CHAPTER – VII

VIETNAM WAR – A LEGAL APPRAISAL
(1945-1976)
VIETNAM WAR – A LEGAL APPRAISAL (1945-1976)

Introduction

The legal control of intervention has been a major problem. One may question the doctrine of the belief that it is possible to control the unlawful behaviour of governments through rules of international law, but the application of those rules depend to a considerable extent on the foreign policy. Thus the policy analysis itself clarifies and illuminates the complexities of intervention doctrine.

Community interests are extremely important for the application of this doctrine. There is also the danger of one-sided rule application. The doctrine cannot be utilized for optimal world order due to multiple factor analysis. Besides it allows all participants to cover their naked violations with a legal fig leaf. Moreover, this approach intensifies the conflict as each party blames the other as law breaker or aggressor. The alternatives are either isolation of the conflict by neutrality or intervention and counter-intervention with all the dangers inherent in gradual escalation of the war.

The norms of non-intervention are satisfactory. Some approaches provide a justification for interventionary conduct in exceptional cases. It is held that intervention is usually undesirable and generally ought to be impermissible. Yet it is also recognised that intervention may occasionally serve the community’s interests. The difficulty, of course, is to formulate rules that best accommodates divergent approaches. Thus competing policies must be evaluated and reconciled in any decision of intervention as has been done in the case of Vietnam to promote a sound legal order.

U.S. Intervention in Vietnam – A Legal Assessment

In the entire period of US intervention, gradual disengagement and further reengagement, various positions had been taken by the international legal community on legal character and consequences of intervention on world order.
Since the Geneva accords of 20 July 1954 through the SEATO treaty of 19 February 1955, the Geneva Agreement on Neutrality of Laos dated 9 July 1962, Gulf of Tonkin Resolution of 10 August 1964, Resolution Relating to Peace and Security of 1966, Legality of U.S. participation in the defence of Vietnam dated 4 March 1966, Non-Intervention Resolution and Declaration of 21 December 1965 and a series of peace proposals starting from Hanoi’s four points dated 8 April 1965. Washington’s fourteen points dated 7 January 1966 till the final Paris Peace Agreement of 27 January 1973, there had been a wide and often contradictory divergence of opinion on matters of both fact (policy) and law pertaining to U.S. intervention and disengagement in Vietnam. There is too much that remains and may always remain controversial about the legal appraisal of this intervention and disengagement. No legal interpretation has been considered as authoritative and acceptable to everyone. Therefore, divergent legal views have been elucidated in the 31 years of Vietnam history which witnessed many facets of international legal perspectives till the final reunification of two Vietnams in June 1976.

To recollect them in a nutshell, the roots of diametrically opposed conclusions on the principal legal issues lay in the role of North Vietnam in formation and control of the National Liberation Front, its role in infiltrating men and supplies to Vietcong in South Vietnam, on the issue whether South Vietnam was a "state" and whether Vietnam war was a "civil war", whether North and South Vietnams were two de facto separate states or two zones, whether


involvement of North Vietnam in war was "an armed attack", whether the Geneva accords were applicable to the Government of Saigon, what were the rights and responsibilities of North Vietnam, South Vietnam, National Liberation Front and the U.S. in turning away from the terms of Geneva Accords, whether American action against North Vietnam was a legitimate exercise of the right to collective self-defence or was it a violation of international law. Many more legal issues cropped up during disengagement also.

In fact, there is little agreement on the central characteristics of the Vietnam conflict. So it is difficult to conduct a general enquiry into the legal aspects of contemporary civil warfare without dealing with the Vietnam war itself. This aspect has already been dealt with in the previous chapters. The legal status of U.S. intervention in the Vietnam War and other legal issues have also been examined in the present chapter. The various policy arguments pertaining to the general status in international law of armed conflict that arises on the borderline between civil war and international war have also been covered here.

The attempts made in the previous chapters connecting legal perspectives on violence of this sort with the interconnected perspectives of international politics and international morality, although controversial in matters of both analysis and conclusion, are not to be regarded as an exhibition of legal polemics. But certain pertinent issues have been addressed such as whether U.S. was legally entitled to treat the support provided by North Vietnam to National Liberation Front (NLF) as an "armed attack" on South Vietnam that justified recourse to "collective self-defence" against the territory of North Vietnam. Besides, simultaneous contradictory inferences of "aggression", drawn by parties

---

6 For insights into relationship of international law with politics and morality of intervention, see Richard A. Falk, Law, Morality and War in the Contemporary World, (New York, 1963).
to the conflict, have also represented the most troublesome extra-legal setting within which Vietnam war arose.9

In the U.S. Congress, in professional associations and in citizen groups, legal issues had been debated time and again. Various public debates on controversial policy questions had been found unconvincing as well. But the use of legal arguments in public debate is itself worthy of a careful study.

Much has been written about whether one country is justified in helping the people of another in a struggle against their government for free institutions. The answer to this issue has been equally debated depending on the yoke which the people are attempting to throw off, whether purely a native government or that of foreigners. Similarly on the policy of intervention there has been many opinions especially in the context of U.S. involvement in Vietnam as the U.S. intervention there grew gradually over an extended period of time providing scope for a comprehensive analysis and the issues in Vietnam were extraordinarily complex. But the U.S. was always concerned with the principle of international conduct and it underwent profound self-examination on the question of what constituted legitimate in foreign policy and international conflicts.

However, the U.S. was particularly concerned with one dilemma: what happens when "natural" revolutionary impulses become intermingled with external aggressive forces. In fact the real threat to the free world and to the aspirations of the nations to peacefully determine their own future10 derived only from such an intermingling coupled with "indirect aggression" from abroad in the form of fomenting, direction, supply and contribution of individuals, organized units and material to such revolutionary wars. In such a situation, if the U.S. desired to combat the "indirect aggression", it would also have to combat genuine revolutionary forces aimed at the welfare of the society.

---------

273
The U.S. was initially advised to avoid a futile and reactionary negativism. But the peculiar interpretation of wars of national liberation, which according to Americans were a device for disintegrating what communists called capitalism and imperialism, triggered the pace of U.S. actions in Vietnam. For the U.S., wars of national liberation meant communist expansion - they were indeed wars but were liberating nobody.\textsuperscript{11} Here again Soviet and Chinese motives on Vietnam stood diametrically opposite to each other and created an axis making it more difficult to understand as to who really was the frontrunner of Vietnamese war of national liberation.

Chinese and Soviet communists realized decolonization as an opportunity for communist expansion. They redefined colonialism as "neo-colonialism" and prepared themselves to fight wars of liberation against American imperialism which was confined to foreign influence and not foreign occupation as was the case with French Army in Vietnam. Thus communists succeeded in fusing communism with nationalism, especially for the cause of national unity. The first victorious struggle against the French was conducted primarily under the communist leadership by peasants, who regarded their leaders more as patriots than communists.\textsuperscript{12} But due to a number of disagreements on the question of proper communist conduct, Sino-Soviet dispute became a part of Vietnam struggle for more than 30 years.

Vietnam's war of national liberation witnessed situations like the "indirect aggressors"\textsuperscript{13} destroying the prevailing society and then building up a good society. A sense of developing national bond between local people and central government by developing leadership at all levels of society was also witnessed. Thus a dedicated revolutionary group, i.e. Vietcong, came up in Vietnam that took cognizance of such problems and attempted to overthrow and supplant


existing authority. They instilled in average Vietnamese peasant a sense of belonging to identify himself with the present national system in Vietnam and successfully negate such wars of "indirect aggression".

On the other hand, the U.S. prepared itself to meet the insurgency in South Vietnam and the infiltration from the North in cooperation with the government of South Vietnam. This process of using American fire power to counter the Vietcong meant a large amount of killing, maiming and sometimes napalming of villagers, who were innocent. Not only this, but large-scale use of torture such as water torture, electric-current torture, wire case torture were all used on captured Vietcong prisoners as well as on their wives, relatives, etc., to obtain information. The exploitation of peasants by American government employees were excessive in sharp contrast to Vietcong's tradition of honesty. The Soviet Union and China condemned it, saying that in many of the emerging countries of Asia, Africa and Latin America the native peoples were being "subjected to aggression and involvement" by the US-led imperialist powers. In fact, the imperialists always controlled the major cities and were unable to satisfy the countryside which provided opportunities to the revolutionaries. Thus the U.S. was accused of making South Vietnam a testing ground for the suppression of people's war and ultimately U.S. imperialism was defeated by the people's war.


17 Mokhtar Mohammed Tohar, "In They Go – To The Reality of This War", Life, 26 November 1965, p. 71; and McDougal and Feliciano, n. 3, pp. 121-260.

Even American scholars like Hans Morgenthau concluded that US intervention in Vietnam was based on a false premise.\(^\text{19}\) This was because Americans could not stop revolution and by trying to do so they actually promoted consolidation of communism and added to Soviet or Chinese power.\(^\text{20}\) So they left the situation on its own.

In addition, American bombing of North Vietnam was not meant to break the will of Vietnamese but to make difficult their assistance to the Vietcong and to make them realize their vulnerability.\(^\text{21}\) However bad the communist domination might be, it was wrong on the part of the U.S. to assume that a society that came under communist rule was doomed than if it was torn by war. Lastly the U.S. ability to conduct rationally the kind of war being fought in Vietnam was also questioned by public. The U.S. was accused of violating both international law and the U.S. Constitution.\(^\text{22}\)

The U.S. could not fight a war with one set of rules for the enemy and another for themselves.\(^\text{23}\) Even on the constitutionality of violating international law by the U.S., it was argued that the U.S. should have developed a constitutional tradition of restraint to commit the nation to war of any scope and duration. In fact the most effective legal restraints then were self-restraints and hence U.S. participation in the Vietnam war was condemned as allegedly illegal.\(^\text{24}\) Thus gradually a debate arose in all quarters to re-examine the basic commitment in relation to the new circumstances to assess whether or not the intervention in Vietnam was justifiable. Vietnam’s obvious distinctiveness in dominant use of guerrilla tactics as the mode of combat was equally morally questionable. Some


\(^{24}\) See the important dissenting opinion of Justice Douglas in the decision by the Supreme Court to deny a petition for a writ of certiorari in \textit{Mitchell v. United States}, \textit{United States Ludwig Wessel}, vol. 35, 1967, p. 3330.
even contended that it was an "immoral posture" to suggest that national interest was a morally sufficient ground for American policy.\textsuperscript{25} The lack of clarity of the Vietnamese threat to U.S. security was also emphasized so as to magnify U.S. concern for moral obligations other than self-interest. Some claimed that U.S. international actions must reflect a concern for the international system.

The deployment of men and arms across international boundaries and waging of war by a nation from outside a sovereign nation was declared as "aggression."\textsuperscript{26} Therefore, international action was inevitable. In the Conference on Laos at Geneva the international community clamoured to establish an International Control Commission having the will and the capacity to control the borders it was designed to control.

Thus the legal dimensions to Vietnam war and peace are varied. The cornerstone of legalities in international law is reasonability of the course of action taken. "If it is reasonable, then by definition, it is legal. Under this view, law is not regarded as a restraint on behaviour, a restraint which it might sometimes be reasonable to break. At least in the international arena, it would never be reasonable to break the law, for if the conduct were reasonable, it would be lawful."\textsuperscript{27} International legality, like honesty, is the best policy and it produces world order. In this way respect for international rules does serve the interest of each government.

In this context U.S. intervention has come under severe criticism from many quarters including the UN Charter and the SEATO Council.\textsuperscript{28} Its policy of might is right and its engagement in forceful intervention itself were also publicly

\textsuperscript{25} Hans J. Morgenthau, \textit{In Defense of the National Interest: A Critical Examination of American Foreign Policy} (1951); and Dean Acheson, "Ethics in International Relations today", in M. Raskin & B. Fall. (eds.), \textit{The Vietnam Reader} (1966), p. 13.

\textsuperscript{26} For distinction between rebellion, insurgency and belligerency, see Richard A. Falk, \textit{International Aspects of Civil Strife} (Princeton, New Jersey, 1964) p. 194.


debated and denounced. Therefore, the conduct of the U.S. and other free nations is subject to both moral and political restraints.

However, international law distinguishes between a revolutionary group that has outside support and foreign subversion that has some domestic support. At the invitation of the local government, therefore, almost all means that the U.S. used within South Vietnam to counter intervention of North Vietnam were permitted under international law. Not only military but intelligence personnel might be made available to friendly governments to help them deter or track down and capture saboteurs and assassins, who might be operating within their borders. But then whether North Vietnam and South Vietnam were two independent nations became a big controversy. Some argued that they were two independent nations and some claimed that they were a part of the same united Vietnam. The U.S. was charged with colonialism and domination. Assuming that South and North Vietnams were separate nations, the U.S. tried to expose and publicize the distinction between their activities solicited by the South Vietnamese government and the infiltration of communist forces from the North. But China accused the U.S. of “intervention and aggression” in South Vietnam. Thus many opinions including the UN Security Council advised the U.S. not to intervene by force in violation of existing international law.

Another issue with respect to application of international law was whether a particular situation was a revolution, a case of foreign aggression or a case of internal disorder. In South Vietnam, both the sides received external support. Thus it was not clear which was the legitimate government in South Vietnam. Whether the Vietcong in South Vietnam be considered as South Vietnamese or invaders of North Vietnam was a legal issue. The Soviet Union recognized the Vietcong government as the legitimate government of South Vietnam. Thus the legality of the intervention depended on which side of the fence one was...
standing. Mere countering force with force yielded nothing and hence the question of recognition and characterization of disorder in South Vietnam was referred to the UN.³²

But U.S. foreign policy could not be framed on the basis of UN recommendations.³³ On the one hand, the government of South Vietnam requested thousands of American soldiers to come into its country to help defend the regime. On the other, it flatly denied intervention in “internal affairs” of the state.³⁴ Reforming the autocratic regime of President Diem was not acceptable to South Vietnam. But the rightness or wrongness of the internal pressure of U.S. on South Vietnam was related neither to the ends nor to the means but to the intensity of the relationship between these two nations. Therefore, gradual U.S. intervention in the South Vietnamese government, society and the nation as a whole was neither objected to nor resisted by South Vietnam in due course of time.

Thus U.S. policy in Vietnam had always an international legal dimension and in each step of intervention and disengagement generated a legal appraisal of its policy. But it is not easy to draw legal conclusions on vigorously disputed versions of the facts. So it is difficult to assess conflicting factual claims and accordingly one cannot settle the ultimate question of legality.³⁵


³⁴ New York Times, 1 April 1962, p. 5.

The U.S. intervention in Vietnam had its impact on the potential effectiveness of international law. The effect of American military measures as precedents in other conflicts involving different political and foreign policy considerations had far-reaching implications in the world order.

The resort to military measures on the basis of collective self-defence by the U.S. in South Vietnam was against the territory of a country whose alleged "armed attack" was not an open assault across the border. Rather than limiting the assault to the attacked territory, the U.S. continued its systematic and sustained bombing of entire North Vietnam unlike in Greece in 1946, French strike in Tunisia in 1958, British raid against a fort in Yemen in 1964 and the Egyptian bombing of towns in Saudi Arabia. In fact such actions against the territory of a third state negated the distinction between internal and international war. Still the U.S. did not refer the Vietnam dispute to the UN Security Council until January 1966, even though it had been assisting South Vietnam militarily since 1954, operating the Military Assistance Command since February 1965 and hostilities between North and South Vietnams and infiltration had been going on since 1959.

However, the U.S. was perpetually engaged in diplomatic talks over the problems of Vietnam and Laos with the USSR and communist China, indirect contacts with Hanoi, private discussions in the UN and an attempt was made to have Security Council deliberations on Vietnam following the 1964 incidents in the Gulf of Tonkin.

The reasons for not taking up the issue in the UN were many. The likelihood of a Soviet veto, the opposition expressed by communist China to any so-called meddling by the UN in Vietnam and the feeling among some American policy makers that the most appropriate machinery was that of the Geneva Conference were the main reasons why the Vietnam dispute was not brought up officially to the UN.

Meanwhile, the U.S. rejected General de Gaulle’s proposal in 1963 for a neutral Vietnam,\(^{38}\) French call in 1964 for reconvening the Geneva Conference on Laos and suggestion from Secretary General U.Thant in 1964 for a secret meeting in Burma between the representatives of North Vietnam and the U.S..\(^{39}\)

In addition to charges of the Egyptian bombing of Saudi Arabia, news reports and commentaries had frequently mentioned guerrilla forces in various countries which were allegedly assisted or controlled by foreign states. They were Venezuela, Bolivia, Columbia, Guatemala, Ethiopia, Kenya, Aden, Mexico, Burma and South Korea. The foreign state charged in the first five instances was Cuba, together with the Sudan in the case of Ethiopia.\(^{40}\) Kenya had blamed Somalia and the latter alleged aid from the U.A.R and the U.S.S.R. In this connection Kenya circulated a warning to Somalia in the UN and in the Organization of African Unity.\(^{41}\) The British in Aden and elsewhere in the Federation of Saudi Arabia blamed revolutionaries from Yemen having Egyptian support.\(^{42}\) The People’s Republic of China had been charged with aid to subversive activities in Mexico,\(^{43}\) and was said to be feared by the Burmese government as a possible source of assistance to Burmese insurgents.\(^{44}\) North Korea was believed to be attempting to create guerrilla warfare in South Korea.\(^{45}\) Therefore, it became desirable to resolve the problem peacefully through all available international arrangements including the UN.

Similarly in Vietnam clamour for peace could be heard even though conflict continued because of wide differences between the objectives of the participants and the willingness of North Vietnam to aggressively pursue its aims by force. Until that willingness was changed or unless the U.S. abandoned the Republic of Vietnam, the conflict was likely to continue and it was considered a lawful policy

---

\(^{38}\) Background information, n. 32, p. 14.


\(^{42}\) Ibid., 14 May 1967, p. 2E.


\(^{44}\) Ibid., 9 July 1967, p. 3E.

alternative for the U.S.. Meanwhile, various proposals of peace came from different quarters to end U.S. intervention.

**War Crimes, Damages, Compensations and Legal Controversies**

During U.S. intervention and disengagement through peace negotiations and during Vietnam’s subsequent tilt towards the U.S. and capitalism which generally was termed as U.S. re-engagement in Vietnam, many controversial instances had occurred having international legal repercussions. Many controversial issues had also been dealt with by various authorities and real drama participants like Robert McNamara, the then Defence Secretary, who apologized for the wartime failures of the Kennedy and Johnson administrations and further expressed regrets that lack of deeper political and military debates led to America’s failure in Vietnam.46

Prominent among the controversial issues having international legal repercussions were the use of Agent Orange, My Lai massacre, secret assassination programme called Phoenix, one-year tours of duty by American GIs, operation “Niagara”, massacre at Hue and U.S. bombing of Khe Sanh in 1968. These American failures in terms of compliance with the rule of law were a combined result of the White House mismanagement and the Pentagon’s more general failure to transform the military system speedily enough and in the right directions.

**My Lai Massacre**

The first incident of international dimension during peace talks was My Lai massacre during Tet offensive in 1968.47 Before this incident, Operation Rolling...

---


Thunder of President Johnson for bombing of entire North Vietnam in 1965 had aroused massive denouncement all over the world. But My Lai massacre proved to be the proverbial last nail in the coffin of dwindling U.S. popularity in the international legal arena.

With the objective of capturing Vietcong guerrillas in South Vietnam, Lt. William L. Calley on 16 March 1968 entered the Southern part of My Lai-4, a sub-hamlet in Northern Quang Ngai province, for a search-and-destroy mission and opened fire immediately on anyone who tried to flee. All of the targets were old men, women and children. Those who tried to confront the Americans were killed with bayonets or bursts from M16s. Women and girls were raped, livestock were slaughtered and the hooches of My Lai were burned to the ground. Terrible atrocities were committed by the Americans that amounted to sickening display of their anger and frustration. Civilians had been killed in operations before, sometimes for purpose or by willful neglect but more often by accident. Even though the U.S. declared that 90 Vietcong had been dead at the cost of one U.S. serviceman wounded, it was beyond the comprehension of international community to presume that the dead old men, women and children were U.S. enemies. In fact somewhere between 172 and 347 civilians were murdered at My Lai which became the greatest American atrocity of the war. Legal experts questioned the justification for torturing and massacring an entire village of South Vietnam. Questions were raised in the UN on whether Calley was acting under specific orders at My Lai. Some raised the issue as to how could a man behave like that when he was told by a legitimate authority to restrain himself from taking action against a third individual.

My Lai was an aberration of the normal US rules of war. It violated the MACV (Military Assistance Command Vietnam) Rules of Engagement as well as


the Uniform Code of Military Justice, which governed military conduct during war time. It was a damning indictment of an army unit let loose without moral or military constraints, free to do what it liked with little fear of punishment.\(^{52}\)

Ronald Ridenhour, a soldier who was not involved in the incident, collected the confessions of the concerned soldiers and when he came back to the US, he prepared a summary of the My Lai incident and mailed it to thirty America's most influential Senators and Congressmen in a letter dated 29 March 1969.\(^{53}\) My Lai quickly became news. Lt. Calley was placed under arrest and charged with murder.\(^{54}\) Other members of his platoon were also charged and a handful of officers were put on trial for committing offences,\(^{55}\) which included attempted cover-up, violating the customs of war, dereliction of duty, failure to comply with regulations, perjury and felony.

This incident elucidated the moral vacuum in which most American soldiers were operating in Vietnam. Frustration, anger and revenge were the motivating factors for the mass murder. It also exposed the quandary in which an American infantry man was placed. He was equally confused like the politicians when it came to identifying the enemy. In fact many of the young soldiers started questioning the rationale behind the Vietnam war. Thus the My Lai incident showed that the morale of the soldiers was sinking ever lower.

The My Lai incident again generated legal debate on the difficulties and problems of fighting communism.\(^{56}\) Difficulties in differentiating a friend from a

\(^{51}\) Elliott, n. 46, p. 150.
foe, a supporter from a victim were part and parcel of guerrilla warfare. Thus
time and again the village population became the victims in a larger game. For
the Americans, these villagers might have been communist supporters or could
become so in the future and hence the destruction was justified.57

But My Lai was popularly regarded as a “war crime” in the sense that
unarmed Vietnamese civilians were murdered by U.S. troops during a combat
operation. Technically, of course, the killing of these South Vietnamese people
was not a war crime. The victims were citizens of an allied nation, not enemies
protected under the Geneva Conventions, but citizens protected by the law of
Vietnam and the perpetrators were U.S. soldiers, governed by the U.S. Uniform
Code of Military Justice. Within the scope of the Uniform Code of Military Justice,
the My Lai murders were not legally distinguishable from other homicides – the
My Lai cases required the same type of investigation, the same administrative
process, the same type of evidence and the same standards of proof as any other
homicide case tried under the code. When the My Lai case first came to light in
the U.S., initial investigation was conducted by agents of the Inspector General
and the Army Criminal Investigation Division. When investigators, counsel and
accused began arriving in Vietnam to obtain statements of witnesses and other
evidence, the MACV (Military Assistance Command, Vietnam) Staff Judge
Advocate was asked to provide support to those having legitimate interest in the
case. In addition to being the initial point of contact for visiting groups concerned
with My Lai, the MACV Staff Judge Advocate also maintained liaison with the
Vietnamese Colonel who was himself an attorney and the Joint General Staff,
whose authorization was required before any Americans could interview any
Vietnamese concerning the case.

Headquarters of the Military Assistance Command in Vietnam did not have
authority to convene courts-martial and its judge advocates were seldom involved
in the courts-martial proceedings. The MACV Staff Judge Advocate assisted the

57 For detailed reasons, see Martin Gershan, Destroy or Die: The True Story of Mylai, (New Rochelle, N.Y.,
1971). But General Hamilton H. Howze described My Lai as “apparent cases of indiscipline – gross
breakdowns of the American military system”, see Howze, “Military Discipline and National Security”,
Army, vol. 11, 1971, p. 12. Also see Richard A. Falk, Gabriel Kolko and R. Lifton, Crimes of War
Commander of the Military Assistance Command, in formulating legal policies applicable to the entire U.S. command, in establishing jurisdiction for the administration of military justice within the command and in monitoring the justice programme to promote equal application of law throughout the command. The MACV Staff Judge Advocate also coordinated with appropriate Vietnamese officials on criminal matters of interest to both the governments such as black market activities, currency manipulation and drug violations.

Similar incidents at Cam Ne in 1965 and Thuy Bo in 1967 had already occurred, but not in such scale as at My Lai. This incident caused a division in the U.S., some supported the soldiers and others opposed them. In March 1971, Lt. Calley was sentenced to life imprisonment, but left on parole by the end of 1974. All of his officers were acquitted. But the incident had its long-term effect even on the Presidential election of 1996 as General Colin Powell\(^\text{58}\) lost the candidacy because he could not face the charges of conspiracy and collusion in the attempted cover-up of the My Lai massacre.\(^\text{59}\)

The search and destroy policy of U.S. army was put to a heavy criticism by the international legal community as the killings were contrary to U.S. army regulations. The outrage against the massacre raised the issue of suppression of evidence and exposed rampant careerism on the part of senior officers in the army, for which they withheld information and violated army regulations. The tracking down and killing of Vietcong because the U.S. was rabidly anti-communist was thus abandoned due to international legal pressure.\(^\text{60}\)

With respect to military justice, an examination of the judicial proceedings of those charged in connection with the overall My Lai incident is of limited value in fixing criminal responsibility and determining specific criminal acts. Dismissal of most of the charges without trial and the considerable legal maneuvering at the


\(^{59}\) Elliott, n. 46, p. 149.

\(^{60}\) Ibid., p. 147.
few trials undermined the criminal nature of acts which should have been determined by the judiciary. But it is a fact that there had been a failure of command responsibility for those crimes and a conspiracy to cover-up war crimes. The complexities of events, the reluctance of witnesses to testify against their former comrades-in-arms or in some instances to incriminate themselves undoubtedly hampered prosecution efforts. So ultimately there was a need for legislation to close the jurisdictional gap to prosecute those servicemen who have been already discharged for war crimes.\footnote{61}

Some argue that My Lai was a reversal of the rules of war that were set by the Nuremberg and Tokyo War Crimes Tribunals. The Tribunals set a precedent that defence of superior orders would not be applicable for war crimes to escape criminal responsibility. Secretary of the Army, Howard H. Callaway, was quoted in the \textit{New York Times} for stating that Lt. Calley's sentence was reduced because Calley honestly believed that what he did was a part of orders given to him. This was in direct contradiction to the standards set by the Nuremberg and Tokyo Tribunals where several German and Japanese soldiers were executed for similar actions.\footnote{62}

\textbf{Phoenix Programme}

The Phoenix Programme stood out as a policy of mass murder.\footnote{63} Its main objective was the selective, intelligence-oriented method of removing key Vietcong operatives. The Vietcong’s long-term terror campaign, on the other hand, was responsible for over 60,000 civilian deaths, most of the victims being civil servants, school teachers, village elders and doctors. Thus murder had become a part of communist policy since the earliest years of struggle and this


policy was fully carried out in 1968 for the execution of around 3,000 people following the fall of Hue.

In retaliation, in an attempt to cripple or eliminate South Vietnamese communist guerrilla resistance by Vietcong, the Phoenix Programme was allegedly designed to conduct arrest and assassination operations against suspected Vietcong and Vietcong sympathizers. This programme was designed and operated by the U.S. Central Intelligence Agency (CIA), the U.S. Army and components of several South Vietnamese intelligence and law enforcement agencies.

This programme became increasingly important after the 1968 Tet offensive and Phoenix-generated intelligence was used to determine military targets. It also resulted in the arrest, detention, brutal interrogation and execution of thousands of Vietcong fighters and sympathizers at the hands of South Vietnam police and intelligence agencies. It also facilitated exoneration of thousands of suspects, when intelligence agencies did not find anything against them.

The programme had CIA personnel as its core of leadership. Its base was Saigon. It started in 1967 and picked up momentum after Tet in 1968. It used a complex network of informants, a mix of military intelligence to determine appropriate targets for “neutralization”. The first CIA officer to head the programme was William Colby in 1968 who in 1973 became CIA Director.64

One of the eyewitness accounts of the massacre of 15 members of one family, all women and children, in a village called Thanh Phong on 25 February 1969 created an unprecedented clamour for human rights when Bob Kerry, who as leader of an elite Navy unit had attacked the village, stood for US

Presidentship as the Democratic Party's candidate in 2000. The Americans had killed 20 civilians including 13 children and a pregnant woman. Hence, the U.S. public and legal luminaries strongly condemned the incident when it came to light in 2001 by one eyewitness survivor Bui Thi Luom, who was a 12-year old girl in 1969.

During the programme, the Americans were looking for a Vietcong leader who was operating from Thanh Phong village. He was targeted for assassination for his political opinions. Similar exercises were constantly designed to 'neutralize' i.e. to assassinate or imprison members of the National Liberation Front. Operation Phoenix was launched on 1 August 1968 in order to eradicate communist infrastructure by killing a total of 40,994 personnel. Out of these Bob Kerry and his men carried out the dirty work for the CIA's Phoenix programme killing 20,587 persons by May 1971.

The programme attracted much criticism from all over the world, some calling it the worst "examples of human folly, courage, stupidity and greed" and others terming it "one of the darkest in American history". They criticized the programme because it targeted the civilians, not soldiers. They held that Phoenix violated the Geneva Conventions which guaranteed protection to civilians in times of war. Under Phoenix, due process was totally non-existent. South Vietnamese civilians whose names appeared on blacklists could be kidnapped, tortured, detained for two years without trial, or even murdered simply on the word of an anonymous informer. At its height, Phoenix managers imposed a quota of eighteen hundred 'neutralization' (deaths) per month on the people running the

---


programme in the field, opening up the programme to abuses by corrupt security officers, policemen, politicians and racketeers all of whom extorted innocent civilians. Thus civilians were blackmailed. If they did not do what Phoenix programmers wanted, they were declared as Vietcong.

The programme was conducted at midnight, while its victims were home, sleeping in bed. So the programme was called ‘scalpel’ which cut deeper than what the U.S. government admitted. This was a psychological warfare tactic in which Vietcong were brutally murdered along with their families and neighbours as a means of terrorizing the entire population into a state of submission.69

The Phoenix programme brought into question the American ethos who considered themselves a nation ruled by laws and an ethic of fair play. The programme was a symbol of the dark side of human psyche.

Like the Phoenix programme many other American inhuman assaults in the battlefield such as Operation Rolling Thunder (by which the whole of North Vietnam was bombed), Operation Starlite (by which around 1500-strong enemy force with its back against South China Sea was trapped), Operation Game Warden (by which the U.S. Navy interdicted Vietcong supply routes through the dense network of canals and rivers in the Mekong Delta), Operation Ambush (by which the U.S. Army carried out anti-guerilla warfare), Operation Apache Snow (by which A Sham Valley with deeply entrenched enemy forces was cleared), Operation Junction City (by which people were denied re-entry when the U.S. Army failed to sustain military presence in war zone C), Operation Strategic Hamlets (by which communists who relied mostly on local population were attacked) had earned notorious reputation in the international legal community.70 But Operation Niagara surpassed them all.

---


70. Elliott, n. 46, pp. 45, 51, 52, 63, 97, 98, 109.
Operation Niagara

Operation Niagara was simply meant to bombard cascading shells and bombs\(^71\) on a conglomeration of 2000 or more North Vietnamese soldiers who gathered in the vicinity of Khe Sanh by late January 1968.\(^72\) First, this operation gathered intelligence reports to pinpoint the available targets, and secondly, it coordinated shelling and bombing of those targets with all available air and artillery assets.

Intelligence was generated locally through a variety of means. Hundreds of acoustic and seismic sensors were seeded around the combat base.\(^73\) The SOG (Studies and Observation Group) obtained its information from casual encounters with villagers, from regular paid agents including Montagnards and from locals who were hired as agents of the U.S. intelligence agencies.

During the night of 3 – 4 February 1968, the sensor arrays indicated the presence of up to 2000 North Vietnamese soldiers in the vicinity of Marine hill outposts. Defensive artillery fires were ordered against those troops. Sensor monitors reported screaming of men in panic and the sounds of troops fleeing the area. During the battle guns fired 158,891 mixed artillery rounds.\(^74\) The extent of air support was so high that at times the sky over Khe Sanh resembled "a giant beehive".\(^75\) The Air Force liaison officer felt that strikes could be conducted to within fifty meters in case of emergency.\(^76\) Marine air flew 7,078 sorties and delivered 17,015 tons of ordnance in defence of Khe Sanh, while the U.S. Air Force tactical aircraft contributed 9691 sorties and 14,223 tons of munitions.\(^77\)

The North Vietnamese soldiers were found wandering around in a daze with blood streaming from their noses and mouths. To catch these stunned


\(^75\) Ibid., p. 95.

\(^76\) Ibid., pp. 103-104; and Nalty, n. 73, pp. 66-67.

\(^77\) Prados, n. 73, p. 297.
survivors above ground, U.S. artillery men at Khe Sanh often placed massed artillery fire into the Arc Light target area ten to fifteen minutes after the departure of the heavy bombers. Thus B-52 bombs broke the back of North Vietnamese Army at Khe Sanh through Operation Niagara.\footnote{Nalty, n. 73, p. 88 and Elliott, n. 46, pp. 123-25.}

But Soviet intelligence-gathering trawlers operating in the Pacific used to give a two-hour warning before B-52 bombing and North Vietnamese Army had sufficient time to flee. So this operation was not that successful as U.S. soldiers believed it to be.

The battle of Khe Sanh\footnote{Oriana Fallace, Interview with History (New York, 1976), pp. 85-86 and Elliott, n. 46, p. 133.} invited President Johnson’s call for severe restrictions on aerial and naval attacks against North Vietnam. He declared readiness of the U.S. to begin peace discussions to end the war and declined to seek reelection to the Presidency. In June 1968 the base at Khe Sanh was abandoned by the Americans owing to public clamour and criticism from the international community. Thus the U.S. learnt the lesson the hard way that one could not win at the conference table what it could not win on the battlefield.

This operation also demonstrated that any territory in North Vietnam for the U.S. Army was disposable, important to the point of madness one day and useless and of no strategic value the next day. Many such hills in North Vietnam became violent battlegrounds because the enemy was there and then reverted to uninhabited terrain, a worthless red-dust plateau, scored and burnt by the conflict and its aftermath.

**Massacre at Hue**

This incident is a part of the Tet offensive (30 January 1968-8 June 1968) consisting of a series of operational offensive during the Vietnam war. The operations were called Tet offensive as they were timed to begin on the night of 30-31 January 1968, the lunar new year day. The offensive began spectacularly
during celebrations of the Lunar New Year and sporadic operations associated with the offensive continued into 1969.  

This offensive badly damaged some sections of Saigon City, particularly by U.S. air and artillery strikes. The Chinese district of Cholon suffered especially, with perhaps hundreds of civilians killed in U.S. counter-attacks. The attack on the US Embassy in Saigon by Vietcong and subsequent American reinforcements killing all Vietcongs inside the embassy created the biggest media show in the US and South Vietnam. With the dead bodies of Vietcong still scattered over the rubble of the badly damaged embassy, General William C. Westmoreland gave a press conference inside the compound. The reporters could hardly believe their eyes. General William C. Westmoreland was standing in the ruins and saying everything was great. Such inhuman action was highly condemned all over the world.

The killings during Tet also had personal motives. Nguyen Van Lem was captured by South Vietnamese national police who identified him as the captain of a Vietcong assassination and revenge platoon and accused him of murdering the families of police officers. He was brought before Brigadier General Nguyen Ngoc Loan, the chief of national police, who shot the prisoner pointblank because the suspect had killed a police Major who was one of Nguyen’s closest friends. This shooting was photographed and appeared on the front pages of several newspapers around the world which shocked everybody as an act of cruelty.

The city of Hue was attacked by ten North Vietnam battalions and six Vietcong battalions. Thousands of civilians believed to be potentially hostile to communist control, including government officials, religious figures and expatriate

---

Residents were executed in what came to be known as the Massacre at Hue. The recapture of the city by U.S. forces again brought about a deadly combat the U.S. military had hardly seen since World War II. The U.S. lost 216 men and the South Vietnam Army lost 384. The North Vietnamese lost 8000 men in the city. Lasting 26 days, Hue was one of the longest and perhaps the bloodiest single battles of the Vietnam war. The extent of massacre of civilians by the communists was realized when approximately 2800 bodies were found and another 2600 persons were found missing. Some thousands of additional lives were lost in the crossfire in the battle. Communist command described the battle of Hue “an overall success”, in spite of the massacre of civilians.

Its effects were felt on both sides. The National Liberation Front (the political arm of Vietcong) reformed itself as the Provisional Revolutionary Government of South Vietnam. On the other hand, the violence witnessed during the Tet Offensive had a deep psychological effect on the South Vietnamese civilians. Confidence in the government was greatly reduced, as the offensive clearly showed that even with massive American support, the government could not protect its citizens. The South Vietnamese army also suffered in terms of morale with the desertion rate increasing. It also was a blow to US hopes of winning the war rapidly. General Westmoreland asked for 206,000 additional troops and the news of this request confirmed the suspicion of many that the result of the Tet Offensive had not been depicted accurately by President Johnson or his spokesmen. If the communist had suffered such a serious setback, why did the Americans increase their force by 40 per cent. The media also did not reflect on Tet with any positive light. General Westmoreland was promoted as Army Chief of Staff, only to be “kicked upstairs” due to Tet. President Johnson suffered a staggering setback. In fact it was President Johnson’s failure to prosecute the war effectively, which would have caused his defeat at the Presidential polls in 1968. On 31 March, President Johnson announced that he

86 James R. Arnold, n. 82, p. 82.
87 Ibid., p. 91.
88 Ibid., p. 90.
would not seek reelection and also announced a halt to the bombing of North Vietnam.91

**Battle of Khe Sanh**

Khe Sanh was an airstrip and US Marine base just south of the Demilitarized Zone (DMZ). The attack on Khe Sanh by Vietcong, which began on 21 January 1968, was intended to serve two purposes;92 as a diversionary tactic to draw American attention and forces away from the upcoming Tet attacks and to prevent the forces at Khe Sanh from attacking supplies and troops moving South on the Ho Chi Minh Trail. In turn American military stated that the very purpose of the Khe Sanh base was to provoke the North Vietnamese into a protracted battle allowing American artillery and air strikes to inflict massive casualties.

Khe Sanh and its 6000 men were surrounded by three North Vietnamese divisions, totaling approximately 20,000 men. Throughout the battle, which lasted 77 days, the Marines were subjected to heavy artillery bombardment, along with sporadic small-scale infantry attacks. There was never any major ground assault on the base and the battle was largely a duel between American and North Vietnamese gunners, combined with air strikes from the American side.93 The battle was to be the most important North Vietnamese assault on the U.S. so as to gain bargaining leverage at the negotiating table.

American air support eventually launched massive bombing by B-52s to destroy North Vietnamese trenches and bunkers, which were neutralized by use of napalm, one ton bombs and huge amount of artillery fire. The main reason of communist withdrawal from Khe Sanh, thus, was the fear of nuclear weapons, which they felt Americans could use to gain victory.94 But its use could be viewed

---

93 Moyer, n. 74, p. 6; and Peter McDonald, n. 74, p. 279; and Robert Pistor, n. 72, p. 112.
as a great provocation by the Russians and Chinese than the other actions which President Johnson was unwilling to take.95

In fact Khe Sanh was of such overwhelming strategic importance that its capture could have led to an earlier end of the US involvement in Vietnam.96 It was comparable to France's loss at Dien Bien Phu which led directly to their withdrawal from Indo-China.97 In fact, the psychological victory of the Vietnamese communists during this period led to the beginning of the end for the U.S. in Vietnam. Public opinion in the U.S. towards opposition to the war in Vietnam, in terms of considering involvement as a mistake, first rose above 50 percent and then gradually grew manifold.

At Khe Sanh the U.S. achieved its most satisfying body counts and kill ratios of American deaths to enemy deaths.98 But Khe Sanh was an overall failure on both sides as the base was abandoned on 23 June 1968.99

Agent Orange

Agent Orange, a weed killer containing dioxin,100 was widely used during the Vietnam war. Dr. Han K Kang of the Department of Veteran Affairs in Washington, D.C., noted in the American Journal of Industrial Medicine that two thirds of the herbicides used during the conflict contained dioxin.101

---

101 J. Dux and P.J. Young, Agent Orange: The Bitter Harvest (Hodder & Stoughton, Lane Cove, 1980).
The main reason behind the use of Agent Orange was to search for communist bases and to maximize other ‘terra farming’ techniques. A mass of dense vegetation carpeting a labyrinth of tunnels and bunkers in the north-west of Saigon had to be cleared for combat operations and General Westmoreland devised an engineering plan to melt the whole area. Thus Agent Orange was first sprayed across the region, killing the vegetation and reducing cover for the guerrillas to naught.

Little known until that time, the chemical soon achieved notoriety and this incongruous sounding chemical soon became associated with a number of disability problems. Thus Agent Orange engendered a massive controversy that embroiled the UN and its use was seen as the violation of the Geneva Protocol and the 1907 Hague Convention. The use of Agent Orange and the chemical’s terrible legacy had left the U.S. government open to charges of committing war crimes against the South Vietnamese people.

When it was first used in 1961 during the President Diem regime in order to deny the Vietcong both cover and source of food, the defoliant killed almost all plant life, flattening jungle and laying bare the countryside. Enemy supply trails were sprayed allowing U.S. reconnaissance from the air. Villages showing communist sympathy were sprayed, compelling them to relocate to ‘Strategic Hamlets’ that were closer to friendly forces.

In 1966 the project had reached its peak and 20 million gallons of chemical herbicides had by then been dropped on South Vietnam of which 60 per cent was

Agent Orange. Agent Orange had emerged as the most effective and popular of the herbicides. Agents Purple and Pink had previously been in use up to 1964. The different defoliants actually received their names from the designating colours on the drums they came in. Agent Orange was also accompanied by the less known and less popular Agents White and Blue. Vast swaths of blighted countryside, once dense forest, supported almost no vegetation except the coarse weed known locally as American grass, useless for feeding humans, livestock or most wildlife. For more than a generation, practically every family in the stretch of Central Vietnam had endured severe health related problems like repeated miscarriages, crippling birth defects, chronic illness and untimely deaths. Hanoi government said that as many as 600,000 Vietnamese had fallen victim to serious illnesses from exposure to the defoliants. After heavy spraying, fish and animals were found dead or dying in the forest. Many people were found paralyzed because of heavy doses of TCDD, which caused permanent nerve damage. Once it is in the ground, TCDD can last for decades. It becomes a recipe for environmental disaster.

Debates began immediately with the government over its use.\textsuperscript{107} Some favoured it as the most effective way to deprive Vietcong of jungle cover, whereas others doubted the chemical's military use.\textsuperscript{108} Later it was revealed that Agent Orange contained a highly carcinogenic material called dioxin that could also induce malformations in newborn babies. By then full nine years of spray had already affected thousands of farmers and their families, American and other allied soldiers in South Vietnam.

As it turned out, numerous cases of cancer in post-war Vietnam were attributed to Agent Orange, as the heartbreaking reports of deformed children poured in.\textsuperscript{109} As media awareness of Agent Orange gradually grew after the war, a number of Vietnam veterans made disability claims against the manufacturers


of the herbicide, who agreed to establish a 180 million dollars fund for the payment of these claims. Even today these claims have never reached the countless South Vietnamese civilians. Hospitals in modern Vietnam continue to treat Agent Orange victims and their children.

However, the manufacturers and US government dispute any such damages. They claim that no one has ever produced conclusive scientific proof that the herbicides caused those medical problems. They blame a whole range of other factors such as disease, malnutrition and lack of health care. But Hatfield Consultants, an independent environmental assessment firm based in Canada, found extraordinary levels of TCDD, an extremely toxic form of dioxin that existed as an unwanted contaminant in Agent Orange. The toxin was everywhere in the soil, in the fish and in the children’s bloodstreams. Immediate symptoms of exposure included runny nose, weeping eyes, nausea, respiratory difficulty, dizziness and skin rashes.

The UN General Assembly adopted a declaration/resolution in 1969 which reinforced the Geneva ban on chemical weapons of all kinds. On 25 November 1969, President Richard Nixon announced that the U.S. would unilaterally “renounce the use of lethal biological agents and weapons and all other methods of biological warfare”. The reason behind it was spelt out in 1989 before the U.S. Senate by Harvard University’s Mathew Meselson. According to him, these weapons could be as great a threat as nuclear weapons and they could be simpler and less expensive to develop and produce than nuclear weapons and crucially the U.S. biological weapons programme could be easily duplicated. Therefore, the U.S. biological weapons programme was considered a substantial threat to the U.S. security itself. Another revelation was that Iraq had an

112 Elliott, n. 46, p. 167.
113 For a detailed note on Nixon’s contribution to Vietnam war, see ibid., pp. 172-178.
114 Ibid., p. 167.
active biological weapons programme prior to the Gulf war, a venture that included anti-crop weaponry.\textsuperscript{115}

Accepted opinion today recognizes that using the defoliant was wrong, on both moral and military grounds, and it amounted to ecological warfare of a kind never seen before. In the operation, the villagers could not afford to leave their homes. They could not afford to incinerate the topsoil. They could not even afford to stop feeding locally grown fish to their hungry children. For some time, on Hartfield's advice, village officials urged people to eat only the flesh of the carp they raised and threw away the fat, liver and innards.

\textbf{Other Atrocities}

There had been a series of other atrocities committed by the U.S. army. Nearly 40 years later, declassified army files confirmed that atrocities by U.S. forces in Vietnam were more extensive than what was previously known. These files were a part of once-secret archive, assembled by a Pentagon task force in the early 1970s. The documents elaborated 320 alleged incidents that were substantiated by army investigators, excluding the most notorious U.S. atrocity, the 1968 My Lai massacre. Though not a complete account of Vietnam war crimes, the archive is the largest such collection to surface till date. It includes about 9000 pages, including investigative files, sworn statements by witnesses and status report for top military brass.\textsuperscript{116}

The records describe recurrent attacks on ordinary Vietnamese families in their homes, farmers in rice paddies and teenagers out fishing. Hundreds of soldiers in interview with investigators and letters to commanders described a violent minority who murdered, raped and tortured with impunity. Abuses were uncovered in every Army division that operated in Vietnam. Americans once

\textsuperscript{115} Paul Rogers, Simon Whitby and Malcolm Dando, "Biological Warfare against Crops", \textit{Scientific American Journal}, (New York), vol. 280, no. 6, June 1999, p. 73.

supported keeping the records secret but now believe they deserve wide attention in light of alleged attacks on civilians and abuse of prisoners in Iraq.117

Among the substantiated cases were seven massacres from 1967 to 1971 in which at least 137 civilians died, 78 other attacks on non-combatants in which at least 57 were killed, 56 wounded and 15 sexually assaulted and 141 instances in which U.S. soldiers tortured civilian detainees or prisoners of war with fists, sticks, bats, water or electric shocks.

Investigations and Reparations

Investigators determined that evidence against 203 soldiers accused of mistreating Vietnamese civilians or prisoners were strong enough to warrant formal charges. These cases were referred to the soldiers’ superiors for action. However, only 57 of them were court-martialed and just 23 convicted. The maximum term served by any out of them was just seven months. Many substantiated cases were closed down with no action at all. There was little interest in prosecuting Vietnam war crimes. Many had left service and army did not attempt to pursue them.

In a letter to General Westmoreland in 1970, an anonymous sergeant described widespread, unreported killings of civilians by members of the 9th Infantry Division in the Mekong Delta and blamed pressure from superiors to generate high body counts.118 But there is no evidence in the files that this complaint was investigated further.

On 8 October 1967 after a firefight near Chu Lai, members of B Company of the 1st Battalion, 35th Infantry, 4th Infantry Division spotted a 12-year-old boy out in a rainstorm. He was unarmed and clad only in shorts. He was caught on a hill, brought down and the lieutenant asked who wanted to kill him. Two volunteers stepped forward. One kicked the boy in the stomach. The other took

118 Elliott, n. 46, pp. 95-97.
him behind a rock and shot him. They tossed his body in a river and reported him as an enemy combatant killed in action.\textsuperscript{119}

Three days later B Company detained and beat an elderly man suspected of supporting the enemy. Two men caught hold of him and threw him off the hill onto a bunch of rocks. In another incident two American soldiers were found using a Vietnamese man for target practice. They had discovered the victim sleeping in a hut and decided to kill him for sport. On 23 October 1967, five unarmed women were ambushed and reported as enemies killed in action.

American Officers such as Capt. Donald C. Reh, Lt. Col. William W. Taylor Jr, Lt. Johney Mack Carter were all investigated. But nothing happened. Since the 1980s, several lawsuits had been filed against the individuals and companies which produced lethal weapons like Agent Orange, among them being Dow Chemical and Monsanto. U.S. veterans received 180 million dollars in compensation in 1984, while Australian, Canadian and New Zealand veterans also obtained compensation in an out-of-court settlement in 1984 itself.\textsuperscript{120} In 1999, 20,000 South Koreans filed a law suit in South Korea. In January 2006, the Korean Appeal Court ordered Monsanto and Dow to pay 62 million dollars in compensation to about 6800 people.\textsuperscript{121} However, no Vietnamese had obtained compensation and on 10 March 2005, Judge Jack Weinstein of Brooklyn Federal Court dismissed the lawsuit filed by the Vietnamese victims of Agent Orange against the chemical companies that produced the defoliant. Yet Vietnam is the largest area on the planet to have been subjected to chemical spraying as a result of war.

The Vietnamese government has conducted a nationwide census on the impact of Agent Orange. The study by Hatfield Consultants Ltd. of Canada has explored the environmental and health aspects of the herbicides' use in Vietnam. The study found high levels of dioxins in babies born after the war, in fish and in

\textsuperscript{120} For details see Dux and Young. n. 101.
\textsuperscript{121} “Korea Orders Agent Orange payments”, \textit{Mercy News}, 26 January 2006.
animal tissues. But the U.S. still refuses to accept any responsibility for illnesses linked to Agent Orange.122

Vietnamese officials did not seek reparations or damages from the U.S.. The last thing Hanoi wanted was to hurt Vietnam’s chance of having normal trade relation with Washington as soon as possible.123

**Conclusion**

Military intervention by the U.S. in Vietnam was condemned mainly because it violated the UN Charter, especially Article 2(4) that prohibits the use of force in international relations. Military intervention also violated the Geneva Accords of 1954. Also American war actions against North Vietnam were unlawful reprisals. The SEATO Treaty of 1954 did not “commit” the U.S. to take military action in Vietnam. Moreover, the “unlawfulness” of certain U.S. “methods of warfare” were also condemned. Those methods constituted violations of the 1949 Geneva Conventions on the Law of War, especially. Lastly the “illegality under international law” of foreign military intervention in a “civil war” created much controversy all over the world. It was felt that international law should be enforced vigorously and effectively when internal subversion was abetted by hostile foreign interventionist support.

---

122 Jim Tautman, n. 103, p. 15.