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FOUR PAPERS ON THE VIETNAMESE INSURGENCY

IV. TOWARD THE DEVELOPMENT OF A MORE ACCEPTABLE SET OF LIMITS FOR COUNTERINSURGENCY

Raymond D. Gastil

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Four Papers on the Vietnamese Insurgency

IV: TOWARD THE DEVELOPMENT OF A MORE ACCEPTABLE SET OF LIMITS FOR COUNTERINSURGENCY

By

Raymond D. Gastil

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Four Papers on the Vietnamese Insurgency

I. A Conservative, Decentralized Approach to Pacification in South Vietnam, HI-878/2/I

II. Counterinsurgency and South Vietnam: Some Alternatives, HI-878/2/II

III. Principles for Settlement in South Vietnam, HI-878/2/III

IV. Toward the Development of a More Acceptable Set of Limits for Counterinsurgency, HI-878/2/IV

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Some of those who have been kind enough to review and contribute to the document disagreed considerably with the author over the concepts contained in this report, but the criticisms were almost invariably constructive, and in general are reflected in the document, even where substantial disagreement still remains.

Four Papers on the Vietnamese Insurgency

General Preface

In these papers I have attempted to consider a number of alternative means to raise the level of security in South Vietnam so that the tide of allegiance begins to flow strongly against the communists. In developing these papers I have been aware of the many important issues relative to security with which I have not dealt, or have only dealt with tangentially. These issues have been ignored because: 1) I thought I had little to say that others haven't said; 2) I felt that they were of second priority; 3) I thought that the United States, or at least an American analyst at a distance, could have little of real use to say on these topics.

I am convinced that the evolution of a more legitimate Saigon government is crucial, and, more importantly, the collapse of the Saigon consensus could ruin all other plans. This is something to worry about and try to avoid, but this subject does not appear to be one to which we can add much to analytically.

I believe that economic, social and educational development are of great importance in South Vietnam. Land reform is an important aspect of this, although increasing land and man productivity may be equally important. In many parts of South Vietnam, however, the issue is more one of finding steady, remunerative employment for a locally surplus population than it is a matter of dividing up land more equitably. I believe that the country can be made to grow now, and may really "take off" if peace is achieved. For example, a subsidized rice price for the farmer might go a long way toward reversing production trends in the Delta. But I do not believe that economic development is generally a very effective counter to insurgency once stated. Indeed, the readjustments attendant on the economic development of underdeveloped countries often prepare a fertile ground for communist or other radical ideology.

I believe that there does have to be change in the Vietnamese social and political structure to accomplish the demands of a changing economic situation. There needs to be institution building. Yet the question is one of timing. For example, a change toward greater centralization which might be desirable in 1990 might merely further disorganize society in 1970.

I am confident that there is administrative insufficiency in South Vietnam. There need to be better men, more trained men, and a more organized national structure. However, to say this does not solve the immediate problems. My reaction is to reduce or restrict the demands on the structure rather than to imagine its rapid improvement. However, at the apex of the command structure I believe that a joint Vietnamese-American war council may help to solve the most general problem of insufficient direction and coordination. It is necessary to have a generally accepted strategy, including priorities and standards of performance, even if we are to use a generally decentralized administration for the actual execution of plans.

The security suggestions given in these documents stem from a number of alternative assumptions and judgments of the current scene. The first paper (A Conservative, Decentralized Approach to Pacification in South Vietnam) is based on the observation that many Vietnamese and American advisers at the district and province level believe that if they were simply provided with more resources at this level--perhaps another regional force company in every district--then they could vastly improve and perhaps solve their pacification problem. Since in most areas our conventional offensive makes it extremely difficult for the VC/NVA to match these increases at the district level, I judge that this may well be correct. If so, then only a rather modest change in priorities may be necessary for the Vietnamese forces with almost no reallocation of U.S. forces. This approach stresses a primarily Vietnamese solution to the insurgency problem. To a large extent, a discussion of district emphasis and decentralization is a plea for a solution which fits GVN's administrative capability and which builds on the strengths available in the South Vietnamese society.

Yet this minimum approach may be insufficient. The security problem of most pro-GVN areas in the country is severe, for the war is everywhere and there is no front in terms of which success can be measured. A review of alternative counterinsurgency systems and of the present war in Vietnam suggest that we need to separate the people from the insurgents more positively than the districts can do in isolation. (Counterinsurgency and South Vietnam: Some Alternatives) But if we are to set up an effective frontal system, I believe we must make a major reallocation of all friendly forces in Vietnam. This appears to require deep fronts of patrolling, both area saturation and what I call a thickened perimeter. On the basis of this set of assumptions I have tried to look at the forces which might be required and the degree to which present deployments might have to be altered.

In addition to these questions I have tried in the remaining papers to ask what we want by way of final settlement, what we might expect to end up with if things go moderately well. (Principles for Settlement in South Vietnam) I have also tried to inquire into the possibility of improving the morality of our position in Vietnam--maintaining stringent limits which are sometimes costly to us, but also accomplishing our objectives with less cost to everyone involved. (Toward the Development of a More Acceptable Set of Limits for Counterinsurgency) In particular, I am thinking of the legacy of this war. What are we going to think of ourselves after it? What lessons might it have for our next one?

Four Papers on the Vietnamese Insurgency

IV: TOWARD THE DEVELOPMENT OF A MORE ACCEPTABLE SET OF LIMITS FOR COUNTERINSURGENCY

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Four Papers on the Vietnamese Insurgency

IV: TOWARD THE DEVELOPMENT OF A MORE ACCEPTABLE SET OF LIMITS FOR COUNTERINSURGENCY

A. Introduction

Today the United States is placed in a particularly difficult position in regard to the use of violence. It is the only nation which can defend the humanist, liberal culture developed in the eighteenth century against major threats to the spirit or the area of influence of that culture. Yet rational humanism has evolved, and was bound to evolve, to a point where the use of force and violence seems to be indefensible, even in defense of the culture itself. This is particularly true where this force and violence may result in large-scale casualties. I judge that this evolution has even eroded the peace of mind of our military leaders. It certainly means great internal and external political costs wherever and whenever power is used in the future by the United States.

Another aspect of the late twentieth century is that nuclear weapons have made the survival of mankind depend ultimately on the ability of nations to limit the use of violence, to reject the notion of total war. I suggest that the Vietnamese struggle is being examined by the leaders of many states as an object lesson in the possibility of controlling war in general. If so, then when we talk of actions in Vietnam, we are not talking just about Vietnam, or guerrilla war, but war in general, in the future, even nuclear war.

For our humanist society to defend itself in the future, it will be necessary for it to strike a balance between the necessity for violence in defense of itself and its values, on the one hand, and its internal intellectual opposition to violence of any kind, on the other. I suspect that the resolution of this tension might be obtained through the theoretical and practical acceptance of a much more austere doctrine for the control of force than is presently accepted in ruling circles in the United States, civilian or military.

If the United States were weak, we could hardly initiate abstinence, but since we are strong, we can. If we were fanatics, we would be unlikely to introduce restraints, but since we are neither, in our defense we not only can, but must.

The growing military involvement of the United States in Vietnam could have been the occasion for the development of these standards of abstinence, as much as it has been used to demonstrate our will to prevent the spread of communism. But in not limiting our actions sufficiently, we have even damaged the appearance and meaning of our containment policy. Our bombing and shelling has probably been more accurate and more "military" in this war than in other recent wars. But repeated bombings of the same rail junction, and even of non-collocated targets in an area with 1500 persons to the square mile* is going to lead to many unintended civilian casualties, or

---

*The concentration characterizing the central Hanoi-Haiphong-Nam Dinh triangle.

at least to the destruction of much civilian property. Of course, it can be shown that the civilian losses are relatively very low, but this kind of interdiction and even strategic bombing may make the "counterforce" approach as demonstrated in Vietnam seem less real to the world than more serious attention to these issues could have made it.

It is the purpose of this paper, then, to raise questions about some additional rules and principles that might be usefully followed by the U.S. in counterinsurgency situations. If a more stringent set of rules were followed in Vietnam we might yet make this conflict a testing ground for a U.S. policy based on both implacable strength and strict self-dicipline which in the long run would be more useful to the defense of our society and its values than is the present policy based upon older standards.

B. Rules of War*

The basic rule of war is that war is fought for political objectives rather than out of a desire to kill or to gain revenge. Any violent act in war must have a direct relation to shortening the war, and there must be a proportionate relationship between the increased suffering caused by the usage and the increased submission obtained.** The basic principles were phrased somewhat differently in the U.S. Field Manual (FM-27-10, paragraph 4) on The Rules of Land Warfare of 1940. They were:

"a. The principle of military necessity, under which, subject to the principles of humanity and chivalry, a belligerent is justified in applying any amount and any kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life and money;

"b. The principle of humanity, prohibiting the employment of any such kind or degree of violence as is not actually necessary for the purpose of the war; and

"c. The principle of chivalry, which denounces and forbids resort to dishonorable means, expedients and conduct."

However, by 1956 (FM-27-10, 1956, paragraphs 2 and 3) the first principle of military necessity had been largely rejected by the U.S. Army as a separate basis of action. No international conference accepted these principles of war, or changes in them, but similar principles are a customary basis of judgment for many nations. The assumptions of this code developed out of a vision of two armies facing one another in the field. Yet military men are trying and must try to apply these principles to vastly different circumstances.

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*The following section is revised from Raymond D. Gastil, Attitude Changes and CBW, HI-504-RR/A4, June 7, 1965, pp. 19-26. It was also part of Appendix B of HI-707-RR submitted to ARPA.

**John S. Risley, The Law of War (London, 1897), pp. 113-115.

According to the laws and usages of war, civilians must never be directly attacked. Here, however, there are several qualifications. First, there may be incidentally unavoidable destruction ("double effect"). And if we look at the targets for military necessity, they may be: "the destruction of property demanded by the necessities of war; the obstruction of ways and channels of traffic, travel or communication; and the withholding of sustenance or means of life from the enemy" (FM-27-10, 1940, paragraph 24; also 1956, paragraphs 40-41). It is permissible to carry out a policy of "devastation" if there is "some reasonably close connection between the destruction of property and the overcoming of the enemy's army." However, "devastation as an end in itself or as a separate measure of war is not sanctioned by the law of war." (Paragraph 56.) Civilians should be allowed in most cases to evacuate before a bombardment (1863, paragraphs 19-25; 1956, paragraph 43). In fact, undefended places (i.e., places without military forces) are not to be bombarded from land or air (1956, paragraph 39).

There will, however, be exceptions to nearly all principles as understood by the American military. Although apparently rejected in official theory, military necessity still plays a role. Here we consider reprisals, particularly as these may cause deviations from the rule of never directly targeting inoffensive civilians or their property. Reprisal is essential to the whole structure of military custom, because it is the final sanction against rule-breaking by an opponent. Reprisal or retaliation is, therefore, the use of an otherwise illegal practice to make an opponent desist from an illegal practice (not necessarily the same practice). Reprisals should never be for revenge, "or exceed the degree of violence committed by the enemy" (paragraph 497).

The danger of spiraling reprisals was explicitly realized in an earlier tradition.

> "Retaliation will...be resorted to...cautiously and unavoidably; that is to say retaliation will only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds which may demand retribution. Unjust or inconsiderate retaliation removes the belligerents further and further from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages."*

The modern Manual cautions, "even when appeal to the enemy for redress has failed it may be a matter of policy to consider, before resorting to reprisals, whether the opposing forces are not more likely to be influenced by the steady adherence to the law of war on the part of their adversary" (1956, paragraph 497-b).

Until 1956 hostages could appropriately be taken to avoid an opponent breaking a rule of war. Hostages could apparently include military or civilian persons of the enemy, although specifically not prisoners (FM-27-10, 1940, paragraphs 359, 358). Paragraph 358 went on:

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*Instructions for the Government of the Armies,...U.S. War Department, 1863, paragraph 28.

"...The offending forces of populations generally may lawfully be subjected to appropriate reprisals. Hostages taken and held for the express purpose of insuring against unlawful acts by the enemy forces or people may be punished or put to death if the unlawful acts are nevertheless committed."

Since 1956 the U.S. Army has ruled out all such usages. According to the new rules there can be no hostages and no reprisals against "protected civilians" (1956, paragraphs 11, 273, 497).*

The American military also respects certain limits on the manner of injuring an enemy (paragraph 33). The oldest prohibition in military tradition is against poison; however, this is not officially extended to poison CBW (paragraphs 37 and 38). The manual also explicitly recognizes article 23 of the Annex to the Hague Convention No. IV of 1907, including the prohibition on weapons causing unnecessary injury, such as lances with barbed heads, irregular shaped bullets, use of inflaming substances, glass in projectiles, etc. (Paragraph 34.)

C. Special Problems of Applicability to Insurgency Situations

The rules of war have been worked out for the regulation of the fighting of regular armies of separate nations in the field. Civil wars put a strain on these rules, because the opponent soldier is frequently considered a traitor and the opponent citizen a lawless rebel. However, the first official formulations of the laws of war in the United States in 1863 had to take into account the special circumstances of the irregular soldier in support of a rebellion.

According to recent discussions of the problem, the first responsibility of the analyst is to define the degree to which the fighting to be considered is "of an international character." The rebels or guerrillas involved can receive the normal protection of international law only if the conflict is judged by nations concerned to have an international character. To have such a character there must be:

1) general hostilities

2) rebel occupation of substantial territory

3) rebel government in this territory

4) necessity for third states to take some cognizance of the rebellion.**

In general, if the partisans or guerrillas are part of an international conflict, it is fairly easy to pass this hurdle. If they are not involved in such a conflict, then this may be a crucial problem in attaining the protection of international law.

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*This does not yet protect civilians in general.

**Legal Aspects of Counterinsurgency (Charlottesville, Va.: Judge Advocate General's Office, U.S. Army, July 1964), Institute's Study Guide, pp. 3-4.

The requirements for international belligerency status may then be fulfilled if the soldiers:

1) are commanded by a person responsible for his subordinates;

2) wear a fixed, distinctive emblem recognizable at a distance;

3) carry arms openly;

4) conduct their operations in accordance with the laws and customs of war.*

In certain cases, a levée en masse might be used to combat a rapid attack. In this case only items (3) and (4) may be necessary.**

However, once a territory is considered "occupied" by a particular party or government, then there is some question as to the belligerent status of the guerrillas even if they have fulfilled the above criteria, and even if an external but related conflict has an international status. Article 4 of the 1949 Geneva Convention specifically seems to codify the more liberal doctrine that the state of occupation is irrelevant to the status of the guerrilla. This liberalization of criteria seems to have stemmed directly from the experience of World War II, and the condemnation by the victors of the earlier occupation doctrine which the Germans and Japanese cited in defense of their treatment of partisans and guerrillas.***

The United States, although a signatory of Geneva, seems to believe otherwise. FM-27-10 defines an occupied area as one in which,

> "...organized resistance must have been overcome and the force in possession must have taken measures to establish its authority. It is sufficient that the occupying army can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces.... (Paragraph 356.)
>
> "Nor does the existence of a rebellion or the activity of guerrilla or paramilitary units of itself cause the occupation to cease, provided the occupant could at any time it desired assume physical control of any part of the territory. If, however, the power of the occupant is effectively displaced for any length of time, its position toward the inhabitants is the same as before occupation." (Paragraph 360.)

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*Hague Convention, 1899, Annex, Art. 1.

**Ibid., Art. 2.

***See Philip M. Thienel, The Legal Status of Participants in Unconventional Warfare (Washington, D.C.: SORO, December 1961), pp. 35, 38, passim. He takes less note of the U.S. position discussed below.

It then goes on to say that inhabitants of occupied areas must "behave in an absolutely peaceful manner, take no part whatsoever in the hostilities carried on" (FM-27-10, Paragraph 432). FM-27-10 also states that uprisings in occupied territory are violations against the laws of war, and persons involved are not entitled to the protection of these laws (Paragraphs 72-74, 80-82).

In actual practice, however, guerrillas have often not been treated as criminals, although their leaders may be so treated upon defeat. For each guerrilla war a series of ad hoc understandings may grow up, based on the international rules of war and the reciprocal interests of the two groups of fighting men. Where reciprocity is not a factor--perhaps in the case of a new weapon--there is apt to be less carry-over from international rules. Even the most irregular troops may not be shot, if this indulgence means that the soldiers of the central government will also be spared when captured. Injunctions against torture should operate similarly, though they do not work out as often.

The 1949 Geneva Conventions, established in light of the war crimes trials, attempted to go farther than the Hague Conventions in the regulation of the treatment of combatants and non-combatants not entitled to the legal status of belligerents and not engaged in conflict of international character. In Article 3, it seems to be implicitly agreed that in "insurgencies," there shall be

1) no cruelty to, or killing of, prisoners or non-combatants

2) no taking of hostages

3) no outrages to dignity

4) no passing of sentences or execution of sentences without a regular court, affording judicial guarantees.

The U.S. Army apparently would define insurgents as "organized bodies of men who, for public political purposes, are in a state of armed hostilities against the established government." The insurgency also has to be "something more than a riot."*

It is interesting to note that an insurgent does not have to obey any rules of conduct in order to receive the kind of treatment suggested here by Article 3 of Geneva 1949. He may be executed, but not summarily and his civilian supporters cannot be directly attacked. Actually, the one-sided nature of the more civilized nation's adherence to certain rules of conduct has long been accepted by the United States.**

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*Legal Aspects of Counterinsurgency, op. cit., pp. 8-9. See also Julius Stone, Legal Controls of International Conflict, 2nd imp. (New York: Rinehart, 1959), pp. 566-567.

**Cf. the case of the Court Martial of an American Brigadier General in the Philippines in 1901, described in Legal Aspects of Counterinsurgency, op. cit., p. 22.

Another set of rules for consideration in determining the limits upon counterinsurgency warfare may be found in the "just war doctrine" as developed in the Christian tradition.* While the rules of war have been developed primarily on the basis of tradition and precedent, the just war doctrine is developed ostensibly on a more rational framework. Thus, there is no room for an emotion other than respect for the value and dignity of life. It is wrong to fight if there is not a reasonable hope of winning. It is wrong to allow more persons to be killed on either side than is necessary to obtain an opponent's forces rather than to punish; non-combatants should never be directly targeted. If non-combatants are in the target area of a military attack, then the number of civilians incidentally killed must be proportionate to the value of the objective. In other words, it is not "double effect" (or unavoidable civilian casualties as a side-effect) if a city is destroyed in the course of striking at an anti-aircraft battery. Most generally, violence can only be used justly if the values being defended are just, and the objective is the long-run welfare of man in general. A man killed out of hate, and not out of a higher consciousness of that man's interests (or his people's), is unjustly killed.

There is a cynical, easy doctrine, held by many military men and many civilians high in our government, that all of this talk of rules and justice is hypocrisy. They reason that only what succeeds is just, and will be rewarded. I have tried, however, to suggest that this is simply not true. First, it is not true because there are the two living strands of religious and legal-military tradition in our own society which deny it. Secondly, it is not true because the United States needs to preserve the chance to defend itself within the framework of the developing liberal and pacifist consensus in Euro-America. If we do not in our local wars work out and make acceptable a useful form and understanding of force, then we may soon be unable to express force adequately, even in the most serious of crises.

D. Moral Issues in the Vietnamese Conflict**

At least until recently there has been a consistent pattern of torture on the part of the South Vietnamese. The bodies of the enemy dead are desecrated by Vietnamese or tribesmen. The Viet Cong have done the same or worse. Here the Americans and Australians have held to more acceptable rules. They are accused generally only of looking the other way, threatening to turn suspects over to the Viet Cong, and the use of "brain washing" or mental torture.*** Perhaps the worst aspect of the American position is that we apparently have not kept prisoners except for very brief periods, although this may be improving today.

What are the results of this situation? Since the ideological motivation of the non-communists is not high, the lack of discipline and humanity

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*Cf. discussions by Robert W. Tucker, The Just War (Baltimore: Johns Hopkins Press, 1960), and Paul Ramsey, War and the Christian Conscience (Durham, North Carolina: Duke University Press, 1961).

**This section was submitted previously as part of Appendix B to HI-707-RR.

***On the American practices, compare Robin Moore, The Green Berets, Marshall Sahlins in Dissent, January-February 1966, as well as many other accounts.

displayed in such actions can only make non-communists feel less sure about the sense of their effort. This may be true both of the Vietnamese and of the many Americans who must turn a prisoner over to the Vietnamese. I think that it should also be a matter of national rather than field decision as to whether we have a right to use copied brain washing techniques on anyone--and under what controls. Practically, these facts of life mean that the morale of an ordinary Viet Cong is upheld by a fear of his potential captors almost equally as strong as the fear of treatment of the defector or deserter by his own people if they should recapture him.

Many observers have emphasized the advantages of an amnesty program for captured Viet Cong. This is, of course, desirable. But it might also be useful for the U.S. forces to handle prisoners for longer periods of time before turning them over to stabilized prison camps in the rear. The latter might also benefit from more U.S. interference--but my impression is that prisoner maltreatment is primarily a field experience.

The next problem of battle in Vietnam is the use of relatively "indiscriminate firing." A column on a road may simply fire into an overgrown area or at apparently abandoned buildings out of a mixture of fear and proper caution. Many outposts seem to fire artillery at night almost randomly into the jungle. The same actions may be ascribed to planes, though less commonly reported. One suspects that in addition to good military reasons, such as "harassing fire," contributing reasons for such firings are the desire to be doing something, and an abundance of ammunition. While there is no clear objective of the fire, there should be an intention to kill Viet Cong and a reasonable likelihood that Viet Cong rather than others will be killed. If so, then the occasional killing of civilians may be justified by the principle of "double effect." But unless a position is under attack these requirements would probably lead to little loss if they were more narrowly and strictly interpreted.

Another common form of war in Vietnam is the calling in of heavy artillery or bomb attacks against suspected Viet Cong concentrations. When these concentrations are in or near populated areas, there is a real question as to the wisdom or morality of relying on such heavy firepower. In many cases, the populations are warned ahead of time. But how often is there no time? Or the population only goes into tunnels which may be purposely attacked with the delayed fuzing of bombs? The character of this war is that the population often doesn't know where the front is, and very fast actions are necessary to attain surprise on an enemy who, since he is not holding a line, is willing to vanish. These effects are increased by the fact that Viet Cong units seldom surrender. Civilian property and lives in Viet Cong armed hamlets are, therefore, often destroyed as their forces slip away into the forest.

I do not feel that any hamlet should be considered "Viet Cong," but only some parts of the country as Viet Cong controlled. At present, in exposed and Viet Cong controlled or hollowed-out villages, there are few reasons for the villager not to cooperate. Even if one <u>is</u> a civilian who does not fight, he will be treated by the bombers, artillery, and at least

some army units as though he (or she) is Viet Cong by fact of residence. The concept of "enemy villages" in which all people are treated as combatants is a natural outgrowth of the guerrilla situation and of experience--but should be resisted in a moral-political policy in which an attempt is made to preserve some of the distinctions of military tradition.*

E. The Use of Chemical Agents in Vietnam

Whereas the world is on record as proscribing chemical weapons; the United States has never officially accepted this position.** The specifics of the modern interpretation of this issue are as follows:

> "The foregoing rule (on poison) does not prohibit measures being taken to dry up springs, to divert rivers and aqueducts from their courses, or to destroy through chemical or biological agents harmless to man, crops intended solely for consumption by the armed forces (if that fact can be determined)."
>
> (paragraph 37)

> (However) "The United States is not a party to any treaty, now in force, that prohibits or restricts the use in warfare of toxic or nontoxic gases, or of smoke or incendiary materials, etc."
>
> (paragraph 38)***

Apparently the United States distinguishes sharply between chemical and bacteriological warfare, and between the open use of physical or biochemical means to destroy food and water sources and secret or insidious denial without announcement. A legal authority points out, however, that the United States Navy has condemned the use of poison gas as though it were contrary to international law, and American political statements of the 1950's did not make clear the distinction of chemical and bacteriological war. ****

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*On the extent to which a Viet Cong "combat village" is populated only by dedicated Viet Cong see, D. Warner, The Last Confucian, pp. 142-153; Kano Knoebl, Victor Charlie Praeger, 1967 (1966) pp. 243-245. The sources cited in accompanying papers suggest that the average peasant in a VC village is assumed by Vietnamese to be cooperating with the Viet Cong only by force of circumstances.

**K. H. Rothschild, Tomorrow's Weapons (N.Y., 1964), pp. 187-195. Cf. also C.T. Van Meter, K.A. Krieger, and P.R. Cleveland, The Development and Use of Biological and Chemical Weapons (U), Project Summit, The Institute for Cooperative Research, Philadelphia, 1964, 1-1, pp. 16-27. (SECRET-NO FORN). See also R.D. Gastil, Attitude Changes and CBW, HI-504-RR/A4 June 7, 1965.

***U.S. Field Manual, The Law of Land Warfare (1956), FM-27-10. The Rules of Land Warfare (1940) was considerably more restrictive, and included an explicit prohibition on the spreading of disease (Paragraph 28-1940).

****Morris Greenspan, The Modern Law of Land Warfare (Berkeley: University of California Press, 1959), p. 357 (n. 176) and pp. 357-358.

The use of chemical defoliants on trees seems to have not had much positive effect, but some world opposition. There is certainly little reason to oppose use on other than political-psychological grounds, if there is some care in avoiding use in areas where valuable trees or plants are grown. Use against rice is psychologically undesirable, except where the rice is obviously grown for the near exclusive use of the Viet Cong military force. Use in other areas has both a negative psychological impact and is forbidden in traditional warfare. In addition, it smacks of chemical and biological warfare of the worst type.

F. Toward a More Austere Doctrine of Limitation

To a considerable degree, Americans have noted the foregoing problems and worked on them. But they are very difficult, and I wonder what the priority has been.

Let me suggest here, then, that a more radical approach be taken, one which would affect the entire strategy of the war. This policy may in the short run result in higher material and personnel costs to the United States. But in the longer run, only this policy may make possible our continued role in international affairs. This approach would include:

1. Advance Notice of Limits on Area of Conflict
2. Strict Definition of Acceptable Targets
3. Emphasis on the Isolation Rather than the Destruction of Enemy Forces
4. Acceptance of Moral Responsibility for Acts of Allies
5. More Careful Weapon Selection and Use for the Reduction of Injuries and Deaths to all Parties*

1. Advance Notice of Limits on Area of Conflict

In an insurgency war managed from outside there is always the danger of hot pursuit being turned into a general attack on the insurgency's sponsor. The threat of a spread of the war to the homeland is a significant deterrent to the potential sponsor. However, it is also a deterrent to our own involvement, for the American public also fears--if it may momentarily applaud--the spread of a conflict into something bigger.

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*John C. Donnell "The War, the Gap and the Cadre" in Asia, No. 4, Asia Society, 1966, pp. 69-70, has suggested that we also abstain from the political assassination of VC leaders. The assumption apparently is that we should preserve some traditional limits, even if the rationale of these is not clear. In my own mind I am not clear that assassination is not acceptable, particularly as a reprisal.

The United States would do better, I feel, to proclaim its determination to block any and all covert or overt communist aggressions at, or in the immediate adjacency of, the point of attack or infiltration. Thus, in South Vietnam we might well have confined our effort until 1963 to South Vietnam and Laos. From 1963 to 1966 we might have moved on up the Ho Chi Minh trail to interdict movement through such passes as the Mu Gia. After the North Vietnamese attacked directly across the DMZ in 1966 we might have declared a strip 25 miles into North Vietnam as part of the zone of interdiction. Each time our escalation should have been explained in terms of instrumental military value within narrowly defined limits, with no direct or indirect threat of further escalation.

A strong, implacable United States should be able to defeat almost any challenge in the world in the self-assured manner discussed here. It should be made clear that we are not going to allow wars to get out of hand, but on the other hand we will bring to bear whatever force is necessary at the point of conflict.

The results of this policy would be to support morality and limits in at least three senses. First, by confining the area of activity, we are likely to limit civilian casualties. For even if we are careful in our more general attacks on North Vietnam, interdiction and strategic bombing in the center of that country are bound to produce more casualties than an equal effort at the periphery. Secondly, by staying at the periphery we would encourage the sponsors and allies of North Vietnam to stay out of more open involvement, and therefore would not open up the possibility of an escalation to a broader conflict. Finally, by a much more strictly controlled effort we would establish more firmly in the world the habit of controlled, measured force than we have with present methods.

There would be costs to this approach, but I doubt if they are as great as often imagined. A country does not engage in a conflict with the United States lightly, even if we guarantee its heartland from our attack. Irrespective of our bombing in the North in Vietnam, there is considerable cost to Hanoi in keeping the war going. The highest cost will be defeat. Yet no doubt there is a lowered threat to the communists if we guarantee the confinement of this and future wars. I think that this cost to us may be more than matched by the heightened deterrence offered by what I feel will then be a more consistent and dependable U.S. response in future years. One might add that what I am proposing is not "fair" to our allies nor to our troops. But as in many other features of the struggle to maintain moral limits on conflicts, fairness, equal treatment, an eye for an eye can no longer be tolerated. In our soft, humanist society, these doctrines will lead to erratic fluctuation of opinion between calculated but unpredictable spirals of punishment on the one hand, and pacifist acquiescence on the other.

2. Strict Definition of Acceptable Targets

It is general American policy never to fire at civilian targets. Many times this means that densely packed areas cannot be fired into even if the VC are firing from them. I would propose here that the more "frustrating" aspects of this policy be taken as the norm.

I think that the precise nature of this stricter policy would require a great deal of examination. But let me suggest a few items that should be studied. I believe that it might be found that harassing fire or "reconnaissance by fire" should be declared generally unacceptable for our forces. I am sure that these tactics are of some value, and it would be a loss to give them up. Yet I also imagine that their continued use supports an attitude of mind that includes a lack of precision, a lack of precise interest in what is being fired at, which degrades the over-all sense of limitation in our approach.

On balance it might be preferable not to ever destroy houses, religious or other community structures except in a direct firefight against communists in particular structures. Receiving fire from a hamlet should not generally be regarded as a reason to attack it unless the hamlet is standing in the way of a direct attack by our forces. Such restraint should particularly be shown in response to an occasional rifle fired from a roof top at a plane.*

3. Emphasis on the Isolation Rather than the Destruction of Enemy Forces

The advantage of the guerrilla is that he can maintain his forces outside of the reach of conventional forces, choose from among a large number of fixed targets, and strike repeatedly with local superiority. The conventional forces can, of course, attempt to strike at guerrilla bases, yet the guerrilla loses less face, if not less matériel, by abandoning these bases than does the conventional force. However, to make practical use of these structural advantages, guerrilla forces must have a considerable intelligence net among the people. They must also have a means of obtaining food from the people. If we are speaking of large guerrilla units, they must use the people to transport food and other supplies as well. They also need the people for guides and for aid in detailed planning.

As the guerrilla war grew in South Vietnam, the "guerrillas in the woods" became regimental and division sized units, often of NVA. These units required complex logistics just to survive in the jungle areas, and they often needed days just to move to target areas. In addition, the people from which food and so forth was to be obtained have been steadily impoverished by the war in communist areas, by drafts and requisitions. Today they may be hardly able to feed themselves. Interdiction of all communist supply routes has been tightened through air power, river patrols, long-range patrols and pacification.

The American and Vietnamese forces are now faced with a choice in South Vietnam between going after the communist main force units in the jungle, or allowing them temporary control of their headquarters, and waiting for their attacks before responding. If allied forces go after these forces, the communists will be fighting in the best possible environment for them, and the worst, because least known, for us. Nevertheless, we have accepted this approach and are succeeding--with fairly high casualties for both sides.

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*This is stricter than the finer distinction suggested by John Donnell, Ibid., p. 65.

Thus, we are going into the jungles and winning the body-counting war. But as suggested in an accompanying document, I wonder if this is not resulting in an unnecessary toll for both sides in terms of our objectives. Intelligence seems to show that the communist main force units in the jungle are suffering greatly from disease and malnutrition. While they can fight and die for their jungle bunkers, I wonder how effectively they could be as an offensive force against the urban society, particularly with the firepower we can quickly bring to the defense of any point? As explained in the accompanying document, it is a matter of the alternative use of forces--as blocking and reaction forces in defense of pacification or as search and destroy forces in search of body counts. If the latter is not the better use, it is also an immoral policy, for it sacrifices unnecessarily lives on both sides.*

Perhaps also immoral, because ineffective in terms of lives lost, have been the search and destroy operations conducted on the basis of inadequate intelligence in areas in which neither we nor the government have the forces necessary to hold the territories thus invaded. In this case, surely success is morality, for one can accept many casualties in a one-time sweep, but the civilian and military casualties resulting from repeated sweeps in the same area seem foolish and thus wrong. Such sweeps are somewhat analogous to harassing fire, supporting an attitude of carelessness in the use of violence. Fortunately, operations of this kind, if not the fire, may now be less common.

4. Acceptance of Moral Responsibility for Acts of Allies

I assume that our forces live up to fairly high standards, even in this war, and that we treat the Viet Cong essentially as we would prisoners of war. For one thing, we are tremendously interested in the safety of our own captured men and hope for reciprocity through the good behavior of our men.

However, by slowly edging into the Vietnamese conflict, we have continued to take an irresponsible attitude toward many other moral issues, viewing these officially as "the prerogative of the South Vietnamese." I would say that we are much too closely involved in South Vietham, and probably have been ever since our first Special Forces went in, to responsibly take this attitude. Again this war is a model of later wars, and we are allowing traditions of the relations of U.S. and local power to be developed here which will bedevil our policy for years.

Let us make some distinctions. If we have a subsector or sector adviser with a couple of assistants in a district, and if these people play the role of adviser in other ways, then they can legitimately refrain from direct interference in the South Vietnamese treatment of prisoners or civilians. They should, however, continually attempt to influence this behavior through instrumental or moral arguments, leverage on favors, etc.

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*Raymond D. Gastil, Counterinsurgency and South Vietnam: Some Alternatives, HI-878/II-RR, August 8, 1967, Part 2.

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However, wherever Americans are in de jure or de facto command in other aspects of the exercise of force, then the Vietnamese should not be allowed to follow their own standards. This would be the case, for example, in many CAC company arrangements of the Marines, or at least until recently in many Special Forces camps.

An alternative approach, favored by Mr. Herman Kahn, would be to have the Americans overlook the faults of Vietnamese prisoner treatment when we do not directly observe these, but to object strenuously and possibly intervene whenever American officers are present. Which method works out best would be a matter of experience, with clearly some drawbacks to either. I think the matter of preserving the dignity of local Vietnamese officials would be more easily handled in the former approach.

At other levels we might consider going considerably farther. For example, it might be explained to the chiefs of the Saigon government, or other government requesting our aid, that the support of the American public is basic to the interests of both nations. To a considerable extent this support is dependent upon the upholding of civilized standards by both our soldiers and the soldiers of our allies. Therefore, we will find it necessary to publicly condemn breaches of these rules by allies, even in the midst of war, and may even be forced to withdraw certain categories of help. This policy might lead in the short run to "cutting off our nose to spite our face." For we would appear to be taking Quixotic attitudes with peoples who do not care about our standards of morality and do care very much about our arrogance. But because we care, I think even if we lost a nation to communism in the short run, such a careful policy might be a preferable policy over a longer period.

Another approach to improving the behavior of our allies might be characterized as "pseudo-technical" or "pseudo-professional." We would develop for both American and Vietnamese units a large corps of American interrogation specialists, provided with fancy equipment, who would operate in the front lines, interrogating prisoners as close to the moment of capture as possible. We might make this approach seem terribly new and modern and important--with the result of direct American control over treatment of captives at the earliest possible stage.

5. More Careful Weapon Selection and Use

The agreements of past generations on the laws of war often included a detailed consideration of acceptable or unacceptable weapons. Decisions as to acceptability were often on purely traditionalistic grounds, or the "unfair weapons" of defeated opponents were often officially condemned by the victors after a war. For example, gas was outlawed after World War I because it was identified with the Germans. If we had used the atomic bomb and lost World War II, surely atomic weapons would be "outlawed" today. The point is really that there is a tradition here which should be reviewed and modernized, with an eye to improving rather than enshrining tradition.

The basic issue should become: are we using the right weapons in the right way to obtain our goals at the least cost in injury and death to all parties?

In Vietnam today our M-16 rifle is using a very light, high velocity bullet. There seems to be a body of opinion that the projectile has a tendency to tumble as it passes through, with effects much like those of the dum-dum bullet outlawed at the turn of the century. There is reason to believe this opinion is false. But if this bullet does, indeed, cause more than enough deaths and aggravated injuries relative to the need to put an enemy out of action, then we should explicitly reconsider its use.

In Vietnam we are pouring in tremendous amounts of firepower. We have it, and we achieve our effects. However the crude use of overwhelming firepower seems more appropriate to total war. It leads to inattention to fine distinctions in the general use of violence in guerrilla war. I wonder if in some situations still more attention might be given to "sharpshooting," whether with rifles, bombers, or artillery? Again, we are partly put into the present condition by our tremendous logistics capability. With less, we might necessarily "aim" more carefully.

As suggested above, the bullet and bomb are not necessarily the moral weapons today. If real thought were put into the issue, I imagine that even as simple a gas as tear gas might be used in many more situations--to obtain captives not casualties--than it is today. It might even be possible to "take" a VC unit caught in a field with a nonlethal gas from a helicopter. The use of identifying substances sprayed on, or dispersed over, a battlefield might allow for later nonlethal pickup. Such an approach might both improve intelligence and reduce the number of casualties necessary to our victory.

The use of chemicals in Vietnam against persons seems to be operating at present within fairly sharply defined boundaries. Since one rule of war should be to attain goals with the least loss of civilian or combatant life, the use of nonlethal chemicals is of positive value from the moral point of view. Perhaps, it would be possible to change Vietnamese and foreign opinion to the point where the use of these chemicals would be of positive value politically as well. Little seems to have been done along this line. In order to accomplish this goal and for other reasons we should be careful not to use chemicals which would erode the lethal-nonlethal distinction which seems to be building up as a result of Vietnam. If we are interested in developing a better image for nonlethal chemicals, then their use to smoke out guerrillas in order better to kill them, especially with bombs, should be curtailed. Smoke, hot air or other means should be preferred, if killing is to follow the expelling of communists from their protective cover.

A preferred doctrine of limitations for the use of incapacitating agents in Vietnam or in other insurgencies might include the following points:

1) Chemicals should be employed only of the kinds and concentration used in riot control in the most advanced, non-totalitarian states

2) Chemicals should be used only for immediate tactical exploitation with a view to improving the captured/killed ratio

3) Chemicals should be used only against specific targets and positions and not as undifferentiated area weapons

Within the confines of clearly understood limits such as these there might be a much more rapid and humane development of counterinsurgency warfare than is possible today. There is no new departure here, such a departure would have little chance of acceptance; but there is an attempt to exploit the better part of our current national doctrine on the use of gas.

Use of defoliants on crops in Viet Cong controlled areas makes military sense and is not always a breech of normal usage. But it does break across boundaries of separation of civilian and soldier which I believe it would be better for present and future situations to preserve.

It might be possible to combine new doctrines of weapon use and new weapon preferences with unit tactics designed to increase the opportunity and occasion for surrender. One notes that U.S. forces when they have the advantage appear to be extremely aggressive. Perhaps it might be possible to more often hold or surround a small enemy position, drench it a few times with tear gas--not firing at the first heads that pop up--and then repeatedly urge surrender on the whole enemy position, or on elements of it.

More specifically, the problem of how to take a fortified Viet Cong hamlet without large numbers of civilian casualties is certainly hard to answer. It may be that a simplistic heavy firepower solution to capture is often used. It might be possible to infiltrate more hamlets to find out what was really there before blasting them with heavy weapons. Patrols might capture hamlet members for interrogation more often. These methods might also make it possible to pinpoint more exactly the places to be attacked in the hamlet complex. Another method which seems to be tried, though perhaps not consistently enough, would be to drench a hamlet in tear and vomiting gases after troops have moved to close-in positions. Close approach for rapid take-over might be prepared by covering ground advance with smoke, while using planes to cover escape routes. The attacking force should then be able to get into a village in a short enough time to achieve effective control down to the level of a small arms fire before the effect of the gas wears off. It might also be possible to request more often the surrender of hamlets--especially if a prisoner protection program is inaugurated.

G. Conclusion

It seems to me that we need to form a closer alliance of the idealistic, pacifist tendencies in our intellectual traditions and our national requirements to defend ourselves and our values. This is particularly true in regard to small, muddy situations such as Vietnam, which Americans may become increasingly reluctant to support, even if we "win" the present contest. I believe that one way to form this alliance is to make a firmer commitment to a highly limited, highly moral employment of force. Even though the short-run costs are bound to be fairly high, I believe we are strong enough to carry out such a policy while defending our interests successfully.

Vietnam could have been the beginning of such an evolving doctrine of severe limitation. In other words it should have been a model of how such a war, or any war, will be fought by the United States in the future. We have, of course, shown great accuracy in our bombing confined to military targets, and have been perhaps more careful than any other army in history in South Vietnam. But the combined effect of the actions of the United States and its allies has not been nearly limited enough to appear as a new model of war. In this paper, I have suggested some ways in which we might consider working toward a model war concept in Vietnam, and in later wars of this type.

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This paper attempts to inquire into the possibility of improving the morality of our position in Vietnam--maintaining stringent limits which are sometimes costly to us, but also accomplishing our objectives with less cost to everyone involved.

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