

International humanitarian law and irregular warfare

Lessons learned in Latin America

by
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The political and military strategies of the parties in conflict form the baseline for discussion of international humanitarian law in relation to wars involving irregular forces. Depending on developments in the conflict and the context, such a discussion can shift from the political to the legal sphere. Any irregular force is initially a political and social reaction to the existence of a political system that contains within itself the fundamental cause of the conflict. Insurgent movements should therefore be viewed more as a consequence than as a cause or a solution. This implies that there is an inevitable dose of fanaticism in their thinking, and their development to a more mature stage will depend on a wide variety of factors, from the nature of the conflict and the characteristics of the guerrilla group to the level of development and recognition reached by both the insurgent movement and the conflict.

An examination of events in Latin America from the late 1960s to the 1990s reveals a broad range of conduct on the part of insurgent forces. On the one extreme are Uruguay's Tupamaro

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guerrilla fighters of the 1970s, who were closest to the "Robin Hood" type of behaviour. On the other are the guerrilla fighters of Peru's Shining Path in the 1980s and 1990s; they could clearly be considered a terrorist group, governed by no rules but their fanaticism.

The degree of social polarization and the socio-educational characteristics of the insurgency in each country gave rise in Latin America to a variety of political and military strategies, which were reflected in different types of conduct as regards humanitarian rules. A mix of religions and the predominance of indigenous and peasant peoples spawned more radical movements, longer conflicts and greater disregard for humanitarian law. This was not as common in forces with urban social components, a higher level of education and greater political emphasis and interest.

Guerrilla movements in fact invent their own rules of humanitarian conduct and do not act, as States do, on the basis of their knowledge of the law, but rather as a matter of political expediency. The result can be positive when the priority is political and the aim is to win supporters from a broad range of social and political backgrounds, or negative when ideology plays a more prominent role and the aim is to maintain support within a narrower social spectrum. It can thus be said that every insurgent movement has a political code of conduct that in practice becomes its rules of humanitarian law with regard to the population, prisoners, the wounded, etc.

Guerrilla in Latin America

In only two Latin American countries have insurgent movements succeeded in gaining power: in Cuba in 1959 and in Nicaragua in 1979. Both movements were characterized by relatively low levels of fanaticism and a more advanced humanitarian approach than other guerrilla movements in the region. In victory, Nicaragua's insurgents preferred to have government soldiers surrender rather than to annihilate them, treated their prisoners well, did not stage large-scale executions of spies, and upheld a policy of respect for and protection of the civilian population. Neither in Cuba nor in Nicaragua did guerrillas systematically resort to the practice of abductions.

By refraining from using abductions as a source of funds, the Nicaraguan guerrillas were able to isolate the government, avoid extreme social polarization and keep the sympathies of even the broadest social classes. The political implications of this type of conduct played a decisive role in their overthrow of the government. Their strategy was based on winning over a majority of the country's inhabitants. The chief aim of both the Sandinistas and Cuba's 26th July Movement was to break down and isolate the enemy. In Cuba, government troops were even incorporated into the rebel forces. Indeed, in the final stage of the war, the 26th July Movement had numerous soldiers and officers from the army of dictator Fulgencio Batista in its ranks.

There were worse dictatorships in Latin America than those of Somoza in Nicaragua and Batista in Cuba, and in some cases they faced stronger guerrilla movements that were nevertheless defeated, as for example in Guatemala. There is therefore an inherent connection between observing humanitarian law and the degree of success of the strategies of both insurgents and government forces.

El Salvador's *Frente Farabundo Martí* was far superior in military terms (men, weapons, capacity and territory under its control) to the guerrilla forces in Cuba and Nicaragua, yet it did not win a military victory. Its failure to do so was undoubtedly the result of a number of factors, among them the negative repercussions of the systematic kidnapping of industrialists during the 1970s, which affected its political ability to gain supporters and make alliances. A violation of humanitarian law thus ended up undermining the strength of its own forces.

The abductions provided El Salvador's guerrillas with plentiful financial resources, but they also polarized the conflict, prompted greater repression and prevented the internal isolation of the government. The guerrillas also had a far greater tendency to execute spies — a practice which occasionally reached considerable proportions — and this polarized popular opinion even further. On the other hand, they achieved a level of military discipline unmatched by any other insurgent force in Latin America, and in the final days of the war were able to incorporate humanitarian law almost formally into their

structure. They captured and secured the surrender of thousands of prisoners, including high-ranking officers, and treated them in accordance with humanitarian law, with the cooperation of the International Committee of the Red Cross. Their main reason for treating prisoners humanely was to reduce their own material and human costs in battle by ensuring surrender.

In the case of Nicaragua, the political doctrine governing the insurgent forces can be summarized by the slogan "Implacable in combat, generous in victory", a simplified and primitive code of conduct that was also highly creative in terms of humanitarian law, in particular the treatment of prisoners. What it taught the guerrillas about the treatment to be accorded the enemy was automatically reflected in the way they treated the population and in other areas of humanitarian concern.

That political slogan was probably more effective than a few formal courses on humanitarian law. It summed up an ethical and political attitude that guided the insurgents. Demonstrating that they were more humane than the enemy and breaking the latter's will to fight with an act of compassion was one of the basic methods of the Sandinista forces.

The slogan's impact continued to be felt many years later, when the insurgent forces had become the Sandinista People's Army and were fighting the Nicaraguan Resistance. In 1986 a militia force shot down a plane piloted by Americans attempting to bring weapons and ammunition to the Resistance. An American citizen, Eugene Hassenfus, was taken prisoner and treated in accordance with the rules of humanitarian law, not by regular army troops but by militiamen who were not acting on orders from higher up, at a time when our country's rejection of United States policy was at its height.

The Nicaraguan people have a gift for self-expression that explains why there are so many Nicaraguan writers and poets. The above-mentioned slogan and others like it were useful means of building a bridge, using this cultural characteristic shared by all Nicaraguans, to those whom it would have been very difficult to reach with the message of humanitarian law from the position of an insurgent force fighting a war. In the case of Nicaragua as in any war, there

were serious human rights incidents on both sides, but in comparative terms there were less assassinations and killings than in El Salvador, and we did not experience the genocide seen in Guatemala.

In Nicaragua, the victors executed fewer people than in Cuba; many members of Anastasio Somoza's former National Guard were taken prisoner and released after several years behind bars. This probably explains why our reconciliation process was so successful. We had far fewer problems of post-war violence than Guatemala and El Salvador, and the current situation of political polarization is a logical development more closely related to the democratic learning process than to the desire for revenge.

The observance of humanitarian law by an insurgent force is determined by various factors: the desire for revenge, the degree of ideological fanaticism, the level of education of the combatants, and the practical difficulties that compliance with humanitarian law can create for an irregular force fighting a war.

The desire for revenge and ideological fanaticism are related to the factors that gave rise to the conflict, and these factors are quite directly related to the conduct of government troops. The belief of some conventional armies that in certain circumstances observance of humanitarian law detracts from the effectiveness of their military operations is a serious mistake, because violations of the law lead to more radical attitudes and have the potential to exacerbate the conflict. Whether it is applied by insurgent or government forces, a military strategy that incorporates respect for humanitarian law gives those forces a strategic military edge. In a conflict in which resentment runs high and there is a risk of extreme ideological polarization, the leaders will have to display great maturity and political skill if they are to hold sway in very adverse conditions.

The members of insurgent forces tend to have very little education. The ability to create a force that responds well to discipline, strategy and the rules of humanitarian law depends, among other things, on the level of education of the leadership structure, middle-ranking officers and combatants. The worst combination is ideological fanaticism at the top and little or no education further down the ranks. The existence of large numbers of middle-ranking

officers with a fair or good education leads to greater critical awareness and possibilities for positive development, allowing the movement to grow out of the inevitable phase of fanaticism that prompts its emergence.

In Nicaragua, many of the FSLN militants were young city-dwellers who had a basic education; in fact, the FSLN's fundamental strategy was one of urban insurrection, as far as the term "urban" can be used in the context of a pre-eminently agricultural country with no big cities. The main thing in Nicaragua was that the Sandinista fighters not only had some education, but also had a more highly developed cultural framework for having lived in towns, regardless of the country's level of development.

In El Salvador, the majority of FMLN fighters were of peasant origin. The movement nevertheless had a large contingent of middle-ranking urban leaders with a higher or medium-level education, who mixed with young educated peasants having benefited from a 1960s educational reform that had brought basic and medium-level education to rural areas. Because of this, the Salvadoran guerrilla forces were even able to run educational programmes for the combatants and the population; after the conflict those programmes were taken up by the government and incorporated into its plans.

Education is one reason for the high degree of development and military effectiveness of the Salvadoran guerrilla forces. It explains why they were able to incorporate humanitarian law into the training of their forces and to demand that the government armed forces respect it. On the other hand the guerrilla groups in Guatemala and Peru, with their broad indigenous bases, did not even share the same language, were very backward in educational terms, had serious ideological differences, and were led by people carrying a heavy load of religious and/or political ideology. This is a serious obstacle to efforts to apply humanitarian law and makes conflicts more cruel and intractable.

The practical difficulties that arise when an insurgent force applies humanitarian law can only be overcome if that force understands that applying the law will give it a strategic advantage. Holding an enemy captive or caring for a wounded opponent when

resources are scarce for your own men is less difficult if that rule has been incorporated into military procedure as a part of strategy. If such is not the case, ethical considerations will not carry enough weight and are unlikely to be accepted and applied by the combatants.

Insurgent forces face much greater difficulty in dealing, for example, with the risk that a spy represents for the lives of members of its support networks. Handling the complications of formal arrest, captivity and lawful trial, and finally having to consider the possibility of releasing an enemy spy, is probably one of the thorniest humanitarian issues for insurgent forces. It is sometimes less complicated for them to grant proper treatment to an enemy soldier who has surrendered than to a spy. That is why summary executions are one of the most frequent violations of the law among guerrilla groups of all ideologies.

When each side enjoys equal support from the population, violations affecting civilians can take on dramatic proportions. A longer conflict carries a far greater risk that this will happen, and the treatment the civilian population receives as a result of the polarization of opinion does not bode well for the implementation of humanitarian law. This was less the case in Nicaragua than in Guatemala and El Salvador; it is one of the biggest problems at present in Colombia, where the regions under the influence of one or the other of the parties are relatively well-defined, and the conflict between them is taking the form of constant attacks on civilians.

Lessons learned

In the light of the above, four main conclusions can be drawn in terms of the application of humanitarian law in irregular wars:

1. The warring parties must see it as being to their advantage to apply humanitarian law.
2. Simple and creative means must be found to convey the message of humanitarian law.
3. The true neutrality of civilians must be fostered and protected.
4. Means must be found of securing some form of international recognition of the insurgents.

As concerns the first point, the idea is to apply the same rule as when steering a conflict towards a negotiated settlement. It would be very hard for the parties to accept the idea of a negotiated end to the conflict if the result is not to their advantage and if their objectives are not met at least in part. The parties somehow have to be convinced of the fact that their conduct in humanitarian terms gives them advantages, which may be military or political, and that those advantages will lead to an outcome that favours the party that has complied more closely with humanitarian law, whether it is a negotiated settlement or a military victory.

This approach to promoting the application of humanitarian law, even if initially adopted by the parties in the interests of gaining the upper hand, is in practice much more likely to result in negotiation than in conflict, whatever the intentions of the parties. In El Salvador, exchanges of prisoners and the evacuation of the war-wounded paved the way for the dialogue, humanitarian agreements and political negotiations that put an end to the war. In Nicaragua, the Hassenfus case was useful in creating the conditions that subsequently led to an understanding with the United States.

When it comes to the second point and to ways of teaching humanitarian law, the baseline is that where there is a conflict there will, as a rule, be serious shortfalls in education or major cultural barriers. This hampers understanding and acceptance of the rules of conduct laid down by humanitarian law. The slogan "Implacable in combat, generous in victory" is a remarkably eloquent example of the advantage of creative teaching, since the educational aim is achieved with very few words. Discovering a relationship between the rules of humanitarian law and the cultural values of a country in conflict can make it easier to build bridges between those concerned. It is therefore essential to discover links between the ethical values of the country's culture and humanitarian law.

The third point, which refers to the neutrality of civilians, is based on the fact that in an internal conflict each party is striving to gain the support of the population, while at the same time intimidating or persecuting that population for the support it gives to the adverse party. Ultimately, civilians become targets and the number of

violations of humanitarian law goes up. Insofar as a conflict within a country affects the interests of its inhabitants, they are not all likely to be neutral. Nevertheless, civil wars do not take place with the approval and participation of the majority of the citizens.

It is therefore important not only to teach combatants to respect civilians, but also to educate the population about what constitutes effective neutrality, so that it can reduce its own risks. Promoting neutrality among civilians and teaching them to handle neutrality vis-à-vis the parties of the conflict can not only help reduce the number of violations of humanitarian law but also attenuate the ferocity of the fighting. Indeed no matter how intractable a conflict, there will always be some sectors of the population that do not want war and most people will not want to become involved.

The final point concerns the importance of international recognition of insurgent movements as a means of getting them to apply humanitarian law. Those movements are born and develop in isolation, and the most common strategy for defeating them is to increase their isolation. A superficial comparison of the guerrilla forces in Colombia and El Salvador reveals what a difference it makes when a guerrilla force is recognized or tolerated by States and international bodies, as was the case in El Salvador, as opposed to when it is not.

The Colombian guerrilla movements are characterized by their political, logistical and financial independence. As a result, they are subject to no rules and their acts have no legal effects; they come under no pressure and receive no criticism, encouragement or advice, all of which affects humanitarian law. The present Colombian government is changing that situation and trying to make the guerrillas an active subject of foreign policy.


In El Salvador, the guerrillas were recognized by the governments of France and Mexico in 1982, a very controversial decision at that stage of United States policy. Their recognition played a major role in slowing down the insurgents' process of radicalization and in bringing the war to an end with a negotiated settlement. Obviously every process differs in this respect, but recognition is vital.

In the case of Nicaragua, the governments of Panama, Costa Rica, Venezuela, Mexico and even the United States under

President Carter adopted a policy of tolerance towards the Sandinista Front during the struggle against Somoza's dictatorship, enabling the Front to develop its international relations without hindrance. This is one of the reasons why there was no extreme radicalization in Nicaragua, why despite everything the Sandinista revolution eventually led to free elections and democracy, and why the Sandinista People's Army became the National Army of Nicaragua. For the first time in the history of Latin America, an army that was born as a guerilla force and matured as part of a government became an army for the nation without political overtones.

It was no simple process: the birth of the National Army was marked by drastic cuts in personnel in the midst of economic crisis and the mistrust of many sectors. Today, however, the Nicaraguan Army, non-partisan and professional, is one of the country's most prestigious institutions.

In this way humanitarian law was transformed from a political slogan used by guerilla forces to a profound institutional pledge, in the hands of officers trained in the principle that their fundamental obligation is to defend the territory and protect the security of all Nicaraguans, no matter what the shade of their opinions.



Résumé

Droit international humanitaire et guérilla – Leçons d'Amérique latine

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Ancien chef d'état major des forces armées du Nicaragua, le général Cuadra Lacayo évalue le rôle du droit international humanitaire dans la tactique des chefs, lors des insurrections des cinquante dernières années en Amérique latine (notamment à Cuba, en El Salvador et au Nicaragua). Il arrive notamment à la conclusion que les règles humanitaires sont mieux respectées si leur utilité pour la lutte insurrectionnelle est comprise par tous. Le respect d'un minimum d'humanité dans les combats faciliterait également le passage à un ordre constitutionnel à la fin de la lutte. En se référant à l'exemple du Nicaragua, l'auteur souligne la place importante que le droit international humanitaire a trouvée dans les forces armées, elles-mêmes issues des forces insurrectionnelles.