International Children's Emergency Fund (UNICEF) for passing Republic Act No. 11188 or the Special Protection of Children in Situations of Armed Conflict Act.⁴⁹ This law follows the 2017 UN-MILF Action Plan wherein 1,869 children disengaged from the Moro Islamic Liberation Front's (MILF) armed forces.⁵⁰

Of particular importance in R.A. 11188 is the declaration of children as Zones of Peace.⁵¹ Under the law, Zones of Peace are defined as,

“[a] site with sacred, religious, historic, educational, cultural, geographical or environmental importance, which is protected and preserved by its own community. It is not merely a "Demilitarized Zone", but a **sanctuary that operates within ethical principles of nonviolence, free from weapons, acts of violence, injustice and environmental degradation**. The recognition of the Zone of Peace expresses commitments on the part of its community, governmental authority and, if appropriate, religious leadership to preserve the peaceful integrity of the designated site. Its custodians, members, participants and visitors exemplify mutual respect and nonviolent behavior while on the site, and share their resources for furthering peace and cooperation.”⁵²

By virtue of being a Zone of Peace, R.A. 11188 designates that children are to be treated in accordance with the policies stipulated under Article X, Section 22 of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and

⁴⁹ UNICEF. (2019, February 20). *Law protecting child soldiers a victory for the Philippines*. UNICEF. Retrieved December 4, 2022, from <https://www.unicef.org/philippines/press-releases/law-protecting-child-soldiers-victory-philippines-unicef>

⁵⁰ *Id.*

⁵¹ Rep. Act No. 11188 (2018), § 6. Special Protection of Children in Situations of Armed Conflict Act.

⁵² § 5.

Discrimination Act".⁵³ Passed in 1992, R.A. 7610 mandates the policy that children shall not be the object of attack and shall be entitled to special respect.⁵⁴ They shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment.⁵⁵

It also provides for the following:

- (a) Children shall not be recruited to become members of the Armed Forces of the Philippines of its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies;
- (b) Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered;
- (c) The safety and protection of those who provide services including those involved in fact-finding missions from both government and non-government institutions shall be ensured. They shall not be subjected to undue harassment in the performance of their work;
- (d) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots; and
- (e) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated due to armed conflict.⁵⁶

The closest approximations of a “safe zone” in IHL is the concept of Neutralized Zones under the GCIV and a demilitarized zone under API. Establishing a neutralized zone permits the sheltering from the effects of war the wounded and sick combatants or non-combatants and civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.⁵⁷ In the same vein, making a demilitarized zone the object of attack is a grave breach of Additional Protocol I.⁵⁸ A demilitarized zone is generally understood to be an area,

⁵³ § 6.

⁵⁴ Rep. Act No. 7610 (1992). Art. X, § 22.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Art. 15, Geneva Convention IV.

⁵⁸ Article 85(3)(d), Additional Protocol I.

agreed upon between the parties to the conflict, which cannot be occupied or used for military purposes by any party to the conflict.⁵⁹

On a more novel note, R.A. 11188 defines four (4) different types of children:

- (a) Children or a person below eighteen (18) years of age or a person eighteen (18) years of age or older but who is unable to fully take care of one's self; or protect one's self from abuse, neglect, cruelty, exploitation or discrimination; and unable to act with discernment because of physical or mental disability or condition.⁶⁰
- (b) "Children affected by armed conflict (CAAC)" or all children population experiencing or who have experienced armed conflict;⁶¹
- (c) Children involved in armed conflict (CIAC) or children who are either forcibly, compulsorily recruited, or who voluntarily joined a government force or any armed group in any capacity.⁶² They may participate directly in armed hostilities as combatants or fighters; or indirectly through support roles such as scouts, spies, saboteurs, decoys, checkpoint assistants, couriers, messengers, porters, cooks or as sexual objects;⁶³ and
- (d) Children in situations of armed conflict (CSAC) or children involved in armed conflict, including children affected by armed conflict and internally displaced children.⁶⁴

These classifications are important in determining the specific actions to be undertaken by the State when dealing with these children such as the release of CIACs⁶⁵ and the enforcement of rights such as the right to be treated as victims and the right to be with their families for CSACs.⁶⁶

⁵⁹ Weller, M., Solomou, A., & Rylatt, J. W. (2015). *The Oxford handbook of the use of force in international law* (M. (Marc) Weller, A. Solomou, & J. W. Rylatt, Eds.; First edition.). Oxford University Press.

⁶⁰ Rep. Act No. 11188 (2018), § 5(g).

⁶¹ § 5(i).

⁶² § 5(j).

⁶³ *Id.*

⁶⁴ Rep. Act No. 11188 (2018), § 5(k).

⁶⁵ § 23.

⁶⁶ § 7.

6. What R.A. 11188 got wrong

It is particularly interesting that R.A. 7610 gives a policy that children “shall not be the object of attack” and that they shall be entitled to special respect.⁶⁷ However, it is equally concerning that such blanket declaration falls under Article X entitled, “Children in Situations of Armed Conflict”—a title that mirrors the nomenclature of CSACs. Under R.A. 11188, Children in Situations of Armed Conflict or CSAC refers to “*all children involved in armed conflict, children affected by armed conflict and internally displaced children.*”⁶⁸

What this suggests is that even in the likely instance where a child directly participates in the hostilities, he cannot be the object of an attack precisely because he is a Zone of Peace. In fact, it is only in the definition of *Children involved in armed conflict* or CIAC in R.A. 11188 where it is recognized that children may become combatants. However, in every instance CIACs are mentioned in the law, they are cited only in relation to their treatment in custody, release, and reintegration back into their communities⁶⁹ with no mention of the procedure to be undertaken the moment they become lawful military targets.

Still, interpreting Article 35 and 52 of Protocol I prohibiting the employment of means that cause superfluous injury or unnecessary suffering and the targeting of military objectives only to those limiting which brings a definite military advantage on one hand and the heightened protection to children given in R.A. 11188 on another could suggest that soldiers are not given *carte blanche* authority to retaliate in the same offensive manner to child soldiers. That is to say that perhaps a more protracted approach is expected of soldiers when dealing with their child counterparts such as disarming and engaging with no intention to harm.

⁶⁷ Rep. Act No. 7610 (1992), Art. X, § 22.

⁶⁸ Rep. Act No. 11188 (2018), § 5(k). (Emphasis supplied.)

⁶⁹ § 22, 23, 24.

However, it is still unclear what the definitive approach should be when the child soldier in question is on the offensive and the life of the soldier is in imminent peril. Should efforts still be taken to prevent superfluous injury? Are children still considered Zones of Peace then?

R.A. 11188 offers no guidance as to resolving the same.

While it may be argued that it was well within the intentions of the lawmakers to exclude the specific mention of combatants in reference to zones of peace, the very definition of CSACs necessarily include children involved in armed conflict or CIAC.⁷⁰ That is to say that because of the sweeping definitions by which CSACs and CIACs are defined in relation to children as a whole, it would appear that the general policy of a zone of peace governs even if the child becomes a combatant by directly participating in the conflict.

This inherent conflict with IHL is problematic because any violation of R.A. 11188 including the broad prohibition of “killing children” merits the ultimate penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00)⁷¹ or close to \$36,000.

Granted, such omission of the concept of direct participation as an exception to the protective status of civilians and children could be attributed to mere oversight. However, absent any amendments to the law, the same wording could lead to the encouraged recruitment of child soldiers by both state and non-state belligerents to ensure heightened success and impunity on the battlefield. Taken to its literal and maximum extent, it may very well lead to deliberate violations of IHL. This is because R.A. 11188 effectively creates super child soldiers—one that may bear arms and shoot but cannot be targeted by virtue of the overwhelming veil of protection known as “Zones of Peace”.

⁷⁰ Remember, CSACs are defined as children involved in armed conflict, including children affected by armed conflict and internally displaced children.

⁷¹ Rep. Act No. 11188 (2018), § 9.

The author submits that should there be an opportunity for lawmakers to amend R.A. 11188, an explicit mention that the declaration of “Zones of Peace” for Children shall not extend to those who take an active part in hostilities with a specific reference to interpretations under contemporary IHL such as the ICRC’s “Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law”.

7. Nobility only on paper

R.A. 11188 institutionalizes numerous safeguards for the protection of children, many of which are obvious manifestations of contemporary treatment of the youth: The right to be treated as victims,⁷² the State burdened responsibility to prevent the recruitment, re-recruitment, use, displacement of, or grave child rights violations,⁷³ the dismissal of criminal cases against children involved in armed conflict, and their immediate referral to the social welfare authorities for rehabilitation and reintegration programs.⁷⁴

Such noble intention, however, is tainted by its failure to address the impact of child soldiers in modern warfare. If anything, R.A. 11188 dangerously misdirects the focus of child support and protection through its blanket declaration of a zone of peace, carelessly leaving out the application of a child’s potential combatant status when engaging in armed conflict as child soldiers.

Instead, what is laudable has quickly become one burdened with complications: How an otherwise innocent looking civilian in the eyes of a soldier is actually a civilian-soldier hybrid who can kill but cannot be killed in the eyes of the law. It even sends backwards decades upon decades of efforts to conjure a collective voice against child soldier recruitment by incentivizing use of the same to ensure victory.

Such fusion of distinction, or the lack thereof, is what makes R.A. 11188 a missed opportunity in the development of IHL—a disservice to the

⁷² § 7.

⁷³ § 8.

⁷⁴ § 28.

countless who had worked to make normative the special protection we give to children in times of armed conflict.

Truly, and as has been proven, the road to hell is paved with good intentions.