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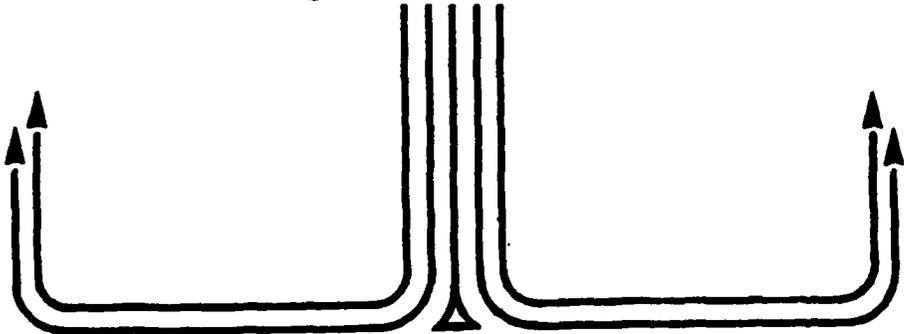
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STUDENT REPORT
MORAL CONSIDERATIONS FOR U.S.
MILITARY SUPPORT TO
INSURGENCY WARFARE
MAJOR MICHAEL J. DREDLA 88-0785
"insights into tomorrow"



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REPORT NUMBER 88-0785

TITLE MORAL CONSIDERATIONS FOR U.S. MILITARY SUPPORT TO
INSURGENCY WARFARE

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Submitted to the faculty in partial fulfillment of
requirements for graduation.

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PREFACE

This article examines the moral aspects of United States Special Operations Forces (SOF) providing support to an anti-communist insurgency in the third world. Beginning with an explanation of why moral considerations are important for military leaders, the article describes U.S. policy with regard to supporting third world insurgencies and how SOF might be used in training/advising insurgent guerillas. It describes the use of "just war criteria" as a tool for examining the moral aspects of deciding to use SOF. Following this, the article compares these criteria to U.S. insurgency support policy and SOF support roles, analyzing pertinent moral considerations. Conclusions are drawn as to what moral aspects SOF military leaders should consider in their decision to employ SOF in such a role.

The author wishes to thank Majors Bill Magill and Jim Connors of the Air Command and Staff College faculty for their advice and assistance in preparing this article. A special thanks is given to Colonel Ken Wenker of the Air War College faculty for his insightful advice on application of "just-war" criteria.

Subject to clearance, this article will be submitted to the Center for Low Intensity Conflict (CLIC) for consideration to be published as a "CLIC Paper." As such, the article's format is in accordance with the sponsor's desires.

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EXECUTIVE SUMMARY



Part of our College mission is distribution of the students' problem solving products to DOD sponsors and other interested agencies to enhance insight into contemporary, defense related issues. While the College has accepted this product as meeting academic requirements for graduation, the views and opinions expressed or implied are solely those of the author and should not be construed as carrying official sanction.

"insights into tomorrow"

REPORT NUMBER 88-0785
AUTHOR(S) Major Michael J. Dredia, USAF
TITLE Moral Considerations for U.S. Military Support to Insurgency Warfare.

I. **PURPOSE:** To examine the moral aspects of the United States deciding to employ Special Operations Forces (SOF) in support of an anti-communist insurgency.

II. **PROBLEM:** SOF may be tasked to provide advice and training to insurgent guerilla forces attempting to overthrow a communist/Marxist regime in the third world. SOF military leaders have the responsibility to consider the moral aspects of deciding to use SOF forces in such a role. Additionally, once the decision to employ SOF is made, the moral aspects of the conduct of guerilla war must also be considered. These moral aspects are examined by applying historical "just-war" criteria. In particular, the criteria are compared to U.S. policy in supporting third world insurgencies and to the role SOF would play in advising and training insurgent guerilla forces.

III. **DATA:** The "Reagan Doctrine" is the informal term referring to the continuing U.S. policy of providing covert and overt assistance to selected insurgent groups fighting Marxist Governments in the third world (e.g. in Nicaragua, Afghanistan, Angola, and Cambodia). A

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controversial aspect of this "doctrine" has been the morality of the U.S. providing support to guerillas attempting to overthrow a standing government, albeit communist and repressive. To date, support has been primarily through economic and military hardware assistance. However, the United States does have the option, and special operations forces are trained, to provide advice and training to guerillas in the conduct of insurgency warfare.

Military leaders (from the National Command Authority on down) must consider the moral aspects of their policy decisions to use SOF in such a role and the moral aspects of how those forces will be employed. A useful tool in examining those aspects is traditional "just-war" criteria. These describe the conditions under which 1) A state's decision to use military force would be morally justified, and 2) The force's conduct, once employed, would be morally justified.

In comparing the just-war "decision" criteria to U.S. policy on providing SOF support to an insurgency, several moral considerations are examined. For example, under the "competent authority" criterion, appropriate U.S. leadership must support the decision to employ SOF. The insurgent group itself should also be backed by the international community to morally derive the "authority" to conduct the insurgency. Under the "just cause" criterion, the U.S. must determine if the "cause" is sufficiently "just" to allow the use of SOF. It must examine the goals of the insurgency and the degree of U.S. national interest in seeing the regime overthrown. The four remaining decision criteria, "probability of success", "proportionality", "right intention", and "last resort" provide additional insight into how the decision to use SOF would be morally justified.

In comparing the just-war "conduct" criteria to how U.S. SOF forces would be employed, the importance of both U.S. SOF and the insurgents conducting morally based operations is examined. In particular, insurgent operations must be "proportionate" in that they serve a useful military purpose and do not cause needless death or destruction. These operations must also be "discriminate." Insurgents must not directly attack non-combatants or non-military targets. Satisfying both these criteria in guerilla warfare is difficult due to the inherent problem distinguishing civilian/military targets in a revolutionary environment.

IV. CONCLUSIONS: SOF military leaders must consider the moral aspects of their employment decisions. Traditional just-war criteria provide a useful tool for examining those aspects and provide several insights into how military leaders can morally justify the use of SOF in an insurgency support role. Leaders must have a thorough understanding of the social, political, and economic factors of the third-world insurgency in question. Quality intelligence is necessary to provide these insights as well as determine the probability of the insurgency's success. International support from U.S. allies/friends for the

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Insurgent's cause is important to give them legitimacy and help justify U.S. intervention and assistance. The moral use of SOF in providing that assistance requires pre-employment training of SOF on conducting proportionate and discriminate guerilla operations. Once committed, SOF must ensure the insurgents conduct morally justified operations. If not, the legitimacy of their cause could be threatened. U.S. forces should be prepared to withdraw if support of guerilla operations becomes morally untenable.

I. INTRODUCTION

This article examines the moral aspects of a unique category of Low-Intensity Conflict (LIC) in which United States Special Operations Forces (SOF) may have to participate--that is, training anti-communist insurgents attempting to overthrow Marxist regimes in the third world. To the reader, this may seem implausible. But, in fact, SOF are organized and trained to assist insurgents in conducting guerilla warfare if so tasked.

As noted by former Secretary of Defense Weinberger, justification of the use of military power as a foreign policy tool requires substantially compelling reasons. He stated several criteria that must be satisfied and notes the importance of achieving a unified "national will" to apply military force when necessary (13:--). Since the Vietnam debacle and America's aversion to becoming involved in military conflict, the Government must specifically have morally compelling reasons before becoming involved in third world conflicts. David Tarr argues in his article on foreign policy constraints affecting LIC that since Vietnam "Americans tend to demand or expect that United States foreign policies be based on sound moral principles" (4:55). Former Ambassador to the United Nations, Jeane Kirkpatrick, addressing the issue of the U.S. supporting the overthrow of third world Marxist regimes asks:

Is it morally and legally acceptable for the United States to support armed indigenous movements against these [Marxist] governments? Or does such support constitute unjustified and illegal interference in the internal affairs of other nations? Is it ever justified to support an armed attack on a sitting government? (9:92)

This article, recognizing the need to morally justify the use of military force, and the moral controversy surrounding U.S. support of anti-communist insurgencies, will focus on the moral justification of using SOF in an insurgency-support role. In particular, this article will address two questions:

- (1) What are the moral considerations for deciding to use SOF in such a role? and,
- (2) Once the decision to use SOF is made, what are the moral considerations in conducting insurgent/guerilla war?

The answers to these questions are important for military leaders involved in SOF employment decisions for several reasons. First, military leaders are challenged by law to conduct themselves morally. U.S. Public Law requires that "...any person in government service should put loyalty to the highest moral principles" (24:855). Military

leaders must examine and understand the moral principles behind which they make decisions. Second, as a result of society's expectations of U.S. foreign policy, military leaders must be morally responsible under society. As Richard Gabriel writes concerning military conduct, "It [the military] must develop within its officers and men a capacity for moral reasoning, ethical judgement, and the personal courage and institutional support to exercise its moral options" (2:187).

Military leaders are responsible for conducting military operations in accordance with the international laws of war to the best of their ability. Department of Defense policy (20:2) requires it regardless of where such conflicts appear on the warfare spectrum. As stated by military ethicists Wakin, Stromberg, and Callahan "...certainly every military leader should have done some serious reading and reflecting on the morality of war itself, and even more important, should accept responsibility for observing the laws of war and their attendant moral justifications" (14:281). In conducting operations in accordance with the laws of war, leaders must be cognizant of the moral basis of those laws.

This article will address those moral aspects that should be considered in the decision to use SOF to support an insurgency. Initially, the article will briefly discuss recent U.S. policy in supporting anti-Marxist insurgents and how SOF might be employed to support this policy. Second, the article will examine historical "just-war" criteria and how they might be applied as moral considerations for the use of SOF in an insurgency. Next, the article will analyze U.S. policy and SOF insurgency support employment principles in light of the just-war criteria, thus providing moral considerations in deciding when to employ and how to employ SOF in an insurgency support role. Finally, based on this analysis, recommendations are made to help SOF military leaders address the two moral questions raised earlier.

This article will not deal with a closely related subject: the laws of war. As noted previously, the conduct of war, under international law, is assumed to have a moral basis. To discuss the moral aspects of insurgency warfare vis-a-vis international law would require a lengthy, technical discussion well beyond the scope of this article. For the interested reader, O'Brien's The Conduct of Just and Limited War, (3: Part I) and Wasserstrom's article on "The Laws of War" in Wakin's War, Morality, and the Military Profession (5: Chap 26) provide excellent analysis of the relationship between just-war doctrine and the laws of war.

II. U.S. POLICY/CAPABILITIES IN SUPPORTING INSURGENCY

From its beginning, the Reagan Administration has had a unique policy with regard to insurgency warfare. The administration has provided increasing aid for selected insurgent guerillas fighting Marxist regimes in the third world. Known informally as the "Reagan Doctrine," the term specifically refers to covert and overt U.S. military/economic material assistance provided to anti-communist rebels in Nicaragua, Afghanistan, Angola, and Cambodia. Support for these rebels, although the subject of heated debate, has been approved by Congress (16:2-4).

The policy is unique in that the U.S. has historically been in the position of aiding friendly governments in counterinsurgency (Vietnam and the Philippines are good examples). But now the U.S. is involved, to various extents, supporting guerilla efforts to destabilize and overthrow communist regimes.

This policy has been the subject of considerable controversy in America and has been brought into sharp focus with recent disclosures during the "Iran-gate" controversy of alleged illegal diversions to the Nicaraguan Contras.

A singularly controversial issue has been the "rightness" or morality of the U.S. intervening to assist guerillas in attempting to overthrow an existing, sovereign government, albeit communist and repressive. This intervention is generally objected to for three reasons:

First, it is wrong because we are violating the sovereignty of a nation-state. Article 2.4 of the U.N. Charter states members should "refrain from the threat or use of force against the territorial integrity or political independence of any state" (9:93).

A second objection is that intervening through an insurgency is morally wrong because attempting to change a government (although it may deserve changing) by overthrow is immoral (10:18).

A third objection is to the means used to achieve that overthrow. In an insurgency, that usually means guerilla warfare. The specific objection is that guerilla warfare is, by nature, immoral (10:18).

All of these objections have certain validity and must be considered in any U.S. decision to intervene under the Reagan Doctrine. From a military perspective, these objections become even more critical, for the President does have a military option. He can authorize the use of U.S. SOF to provide advice and training to indigenous guerilla forces involved in an insurgency.

In his FY88 Report to Congress, Secretary of Defense Weinberger reported on these capabilities and skills of SOF and stated, "If called upon, these skills can be employed in support of guerilla [insurgency] warfare" (15:293).

The United States does not have to be in a state of war to use SOF in such a role. JCS policy states this support "...may be employed to attain national objectives during war, crisis situations, or peace" (21:para 5-1a). In describing various capabilities it can provide under peacetime contingencies, U.S. Army doctrine states, "U.S. Army support...can include the use of both SOF and general purpose forces, such as combat service support for guerillas in a third country" (18:Para 9-6). This support and advice would be primarily focused on training the indigenous insurgent group to conduct guerilla operations. These might include raids and hit-and-run interdiction operations to hinder the target government's lines of communication, and destroy key facilities. Psychological operations training would show guerillas how to create a favorable impression on the local population, isolate the government, and damage the government's will to fight. Training can also be provided in guerilla intelligence gathering techniques and escape and evasion operations (19:9-11, 17:24).

The nature of guerilla warfare raises moral questions. Behind these questions are the tactics normally associated with guerilla operations. Terrorism, sabotage, subversion, and assassination are terms causing one to question the morality of supporting guerilla warfare since these are well-known guerilla tactics. The possibility U.S. SOF may be providing advice and training to insurgents on these tactics, in peacetime, in an effort to overthrow a government will be difficult to justify unless the U.S. has a morally compelling basis for providing support.

Before examining the moral considerations of SOF insurgency support, one should remember that, normally, moral issues are not black and white. For example, if faced with a moral dilemma, one might tend to form a list of pros and cons of taking either action and choose the one that's "the lesser of two evils." This point is important because this article does not attempt to provide a cookbook approach to the morality of SOF actions. Rather, this article emphasizes moral aspects to be considered by military leaders in deciding to take those actions. With that in mind, an historical approach to analyzing these moral decision factors known as the "just-war" criteria would be useful.

III. JUST-WAR CRITERIA

The principles concerning the moral justification of war is generally acknowledged to have been first formalized by St. Augustine of Hippo (354-430 A.D.), calling it the doctrine of "just and unjust wars" (5:227). Over the centuries, the just-war criteria forming this doctrine have evolved, as warfare has evolved, being primarily applied to armed conventional conflicts between warring nations. With the development of nuclear and chemical/biological weapons, the criteria have been used to analyze the morality of those warfare categories (5:CH 27,30). With the advent of the study of wars of "low intensity," analysis has also been done in applying the just war criteria to LIC. The morality of U.S. military participation in counterinsurgency has been examined in detail by William V. O'Brien using the just-war criteria (3:CH 2,3,7,8 and 1:--).

Can these criteria be applied to U.S. military support for insurgency? Although O'Brien doesn't make that particular application, he does state "While many of the special operations under consideration [e.g. insurgency support] do not necessarily occur in time of war, they all contribute either to preparations for, deterrence of, or conduct of war. That being the case, it is important to bear in mind the conditions of just war doctrine...." (1:58). Thus, just-war doctrine can be considered for SOF employment other than counterinsurgency.

The U.S. Catholic Bishops in their 1985 treatise on the just-war criteria stated, "While the legitimacy of revolution in some circumstances cannot be denied, just-war teachings must be applied as rigorously to revolutionary-counterrevolutionary [i.e. insurgency-counterinsurgency] conflicts as to others" (5:246). From this argument, the just-war criteria are also a useful tool for applying to the insurgency aspects of war.

What are the just-war criteria? The following is not a detailed description, but rather a brief synopsis of the essential elements. Application of these elements will be described in more detail in the analysis portion of this article.

"Just-war doctrine begins with a presumption against war. That is, war is an extreme, a last resort when all has failed. Just-war conditions [criteria] are seen as requirements that must be met to overcome the presumption against war" (1:58). These requirements are generally presented in two categories. The first are "war decision" criteria which are used to determine when resort to war (or the use of military force) would be moral. The second are "war conduct" criteria which are used once the decision to use force/war is made, to determine the morality of how the war is conducted (5:244). Both categories can be summarized as follows:

War Decision Criteria

1. Competent Authority: "The war must be authorized by those having the right to commit the state to war" (1:59).
2. Just Cause: "The society of the just belligerent must represent and defend the values of fundamental human dignity. There must be a particular just cause necessitating recourse to war" (1:59).
3. Probability of Success: "This is a difficult criterion to apply, but its purpose is to prevent irrational resort to force or hopeless resistance when the outcome of either will clearly be disproportionate or futile" (5:248).
4. Proportionality: "...the damage to be inflicted and the costs incurred by war must be proportionate to the good expected by taking up arms" (5:248).
5. Right Intention: "The use of force must be limited to pursuit of the just cause, untainted by hatred and a desire for vengeance, with a just and lasting peace as the ultimate goal" (1:59).
6. Last Resort: "For resort to war to be justified, all peaceful alternatives must have been exhausted" (5:244).

War Conduct Criteria

1. Proportion: "Particular actions should be proportionate to the requirements of legitimate military necessity and should not involve needless suffering or destruction" (1:59).
2. Discrimination: "Direct intentional attacks on non-combatants and non-military targets are prohibited" (1:59).

The war decision criteria are used to analyze when it would be morally permissible to commit military forces. The war conduct criteria are used to determine how those forces should morally conduct operations.

It is important to note the relationship between the war conduct and decision criteria. The war must be conducted justly/morally to sustain support for the just decision. Any significant violations of the war conduct criteria will put the just-war decision in jeopardy even if all the war decision criteria are met (1:68). In applying these to the issue of SOF supporting an insurgency, this article will consider the criteria in two steps. The first will discuss the war decision criteria in light of the Reagan Doctrine and U.S. policy on employing SOF in such a role. The second step will address, once the decision to employ SOF is made, how insurgent support activities should morally be conducted in light of the war conduct criteria.

IV. WAR DECISION CRITERIA AND U.S. POLICY

The following discussion is intended to highlight various considerations for each war decision criterion. Keep in mind the fundamental purpose of these criteria. That is, what moral grounds does one have for deciding to commit SOF to support an insurgency. Given the "presumption against war," how do the criteria indicate one can override this presumption and intervention by SOF is a legitimate moral recourse?

A. COMPETENT AUTHORITY

The employment of SOF to support an insurgency must be authorized by those having the right to commit those forces in such a role. This implies two questions for consideration under the Reagan Doctrine. First: Who has the authority to commit SOF to action? The second is more difficult: What is the "competent authority" that authorizes an insurgency against a sitting government?

To address the first, DOD policy is that only the National Command Authority (NCA) can commit SOF to action under non-war conditions (21:Para 3-2). It would be morally questionable if persons subordinate to the President or Secretary of Defense unilaterally committed SOF to action in peacetime (much less illegal).

Fogging this issue however, is the role of Congress. Under the War Powers Resolution, the President must consult with Congress if he intends to commit forces into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances..." Additionally, the President must withdraw those forces after 60 days unless Congress declares war or authorizes the forces continued use (22:142-144).

The moral issue here is in the nature of low-visibility SOF operations. If, in the NCA's judgement, the decision is made to keep SOF support covert for national security reasons, can the Congress be bypassed? Does that violate Congress' "intent" under the War Powers Resolution and thus violate the competent authority that Congress represents?

To satisfy this criterion it would seem that, at a minimum, the NCA must agree SOF need to be committed and selected Congressmen be informed through the oversight committee process. More difficult is obtaining the authorization of the entire Congress after the 60-day period expires without compromising the covert activity.

The other difficult aspect of the competent authority criterion is: With what authority did the insurgents begin the revolution? This question requires the President and Congress examine the legitimacy of the insurrection vis-a-vis the repressive conduct of the communist regime.

It is usually not in the interest of the repressive regime to recognize the legitimacy of the insurgent movement but rather to treat them as bandits and lawbreakers (3:160). If the communist government were to recognize the insurgent group as a political entity with a popular base, that recognition would provide the insurgents with a certain degree of "authority" in declaring a revolt.

Since that recognition would probably not be obtained, it would seem prudent for the U.S. to take political actions to obtain legitimate recognition of the insurgency by other international actors (such as the U.N. or other U.S. allies). By obtaining this international consensus, the guerillas may derive the moral "authority" needed to conduct the insurgency.

O'Brien argues the insurgents must also demonstrate they have a legitimate basis by conducting themselves with clear public purpose, organization, control, willingness, and ability to obey the laws of war. "These qualities distinguish a revolutionary force worthy of recognition as a lawful belligerent from miscellaneous individuals and groups that engage in violence..." (3:161).

If the U.S. can obtain international support for the insurgents and if the guerillas were to conduct themselves with legitimate qualities, the insurgents could more easily achieve the "international" competent authority to prosecute the revolution.

B. JUST CAUSE

In the scholastic, natural-law tradition from which most of the just-war doctrine is derived, there are basically two causes for armed resistance against an incumbent regime: self-defense and reaffirmation of the sovereignty of people. If a regime is so oppressive that it threatens the fundamental rights of the members of the community and the common good, it may be resisted by force. Or, if the government acts in ways contrary to the conditions established for the legitimate exercise of power, the people, as the original repository of political authority, have a right to reclaim that authority and vest it in a new government (3:162).

The "just cause" necessitating a recourse to revolutionary warfare pivots on the oppressiveness of the incumbent regime. The questions for the United States are: How does the just cause of an oppressed people in a third world country become the just cause of the U.S.? And, under what conditions does the U.S. accept certain responsibility for assisting the insurgents in fighting for their just cause?

The moral dilemma is that normally, under international law, intervention by an outside power is illegal (3:168). There must exist significant compelling reasons to overcome the presumption of a state not interfering in the affairs of others.

Charles Krauthammer, in his critique of the morality of the Reagan Doctrine, suggests two tests (10:22) to determine when the moral

imperatives of the cause would override the principle of non-intervention.

The first is to determine the level of popular support for the insurgency. Does the insurgent group represent the political aspirations of a majority of the oppressed people?

The second is to determine the ends (goals) of the insurgency. Is it attempting to establish a government that will support the peoples' basic needs and provide for individual freedoms and human dignity? This latter test is closely related to "right intention" and will be discussed shortly. The problem with these tests is, if applied worldwide, many rebellious movements would be a just cause for U.S. intervention. Oppressive regimes are numerous, as are supposed popular revolts.

A key additional test for justifying intervention, according to Senator Stephen Solarz, is to selectively intervene only when the national interests of the U.S. are clearly at stake. He outlines six questions that must be answered to determine the level of national interest, justify intervention, and gain moral support of the American people (11:25).

Former U.N. Ambassador Kirkpatrick adds another dimension to the just cause criterion. She argues our constitutional doctrine, supported by the U.N. Charter, affirms the inherent right for individual self-determination and other human rights guarantees. When an external power (i.e. Soviets) supports a communist regime that prevents individuals from exercising those rights, the U.S. has legitimate cause for intervening (9:93-94).

It seems from the above arguments a moral "just cause" for U.S. support to insurgency is for humanitarian reasons, specifically to liberate oppressed people. If the Soviets are sponsoring the oppressive government and it is in our national interest to see the Marxist regime overthrown, the just cause of the oppressed people may legitimately become the just cause of the United States. In particular, if the Soviets or their surrogates are providing military assistance to the Marxist Government countering the insurgency, the U.S. may have legitimate just cause to assist guerillas in fighting for the oppressive government's overthrow.

C. PROBABILITY OF SUCCESS

Before deciding to commit SOF to support an insurgency, the U.S. must consider the chances the insurgency has in achieving its ultimate goal--removal of the communist regime and establishment of a democratic government.

In effect, this criterion says it would be immoral to commit military forces to assist insurgents if the insurgents have no hope in succeeding. The purpose of this criterion is to prevent irrational use of force in the face of insurmountable odds.

The problem in applying this criterion is in defining success. If success is the overthrow of the government, the insurgents may have insufficient military power to successfully accomplish that goal.

If the goal was moderated so the purpose of the insurgency is to force political reforms and democratic processes within the existing regime, the determination of "success" has different meaning.

An essential step for the U.S. is to accurately assess the goals of the insurgency and come to a clear understanding of these goals with the insurgent group.

Second, and equally important, the U.S. must have accurate intelligence estimates of the military capabilities of the insurgents, its level of popular support, and its potential for advancement into later stages of insurgency. Also, accurate intelligence on the communist regime's ability to counter the insurgency and information on their external support is essential to determine the insurgent's ability to achieve their goals.

Once the U.S. is convinced the insurgents have reasonable hope for success, particularly if given SOF assistance/training, this moral criterion could be satisfied. It would be morally questionable to commit U.S. SOF to support the insurgency if success was improbable.

D. PROPORTIONALITY

This criterion requires the good to be achieved by supporting the insurgency must outweigh the damage to be inflicted (i.e. on the people/country) and the costs incurred (i.e. lives/resources).

This requires a qualitative assessment and the best moral judgement of military leaders since comparing the "good" of revolution and establishing democracy to the "bad" effects of war is not easy.

The U.S. Catholic Bishops, referencing the principle of "proportionality" came to the conclusion the Vietnam War had become unjust because the "conflict had reached such a level of devastation to the adversary and damage to our own society that continuing it could not be justified" (5:248).

Relying on accurate operational and intelligence estimates, the U.S. should assess the potential levels of damage to the third world society which may result from escalation and protraction due to U.S. support. This criterion is also closely related to the war conduct criteria. The insurgent war must be conducted proportionately and discriminately, to the maximum extent, to avoid collateral damage and the waste of resources (more on this later). It would be counter-productive to effectively devastate the country in order to establish a democracy.

E. RIGHT INTENTION

This criterion requires the introduction of SOF to support the insurgency be intended to pursue the just cause. In military terms, the just cause can be thought of as the political/military objective (e.g. overthrow of the oppressive communist regime to liberate the oppressed people).

The underlying intention in achieving that objective must be to establish a just and lasting peace, and pursuit of that peace must not be tainted by a desire for vengeance or hatred. The rationale is that

If the insurgency is successful in overthrowing the communist government, it would be immoral for the victors to cruelly or inhumanely deal with those removed from power. By dealing with the defeated in a just, lawful manner the opportunities for establishing a peaceful and popular government in the long term will be enhanced. As O'Brien states, "Charity toward the enemy in civil war will mitigate the destruction and cruelty of war and enhance the prospects for domestic peace and cooperation once the war is over" (3:166).

In deciding to support the violent overthrow of a government, the U.S. must also actively advocate the establishment of a subsequent government that will rule democratically and without oppression. The U.S. should not support insurgent groups that don't intend to establish a moral government. Under-Secretary of Defense Richard Armitage, testifying before Congress on "U.S. Policy Toward Anti-Communist Insurgency" described an important element in deciding to support an insurgent group; that is, determining their "worthiness of support." He stated:

A fundamental basis of any decision to support a resistance group will be our judgement that, if it succeeded, it would be preferable to the regime in power. Obviously, every resistance group will not be perfect, and not every group that professes anti-communism deserves our support...There are cases where we cannot support resistance groups because of their own tactics and principles. For example, U.S. support in virtually any form to the Khmer Rouge [in Cambodia] would be a classic example of where a lack of discrimination on our part would be wrong. Pol Pot and his henchman are unworthy of our support regardless of how much they share our conviction that the Vietnamese communists should leave Cambodia. Support for the Khmer Rouge, even if indirectly supplied, would be ludicrous and reprehensible. Support for the non-Communist opposition in Cambodia, however, is consistent with our values and should be continued (23:40).

The U.S. must thus have the "right intention" of supporting the establishment of a just regime and carefully examine the political, military, and economic aspirations of the insurgent groups to be assured of their moral intentions.

E. LAST RESORT

The difficulty in applying this criterion to the SOF insurgency support question is in determining when all alternatives in support of the insurgency have been tried and proven to be failures. A possible "last resort" scenario might be one in which an insurgent group has received U.S. military supplies/equipment for years but suddenly find themselves, due to a series of battlefield defeats, facing annihilation by the communist government. SOF could then be provided to prevent their destruction.

Not only is it difficult to determine when the use of SOF would be a last resort, but also debatable is the who would decide it's a last resort. In just-war doctrine, the "competent authority" is normally charged with the moral examination of the decision to use military force. This article pointed out the authority status of Congress as well as the National Command Authority as a result of the War Powers Resolution. Determining the use of SOF is a last resort is thus subject to differing views among those charged with making the decision.

This author suggests that although included in just-war theory, the "last resort" criterion should not be a necessary moral consideration in deciding to commit SOF to support an insurgency. This suggestion is not only due to the above difficulties but also for two other reasons. The first is that SOF insurgency support is best used with other simultaneous non-military policy tools to achieve the just cause. Secretary Weinberger, in a speech discussing the use of military power in LIC stated military assistance must be

...designed into a strategy which involves diplomacy and economic leverage, and the proper management of our technological riches, and the proper unashamed and unremitting willingness to make our case at the bar of public opinion abroad and at home. Absent such a strategy, the use of military assets alone will be feckless, wasteful, and unfair (12:261).

SOF is not best used as a last resort, but included in an overall political, economic, and technological strategy to achieve the political objective.

The second reason is that employing SOF as a last resort is operationally unsound. SOF support is best provided early in a conflict when insurgents still have the ability to achieve selected tactical advantage and retain hope of defeating the government. SOF assistance should not be delayed until the insurgent's backs are against the wall. Seven National War College students, writing on the use of SOF as a policy tool, discuss the danger of using SOF in peacetime as a last resort:

Moreover, if UW [unconventional warfare] is considered a measure of last resort, unconventional techniques are likely to be employed only under unfavorable conditions when all other means have failed to produce results...It is unrealistic to regard unconventional warfare as an array of magic tricks that can be applied at the last moment to stave off disaster (7:68).

SOF support then is best used as part of an ongoing U.S. political, economic, and military strategy to assist the insurgents to overthrow the communist government. Although the "last resort" criterion may be appropriately considered for levels of conflict on the spectrum other than those of low intensity (i.e. conventional, nuclear), it does not appear prudent to include it in the moral determination to use SOF.

V. WAR CONDUCT CRITERIA AND SOF ROLES

Just as the decision to use SOF in support of insurgency should have a sound, moral basis so also must the conduct of SOF operations in support of that insurgency be morally based. As noted earlier, the "decision" and "conduct" criteria are closely linked. If the United States takes pains to ensure the decision to use SOF is morally defensible, it would not be sensible to use SOF in a way that would be morally repugnant. The problem is, given the nature of guerilla warfare, insurgents may believe that any means in their campaign to overthrow the communist government would be justified. O'Brien acknowledges this problem and states it is rooted in the fact that revolutionaries often have limited "strategic and tactical options...if they are to have any chance of success" (3:176). Further, if these options violate the war conduct criteria "...it may mean a choice [for the guerillas] between no revolutionary war for a cause believed to be just or a war openly fought in defiance of the laws of war" (3:176).

U.S. SOF, in providing assistance, should gear their strategy to prevent the insurgents from conducting operations that are immoral. If successful in persuading them to do so, the U.S. enhances its own moral legitimacy in supporting the insurgency. The guerilla's own legitimacy will also be enhanced if the international community sees them as a group not only with a just cause but also a group that pursues that cause in a moral manner.

However, if the insurgents begin, or continue to conduct, morally questionable operations (to be discussed shortly) after SOF has been committed, how should the U.S. respond? According to Messrs Bair, et al, the U.S. should always "be prepared to disengage" (7:69) if the SOF support operation becomes untenable. According to them, an inherent advantage of low visibility SOF operations is that they "can be curtailed with less embarrassment to the United States than is generally the case with [an] overt policy" (7:70). The United States should persuade insurgents to conduct operations that are consistent with war conduct criteria. If unsuccessful, SOF should be withdrawn. With that in mind, the war conduct criteria will now be discussed.

A. PROPORTION

This criterion permits military actions only that serve a useful military purpose (i.e. have military necessity), and in their conduct, do not cause needless death or destruction. The moral problems arise when guerillas, in their attempt to destabilize the communist regime, take actions that don't serve military purposes or, in their zeal to succeed, cause collateral damage (particularly to civilians and/or their property) that could have been avoided.

A key element of successful guerilla operations is surprise, with ambush a classical tactic (6:176). Guerillas also rely to some extent on attacking targets of opportunity. When enemy defense weaknesses are found, they can be exploited. Guerilla strategy thus can become non-coherent in trying to achieve the end goal of undermining the incumbent regime and gaining support of the civilian populace (3:179).

The danger in terms of the "proportion" criterion is in the guerilla command structure losing effective control and failing to maintain operational discipline and a coherent strategy within guerilla elements. In their zeal to overthrow the regime, guerillas might begin targeting the enemy at random and/or using immoral tactics. U.S. SOF advisors to the guerillas must be meticulous in promoting operations with specific military purposes, formulating effective strategy, and maintaining focus on the overall political goal (i.e. subvert, overthrow the regime). Army SOF doctrine is clear on this:

Guerilla operations wear down and inflict casualties upon the enemy, damage supplies and facilities, and hinder and delay enemy operations. The success of guerilla operations...lowers enemy morale and prestige, disrupts the economy, politics, and industry in enemy occupied areas; and maintains the guerilla morale and the will to resist within the native population (19:9).

The focus on guerilla operations is clearly against the enemy. Care must be taken to abide by legitimate guerilla operations which focus on fighting the enemy. Such activities include raids, interdiction, evasion and escape, psychological operations, intelligence gathering and sabotage (19:9-11, 17:24).

Care must be taken to prevent immoral abuses from taking place apart from these operations. Krauthammer states that the "crucial moral challenge" for the U.S. is to ensure abuses by the guerillas are reduced and if possible eliminated. "By abuses I mean terror and torture...The question is whether or not the use of such means is deliberate policy, and whether the Army, guerilla or otherwise, establishes rules prohibiting such conduct and takes steps to enforce the rules" (10:23).

For example, in carrying out interdiction and sabotage operations, guerillas should not rely on terroristic tactics to achieve their purposes. These operations should instead be carried out using well-planned military means. Similarly, if guerillas capture enemy personnel, and in their effort to gain information of intelligence value, they should not "torture" the prisoner. Successful prisoner interrogations should not be dependent on brutality on the part of interrogators.

Guerillas should not conduct terrorist attacks on innocent civilians in an attempt to demonstrate the "lack of control" on internal security by the regime. First, the act itself is immoral. Second, the act could create popular backlash against the guerilla movement, causing a loss of support absolutely essential if the insurgency is to succeed.

Guerillas should not take retributions against civilians who may have sympathized with the communist regime. A primary goal of the insurgents is to win the hearts and minds of the people. Immoral treatment of the civilian populace will hinder achieving this goal.

A primary function of SOF then, is to assist the insurgent command and control system to ensure guerilla operations are conducted morally under the "proportion" criterion. Krauthammer also states that when the U.S. sponsors an insurgency, "One [of our] responsibility[s] is to see to it that the guerilla war is fought within certain moral boundaries...this is the standard to which we would hold ourselves were we conducting a guerilla war of our own" (10:24). These standards not only apply to proportionate guerilla operations but also those under the "discrimination" criterion.

B. DISCRIMINATION

Krauthammer's fundamental critique of guerilla warfare is that it is "...the most morally troubling type of war because its technique is to subvert one of the most fundamental rules of war, the distinction between soldier and civilian" (10:22). This "technique" creates two problems under the "discrimination" criterion. They stem from the notion that, in an insurgency war, both sides might tend to state there are no "non-combatants." The first problem is from the insurgent's perspective:

On the revolutionaries' side the war is waged on behalf of 'the people.' All right-thinking persons are on the side of the people. Those who disagree, oppose, or even hesitate are 'enemies' of the people and lackeys of the corrupt...regime. So, no one who is not clearly supporting the revolution has the right to immunity from direct, intentional attack as required by the principle of discrimination (3:179).

Guerillas might claim, for example, that civilian "political officers" in areas controlled by the government are legitimate targets since they are representatives of and enforce the policies of the repressive regime. Thus, in an effort to subvert the political machinery controlling the people, guerillas might determine civilian representatives can be targeted.

The second problem is caused by the often used guerilla tactic of "blending" in with the civilian populace. This could cause the communist regime to have similar non-discriminate policies to counter the insurgency. From the regime's perspective:

All, or most of the population is supposed to be made up of loyal, law-abiding citizens. All of them have a legal duty to assist in the repression of crime and insurrection. If, by commission or omission they fail in this duty, or if they actually appear to support the rebels, they will tend to be treated as rebels (that is, proper objects of

counterinsurgent attack)...In areas where the rebels are permanently or intermittently in control, all [including women and children] may be suspect with reason (3:180).

Thus, civilians are often caught in the middle of insurgent warfare and are the targets of supposed legitimate attack by either side. Certainly the communist regime must take responsibility for its own actions with regard to civilians. However, guerilla operations often exacerbate the discrimination problem. For example, in attempting to achieve tactical surprise, guerillas may wear civilian clothing as a ruse or disguise. Additionally, the guerillas may not only fight dressed as civilians but also among civilians, operating from remote bases in agrarian/rural areas (6:184). Finally guerillas, in conducting sabotage or interdiction operations, might use weapons which can become "indiscriminate" (e.g. booby traps, land mines). Although intended for enemy military targets these type weapons, if not closely controlled, might be inadvertently triggered by innocent civilians.

In providing SOF support to guerillas, the U.S. must encourage insurgent military policies that distinguish between civilian and military and reduce the risk of indiscriminate attacks. There are historical examples of guerillas wearing distinctive garb in previous insurgencies, in order to establish legitimacy as a revolutionary force and boost guerilla esprit de corps (6:182). Depending on the tactical environment, SOF may want to provide military-like dress for the insurgents for the above reasons, as well as to reduce the discrimination problem.

As SOF advises/trains the insurgents in the elements of military discipline and provides weaponry needed for guerilla operations a synergistic effect could also take place. The insurgency would take on a more "conventional" flavor with clearer distinction between combatants. The revolution would shape itself around more conventional skirmishes/battles reducing the pressure to involve innocent civilians.

VI. CONCLUSIONS

The comparison of just-war criteria to the U.S. providing military support to an insurgency has led to several pertinent observations as to how the U.S. can morally provide that support.

First, military leaders involved with SOF must be cognizant of the moral aspects of insurgency warfare. With regard to the decision to support the insurgency, they should examine the moral aspects involved in that decision. Military leaders are charged with conducting themselves morally. Society expects U.S. policies, especially those military, to have a sound, moral basis.

The decision to use SOF must also be based on a thorough knowledge of the nature of the subject third world countries' anti-Marxist insurgency. SOF leaders must have a solid understanding of the social, political, and economic factors that pertain to the country in question. JCS Pub 20, "Joint Special Operations," states "many actions and objectives associated with SO [Special Operations] are not entirely military. Therefore, key personnel engaged in SO should become knowledgeable in the political, economic, psychological, sociocultural, and military situation in any SO environment..." (21:Para 2-2).

In order to understand this environment, quality intelligence on the country and its insurgency must be available. In terms of the just-war decision, quality intelligence is essential for analysis of the just cause, the probability of the insurgent's success, and the communist regime's orders of battle and intentions in countering the insurgency.

Once the NCA and pertinent leadership have determined the success of the insurgency is important to the U.S. interest, efforts must be made to obtain international support from our allies. This support is important to justify the insurgency as a just cause and to help overcome the presumption, under international law, against intervening in the internal affairs of another country.

If the U.S. decides to provide SOF support, then the issues center on how to conduct moral insurgent operations.

The first step begins with training before employment. SOF military leaders must train their men in the moral conduct of insurgency warfare especially with regard to proportional and discriminate operations.

Once committed, SOF must ensure the insurgents conduct themselves morally. As mentioned previously this will have three main benefits. First, moral conduct will intrinsically support the legitimacy of the insurgents just cause. If they conduct an abusive campaign, international and popular support could easily be lost. Second, the support of U.S. society as well as Congress could more easily be sustained. Finally, if the guerillas are successful in overthrowing the regime and take power, they will represent a new authority that achieved

their cause through moral means. International support and recognition will thus be more easily secured.

Analysis of the just-war criteria and U.S. SOF insurgency support has also provided additional observations concerning the "last resort" criterion and the relationship between all criteria and international law. First, the "last resort" criterion is difficult to apply and, in fact, may be irrelevant with regard to providing SOF support. Applying this criterion precludes using SOF as one of many policy tools in subverting the communist government. It is also operationally unsound to use SOF as a last resort, especially if the only reason is the insurgents are facing imminent defeat.

Second, application of the criteria is related to and should be considered with current international law. As mentioned earlier, a thorough discussion of the legal aspects of SOF support is beyond this article's scope. But, given the linkage between the law and morality, military leaders must thoroughly rely on the advice of military law professionals in deciding when and how to employ SOF in this role. Lt Col Rudolph Barnes, Jr., writing on "Special Operations and the Law" describes the integral role the military lawyer plays in making SOF operations successful given the complexities of international law. In particular, he cites a U.S. Army Forces Command Directive, implementing the DOD Law of War Program that states, "This [legal] officer is to be considered a member of your [the SOF Commander's] operations team and not an intruder into your area of concern" (8:54). Thus, throughout the war decision and conduct process, SOF leaders should integrate the international law perspective with that process.

The justification needed to commit SOF to support an insurgency must be sufficient to overcome the presumption against using military force. This means a thorough analysis of the moral implications of overcoming that presumption. To do this, military leaders, in responding to the moral expectations of society, should rigorously examine pertinent moral aspects of their decisions.

This article has presented use of the just-war criteria as a means of making that important examination. The results of the analysis are not intended to provide black and white solutions but to point out moral factors important for consideration. These should be helpful to military leaders in deciding to commit SOF forces in support of insurgency warfare.

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GLOSSARY

1. **Guerilla Warfare:** Military and paramilitary operations conducted in enemy held or hostile territory by irregular, predominately indigenous forces. (JCS Pub 1)
2. **Insurgency:** An organized movement aimed at the overthrow of a constituted government through the use of subversion and armed conflict. (JCS Pub 1)
3. **Psychological Operations (PSYOP):** Planned psychological activities in peace and war directed at enemy, friendly, and neutral audiences in order to influence attitudes and behavior affecting the achievement of political and military objectives. (JCS Pub 1)
4. **Unconventional Warfare (UW):** A broad spectrum of military and paramilitary operations conducted in enemy-held, enemy-controlled, or politically sensitive territory. Unconventional warfare includes, but is not limited to, the interrelated fields of guerilla warfare, evasion and escape, subversion, sabotage, and other operations of a low visibility, covert, or clandestine nature. These interrelated aspects of unconventional warfare may be prosecuted singly or collectively by predominately indigenous personnel, usually supported and directed in varying degrees by (an) external source(s) during all conditions of war or peace. (JCS Pub 1)