

Just Guerrilla Warfare

Concepts and Cases

Writing in 1976, Walter Laqueur confidently predicted that guerrilla warfare was nearing its end. Post–World War II wars of decolonization had wracked the international system but would wane in the years following the ratification of the 1977 Protocols to the Geneva Conventions. By 1998, however, Laqueur reversed course and noted a resurgence of small wars in Afghanistan, Sri Lanka, Turkey, Chechnya, and the Middle East (Laqueur 1998: ix–xiii, 404–409). This trend had only intensified in the years following the breakup of the Soviet Union. The 1993 Oslo peace accords between Israel and the Palestine Liberation Organization (PLO) disintegrated, and decades of terror, civil unrest, and open warfare in Gaza and the West Bank ensued. American and Coalition forces waged war in Afghanistan against a Taliban enemy that claimed to fight foreign intervention and a corrupt central government. The 1994 Chechen war turned out to be only the first, while the second (1999–2009) proved a far more bloody and vicious affair that still left Chechnya’s demand for independence unaddressed. In the Western Sahara, Polisario guerrillas and Moroccan forces have locked horns since Spain departed Africa in the mid-1960s. This conflict continues to simmer unresolved. In short, guerrilla organizations are still very active. And while some reports suggest a steady decline in intrastate violence, there is no doubt that new wars brew as citizens rise up against autocratic regimes in North Africa and the Middle East (Human Security Report Project 2013). On the other hand, some conflicts, thought intractable when Laqueur wrote, resolved after prolonged guerrilla war. Thanks to international military intervention, East Timor finally rid itself of Indonesia in 2002, while NATO made it possible for Kosovo to achieve de facto independence

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from Serbia in 2008. In 2011, following fighting that caused some of the worst casualties since World War II, South Sudan gained independence from its northern neighbor.

Many of these conflicts are national insurgencies – wars of liberation or secession waged by an armed group against a sovereign state. And, in fact, this study is confined largely to national insurgencies predominant in the post–Cold War period and includes conflicts in Afghanistan, Chechnya, Eritrea, Indonesia, Kosovo, Lebanon, the Palestinian territories, Sri Lanka, Sudan, and Turkey. Insurgencies did not end with European decolonization or with the collapse of the Soviet Union – quite the contrary. Since the breakup of the old Soviet bloc, guerrilla warfare has moved out of the shadows to increasingly occupy state forces and the international community. Modern media has put these conflicts on the front burner and in full view while growing humanitarian concern among Western nations has brought the United States and its allies to commit men and materiel as never before.

Today, there is often a tendency to tar all guerrilla movements with the brush of global terrorism, especially because many of the remaining national insurgencies pit sovereign states against Islamic movements. This is unfortunate and skews our understanding of guerrilla warfare and insurgency. Many guerrilla organizations indeed resort to terrorism, but most are neither terror organizations nor a party to global terrorism. Commentators are, nevertheless, so preoccupied with the global war on terror that there is a misguided tendency to see many national guerrilla organizations as nothing but a prop for Al Qaeda. As such, we overlook important questions of justice that surround many struggles for national self-determination.

There is no doubt that as insurgencies rage, one of the burning questions remains: How should a state army battle an adversary that uses human shields and wages war from among the civilian population? This is an important question, one that I and others have addressed in recent years (Gross 2010a). As crucial and interesting as this subject is, it also raises another, equally compelling question: How should guerrilla armies fight a sophisticated and technologically superior state army? This question is rarely asked because it is widely assumed that human shields, attacks on civilians, and kidnapping soldiers violate international and humanitarian law in the most flagrant way. The catchphrase “we fight by the rules but they don’t” is nearly axiomatic.

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But is it true? Are all forms of guerrilla warfare equally reprehensible? Can we think cogently about *just* guerrilla warfare? Guerrilla armies do not go to war to defend the borders of a sovereign state, but aim instead for independence, autonomy, or regime change. Can these causes, broadly defined as self-determination, rather than traditional notions of territorial self-defense provide just cause for war? Can such guerrilla tactics as using human shields to protect military installations, recruiting civilians to provide vital military services, capturing and exchanging soldiers in lopsided prisoner swaps, laying improvised explosive devices (IEDs) in populated areas, conducting cyber strikes against civilians, waging economic warfare, or pursuing a campaign of deceitful public diplomacy prove acceptable under the changing norms of contemporary warfare? The short answer is “yes,” but guerrilla warfare requires a great deal of qualification, explanation, definition, and argumentation before it joins the repertoire of acceptable military behavior. There is room to speak of just guerrilla warfare. It is not always what guerrillas practice, but neither are its tactics and strategies the heinous practices that state powers often portray them to be.

GUERRILLAS AND INSURGENTS

Throughout this book, the words “guerrilla” and “insurgent” are used interchangeably. Unlike armed militants who mount sporadic challenges to the state, insurgents and guerrillas sustain hostilities for relatively long periods of time and take control of significant territory (Wilson 1988:23). “Guerrilla,” moreover, depicts an actor, not unlike a rival state, that is independent of and alienated from the state they are fighting. Originally, notes Laqueur (1998:xvi), the term guerrilla “describes military operations carried out by irregulars against the rear of an enemy army or by local inhabitants against an occupying force.” Largely confined to conventional war, guerrillas comprised those soldiers who were not part of the regular army (hence “irregular”) and who fought rearguard actions that often complemented the set piece confrontations between regular armies. Post-World War II guerrilla warfare, however, is a far more sprawling affair. Guerrillas do not usually fight alongside regular forces or confront occupying, but transient, enemy forces. Instead, guerrillas represent local peoples struggling against entrenched colonialism or a repressive regime. Twenty-first-century guerrilla warfare embraces all of

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these causes: independence, secession, and regime change. Its aims are, therefore, revolutionary; insurgents do not seek to restore or maintain the status quo ante bellum, but to change it dramatically.

Writing in 1975, Sam Sarkesian (1975:7) defined revolutionary guerrilla warfare as “the forcible attempt by a politically organized group to gain control or change the structure and/or policies of the government, using unconventional warfare integrated with political and social mobilization.” This definition usefully demonstrates how guerrilla warfare is defined by its organization, tactics, and aims. A guerrilla movement is organizationally complex and includes both a military cadre of trained fighters and a political wing that provides an array of supporting services. The military wing is usually the smaller of the two and cannot wage war effectively without the support of a vast political organization that can raise money; buy arms; secure allies; provide health, welfare, and education to insurgents, their families, and the surrounding population; wage a successful public relations campaign; and pursue diplomatic and legal campaigns at home and abroad. Guerrilla tactics, therefore, are multifaceted and include military operations, economic warfare, and public diplomacy. Each tactic aims at a different audience. Locally, insurgents are constantly trying to inculcate their ideology, recruit support, and generally “win the hearts and minds” of the people they claim to represent. Nationally, they are struggling to gain independence or sweep aside an entrenched regime. Internationally, they cultivate support among the world community. Today, more than ever, international backing is crucial for success and necessary for insurgents to overcome the inherent asymmetry of guerrilla warfare.

Compared to interstate war, guerrilla wars are materially and legally asymmetric. Material asymmetry reflects the disparity of arms between the opposing sides and is common in any war. Nations, after all, go to war when they feel they have the upper hand. But in guerrilla war the material asymmetry is glaring, indeed monopolistic, as the weaker side often lacks sophisticated weaponry, tanks, a navy, an air force, or an air defense system. Legal asymmetry points to the disparate status of the parties to the conflict. On one hand, sovereign nation-states are the building blocks of the international order and the only legitimate purveyor of armed force. They confront, on the other hand, an array of non-state actors that include guerrillas representing national groups (e.g., Palestinians, Chechens, or Kosovars), organizations wielding some

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governmental authority (e.g., Hamas or Hezbollah), or the remnants of a defeated government (e.g., Taliban) fighting occupation and their own state government.

These definitions of “guerrilla” and “asymmetric war” are justice neutral. They say nothing about “just” guerrilla warfare. Following the traditional dichotomy in just war theory, it will be useful to define just guerrilla warfare in terms of its just ends (*jus ad bellum*) and its just means (*jus in bello*). This is not just a philosophical exercise. Consider how the 1981 OAU Charter on Human and Peoples’ Rights sets the stage for the conduct of just guerrilla war. Article 20 of the Charter proclaims:

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination ...
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States’ parties ... in their liberation struggle against foreign domination, be it political, economic or cultural.

This proclamation is laddered in an interesting way. Paragraph 1 stipulates a universal right of self-determination for all *peoples*. Paragraph 2 describes a narrower right: all peoples may possess the right of self-determination but only an oppressed people throwing off the bonds of domination may resort to “any means” to secure their rights. This paragraph introduces the moral asymmetry of just guerrilla warfare and the power of just cause. The sides to an asymmetric conflict are not morally equal. In wars of humanitarian intervention and the war on terror, moral asymmetry favors the stronger side, reinforcing its material and legal advantage. In wars of national liberation, the moral advantage shifts to the weaker side, thereby offsetting its material and legal disadvantage by allowing qualified recourse to armed force and, as I argue, to practices sometimes unlawful under international law. As a result, the obvious candidates for just guerrilla warfare are national liberation and secessionist movements together with recent urban revolts and popular uprisings against repressive, autocratic regimes. Candidates do *not* include pan-national Islamic terrorist groups fighting to undermine the international system or the many civil wars motivated by greed, looting, and predation. Paragraph 3 of Article 20 turns from victims to bystanders: if victims have a right to

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wage war, then bystanders may have a duty to aid or, at the very least, to refrain from hindering or obstructing their efforts. These three points are, of course, contentious and shrouded in ambiguity. Conveniently enough, they also echo the structure of this book.

THE ETHICS OF INSURGENCY: A BRIEF OVERVIEW

Part I of this book addresses questions of *jus ad bellum* and *jus in bello*. Chapter 2 analyzes the legitimate ends of just guerrilla war. In the minds of many, guerrillas are little more than criminals or terrorists. This view requires far greater nuance. While traditional just war theory broadly accepts a state's authority to wage war, ethics and law deny the same forbearance to non-state actors. Guerrillas and insurgents must prove their worth. They must establish the justice of their cause on the same basis of national self-defense that gives states the right to fight and must prove themselves the legitimate representatives of their people's national aspirations. What conditions underlie a guerrilla movement's right to fight? May guerrilla leaders who gain less than the complete consent of their people go to war? What role should the international community play as a people strive to realize its right to self-determination? These questions occupy Chapter 2. Some short answers include: (a) a people often, but not always, enjoy the right to wage an armed struggle to gain self-determination, whether independence or autonomy, and/or to secure their compatriots' right to a dignified life; (b) insurgents gain legitimacy when they best serve their people's interests and enjoy some degree of popular consent; and (c) the international community is duty bound to refrain from enacting or enforcing laws that unduly restrict guerrillas' right to fight and from supplying arms to repressive states. When insurgents cannot prevail, the international community may be bound to actively intervene.

"Who Fights and How" is the subject of Chapter 3 and addresses the means of just guerrilla war. The means of war are not only its tactics (as many theorists assume) but speak to the resources necessary to wage war. Before asking how to fight, one must first ask with what. How may guerrillas raise troops and enlist material support from the civilian population? Like states, guerrillas require coercive means to conscript men and material. Lacking the coercive institutions of state, however, guerrillas may resort to a wide range of measures short of violent coercion and physical

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intimidation. Permissible measures include social pressure, ostracism, fines, or imprisonment. Compared to state institutions, guerrilla institutions are weak, leaving insurgents to go to war with limited resources and with erratic support from their compatriots. Once committed to an armed struggle, the second question arises: How may militants fight and what rules govern their use of armed force? This is the concern of *jus in bello*.

International law is not entirely clear about the rules of war insurgents should follow. By law, insurgents enjoy various rights under the 1977 Protocols I and II to the Geneva Conventions. Protocol II protects the fundamental human and legal rights of participants in a non-international, that is, internal armed conflict, but does not grant insurgents the rights of ordinary combatants. Insurgents fighting a civil war, for example, may be held criminally liable and punished for fighting. Protocol I, on the other hand, offers guerrillas fighting “colonial domination, alien occupation and racist regimes” the same rights and status as state soldiers. Nevertheless, these codified laws of war restrict the practice of war and can make it very difficult for guerrillas to conduct an armed struggle effectively. As insurgents chafe under the laws of war, the challenge is to carve out a space that, while often unlawful, is nonetheless morally permissible. This moral floor, as it were, rests on humanitarian principles that protect combatants from inhuman treatment and noncombatants from direct harm, bodily injury, and loss of life.

Combining the premise of the OAU statement together with elaborations yet to come, a provisional definition of just guerrilla warfare denotes *sustained, unconventional military and political operations that utilize armed violence, non-kinetic force, and soft power to realize a people’s right to national self-determination and/or protect their fundamental right to a dignified life by means that do not violate the rights of civilians and enemy combatants*. This is a tall and complicated order. Many will assume that no guerrilla organization can meet its requirements and, under many common interpretations of the law and ethics of war, they may be right. Certainly, the law of armed conflict prohibits direct attacks on civilians, hostage taking, human shields, and the exploitation of prisoners of war in the most categorical way imaginable. How is it possible that anything resembling such tactics does not violate the rights of civilians and enemy combatants? Can one cogently argue that some guerrillas not only enjoy the right to fight by such unconventional means, but that the international

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community has the concomitant duty to either refrain from interference or to actively assist insurgents? The answer can only lie in qualifying each tactic by the humanitarian principles that must constrain it.

Taking such principles as a yardstick to measure moral compliance, Parts II and III investigate a wide array of tactics that guerrilla and insurgents employ. Part II addresses hard, kinetic warfare: improvised explosive devices, rockets, targeted killing, and human shields. Part III examines the little explored field of soft, non-kinetic warfare: cyberterrorism, economic warfare, public diplomacy, and nonviolent resistance. Soft war lies largely outside the domain of international law and requires a moral going-over that just war theory has rarely provided.

Part II: Hard War

Chapter 4: Large-Scale Conventional Guerrilla Warfare: Improvised Explosive Devices, Rockets, and Missiles

“Conventional” guerrilla warfare refers to the tactics guerrillas employ to confront state armies. Regardless of the emphasis placed on terrorism and the growing use of soft, non-kinetic force, military action is the dominant business plan. While guerrillas typically avoid set piece confrontations (Eritrea’s war of independence being a major exception), a host of deadly tactics remain. Improvised explosive devices (IEDs) are high explosives set to disable troops, tanks, and convoys. They are easy to build, difficult to detect, and among the most devastating weapons insurgents can employ. State armies decry their use because IEDs cause many civilian casualties when left unattended at the roadside. Similarly, guerrillas employ relatively unsophisticated missiles. These weapons, too, are difficult to control and may bring excessive civilian casualties when guerrillas target military sites. In the worst cases, guerrillas stand charged of deliberately using inaccurate and indiscriminating weapons to terrorize civilian populations. Whether utilizing IEDs or rockets, insurgents often respond with the same refrain: they have no other weapons to fight state armies effectively.

These charges and countercharges require a careful sorting out. Some civilian casualties may, indeed, comply with the conditions for permissible collateral harm. But this requires evidence that guerrillas seek military targets. Despite their avowed intentions, many insurgents abandon roadside bombs unsupervised, ready to detonate when the first car drives by.

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Supervision and controlled detonation, regardless of the additional risk this poses to guerrillas, seem to be a necessary condition for permissibly employing IEDs. Discrimination, too, regulates the deployment of any missile system so that combatants hit the military targets they aim at. This requires, first, that guerrillas launch rockets with the intent of destroying a military target and not simply wreak collateral harm and, second, that they deploy missiles reasonably capable of hitting their targets. The latter point is particularly contentious given the vast disparity between the missile capabilities of insurgents and states. Nevertheless, guerrillas may equitably demand consideration for less accurate armaments when necessary to wage a just war. Related concerns guide targeted killings and the taking of prisoners.

Chapter 5: Small-Scale Conventional Guerrilla Warfare: Targeted Killing and Taking Prisoners

IEDs and missiles are big hammers employed to disable large military targets. Targeted killings and taking prisoners are more like surgical pliers, often utilized to pick out specific individuals. For states, targeted killing refers to a detailed process of identifying, locating, and killing ununiformed insurgents. For insurgents, however, the process is multi-faceted. On one hand, insurgents seek out enemy military officers and high-ranking political leaders. On the other, they also target compatriot informers and collaborators. In each case, permissible targeting turns on liability. In the first instance, international law and just war theory are slowly making room for disabling civilian political leaders on the assumption that these figures – the head of a guerrilla organization’s political wing, for example – contribute significantly to war-making operations. These arguments resonate on both sides, and offer guerrillas the same latitude. In the second instance, guerrillas often develop rudimentary institutions to try and punish informers and collaborators. Unfortunately, their proceedings sometimes lack discipline and smack of summary execution. Just guerrilla warfare challenges these adverse outcomes by demanding due process and proportionate punishment while proscribing any attempt to intimidate or terrorize the local civilian population.

Prisoner taking is targeted killing without the killing. While states armies take prisoners all the time, two issues dominate when insurgents seize enemy soldiers. First, states and guerrillas must reevaluate the conditions necessary to prevent ill treatment. While there is a firm baseline

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to provide medical care and to prevent torture, mutilation, and execution, other demands of international law might be revisited and modified. As evidenced by Guantanamo Bay and elsewhere, states no longer hurry to declare an end to hostilities and repatriate their prisoners. As states modify the norms surrounding prisoners of war, there is also room to think about how guerrillas may legitimately leverage the benefits of the few prisoners they hold. Guerrillas often deny access to prisoners and bargain information for the return of their own in lopsided prisoner exchanges that states denounce as grossly unfair. These practices speak to the second peculiarity of taking prisoners. Taking prisoners to bargain for the release of compatriots raises the specter of kidnapping and hostage taking, distinctly odious practices that, nonetheless, may find a place in just guerrilla war. Using human shields raises similar hackles.

Chapter 6: Human Shields

When state armies confront guerrillas, human shields are not far from their minds and lead to vocal complaints about violations of international law. For guerrilla armies, on the other hand, enlisting civilians to shield military operations is very effective and demands a closer look. The literature on human shields is relatively sparse. Distinguishing between voluntary shields (civilians who agree to shield) and involuntary shields (those coerced to shield), commentators raise – but do not resolve – a range of questions about intentionality, liability, and the obligation to protect civilians from harm. While many understand that those who intentionally shield military operations are culpable and may suffer death or injury as enemy forces attack a shielded site, the reality is more complex.

Civilians are a constant feature of the landscape and difficult to avoid. Some work for an organization's political wing and provide significant war-sustaining aid. Their presence shields many vital facilities from direct attack thereby leaving states to search for alternative means to disable these sites. At the same time, guerrillas often mount their attacks from within civilian population centers while enlisting or, perhaps, conscripting other civilians to shield command centers and weapon depots. These civilians also provide cover, but their intentions are difficult to discern. Some are conscripted, some volunteer, and some are entirely ignorant of ever acting as shields. All this makes it difficult for states to target human shields directly and leaves guerrillas with a very useful tactic to deter