

# Understanding Rebellion

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Philippine history is marred by one rebellion after another, from the Spanish until the present time.

Who could forget February 1986? Then Defense Minister Juan Ponce Enrile and General Fidel Ramos announced the withdrawal of their support for President Marcos and called for his resignation. With about 300 followers, they barricaded themselves inside Camp Aguinaldo. Crowds of opposition supporters gathered around Camps Aguinaldo and Crame along Epifanio de los Santos Avenue (EDSA) and set up human barricades. Military defections to the rebels' side were rampant. With the flow of the tide going against him President Marcos left Malacañang, and the people at EDSA celebrated the triumph of "people power."<sup>1</sup>

What about the recently concluded Oakwood incident? On July 27, 2003, three hundred twenty-three junior officers and enlisted men, mostly from the elite units of the Armed Forces of the Philippines (AFP) took over the Oakwood Premier Apartments in the Ayala Center, Makati (Oakwood). Led by a small number of junior officers, who called themselves the "new Filipino heroes" and became widely known as the "Magdalo group," claimed that they went to Oakwood to air their grievances about graft and corruption in the military, the sale of

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<sup>1</sup> Henry S. Totanes (Ed.). (1998). *Kasaysayan: The Story of the Filipino People* (Vol. 10). Philippines: Asia Publishing.

arms and ammunition to the "enemies" of the state, the bombings in Davao City which were allegedly ordered by the chief of the Intelligence Services of the AFP (ISAFP) in order to obtain more military assistance from the United States, and "micro management" of the AFP. The incident was brief, lasting less than a day. It ended without bloodshed or damage to property.<sup>2</sup>

During the height of the crisis, President Gloria Macapagal Arroyo placed the whole nation under a state of rebellion through Proclamation No. 427. Corollary with such Proclamation, the President issued General Order No. 4 directing the Armed Forces of the Philippines and the Philippine National Police to immediately carry out the necessary and appropriate actions and measures to suppress and quell the rebellion going on in Makati City with due regard to constitutional rights. This state of rebellion continued even after the rebels returned to their barracks.

#### REBELLION A CRIME UNDER THE REVISED PENAL CODE

Rebellion or insurrection, as punished under Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968, is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval, or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives. The crime of *coup d'etat*, on the other hand as punished in Article 134-A of the same Code, is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment

<sup>2</sup> The Report of the Fact Finding Commission (pursuant to Administrative Order No. 78), Introduction, p.1.

with or without civilian support or participation for the purpose of seizing or diminishing state power. The Oakwood incident, as explained by former Senator Jovito Salonga, was not a coup because it was exposed prematurely and did not garner more support from the armed forces and from the public. It degenerated to a simple act of rebellion or mutiny. But if the reverse had happened, when rebels and coup plotters increased in number, took control of a large territory, and obtained popular support, the event would have become a revolution, as what happened in 1986.<sup>3</sup>

The gravamen of the offense of rebellion is the armed public uprising against the government. The very instant that the rebels rise publicly and take arms against the government, the crime of rebellion is complete. It is not imperative that the rebels must succeed in overthrowing the government in order to commit the crime of rebellion. Also, persons merely agreeing and deciding among themselves to rise publicly and take arms against the Government for the purpose mentioned in Article 134, without actually rising publicly and taking arms against the Government, or those merely proposing the commission of said acts to other persons without actually performing those overt acts under Article 134 are already subject to punishment.<sup>4</sup> There is now no legal impediment for complexing rebellion with common crimes like murder, theft or robbery by virtue of the amendments made by R.A. No. 6968 which deleted some portions of the old Article 135 of the Revised Penal Code. However" the Supreme Court has yet to decide a case overturning the decisions in cases of *People vs. Hernandez*<sup>5</sup> and *Enrile vs. Salazar*<sup>6</sup> which held that rebellion absorbs common crimes.

Rebellion, by its nature, is a crime of the masses or multitudes involving crowd action that cannot be confined within predetermined bounds. It always presupposes a vast movement of men and a complete

<sup>3</sup> Jerome Aning. (2003, July 29). When is a coup not a coup? Ex-Sen. Salonga explains. *Philippine Daily Inquire*; p. 2.

<sup>4</sup> *People vs. Geronimo*, 100 Phil 90. s 99  
Phil. 515.

<sup>6</sup> G. R. No. 92163, June 5, 1990.

net of intrigues and plots.<sup>7</sup> Thus, the persons who commit it are classified and punished according to their participation. A person, who promotes, maintains, or heads a rebellion, shall suffer the penalty of reclusion perpetua or a minimum of twenty (20) years and one (1) day, while a person merely participating or executing the commands of others in a rebellion shall suffer the penalty of reclusion temporal or a minimum of twelve (12) years and one (1) day. When the rebellion is under the command of unknown leaders, the person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or performed similar acts on behalf of the rebels, shall be deemed leader of such rebellion and will be punished accordingly.<sup>8</sup> Those who conspire to commit rebellion shall be punished by prision correccional in its maximum period or from four (4) years and two (2) months and one (1) day to twelve (12) years and a fine not to exceed five thousand pesos (P5,000.00); and, those who propose to commit rebellion shall be punished by prision correccional in its medium period or from two (2) years and four (4) months and one (1) day to four (4) years and two (2) months and a fine not exceeding two thousand pesos (P2,000.00).<sup>9</sup> Public officers or employees who fail to resist a rebellion by all the means in their power, or continue to discharge the duties of their offices under the control of the rebels, or accept appointment to office under them shall suffer the penalty of prision correccional in its minimum period or from six (6) months and one (1) day to two (2) years and four (4) months.<sup>10</sup> Any person who, without taking arms or being in open hostility against the Government, incites others to execute any of the acts in Article 134 of the Revised Penal Code, by means of speeches, proclamations, writings, emblems, banners or other representations shall suffer the penalty of prision mayor in its minimum period or from six (6) years and one (1) day to eight (8) years.<sup>11</sup>

<sup>7</sup> *Ibid.*

<sup>8</sup> Article 135, Revised Penal Code, as amended by R.A. No. 6968. <sup>9</sup>

Article 136, Revised Penal Code, as amended by R.A. No. 6968. <sup>10</sup>

Article 137, Revised Penal Code, as restored by E.O. No. 187. <sup>11</sup>

Article 138, Revised Penal Code, as restored by E.O. No. 187.

## POWERS OF THE PRESIDENT

The powers of the President when there is a rebellion are provided for under Section 18, Article VII of the Constitution which states as follows:

"Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of Martial Law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision thereon within thirty days from filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released."

#### STATE OF REBELLION

The public perceived the declaration of a state of rebellion as allowing the government to arrest even without a warrant any individual deemed an enemy of the state, and to detain suspects longer than the law allows without the filing of formal charges, and the protracted state of rebellion fueled charges that the administration plans to declare martial law.<sup>12</sup> *Bayan Muna* Representative Satur Ocampo warned that the government may exploit the indefinite state of rebellion to bring about a de facto or undeclared martial law.<sup>13</sup> Adding fuel to the fire, analysis of the above Constitutional provision indicates that the power to call out the armed forces may be exercised without need of declaring a state of rebellion, as the existence of lawless violence would be justification enough for its exercise.

As clarified by the Department of Justice, the state of rebellion does not mean that the country is under de facto martial law. There is no suspension of constitutional rights or curtailment of civil rights. The Presidential declaration of a state of rebellion was done to formally inform everyone that there was such a situation and there was a need for all military and police officers to do whatever was possible and reasonable to quell and suppress the rebellion.<sup>14</sup>

With regard to the fear that any person may be arrested without a warrant, Section 5, Rule 113 of the Rules of Court provides, as follows:

"Section 5. Arrest without a warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

<sup>12</sup> Back to normal? (Editorial). (2003, August 5). *The Philippine Star*. p. 10.

<sup>13</sup> Carlito Pablo and Juliet Labog-Javellana (2003, August 2). 'State of rebellion prelude to martial rule; solon warns. *Philippine Daily Inquirer*. pp. 1, 15.

<sup>14</sup> Residual threats remain - GMA. (2003, August 3). *Philippine Daily Inquirer*. p. 2.

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and should be proceeded against in accordance with Section 7 of Rule 112.~'

According to former Solicitor General Estelito P. Mendoza, the crime of rebellion is committed only by rising publicly and taking up arms against the Government. Once the act of rising publicly and taking up arms against the Government ceases, the commission of the crime of rebellion terminates. If the rebellion has ended, it is no longer being attempted or being committed or has just been committed. Hence, no person may now be arrested without a warrant in connection with the rebellion. IS

With regard to the fear that the President might declare martial law, the Constitution is very clear on the matter. The declaration of martial law, as well as the suspension of the writ of habeas corpus, may only be exercised when there is invasion or rebellion, and public safety requires it. And even when there is such declaration or suspension, the Constitution does not cease to operate. Former Solicitor General Mendoza then concluded that the declaration of a state of rebellion does not confer upon the President or the law enforcement agencies any power of arrest or detention not otherwise given to them.

#### MILITARY POLITICIZATION AND ADVENTURISM

Benigno "Ninoy" Aquino once lamented, "How can you put the military back to the barracks when all the President Marcos did

<sup>15</sup> Estelito P. Mendoza (2003, August 5). Rebellion, *coup d'etat*, arrests without warrants. *The Philippine Star* p. 13.

was to spoil them by giving the!!! a taste of power in government. It is like toothpaste, once you press it out of the tube, you cannot put it back. "

Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory. This is how Section 3 of Article II of the Constitution is worded. But it would seem that some people in the military has disregarded the first sentence of the above constitutional provision and focused on the second and third sentence. They have taken it as their duty, as what the junior officers who took over Oakwood had done, to wrest, control from political leaders and establish a new government when political institutions have failed them.

The fact-finding commission created under Administrative Order No. 78 by President Arroyo made some findings on the root causes of increased military incursions in politics. They are as follows:

"1. The politicization of the military amid the erosion of civilian political institutions that had oversight powers over the military, particularly during and since the imposition of martial law, is a cause of military adventurism. The AFP's role as a partner in national development efforts led them to assume roles that used to be played by civilian authorities. This tended to increase their political leverage over other sectors of society, and contributed to their politicization as they interfaced directly with the people and the problems of the country. During the martial law period, there were no institutional checks in the military's power and influence as well as in the uses to which its power was used, other than the personal power of President Marcos.

2. Failure on the part of the Government to enforce the law deprives the law of its power to deter, particularly among those who had engaged in previous coup plots against the Government but who were granted unconditional amnesty in 1995 without prior punishment. A number of coup plotters who had been punished for their participation in the coup attempts of the 1980s and returned to the military after the 1995 grant of unconditional amnesty, have turned their backs on military adventurism. Members of their units did not join the Magdalo group in Oakwood. But some of those who received

unconditional amnesty without prior punishment were in the list of members of the National Recovery Program Council. This suggests that consistent enforcement of the law may be a crucial factor in neutralizing the coup virus.

3. The key role of the AFP in the campaigns against communist insurgency and Moro secessionism creates civilian Government dependence upon the military. In addition to the clearing of areas of insurgents and defending such cleared areas, soldiers are required to discharge the tasks of consolidation and development that properly belong to civilian authorities. Not only is the military's political power enhanced, but their politicization is also thereby increased as they confront the problems of these communities on a prolonged basis.

4. The enlistment by civilian persons, including politicians, of military support for their personal and political ambitions contributes to military politicization and adventurism. Former President Marcos (and not the AFP) initiated the enlargement of the role of the military during his incumbency, particularly during martial law. Civilian persons, including politicians, also sought and encouraged military breakaway of February 1986 and January 2001, giving thereby the AFP great political leverage over the civilian leaders who appear to rely on the military for political survival. When adequately motivated, military adventurers could exploit this situation to destabilize and overthrow the Government.

5. At the same time, officers and troops under diligent and respected commanding officers did not join in the 27 July mutiny, suggesting the critical role played by this breed of military leaders in dealing with the coup virus." <sup>16</sup>

Is there a way then "to put the toothpaste back in the tube" and make the military truly the "protector of the people and the State"? The same commission made recommendations concerning the events at Oakwood in the hope of depoliticizing the military and making it truly subservient to civilian authority. The recommendations are the following:

<sup>16</sup> The Report of the Fact Finding Commission (pursuant to Administrative Order No. 78), pp. 39-40 and 132-134.

"1. Due diligence by commanding officers - Commanding officers in the field need constantly to warn their men against recruitment for destabilization plots against the government by adventurers in the military. Former military rebels who have turned their back on military adventurism could be used to conduct regular dialogues within the AFP for this purpose. The adoption of a program of this nature should go a long way toward neutralizing the coup virus.

2. Effectively address legitimate grievances - The Government and the AFP need to address the legitimate grievances of the military against corrupt officers, officials, bureaucrats, and practices.

3. A civilian Secretary of National Defense (SND) - This Commission reiterates the recommendation of the Davide Commission to have a civilian appointed to the position of SND. Beyond the need to institutionalize the supremacy of civilian authority over the military, the appointment of persons who have not had long and deep ties to the military, and who have not held positions in the military establishment that itself needs to be reformed, is essential if a reform program is to succeed. Although military officers acquire a civilian status upon retirement, they are likely to bring the rigidity of hierarchy, seniority, camaraderie, and other aspects of the military culture into the office of SND that would obstruct reform.

4. Return National Intelligence Coordinating Agency (NICA) to its original mandate - Likewise, echoing the Davide Commission recommendation, this Commission recommends the appointment of a civilian head for NICA. Moreover, NICA should be returned to its original mandate, that is, to coordinate all intelligence agencies, military and otherwise. The President must have a source of intelligence additional to the ISAFP. This should provide the Commander-in-Chief (C-in-C) with a parallel intelligence source in the event that information gathered by ISAFP is not made fully available to the C-in-C, for any reason whatsoever.

5. Enforce the law against all violators - Erring officers, troops and civilian partners in coup plots must be treated in accordance with law to control and reverse the culture of impunity. As already noted, former rebel soldiers that were punished for their participation in the coups of 1980s tended

to have abandoned military adventurism. To remedy the recurrence of 'negotiation in mutual ignorance' of applicable laws, this gap must be addressed in officer education and training.

6. Observe or respect the military's political neutrality - Civilian political leaders must restrain themselves from enlisting military support for their personal and political agenda as this can only further politicize the military and grievously endanger the constitutional system. This is a theme that should constantly be recalled to politicians and political parties.

7. Provide 'negotiators' with clear terms of reference - Government 'negotiators' in similar incidents should be given clear terms of reference by the authorities to avoid misperceptions that could promote another coup plot in the future. In this regard, strict adherence, to the law as recommended in number 5 above need not deter rebel soldiers from 'negotiating' with the government. In a 'negotiation' of a similar nature, it is incumbent on the Government 'negotiators' to demonstrate to and persuade the other side that it is to their common interest to 'negotiate.' The law itself embodies the basic principle that punishment must be tailored to the degree of participation in the offense to be penalized." <sup>17</sup>

## CONCLUSION

. A presidential proclamation of a state of rebellion is not tantamount to a declaration of martial law. There are only two instances when martial law can be declared and that is when there is invasion or rebellion, and the public safety requires it. Constitutional and statutory rights and liberties are still regarded with due respect even if there is a state of rebellion.

The military is a powerful force to reckon with in the country. They can, if they really want to, grab power from the civilian government. But it will not mean that military rule will be a better alternative from civilian rule. One only needs to look at other countries which are ruled by military juntas for an example of things to come.

<sup>17</sup>*Ibid.*, pp. 41-43 and 135-137.

As such, the recommendations made by the commission created by President Arroyo must be implemented to deter the military from posing serious threats to the government.

Few of the rebellions that happened in our country succeeded. The one crucial factor that ensures the success of any public uprising is that it must be supported by the people. The grievances of the ongoing Communist and Muslim insurgencies and those voiced at Oakwood, it is conceded, are legitimate but the means employed, armed conflict with the legitimate and existing government, does not sit well with, the Filipino people. That is why until now, they have not succeeded. There must be genuine demand for political reforms. Only then, when the Filipino people can relate to the rebels' cause, will they have the backing of the people and succeed.