VIETNAM STUDIES

LAW AT WAR

VIETNAM 1964-1973



DEPARTMENT OF THE ARMY


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VIETNAM STUDIES

LAW AT WAR: VIETNAM 1964-1973

by

Major General George S. Prugh

DEPARTMENT OF THE ARMY
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Foreword

The United States Army has met an unusually complex challenge in Southeast Asia. In conjunction with the other services, the Army has fought in support of a national policy of assisting an emerging nation to develop governmental processes of its own choosing, free of outside coercion. In addition to the usual problems of waging armed conflict, the assignment in Southeast Asia has required superimposing the immensely sophisticated tasks of a modern army upon an underdeveloped environment and adapting them to demands covering a wide spectrum. These involved helping to fulfill the basic needs of an agrarian population, dealing with the frustrations of antiguerrilla operations, and conducting conventional campaigns against well-trained and determined regular units.

Although this assignment has officially ended, the U.S. Army must prepare for other challenges that may lie ahead. While cognizant that history never repeats itself exactly and that no army ever profited from trying to meet a new challenge in terms of the old one, the Army nevertheless stands to benefit immensely from a study of its experience, its shortcomings no less than its achievements.

Aware that some years must elapse before the official histories will provide a detailed and objective analysis of the experience in Southeast Asia, we have sought a forum whereby some of the more salient aspects of that experience can be made available now. At the request of the Chief of Staff, a representative group of senior officers who served in important posts in Vietnam and who still carry a heavy burden of day-to-day responsibilities has prepared a series of monographs. These studies should be of great value in helping the Army develop future operational concepts while at the same time contributing to the historical record and providing the American public with an interim report on the performance of men and officers who have responded, as others have through our history, to exacting and trying demands.

The reader should be reminded that most of the writing was accomplished while the war in Vietnam was at its peak, and the monographs frequently refer to events of the past as if they were taking place in the present.

All monographs in the series are based primarily on official records, with additional material from published and unpublished sec-

ondary works, from debriefing reports and interviews with key participants, and from the personal experience of the author. To facilitate security clearance, annotation and detailed bibliography have been omitted from the published version; a fully documented account with bibliography is filed with the U.S. Army Center of Military History.

Major General George S. Prugh graduated from Hastings College of Law, University of California, in San Francisco in 1948 and received the degree of Juris Doctor. He is a member of the bar of the state of California. General Prugh is a graduate of the Command and General Staff College and the U.S. Army War College. He received the degree of Master of Arts from George Washington University in Washington, D.C., in 1963.

General Prugh is particularly well qualified to author this monograph on judge advocate activities at Headquarters, U.S. Military Assistance Command, Vietnam. In November 1964 he became the Staff Judge Advocate at the Military Assistance Command, and served in that capacity on an extended tour until July 1966. General Prugh's assignment in Vietnam coincided with the years which have been described by General Westmoreland, Commander, U.S. Military Assistance Command, Vietnam, as the year of crisis, 1964; the year of military commitment, 1965; and the year of development, 1966.

Following his tour in Vietnam General Prugh assumed the duties of legal adviser to the U.S. European Command in Saint-Germain-en-Laye, France, and later at Stuttgart, Germany. On 1 May 1969, he became the Judge Advocate, U.S. Army Europe and Seventh Army, at Heidelberg, Germany. He was reassigned to the Department of the Army, Washington, D.C., in June 1971, and assumed the position of The Judge Advocate General on 1 July 1971.

Washington, D.C.
10 September 1974

VERNE L. BOWERS
Major General, USA
The Adjutant General

Preface

> The laws of a nation form the most instructive portion of its history. . . .
>
> EDWARD GIBBON

The American people have a special relationship with their law. While they themselves loudly criticize it as too slow, often archaic, and usually inadequate, they are at the same time devoted to its extraordinarily high legal principles—principles of fairness, openness, and justice frequently talked about by other peoples but rarely observed in actual daily practice to the extent that they are in America. The American people take their law with them, insofar as they are able, and they find it difficult to accept when other nations do not see justice in the same light they do. That war affects law is not apparent to many Americans, who are so used to peace at home, where their courts continuously function, that it is very hard for them to visualize how combat interferes with the legal process.

It will surprise no serious student of American affairs to learn that from the beginning of American participation in the Vietnam War there was a substantial presence of American law and legal institutions in the company of U.S. forces there. This presence of U.S. law had effects during American participation and after, some of them only dimly seen at this time because we are so close to the event. The purpose of this monograph is to describe the presence of law at a particular time and in a particular American command in Vietnam. I have selected the U.S. Military Assistance Command, Vietnam, as the headquarters, and the crucial years of 1964 through 1966 as the primary but not exclusive period of time to study, partly because as the senior legal officer, the Staff Judge Advocate at Military Assistance Command, Vietnam, then, I was most familiar with events, but in the main because it was in that headquarters and at that time that basic policy positions were formed. It was early apparent that law could have a special role in Vietnam because of the unusual circumstances of the war, which was a combination of internal and external war, of insurgency and nation-building, and of development of indigenous legal institutions and rapid disintegration of the remnants of the colonial French legal establishment. Further, the Vietnamese people were eager for knowledge of American institutions, including law.

To describe the events, the interplay, the considerations, and the immediate results of U.S. legal activities in the Military Assistance Command, Vietnam, has proved a large task. Any treatment of the conduct and discipline of the U.S. Army, Vietnam, a subordinate command, has been omitted as not a direct part of the law work of the Military Assistance Command.

Similarly omitted is a detailed discussion of the tragic action at My Lai (Son My), which beclouds the record of the many well-led–and legally conducted–military operations. Except for brief remarks in passing, My Lai is omitted for several reasons: it has been widely publicized, it occurred about two years later than the primary period this monograph deals with, and it was the legal responsibility of the service component, U.S. Army, Vietnam, as distinguished from the unified command headquarters, Military Assistance Command, Vietnam, which is the focus of this monograph.

Upon receiving the assignment to the Military Assistance Command, Vietnam, in the fall of 1964, I framed two guiding questions. First, what must be done to assure that the command's activities were performed in a manner conforming to applicable law, national and international? Second, in what manner could law and legal institutions be properly used to further the accomplishment of the command's mission?

These questions led directly to the requirement to find out how the law was actually working–and this meant an early identification of the law that was being applied and its source. For our command's activities this was difficult only in the area of international law. The so-called Pentalateral Agreement, referred to in some detail in the following text, served as a framework for dealing with legal issues arising between U.S. military personnel and the people and legal institutions of the Republic of Vietnam. This agreement was a bare-bones one, however, and much interpretation and practice would be needed before we could be sure the needs of the command and the desires of the host country could be simultaneously met.

Most difficult for us, however, was to determine applicable international law, for much depended upon the legal characterization of the conflict and the American role in it. The traditional tests of internal conflict in contrast to an international conflict were clearly too imprecise in this situation where the country of Vietnam had been divided, purportedly temporarily, by the Geneva Accords of 1954, and both portions of the country claimed sovereignty and had received some supporting recognition. There were aspects of a civil war within South Vietnam and equally valid aspects of invasion by regular troops from North Vietnam; Free World forces were present at

the invitation of the government, asserting the sovereignty of South Vietnam. Attacks on these Free World forces were made by "indigenous" Viet Cong and "foreign" North Vietnamese troops; the line between civilian terrorists and the military insurgents was so blurred as to be indistinguishable; and almost all of the traditional measures —uniform, organization, carrying of arms openly—failed to identify the combatants. Clearly we had a lot of loose ends to pick up before we could be certain of the legal positions we should advocate, and we had few precedents to guide us.

The second question brought us much more quickly and dramatically into the search for Vietnamese law. One fact became abundantly clear; we knew very little about Vietnamese law and how it actually worked. Nominally it was a derivative of the French civil law system, but in practice this law is not what impacted on the bulk of the population, at least outside of the three or four largest cities. The military services had developed a variation of the French system, but it was made unique by the various decrees that had been issued since the establishment of the Republic of Vietnam. Notwithstanding what the law was said to be, it was evident that what was actually being applied was frequently far different. To learn these facts, then, became a first priority and led to the formation of a division in the MACV Staff Judge Advocate's office of field advisers, military lawyers who would assist their Vietnamese counterparts in the field and would at the same time gather as much information as possible about the law system's actually working.

The emphasis of this monograph upon one law office perforce leaves unrecounted the story of the often dramatically impressive accomplishments of the substantially larger number of Army, Navy, and Air Force judge advocate personnel who performed legal services for subordinate commands within the Republic of South Vietnam.

The task of reconstructing the scenes in which the Military Assistance Command, Vietnam, judge advocates played a part was formidable. A debt of gratitude, therefore, is owing to my colleagues in the law who have contributed to the preparation of this monograph and to those many friends who have read all or parts of this manuscript and provided constructive suggestions. I wish to express my appreciation to Colonel Nathaniel C. Kenyon, Major Paul P. Dommer, and Captain Robert E. Deso, who, while members of my office, were project officers for this monograph. They assembled the materials and did most of the writing.

This study can touch on only a few of the highlights of the exciting period described, but it is my intention that it accurately reflect

the fact that at that time, in troubled Vietnam, military lawyers of America and Asia lifted the lid and looked, albeit briefly, at what law and its institutions can do for a country engaged in a modern armed conflict. This was activism in the law, and activism of high order. For having had an opportunity to participate in this activism at this time and with these people, I shall be eternally grateful.

Washington, D.C.
10 September 1974

GEORGE S. PRUGH
Major General, USA
The Judge Advocate General

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LAW AT WAR: VIETNAM
1964-1973

CHAPTER I

Organization for Legal Services

The U.S. Military Assistance Command, Vietnam

The development of a law firm is dependent on the needs of the firm's major clients. This is true in the Army as well as in civilian practice. The how and why of the organization for legal services in Vietnam, then, is more readily understood by first examining the major military client in Vietnam—the U.S. Military Assistance Command, Vietnam.

In August 1950 the United States sent a small military staff to Vietnam to assist the French in teaching Vietnam forces the use and maintenance of U.S. military equipment furnished under the Mutual Defense Assistance Act of 1949. Chiefly technicians, these advisers were not organized in regular military units but functioned as an extension of the U.S. diplomatic mission in Saigon to which they were assigned. By 1953 the United States had between two and three hundred military advisers in Vietnam, but no military lawyer had been assigned.

In 1959 the first Staff Judge Advocate, Colonel Paul J. Durbin of the Judge Advocate General's Corps, was assigned for the U.S. Army element of the Military Assistance Advisory Group, Vietnam. The U.S. Military Assistance Command, Vietnam (MACV), was created 8 February 1962. The Military Assistance Command was made directly responsible for the command, control, and logistical support of the steadily increasing number of U.S. military advisers, technicians, and staff personnel who were being assigned to Vietnam.

When the first U.S. Marine and Army infantry units were committed to combat in 1965, the U.S. Military Assistance Command, Vietnam, was serving as an allied headquarters in a major theater of operations in which multinational forces were engaged; an operational headquarters for U.S. Army, Air Force, Navy, and Marine units in combat in Vietnam, where major ground, sea, and air combat operations in Vietnam were planned, authorized, and executed under its command; and an extension of the U.S. diplomatic mission. The Commander, U.S. Military Assistance Command, Vietnam, served as the military member of the U.S. Mission Council for purposes of

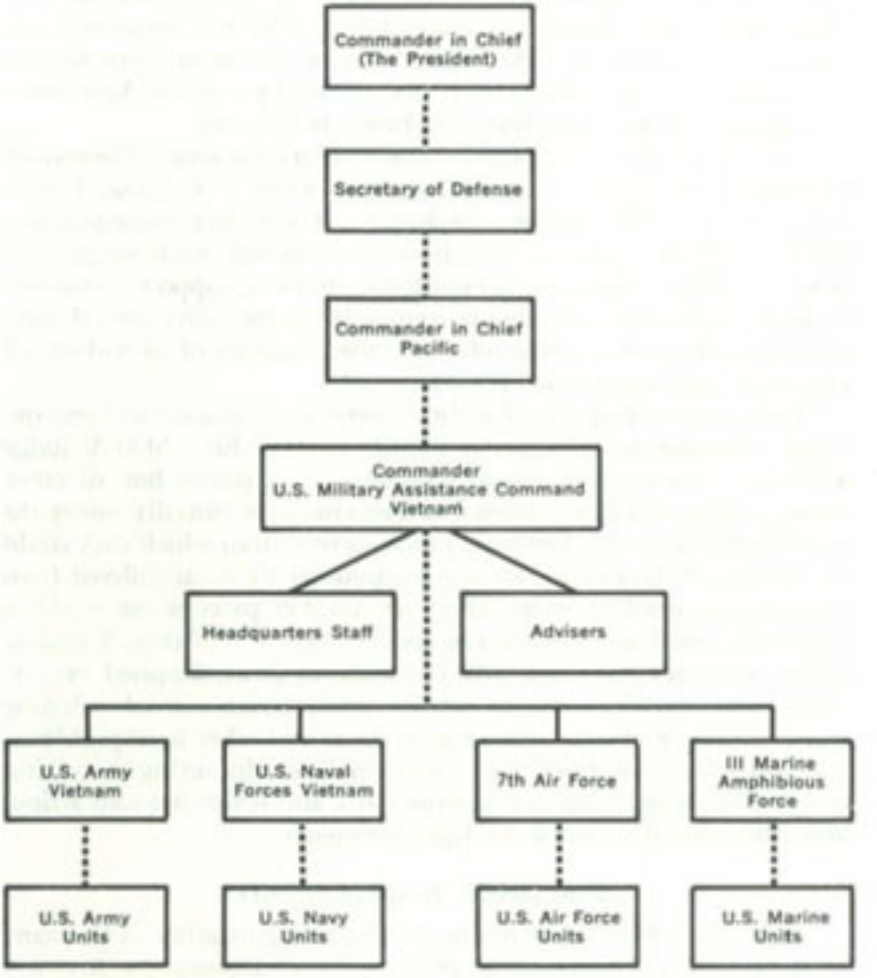
co-ordination with the chief of the mission on all matters relating to U.S. military activities in Vietnam. The relationship between the Military Assistance Command and the U.S. Embassy was always very close. The commander met with the U.S. Ambassador and the highest officials of the government of Vietnam almost daily, and several staff sections of the command, including the Staff Judge Advocate, were in constant contact with officers in the embassy. The U.S. Military Assistance Command also directed the U.S. advisory effort. All U.S. military advisers in Vietnam were assigned to the command and functioned independently of regular U.S. troop units.

The U.S. Military Assistance Command, Vietnam, was a subordinate, unified command under the operational control of the Commander in Chief, Pacific. (*Chart 1*) Its commander, an Army general, reported directly to the Commander, U.S. Forces, Pacific, a Navy admiral, who in turn reported directly to the Department of Defense. The MACV staff sections and advisory teams consisted of military personnel from each branch of the armed services who were assigned directly to the Military Assistance Command, Vietnam. By 1966 each service component of the command also had a major subordinate headquarters for command and control of the major troop units of that service—U.S. Army, Vietnam, U.S. Naval Forces, Vietnam, the III Marine Amphibious Force, and the 7th Air Force. Each of the service elements was self-sufficient in terms of logistical and administrative support, and all combat, combat support, and service units stationed in Vietnam were assigned to one of the service components.

The organization for legal services in Vietnam paralleled the command structure. The MACV Staff Judge Advocate, an Army colonel, was the legal adviser to the Commander, U.S. Military Assistance Command, Vietnam, and was the senior Army Judge Advocate in Vietnam. The staff of the MACV Staff Judge Advocate, composed of attorneys and clerical personnel from the Army, Navy, and Air Force, provided legal services to the MACV staff and advised the Vietnamese legal agencies.

This organizational structure existed until the last year of U.S. participation in the war. In November 1972, as part of a consolidation plan for U.S. Military Assistance Command, Vietnam, and U.S. Army, Vietnam, judge advocate resources of both were reorganized as U.S. Army, Vietnam–Military Assistance Command, Vietnam, Support Command. (*Chart 2*) No change in judge advocate missions or functions resulted, even then, however, and the senior staff judge advocate in Vietnam assumed two roles, legal adviser to the Commander, U.S. Military Assistance Command, Vietnam, and his staff

CHART 1—CHAIN OF COMMAND FOR MACV OPERATIONS



and senior staff judge advocate for units of U.S. Army, Vietnam. The Office of the Staff Judge Advocate, USARV-MACV Support Command, continued to provide legal services to all Army units during the sixty-day troop withdrawal period established in the Agreement on Ending the War and Restoring Peace in Vietnam.

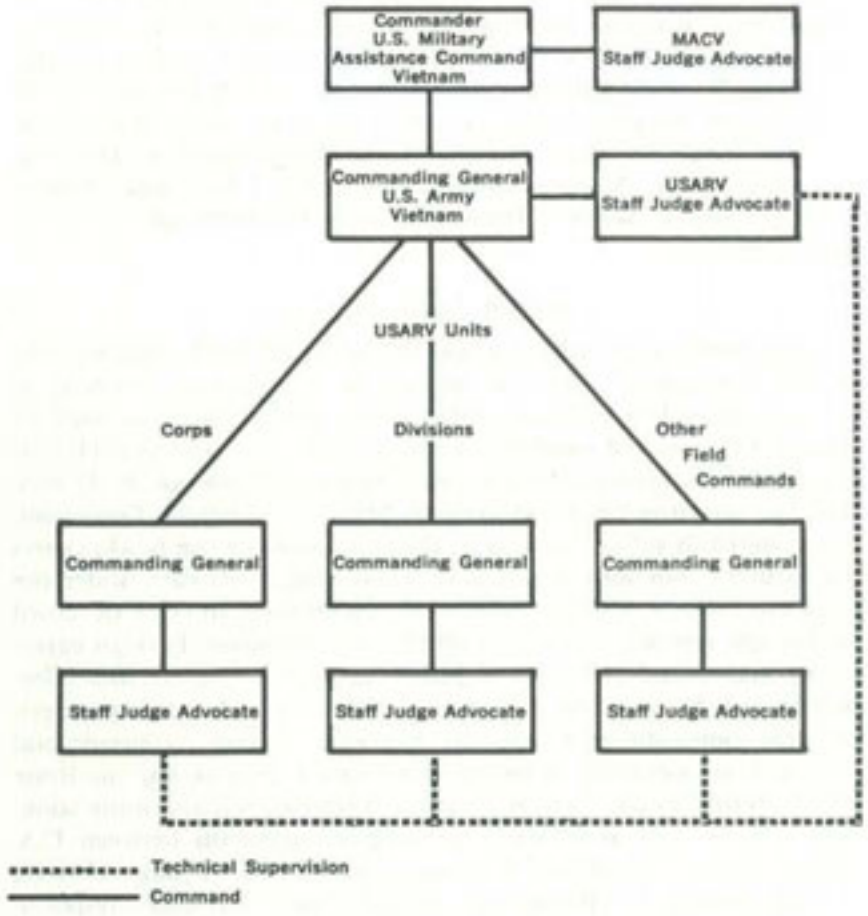
Each of the service elements of the Military Assistance Command, Vietnam—U.S. Army, Vietnam, 7th Air Force, U.S. Naval Forces, Vietnam, and III Marine Amphibious Force—had corresponding judge advocate support at each level of command. Each major U.S. Army, Vietnam, unit—corps, field force, division, support command, brigade—and major subordinate commands of the other several components had its own judge advocate office capable of providing all necessary legal support for the command.

Like the vast majority of military personnel assigned to Vietnam, judge advocates served a twelve months tour of duty. MACV judge advocates were assigned directly to that headquarters but all other Army judge advocates stationed in Vietnam were initially under the control of U.S. Army, Vietnam, headquarters, from which they could be reassigned thereafter. While conditions in Vietnam differed from those experienced by judge advocates in other parts of the world at that time, the legal services provided by the U.S. Army, Vietnam, judge advocates were basically the same as those supplied on any Army post anywhere in the world—trying courts-martial, advising commanders on military justice procedures and other legal problems, providing legal assistance to all personnel, administering the claims program, writing military affairs opinions, and reviewing staff actions and administrative boards for legal sufficiency.

The MACV Judge Advocates

The year 1965 was a watershed for legal organization in Vietnam, as it was for the entire U.S. military force. During the first few months there were only seven American military lawyers in Vietnam. All were stationed in Saigon. One lawyer each served the Army, Navy, and Air Force components of the U.S. Military Assistance Command, Vietnam; the other four were on General William C. Westmoreland's staff. In early 1965 few courts-martial were tried in Vietnam, and crime was not a serious problem. The U.S. Military Assistance Command was responsible to the Army for the administration of claims for all services. The Staff Judge Advocate advised the embassy on legal matters, and the MACV legal staff enjoyed a good rapport with the Vietnamese legal community. The legal problems concerning taxes, real estate leases, black market activities, foreign claims, and drugs, which were to be of mutual concern to the U.S. Military Assistance Command, the embassy, and the Vietnamese government in later years, had not arisen, or were not yet serious.

CHART 2—LEGAL ORGANIZATION OF U.S. ARMY UNITS, VIETNAM



Beginning in March 1965 with the rapid buildup of U.S. and allied troop strength, legal work increased considerably and new areas of responsibility were added to the duties of the MACV judge advocates. By mid-1965 the MACV Office of the Staff Judge Advocate had assumed the general form it was to retain for much of the war—the Staff Judge Advocate, a Criminal and Disciplinary Law Division, Claims Division, Administrative Division, Civil Law and Military Affairs Division, Advisory Division, and an International Law Division. (*Chart 3*)

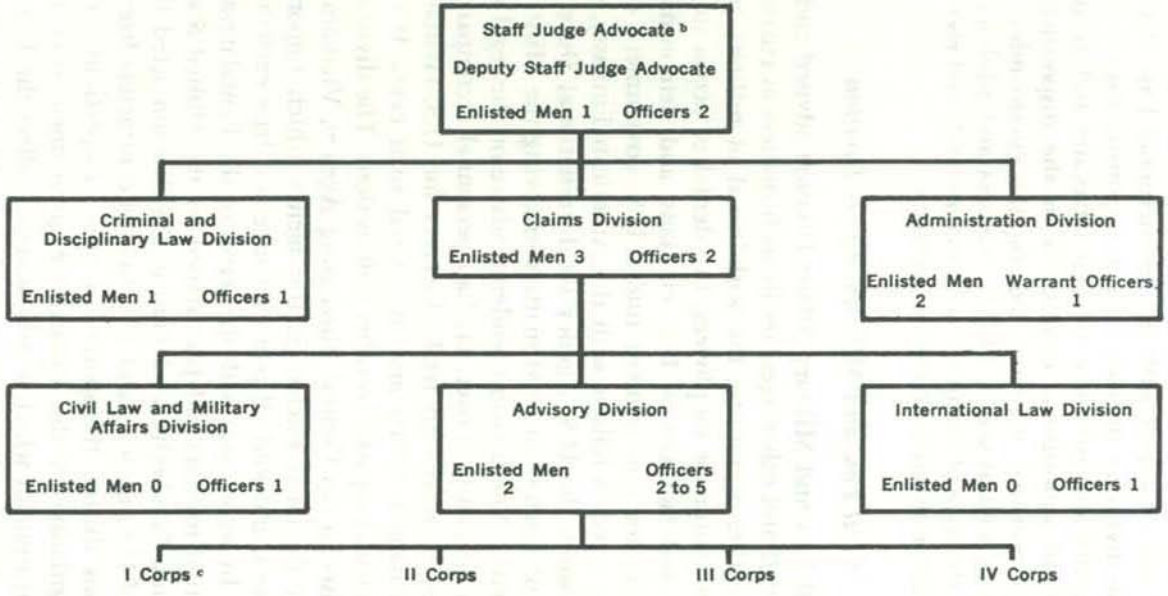
The Staff Judge Advocate

The Staff Judge Advocate was the principal legal adviser to the MACV commander and staff sections on all matters pertaining to law, including U.S. civil and military law, international law, and the laws of Vietnam and neighboring states. (*See Appendix A.*) He was responsible for command policy, supervision, and control of all military law activities for Headquarters, Military Assistance Command, and commands subordinate to it. He performed for the headquarters all statutory functions required of a staff judge advocate under the Uniform Code of Military Justice. He maintained an office of record for foreign agreements entered into by the command. Foreign agreements maintained by the Staff Judge Advocate's office included formal treaties between the U.S. and Vietnam on such matters as agricultural commodities, atomic energy claims, defense, economic and technical co-operation, informational media guarantees, maritime affairs, publications, surplus property, taxation, telecommunication, and trade, as well as informal working arrangements between U.S. field commanders and local Vietnamese authorities. A judge advocate mission peculiar to Vietnam was the Staff Judge Advocate's responsibility for developing and co-ordinating plans and providing advice concerning the role of law and lawyers in counterinsurgency, resources control, and the prosecution of the war. In his advisory capacity the Staff Judge Advocate was the senior military adviser to the Vietnam Directorate of Military Justice and to other military legal offices of the Vietnamese armed forces. The primary advisory objectives were the revision, development, and implementation of the Vietnamese code of military justice, the planning, co-ordination, training, and direction of the Vietnamese judge advocates, and the administration of military law and discipline. The Staff Judge Advocate also maintained liaison with and assisted Vietnamese civil legal agencies.

Criminal and Disciplinary Law Division

In the early days of the U.S. Military Assistance Command, Vietnam, this division performed the traditional military justice work of

Chart 3—Organization of the Office of the Staff Judge Advocate U.S. Military Assistance Command, Vietnam, 1965–1966 [a]



[a] The size and organization of the office of the Staff Judge Advocate varied slightly after 1966. Claims were transferred to U.S. Army, Vietnam, and Criminal Law (Military Justice) was combined with International Law.

[b] In addition to American personnel, there was one Vietnamese attorney adviser, a librarian-receptionist, an interpreter-translator, and one clerk-typist attached to the Staff Judge Advocate's office.

[c] The Judge Advocate advisers in I, II and IV Corps were assigned to the MACV corps advisory headquarters in each of these military regions. The judge advocate adviser for III Corps was a member of the Saigon Staff Judge Advocate's office.

the command, observing the state of discipline and undertaking actions necessary to the functioning of military criminal law. Later the division was combined with the International Law Division. At that time the division's military justice responsibilities consisted of furnishing advice and guidance to judge advocates and to commanders and staffs of subordinate commands in the disposition of disciplinary and criminal matters; keeping the commander and the MACV staff, as well as senior MACV advisers and advisory groups, informed on the state of discipline in the command; and recommending appropriate corrective action as necessary.

Civil Law and Military Affairs Division

The Civil Law and Military Affairs Division advised and assisted the MACV staff and other agencies in such matters as currency control, black market operations, the withdrawal of military privileges from civilian contractor employees, the denial of access to military installations and facilities to U.S. civilians, and determinations of unacceptability for employment under U.S. government contracts. The division acted as liaison with the American Embassy, the U.S. Overseas Mission, the U.S. Agency for International Development, and the consul general on legal matters involving the Military Assistance Command. The division rendered advice on the legal status of, and military jurisdiction over, civilian personnel accompanying the armed forces. It appointed trial observers for U.S. civilians being tried in Vietnamese courts and monitored such cases. It reviewed MACV directives prepared by other staff sections. The division served as legal adviser to the Central Purchasing Agency, Vietnam, and to the Vietnam Regional Exchange, the agency which imported, distributed, stored, and sold all post exchange and base exchange items in Vietnam. In accordance with the terms of the Pentalateral Agreement—a mutual military aid pact signed by the United States with Vietnam, Laos, Cambodia, and France—the division acted to ensure exemption of U.S. agencies and U.S.-invited contractors from import taxes, customs duties, transportation taxes, inspections, and other forms of regulation by the Vietnamese government over imported goods and equipment which would adversely affect the U.S. mission in Vietnam. Finally, the division rendered advice and opinions on real estate matters such as the rent-free use by the United States of property owned by the government of Vietnam, compensation to owners for land appropriated for use as military bases or facilities, commercial leases of property to U.S. governmental agencies (there were over 1,300 such leases in Saigon alone by 1970), and real property disposal.

Advisory Division

Although MACV judge advocates had been associating with Vietnamese military and civilian attorneys for several years, the Advisory Division of the MACV Staff Judge Advocate's office was not organized until August 1965. The purpose of the Advisory Division was to continue the advisory work with the Vietnamese that had been carried on in an informal manner by previous judge advocates, and to augment the advisory work in Saigon by sending judge advocate advisers into other regions of South Vietnam. Broadly stated, the mission of the Advisory Division was to improve the effectiveness of the Vietnamese armed forces military law and procedures and to establish a popular military and civilian base for respect for law and order.

The Advisory Division was responsible for acquiring, compiling, analyzing, and reporting on data concerning the functioning of Vietnamese military law and legal institutions, including military courts, military field courts, tribunals, military prisons, jails, detention centers, rehabilitation centers, re-education centers, and the legal activities of the Vietnamese law enforcement agencies as they affected military law. As information was received and evaluated, recommendations were made to the Staff Judge Advocate for improvements believed possible in the Vietnamese military justice system. The division also acquired, translated, cataloged, published, and maintained files of Vietnamese decrees and other laws.

Acting on behalf of the Staff Judge Advocate, the Advisory Division maintained liaison with elements of the Vietnamese civilian legal community such as the Ministry of Justice, the civilian courts, and the School of Law, as well as with the Vietnamese armed forces legal service, the Directorate of Military Justice. Work with the Directorate of Military Justice included advising and assisting Vietnamese judge advocates on technical legal matters on request; reviewing and advising on the Vietnamese judge advocate annual budget request and table of organization and equipment; advising on the operation of and obtaining supplies and equipment for the military courts and prisons; and assisting in improving military justice and other law instruction in the Vietnamese armed forces schools and training centers. As a matter of course, the Advisory Division also assisted the other divisions of the MACV Staff Judge Advocate's office and other MACV staff sections in matters pertaining to Vietnamese law. For example, the chief of the Advisory Division during 1972 and 1973 was a member of a Joint General Staff committee composed of representatives of the Military Assistance Command and the Republic of Vietnam armed forces to draft a mobilization law and also to prepare a demobilization study affecting the armed forces of the Republic of Vietnam. The judge advocate field advisers, who



COLONEL GEORGE S. PRUGH,
Staff Judge Advocate,
1964–1966.
(Photograph taken after
his promotion to major general.)

at various times were stationed in Hue, Da Nang, Pleiku, Nha Trang, and Can Tho, as well as in Saigon, worked with the Vietnamese judge advocates who administered the military courts and prisons in each of the four corps areas in South Vietnam. The judge advocate field advisers assisted their Vietnamese counterparts in all matters of U.S.-Vietnamese legal relations; established contact with local Vietnamese civilian judges, lawyers, and prosecutors; monitored Vietnamese legal activities in the corps areas and rendered reports on legal conditions in the corps areas to the MACV Judge Advocate in Saigon; and performed as command judge advocates for the MACV advisory units in the corps areas.

International Law Division

The International Law Division reviewed and assisted in drafting and interpreting international agreements between the Commander, U.S. Military Assistance Command, Vietnam, and the Vietnamese armed forces and between the Commander, Military Assistance Command, and Free World forces. This division rendered opinions on international law for the command, including the Law of the Sea, the Geneva Conventions of 1949, and the Laws of War. It maintained files of investigations of alleged war crimes and atrocities committed by or against U.S. military or civilian personnel in Vietnam. It assured that prisoners of war who had been captured by U.S. troops and turned over to the Vietnamese government for detention were being provided the legal rights accorded them by the Geneva Conventions. The International Affairs Division provided instruction to newly assigned MACV personnel in the Geneva Conventions and Code of Conduct.

One significant twist in the development of the role of judge advocates in Vietnam happened in mid-1965 and shaped the functioning of the MACV legal office in a manner not anticipated. It came about through a judge advocate staff study completed on 31 May and designed to explore the role of the civil law system in counterinsurgency operations in Vietnam. The following is quoted from its opening paragraph:

> In the course of examining the legal system of Vietnam to determine where improvements could be made to make the system more effective in the prosecution of the war against the Viet Cong, it becomes apparent that a great gap exists between the work of the police and the work of the judiciary. In short, apprehension of Viet Cong becomes more efficient but the disposition of their cases is far from satisfactory. Some reflection on this specific problem leads to doubts concerning the utility of the civil code system generally as an effective tool against insurgency. At the same time it becomes apparent that the place of law in the counter-insurgency efforts is not well understood or studied, despite the fact that the establishment of a rule of law and order in the society is probably the most important goal that could be achieved.

A few days earlier the Staff Judge Advocate, Colonel George S. Prugh, had reported to a visitor from the Deputy Chief of Staff for Military Operations, Department of the Army:

> The US military lawyers have been trying to inject some of the leadership needed to develop the bench and bar as indicated above. The task is too large for them to accomplish in the light of their regularly assigned tasks. They can still be of material help but it is clear that there should be a full-time civilian effort to generate the programs desired. It is estimated that three full-time practitioners, devoting their entire effort to an advisory program for the civilian bench and bar, could make a real breakthrough within two years and have their influence widely felt within five years. One of these could be located in the central part of Vietnam, spending considerable time at the courts and law school at Hue. The second would do the same for the south, also teaching at Saigon Faculte de Droit, and the third would be the chief and coordinator with the Minister of Justice and the Bench. From these three could come the plans for contractual assistance in the recodification program, the training of indigenous experts, and the handling of technical assistance from CONUS. If recruitment of civilian practitioners proves an obstacle possibly Army officers on excess leave would be available.
>
> There cannot be a successful counterinsurgency program until there is established a respect for law and order. This can be done with establishment of an effective system of law, law enforcement, and public education in the place of the legal institutions and the citizen's role related to them. This is a long-term goal but it cannot be started after the military effort is completed. It must be simultaneous with the military operations against the VC and must be stressed in the areas where a sufficient degree of pacification has been attained to permit the legal institutions to function.
>
> Such a program encompasses public education from the grade schools up.
>
> It also means considerable improvement in the efficiency and relationship between the National Police and the court apparatus. It requires com-

pletely honest, uniform, consistent and impartial administration of the law.

And it needs the development of laws which are reflective of the popular notions, customs, traditions, and culture. . . .

There is a particular warning available to us in any civil code country where one or more of the following exist: (1) the law is an engrafted one, passed without local adaptation from a colonial power in relatively recent times; (2) there is no method for the general public to express itself in legal matters, such as through elections of officials or laws; (3) where the legal institutions do not function in the rural areas; or (4) where the bar is too small, intimidated, a "closed shop," or collectively voiceless in the affairs of the government.

These ideas pointed to a role for the military lawyer heretofore unthought of, a role that involved the use of law and legal institutions in a positive sense to defeat the insurgency. The first step was for the military judge advocates to learn about the existing law and legal institutions in Vietnam and how they functioned.

CHAPTER II

The Vietnamese Legal System

From the very beginning, judge advocates assigned to Vietnam had worked to become familiar with the laws of Vietnam, the legal system, and those who administered it. Clearly it was not enough for lawyers merely to play a passive role of problem prevention. The U.S. judge advocate mission in Vietnam was twofold: to defeat the enemy of the Republic of Vietnam and to assist the Vietnamese to develop their own institutions in the midst of the military crisis. The MACV judge advocates, working closely with their Vietnamese counterparts, sought ways in which law could be employed, including the way to use law as an effective weapon in the struggle against Communist insurgency. They also labored to help their fellow attorneys strengthen the Vietnamese legal system in a manner which would enable it to be truly responsive to the needs of the government and the people.

The accomplishment of these goals required not only a knowledge of the principles of law found in the United States and in international law, but also a thorough grounding in the legal processes of the Republic of Vietnam. This last was an especially formidable task. Vietnam was little known to most of the American Army, and certainly not to the U.S. legal community. There was a scarcity of readily available English source material suitable for studying the legal system. The fact that Vietnamese judicial organization was patterned upon the French system provided some comfort to those who were familiar with the civil law systems of Europe, but it soon became apparent that while the Vietnamese legal system might be French in structure it was uniquely Vietnamese in outlook and operation. Law is rooted in history, and those who wish to utilize the law as a tool for social development must first understand the society from which the law evolved and in which it must function. The requisite knowledge and insight for the task at hand would be gained by judge advocates only through day-to-day, step-by-step personal observation and involvement, in the midst of many distractions. In this continuing educational process the diligence of American attorneys was complemented by the patience, ability, and professional attitude of the Vietnamese attorneys and jurists with whom U.S. judge advocates worked on a daily basis. As mutual understanding

grew, mutual respect increased. Throughout the course of the war the co-operative efforts of American and Vietnamese attorneys have accrued to the benefit of both nations and to the credit of the legal profession.

The Vietnam Environment

The Republic of Vietnam is a long, narrow country on the eastern coast of the Southeast Asia mainland. Roughly the size of Florida, its terrain features are much more diverse. The Annamite Cordillera, a rugged jungled mountain chain, stretches for two-thirds of the length of the country and occupies most of the land. Bordering the mountains, along the coast of the South China Sea, is a narrow, fertile strip of lowland. South of Saigon and covering the southern one-third of the country is the Mekong Delta, a vast, semi-flooded alluvial plain which has long been a major rice producing region for Southeast Asia. The principal road and rail networks run north-south, hugging the coast. Route 1, the most important highway, is a two-lane paved road extending most of the length of the country. While there is heavy local traffic on the roads, most long-distance travel is by air. The mountainous regions west of the coast are largely undeveloped and insecure.

It has recently been estimated that South Vietnam has a population of eighteen million, which would be an increase of about three million in the last decade. The greatest number of people are concentrated in the Mekong Delta and along the narrow coastal plain. The majority of the people are ethnic Vietnamese, but there are several minority groups, the most significant being the Montagnards of the Central Highlands and the Chinese of the Cholon district of Saigon. Each of these groups maintains its own social customs and, to a certain extent, its own laws. While seldom doctrinaire in their beliefs, the Vietnamese profess many religions. Most are at least nominal Buddhists, but the Catholics, who comprise about 10 percent of the population, have been prominent in the political leadership of the country. Several minor sects have also been politically active, even to the extent of supporting private standing armies, such as those of the Hoa Hao and the Cao Dai.

Perhaps the most significant development in Vietnamese society (during the fifties and sixties) has been the growth of the refugee population. The first great wave of Tonkinese refugees fled from the northern part of Vietnam shortly after the Communists came to power. While many of these people were peasants and laborers, many others were educated teachers, professionals, and political figures. This leadership class was generally anticommunist. The Tonkinese from the north quickly became active in the political affairs of the

south, where their activities often aroused the resentment of native southern leaders who were Cochin Chinese. This rivalry was a significant factor in the political turmoil of the early sixties in Saigon.

A second wave of refugees was created during the widespread heavy fighting of 1965-1971 in the south of the republic. Thousands of South Vietnamese were uprooted several times in the course of successive campaigns. The influx of refugees fleeing from the countryside placed an enormous burden on the city governments and social agencies which care for the refugees. As families became separated, possessions lost, and people crowded into the refugee camps, it was only natural that respect for law and order, already much diminished, should deteriorate further. The problems of administering to the refugees' needs mounted.

Administratively, South Vietnam is divided into provinces, roughly similar to U.S. counties. Each province is subdivided into districts. All but the most remote districts have at least one major town and many villages, which are made up of hamlets. The Vietnamese are an agrarian society whose loyalties have always been decidedly local. For those who have not been uprooted by the war, life centers around the family and the hamlet. Beyond the village any sense of personal responsibility toward society tends to dissipate rapidly. While a spirit of nationalism is growing, it is as yet but a thin veneer on the daily lives of many of the people. There are thousands of villages in Vietnam, and often the laws most relevant to the villagers in their dealings with each other are the laws of local custom, based on ancient tradition and strongly influenced by spiritism. These laws are interpreted and administered by the village leaders, who are the only legal authority for most of the population. Thus the ancient Vietnamese adage, "The laws of the emperor yield to the customs of the village," continues to be a valid reminder for anyone attempting to analyze the role of law in Vietnamese society today.

The Chinese Influence

A major influence on the Vietnamese attitude toward law is Confucianism, introduced by the Chinese during the eleven hundred years they dominated Vietnam before 938 A.D. Confucianism is an ethical concept which the Chinese applied to societal organization as well as to their personal lives. The patriarchal family was the model for a perfect society, and Confucianist doctrine prescribes for its support the duties and obligations owed by child to parent, wife to husband, younger to older, and of all to the father as the senior representative of the family group. As the father-figure of the empire, the emperor exercised absolute parental authority over his subjects

through a bureaucracy of mandarins—his personal representatives. In the person of the emperor resided all political, religious, and legal authority. His nearly omnipotent role was the logical result of Confucianist doctrine that taught not to follow certain abstract principles, in the Western sense, but to accept the authority of certain people. The notions of individual rights and abstract justice were absent. The emphasis was upon the duties and relationships between people to achieve social harmony and stability in the state.

A central precept of Confucianism is the achievement of social harmony through adaptation: the ideal solution of conflict is settlement by negotiation and adjustment; any position can be changed; no commitment is final. This philosophy has remained a dominant theme of society and a key to the Vietnamese view of life. A prudent man learns to adapt to changing circumstances and tries to ameliorate unpleasant situations. As political fortunes change, so do political loyalties; such reversals of allegiance are considered in terms of prudence rather than disloyalty. If you ask a Vietnamese a question and he thinks that the true answer might cause you to feel embarrassment or anger, he may respond in a manner he hopes will please you, even if the answer does not correspond to the facts as he knows them. Such responses are considered in terms of politeness, rather than untruthfulness. While honesty is an admired virtue, in the Vietnamese scale of values it would be considered foolish to sacrifice one's own well-being or family interests for the sake of being scrupulously fair to strangers. When the U.S. military lawyers looked at Vietnam in 1965 they recognized the need for a thorough understanding of Vietnamese values and mores. The same could be said of Vietnamese legal philosophy and jurisprudence.

The achievement of independence from the Chinese had not substantially changed Vietnamese law. Under the Chinese, Confucianism was almost synonymous with the law. It was the official state ethical code and the dominant intellectual tradition of the Vietnamese mandarins, the scholar-bureaucrats who administered the country. The Vietnamese dynasties that succeeded the Chinese retained the form and apparatus of the mandarin government, including the laws by which the Chinese had ruled Vietnam. The Vietnamese Hong Duc Code of the Le Dynasty, promulgated in the fifteenth century, was modeled on the Chinese T'ang Dynasty (618–807) Code. The Vietnamese Gia Long Code of 1815 was a bodily re-enactment in the Chinese language of the Manchu Dynasty Code of the seventeenth century. The scholars who adopted the Chinese codes for Vietnam may have felt they were performing a valuable service, but imposition of the foreign law served to alienate the people from the law and from those who administered it.

The French Influence

French rule imposed yet another alien layer of law on the Vietnamese but it did not totally replace Chinese law or ancient customary law. The French administered Vietnam as three separate regions: Tonkin, now North Vietnam, the capital at Hanoi, as a protectorate; Annam, central Vietnam, its capital Hue, as a protectorate; and Cochin China, southern Vietnam, its capital Saigon, as a colony. One result is that each region today has its own legal code, and there is still no single comprehensive Vietnamese civil, criminal, procedural, or other code.

The French protectorate at Tonkin made few concessions to the appearance of native autonomy. The important executive powers were vested in a French Resident-Superior at Hanoi who governed in the name of the emperor. French resident officers in the larger towns directly controlled the local administration. They attempted to work through the mandarinate and to preserve the institution for administrative purposes, but on terms consistent with French needs. The traditional judicial system was retained and applied using the mandarinate as a front. By degrees Tonkin was subjected to modified French codes: a Code of Criminal Procedure in 1917, a Penal Code in 1921, and a Civil Code in 1931.

In Annam the emperor and his officials were left in charge of internal affairs, except for customs and public works, but they functioned under the close scrutiny of the French, whose rule was somewhat less direct than in Tonkin. All of the acts of the emperor, except on some minor matters of religion, eventually became subject to French approval. In Annam, the Gia Long Code was applied until promulgation of the Penal Code for central Vietnam in 1933, a Criminal Procedure Code in 1935, and a Civil Code in three parts between 1936 and 1939. All were basically French codes modified to suit local customs and the requirements of administration in Annam. The French drafters of the codes for both Annam and Tonkin went to great lengths to ascertain conscientiously what Tonkinese and Annamese customs really were and to exclude inappropriate provisions copied slavishly into the Gia Long Code from Chinese texts.

Cochin China, which had been under French domination for some twenty years longer than Tonkin and Annam, became in 1862 a colony under French law, while Tonkin and Annam remained as protectorates, each under the nominal reign of its emperor. Cochin China was administered directly by a French-staffed civil service under a governor and a colonial council. The colonial council was composed half of Frenchmen and half of Vietnamese, the latter elected on a limited suffrage and the former by the French civil servants working in the colony. As a colony, Cochin China sent its own dele-

gate to the Chamber of Deputies in Paris. In 1879, attempts to govern through a controlled mandarinate were abandoned and French administrators were placed at the head of each province. The mandarins had been permitted to apply the Gia Long Code as far as they knew it in the absence of printed texts. The French administrators applied French law and a French translation of the Gia Long Code, and, when these did not cover the situation, the ancient Hong Duc Code. When French administrators were substituted for the mandarins, the Penal Code of France became the basis for civilian law until the Modified Criminal Code was published in 1912. Many statutes enacted in France were interpreted as applying automatically to Cochin China, as to all other full colonies. The Civil Code of France was followed by the French courts in Cochin China, local modifications having been published as early as the *Precis* of 1883.

The old Vietnamese laws remained in an uncertain state of coexistence with the laws of France even after the publication of the various codes by the French. The applicability of the codes was not territorial, but *ratione personae*. Each person carried his own law with him and the regional codes applied only to natives of the region. A stranger, for example an Annamese in Tonkin, was subject to his own law in civil disputes and to French law if charged with a crime. A Frenchman, or another foreigner, would be subject to French law in all matters. Furthermore, the applicability of the law was, to a degree, a matter of choice, as anyone could elect the protection of French law in place of the traditional Vietnamese law that still coexisted with the French codes. There were French courts and Vietnamese courts, but the former enjoyed an overriding jurisdiction. The Vietnamese courts were composed of the courts of the native provincial administrators, sitting as magistrates as they had done under the Chinese system of the Gia Long Code, except that in Cochin China the judges of the Vietnamese courts were Frenchmen until 1921, when a few Vietnamese magistrates were appointed to hear criminal cases according to French law in the vernacular of the accused. In civil cases, litigants had a choice between French and Vietnamese judges, even when they sought to be judged by traditional Vietnamese law in preference to the statutes of the colonial regime. However, if one party was not Vietnamese, jurisdiction lay exclusively with the French court. The only appellate courts were French, and the only procedure for appeal under the traditional Vietnamese system was by petition to the throne.

While all of the codes published by the French for Annam and Cochin China were still in effect in the Republic of Vietnam, they were no more successful in bringing the law to the people than were the Chinese codes which preceded them. The conglomeration of customary, Chinese, and French laws and the cumbersome dual sys-

tem of administration did little to enhance the image of the law or the central government in the eyes of the average farmer in his hamlet. Significant advances were made under the French, but even to those Vietnamese who were exposed to the law and who understood its workings, it must have seemed that the "rule of law" meant simply the rules of the governing political power, imposed on a population whose only participation in the legal process was passive obedience.

A MACV Staff Study of 31 May 1965 summarized the effect of French law upon the Vietnamese as follows:

> Under the French an effort was made to establish a judiciary apart from administration, and this brought French officials deeply into the Vietnamese judicial system, according to the 1962 Michigan State University study of RVN. "Thus the social structure was penetrated and fractured at the district and village levels. The canton chiefs and village elders were stripped of their police and judicial powers, which were given to the French policemen and judges." This led to further separation of the people from the law. The Michigan State University study noted "the introduction of a new legal code had upset the social structure of Vietnam. The Vietnamese were bewildered by both the form and the content of the new French law, which was rigid where Vietnamese law was known for its flexibility. The majestic slowness of the French judicial procedures were in marked contrast to the quickness of traditional justice." One of the main Vietnamese grievances against the French was the substitution of French laws for the Vietnamese code. "French law was completely out of harmony with traditional law and custom."
>
> The French heritage remains heavy in the entire legal system, military and civilian. The older, more renowned lawyers and judges are often found to be French educated, French and non-English speaking. Professional works are often published in French. The French trappings as well as institutions are adapted by the Vietnamese, and these are superimposed over the Vietnamese society without much change. The Code Napoleon influence is naturally strong, and the civil code system, as distinguished from the common law, is employed. Trial by jury is not employed, the technique of cross-examination is severely limited, and the authority of an examining magistrate is much enlarged as compared with US or common law practice. One former French governor wrote: "We have destroyed the past and not built anything to replace it . . . It was with a handful of Frenchmen, under a killing climate, that we attempted to apply our laws to two million people belonging to a Chinese civilization which had stood against two thousand years of revolution.

Following its putative independence from France under the Elysee Agreements of 1949, the Vietnamese legal system remained much the same as it had been under the French, except that on 16 September 1954 the courts and legal system were completely taken over by the Vietnamese. With the appointment of Ngo Dinh Diem as premier in 1954 and the departure of Emperor Bao Dai in 1955 there began the promulgation of a long list of emergency decrees designed to control the population and resources and to protect the state under insurgent conditions. Seven different constitutions were promulgated,

suspended, and replaced as a result of a series of coups and counter-coups. In 1964 alone seven different governments came and went.

The Vietnamese Constitutions

The first constitution was promulgated on 26 October 1956, a year after the Republic of Vietnam was proclaimed, with Diem as president. It provided for separation of executive and legislative powers, but in practice the legislative power was insignificant. There was no separate autonomous judicial branch; the court system was under the supervision of the executive branch through what was then called the Department of Justice. The relationship between the executive and legislative branches was not clearly defined, and the executive, under President Diem, quickly became predominant. Under the constitution the president was vested with broad emergency powers to rule by decree between the short sessions of the legislature, and, in time of war, internal disturbance, or financial or economic crisis to exercise extraordinary power to institute any appropriate measures. While the constitution did provide for some checks on executive power, they were largely ineffectual.

President Diem's regime came to a violent end on 1 November 1963, victim of a successful coup. The 1956 constitution was replaced by a hastily drawn provisional charter on 4 November 1963. All executive and legislative power was placed in the hands of a Revolutionary Military Council headed by Major General Duong Van Minh. Since all power was centralized and exercised by the generals, the provisional charter had little legal significance.

A second provisional charter replaced the first provisional charter on 2 July 1964. This was soon followed by a third provisional charter on 16 August 1964. Both the second and third charters stressed the supremacy of military leadership and executive power. Major General Nguyen Khanh, who had unseated General Minh in January 1964, became chairman of the Revolutionary Military Council, which was the supreme organization of the nation.

The charter of 16 August 1964 was withdrawn because of severe criticism that it provided for a military dictatorship. It was replaced by the fifth constitution, the provisional constitution of 20 October 1964, which provided for a transfer of authority to a civilian government. The civilian government proved ineffective and relinquished its authority in June 1965 to a group of military leaders headed by Air Vice Marshal Nguyen Cao Ky.

This group established the National Leadership Council, a ten-man military directorate, with Major General Nguyen Van Thieu as chairman, a position comparable under the circumstances to that of chief of state. On 19 June 1965 the committee named Air Vice

Marshal Ky as prime minister and proclaimed the sixth constitution, another provisional charter.

In September 1966, a constituent assembly was elected by nationwide ballot to draft another constitution providing for the return to civilian government. The drafting committees consulted many constitutions, particularly the French, American, Japanese, and Korean, and were aided in their work by advice from the United States. The seventh constitution since the constitution of 1956 was proclaimed on 1 April 1967. It provided for a president, a bicameral legislature, and an independent judiciary. Checks and balances between the three branches were set out.

Decree Law

With South Vietnam in a state of almost constant warfare and political upheaval since 1954, the government came to rely increasingly on the use of emergency executive decrees as a means of controlling the people and resources and preserving order in the state. In Vietnamese terminology, a decree was an edict by the executive power, namely the president of the Republic or the prime minister, countersigned by one or more ministers. As a general rule, any decree had to be based on a previous law, that is on an act of the National Assembly. The president or the prime minister had the power to introduce a proposal of decree law. The legal office at the office of the president of the republic was in charge of contacting the minister involved for necessary discussion, exchange of ideas, and draft of the decree law concerned. The draft was then sent to the Council of Ministers for deliberation, and, if approved, it was promulgated by the president and published in the Republic of Vietnam official gazette. The decrees usually did not formally replace existing law, but added to it. If there was conflict between an existing law and a new decree, the new decree controlled.

Decrees were often vague in language and far-reaching in scope. For example, the 1962 law for the protection of morality prohibited abortion, sorcery, animal fights, smoking by persons under age eighteen, prostitution, which was defined as "voluptuous activities," dancing, and beauty contests. Article 4 stated, "Dancing at any place is forbidden. All various styles of dance which are harmful to the good customs and nice traditions, and all beauty contests are banned."

There were hundreds of decrees, affecting every aspect of Vietnamese life. Representative decrees designed to control the resources of the country were those regulating the stocking of goods, the distribution of food, the provision of security measures for rice truck convoys, and the possession and use of pharmaceuticals, medical supplies, batteries, sulfur, steel pipes, cotton seed, soybean oil, and

currency. Among the decrees regulating the life of the people were decrees placing strict controls on the press, requiring government permission for all meetings, including family gatherings, enlarging police powers to search, seize, and arrest, and controlling the use of roads and other transportation facilities. Decrees aimed most directly at suppressing insurgency were those which defined crimes against the state security, forbade membership in the Viet Cong, defined and punished "subversive acts," defined and prescribed the death penalty for "hooliganism" and other offenses, declared a state of emergency, declared a state of siege, declared martial law, and declared war. *(See Appendix B.)*

A survey of the decrees does, however, reflect the efforts of the various governments of South Vietnam to meet the insurgency and invasion threats and at the same time to preserve a reasonable measure of freedom, disrupting the normal patterns of life of the citizens as little as necessary, and giving considerable obeisance to formalism and legal reasoning, which Vietnamese officials, jurists, lawyers, and politicians believed their legal institutions required. That the efforts frequently failed was due to a variety of reasons, one of which was the basic inability of the law enforcement machinery to take on the tasks necessary to support wartime decrees in a war-disrupted country. Another reason was the lack of tradition to support obedience to or respect for the law. A third was that often the decree sought to build upon a foreign, primarily French, law without full knowledge of that law, its modernization, or its wartime application. There was also an apparent belief that severe-sounding laws would not have to be applied as threatened. It is noteworthy that throughout most of the war the decrees, and the courts in enforcing them, declined to take the position that a state of war existed or that wartime penalties should be imposed.

From a legal standpoint, among the most controversial decrees were those that provided for the detention of individuals who were considered dangerous to national security. This category of civilian security suspects consisted of civilians arrested by the police or security guards, or persons detained as a result of military operations who were not readily classifiable as innocent civilians or prisoners of war. Civilian security suspects were initially investigated by the police. If it appeared that they were innocent, they could be released by the police chief, the district chief, or the province chief. If there was sufficient evidence for trial they were turned over to the military courts, which, as in most civil law countries, had jurisdiction over all national security offenses.

If there was insufficient evidence for trial but an individual was nevertheless deemed dangerous to security, he was held for "processing" by the province security committee. This committee consisted

of the province chief, the deputy chief for security, the prosecutor (the only legally trained member of the committee), a National Police representative, a Military Security Service representative, the sector S-2 (a Vietnamese military intelligence officer), and one person representing the Regional Forces and Popular Forces. These committees had the authority to release a suspect, to order him to live in a certain area, to banish him from a certain area, or to incarcerate him in a re-education center for a period of up to two years, such periods being renewable indefinitely. If the committee decided to incarcerate an individual, the recommendation was sent to the Central Security Committee in Saigon, which forwarded it to the Minister of the Interior for signature. The Minister of the Interior, who often was an attorney or judge, was responsible for the internal security of the state.

Proceedings of a security committee were not judicial in nature, although the committee could allow a suspect to be present and be represented by counsel.

Periods of confinement varied: some were for as little as three months, others were extended beyond the original two years. The duration of confinement was influenced by the inadequate facilities for the numbers involved, and ultimately the normal period of confinement for political prisoners, those considered enemies of the state, often including Viet Cong, was between six months and a year. The result was an anomalous situation in which a member of the Viet Cong, taken in combat and dealt with as a prisoner of war, could go to a prisoner of war camp, where he would be treated according to the Geneva Conventions of 1949, but where he would also be likely to remain until the war came to an end; on the other hand, a member of the Viet Cong picked up by the police in a city or village search would likely be sent to a re-education center, where he would be treated as a pretrial criminal, without Geneva Convention benefits, but where he probably would be confined for as little as six months and then set free without a trial.

The courts played no part in sending individuals to the re-education centers, nor could a prisoner seek release through the courts. The common law concept of habeas corpus was alien to Vietnamese jurisprudence, as it is generally in the civil law system. This is not to say that no effort was made to prevent unjust confinement or to release those who might be confined without sufficient cause. The re-education centers were operated by the Ministry of the Interior, but the Ministry of Justice had constitutional responsibility for supervising detentions which were under its control. There was co-operation between the two ministries, and Ministry of Justice prosecutors were able to inspect the prisoners, review confinement records, and report to the Minister of Justice, who could recommend

that prisoners be released. A prisoner or his relatives who felt that a detention was unjust could complain to the prosecutor, who would conduct an investigation.

Under the terms of the 1967 constitution, many of the emergency decrees promulgated earlier were of questionable validity. Yet with few exceptions they remained in effect, and additional decrees were promulgated, further concentrating power in the executive. On 10 May 1972 President Thieu declared martial law. The constitution authorized the president to declare "a state of emergency, curfew or alert" which the legislature must ratify, amend, or reject within twelve days, but there was no specific provision for a declaration of martial law. Some legislators, therefore, thought the decree of 10 May unconstitutional, but it was not rejected. On 28 June the National Assembly passed a bill delegating to President Thieu the sole power to decide by decree any necessary measures in the fields of security, defense, economy, and finance "for a six-month period." Later decrees directed measures to be taken and penalties to be given for violations of "security and public order during wartime or a state of martial law." These decrees were largely variations upon themes of earlier decrees setting forth security measures.

The decrees were emergency political measures taken by a government at war—a war that raged the length and breadth of the country, where the enemy mingled with the citizenry, where political and social institutions were as much targets as were military forces. In order to cope with this situation, measures were enacted regulating virtually every aspect of political, economic, and social activity. Some decrees were detailed; others were sweeping. Generally, decrees gave the government sufficient authority for effective action in the area of national security. In terms of legal craftsmanship, the law and procedures prescribed were often lacking in definiteness, coherence, and uniformity. The profusion of decrees alone would make any comprehensive analysis of their impact on the legal system extremely difficult. Many of the measures enacted envisioned legal concepts unfamiliar to American attorneys, while some decrees contained Western terms which had no precise correlation in Vietnamese jurisprudence. Some of the decrees were secret, and others were not publicized. Since many previously enacted decrees and statutes remained in effect, at least nominally, there were inevitable conflicts between provisions of the different decrees, codes, and the latest constitution.

Drafting executive orders, which are in the nature of legislation, is always a difficult task. On the one hand, the exigencies of the situation must be met, but on the other hand, the measures taken must be within the limits of constitutional authority and should be reconciled with previous policies and laws of the government. This

exacting work requires time, favorable working conditions, and an adequate pool of experienced attorneys, none of which was readily available in Vietnam during the war.

The Ministry of Justice

Prior to the enactment of the 1967 constitution, the Ministry of Justice was the paramount legal institution in the government, with authority over all courts, judges, and prosecutors. There were statutory guarantees designed to promote independent decisions by judges in litigated matters, but the authority of the ministry included the power to supervise the administration of the court system, to appoint, transfer, and discipline members of the judiciary, and to exercise financial control over the judicial system. Under the 1967 constitution the judiciary became separate and independent from the executive branch of the government; the judiciary was granted an autonomous budget, and the Supreme Court exercised authority over all courts and judges.

Other important responsibilities of the Ministry of Justice were retained within the framework of the 1967 constitution. Acting through its "prosecuting judges" (public prosecutors) the ministry prosecuted penal actions, and it could participate in civil actions if it determined such a course was warranted to protect the public interest. It advised the government on legal matters, drafted legislation, administered the prisons, controlled the judicial police, and was responsible for law reform.

The responsibility of the Ministry of Justice as legal adviser to the government was particularly significant since the various ministries did not have legal advisers or legal staffs of their own. Advice was requested on such matters as the civil rights of citizens, the exploitation of natural resources, administrative contracts, and government reorganization. The ministry might also be called on indirectly to advise province chiefs and provincial administrators, who did not have their own legal advisers. These officials normally sought advice from the Ministry of the Interior, which could in turn request assistance from the Ministry of Justice.

Starting in the mid-1960s the Ministry of Justice conducted a vigorous campaign to modernize the laws and increase the use and efficiency of the legal process. In 1965 a Law Study Committee was named by the Minister of Justice for the purpose of unifying the various legal codes that were in effect in the country. The committee, which was financially sponsored by such organizations as the Asia Foundation and the U.S. Agency for International Development, was chaired by the Minister of Justice and included prominent Vietnamese attorneys and judges. The committee worked for three years

to review and redraft the criminal code, the civil code, and the codes of criminal, civil, and commercial procedure. The unified codes were forwarded to the legislature in mid-1969 for debate and vote. To ensure continuation of the work of the committee, it was institutionalized as a Law Center attached to the Ministry of Justice, with the Minister of Justice and the chiefs of the public law section, the civil law section, and the criminal law section of the ministry as members of the Law Center planning board. The Law Center continued the revision of the code of commerce, which was begun by the Law Study Committee, and began work on the administrative code, the code on the authentication of legal documents, and the code on the expropriation of properties for public use. Other projects slated were the revision of the military code, the labor code, and the housing code.

The systematic study and revision of the laws by Vietnamese scholars will be a major step toward gaining the respect of the people for the law, thus forging a bond between the people and the government. The official and unofficial, formal and informal, personal and private support of the American military lawyers in Vietnam has contributed substantially to this process.

A number of steps were taken by South Vietnam to promote the effective administration of the law by ensuring an adequate number of qualified personnel to perform legal functions. After 1967 the Supreme Court was responsible for the regulation and supervision of all judges. This responsibility was fulfilled through the activities of the judicial administration committee. The Supreme Court also established its own law and research center in 1969. Within its jurisdiction, the Ministry of Justice drafted regulations governing the careers of prosecutors and establishing the independent status of notaries, who were previously government officers under the control of the ministry. The ministry also took steps to increase the number of process servers in each province and to bring the judicial police directly under the control of the ministry.

The Court System

A direct result of the separate administration of Annam and Cochin China under the French is that historically South Vietnam has had two court systems, one centered in Hue, the other in Saigon. The ultimate court of appeal for both was the *Cour de Cassation* in Saigon, but each of the two systems administered a different code of laws and each had its own bar and law school. The courts in Vietnam adhered to the French model in that there were dual systems of judicial and administrative courts, each having its own hierarchy and each culminating in an appeals court. The judicial courts heard

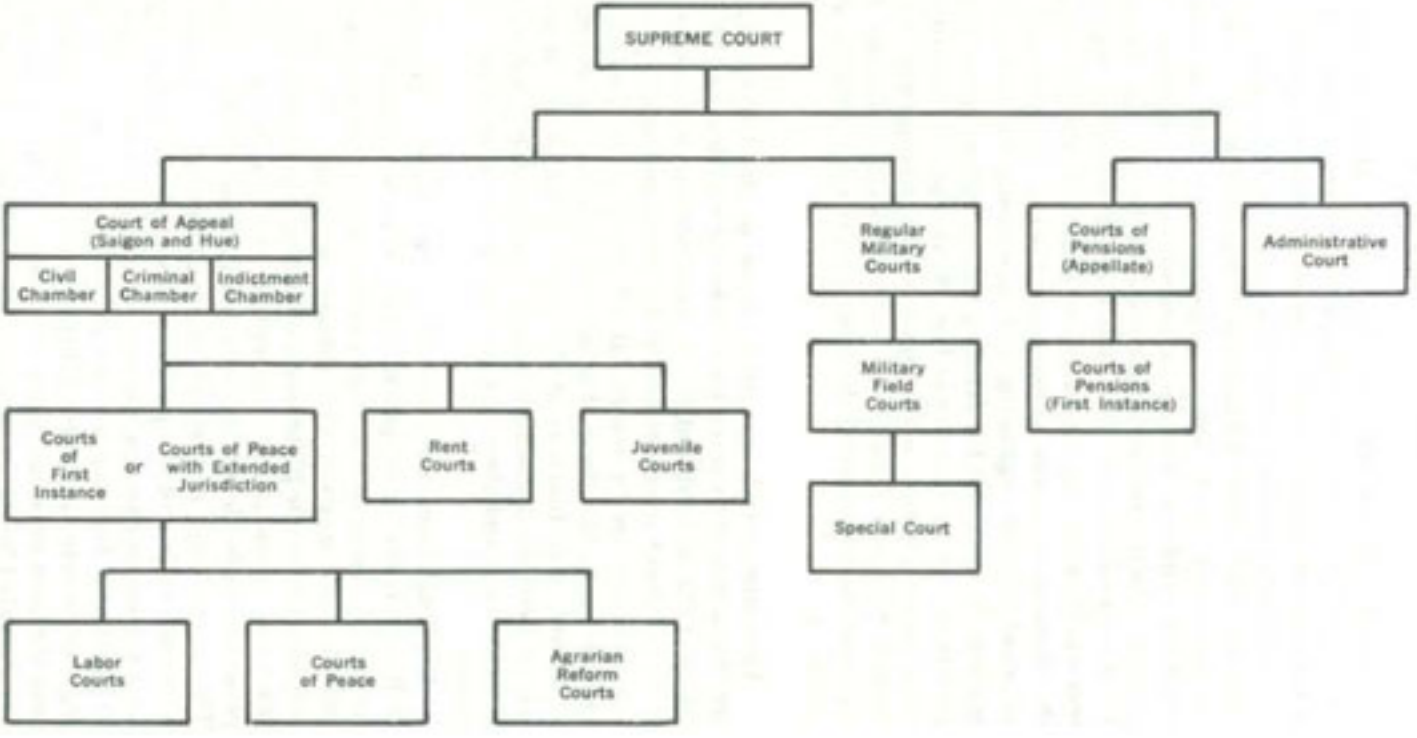
the traditional criminal and civil matters, while the administrative courts had jurisdiction over disputes between citizens and the state involving certain specialized areas of government action.

The highest judicial court was the *Cour de Cassation;* the highest administrative court, the Council of State. There were also a number of specialized courts having cognizance of cases in such areas as employer-employee disputes; a juvenile court; agrarian courts; and a court to hear landlord-tenant disputes. Before the changes effected by the constitution of 1967, the judicial system of South Vietnam was wholly a part of the executive branch of the government, with the Minister of Justice as executive head of the legal system having responsibility for organizing and supervising the courts, for administering the laws, and for defining the regulations governing the legal profession and the practice of law. While the 1967 constitution instituted major changes with respect to the prerogatives of the newly created Supreme Court, the judicial system remained French in tone and the functions of the lower courts were virtually unchanged. (*Chart 4*)

Vietnamese trials are unlike those in the United States, which are characterized by procedural technicalities designed to protect the rights of the accused and direct confrontation and cross-examination of all pertinent witnesses before the court, and which permit aggressive participation by counsel at all stages of the proceedings. Vietnamese trials, like those of other civil law systems, are inquisitorial in nature. The function of the court is not to act as referee in a contest between opposing counsels, but to make a judicious inquiry as to the facts and then to apply the law so as to achieve substantial justice.

Criminal cases are processed in two stages. The first stage of each case is the investigation, which may be a routine matter performed by police or other authorities, or may be an exhaustive compilation and analysis of evidence performed by an examining magistrate from the prosecutor's office over a period of several months. Once the investigation is complete, the case is forwarded to the prosecutor, who determines whether the case should be sent to trial. The second stage of the case, the trial, provides a forum for a disinterested review of the government's evidence and an opportunity for the court to examine the accused and call such witnesses as it, in its discretion, feels are relevant to the issues at hand. In simple and *flagrante delicto* cases there is little deliberation; in serious, complex cases the most important piece of evidence is often a voluminous dossier compiled by the prosecutor's office. Witness testimony before the court, if there is any, is apt to be abbreviated, with the president of the court asking all the questions. The president is in complete

CHART 4—JUDICIAL SYSTEM OF THE REPUBLIC OF VIETNAM



charge of the court; the participation of counsel is limited primarily to argument.

In the military courts, trials seldom last more than a day, and it is not unusual for a field court to try more than a hundred desertion cases in a trial session of two or three days. In the eyes of the accused it is the prosecutor who is the dominant figure in the proceedings. Defense counsel does not usually participate actively in the pretrial stage of a case; it is the prosecutor's office which gathers the evidence and compiles the dossier upon which the case is tried, and it is the prosecutor who decides whether to send a case to trial. If a criminal case goes to trial there is a very high probability of conviction. At trial the prosecutor speaks from a raised platform, equal in height to the court's bench, while the accused and his counsel are at floor level. If the accused is convicted, the recommendation of the prosecutor carries great weight with the court in determining an appropriate sentence.

In comparison with American practice, the role of defense counsel seems severely curtailed; yet defense counsel in Vietnamese courts performs an important function by assisting the court to apply properly the correct law to a case and by ensuring that any factors favorable to the accused are developed before the court. The impetus in a criminal proceeding is nevertheless clearly furnished by the government, with the prosecutor as the key figure in the administration of justice. Thus a heavy responsibility rests on the prosecutors to be scrupulously fair in safeguarding the rights of the accused as well as those of the state in order to maintain the credibility of the system. This need for objectivity on the part of the prosecutors is recognized by the Vietnamese, who accord them the title of "prosecuting judges" and classify them as judges rather than as practicing attorneys. (The prosecuting judges are members of the Ministry of Justice. The magisterial judges, who determine guilt or innocence and assess punishment, are members of the judiciary and are regulated and supervised by the Supreme Court.)

There were five steps in the hierarchy of the judicial courts: (1) *Cour de Cassation;* (2) Courts of Appeal; (3) Courts of First Instance; (4) Courts of Peace With Extended Jurisdiction; and (5) Courts of Peace (or Justice of the Peace). *(Map 1)*

The *Cour de Cassation* sat in Saigon as the highest judicial court of appeal. It heard civil, commercial, and criminal appeals, and had jurisdiction to hear cases in which it was alleged that a lower court had abused its powers, was in conflict with the judgment of other courts in similar cases, or had made certain technical errors.

There were two Courts of Appeal, one in Saigon, the other in Hue. Each was divided into two chambers, civil and criminal. Appeals in civil cases were heard by a panel of three judges who heard mis-


LOCATION OF COURTS
SOUTH VIETNAM 1966-1967
Court of Cassation (now Supreme Court)
Court of Appeal
Court of First Instance
Court of Peace with Extended Jurisdiction
100 MILES
100 KILOMETERS
I CORPS
II CORPS
III CORPS
IV CORPS
CAPITAL SPECIAL ZONE
QUANG TRI
THUA THIEN
QUANG NAM
QUANG TIN
QUANG NGAI
KONTUM
BINH DINH
PLEIKU
PHU BON
PHU YEN
DARLAC
KHANH HOA
QUANG DUC
TUYEN DUC
NINH THUAN
LAM DONG
PHUOC LONG
BINH LONG
TAY NINH
BINH DUONG
LONG KHANH
BIEN HOA
BINH TUY
BINH THUAN
PHUOC TUY
GIA DINH
LONG AN
KIEN TUONG
KIEN PHONG
CHAU DOC
AN GIANG
SA DEC
DINH TUONG
VINH LONG
KIEN HOA
KIEN GIANG
PHONG DINH
VINH BINH
CHUONG THIEN
BA XUYEN
BAC LIEU
AN XUYEN

MAP 1

demeanor cases; two citizen assessors were added to the panel in felony cases.

The Courts of First Instance, of which there were nine in May 1967, usually consisted of a presiding judge, a prosecutor, an examining magistrate, and a clerk. If the court was busy, as in Saigon, additional judges and other personnel could be added. These courts had jurisdiction to hear all civil, commercial, and criminal cases. They could also rehear cases from Courts of Peace With Extended Jurisdiction and from Courts of Peace.

The Courts of Peace With Extended Jurisdiction, of which there were twenty throughout the provinces in 1968, had jurisdiction over civil and commercial cases and all criminal cases except the most serious felonies. They also exercised control over the Courts of Peace. These courts consisted of a presiding judge and clerk. There was no examining magistrate or prosecutor. In some criminal cases two assistant judges might be added, but there was never a prosecutor present.

The Courts of Peace consisted of a single magistrate (justice of the peace) and clerk. Frequently a district chief acted as magistrate. They tried minor civil cases and petty criminal offenses, conciliated disputes brought before them by citizens, and conducted investigations into serious criminal offenses. In 1966 approximately ninety of these courts had been established at district level and at some of the more isolated province capitals. Because of wartime conditions and budgetary restrictions, operations of the Courts of Peace were not emphasized. Endeavors were made only to provide each province with a Court of First Instance.

The Council of State was the highest court of administrative appeal. It heard appeals from the decisions of the Administrative Court and the Appellate Court of Pensions. When asked to do so it could render legal advice to the government and assist in drafting laws and decrees. The Administrative Court heard cases brought by citizens against the government and disputes between government agencies. The Appellate Court of Pensions and the two Courts of Pensions took cognizance of complaints regarding allowances to disabled veterans.

The specialized tribunals were the labor courts, which heard disputes between employers and employees; the juvenile courts for trial of delinquents under the age of eighteen, except in case of political offenses and "hooliganism," which were reserved for trial by the military field courts; the agrarian courts to handle litigation arising from agrarian reform laws; and the rent courts to hear landlord-tenant disputes. Decisions of the agrarian courts were final. Appeals from decisions of the others were heard within the judicial court system.

Chapter V of the 1967 constitution provided for a Supreme Court vested with "independent judicial power" and empowered to establish and administer regulations for the judiciary. It stated that the separate responsibilities of judges and prosecutors were to be clearly delineated and governed by separate regulations, with judges under the control of the Ministry of Justice. The Supreme Court was given extensive powers of review "to interpret the Constitution, to decide on the constitutionality and legality of decrees and administrative decisions," and to decide on the dissolution of political parties whose activities "oppose the republican form of government." Supreme Court justices could be removed from office only for "moral or physical incapacity, conviction, or violation of discipline."

The first step in implementing the changes prescribed in the 1967 Constitution was taken on 17 October 1968, when the National Assembly elected nine justices of the first Vietnamese Supreme Court. Although the constitution provided for the appointment of six additional justices, none was nominated. Shortly after the Supreme Court took office the two existing "supreme courts," the *Cour de Cassation* and the Council of State, were suspended, and their functions were assumed by the new Supreme Court. The authority of the Supreme Court was extended beyond that of the *Cour de Cassation* in that the Supreme Court could hear and decide exceptional pleas made at any stage of a pending case raising the constitutionality of law, decree, or administrative ruling. Supreme Court decisions were binding, and a ruling had the effect of stopping implementation of unconstitutional or illegal legislative enactments, administrative regulations, or administrative decisions from the date of publication of its decision.

The Military Courts

The military courts played a prominent role in the Vietnamese legal system. Under wartime mobilization, a substantial percentage of the population acquired military status, and all military offenders were tried by military courts, regardless of the nature of the offense or the circumstances under which it was committed. Military status encompassed not only active members of the regular armed forces but also members of auxiliary and quasi-military organizations, and even some civilians who worked closely with the military. If a crime was committed by a military member with a civilian accomplice, the civilian accomplice could be tried by the military court. Finally, all civilian security offenders were tried by military courts, in accordance with executive decrees defining security offenses and specifying the forum for trial.

The chief of all legal services for the entire Vietnamese armed forces was the Director of Military Justice, an Army colonel who

reported directly to the Minister of Defense rather than to the Army chief of staff. (Nguyen Mong Bich, who served as director of the Directorate of Military Justice from 1964 to 1966, was elected one of the first nine justices of the Supreme Court.) The director gave advice to the Minister of Defense on all legal matters; studied and implemented the organization, operation, and administration of the military courts; recommended changes to the Vietnamese Code of Military Justice, which is modeled on the French Code de Justice Militaire; studied all problems of national and international law concerning the Vietnamese armed forces; and rendered legal assistance. These functions were carried out by the personnel of the Directorate of Military Justice, the Vietnamese equivalent of the Judge Advocate General's Corps.

There were approximately fifty military justice corps officers, ranging in rank from first lieutenant to colonel. Most were law school graduates, but not all had completed the probationary period required for full admission to the bar. These officers could function as prosecutors, examining magistrates, or judges. They were assisted by bailiffs, clerks, and the judicial police. The directorate was charged with the investigation, preparation, prosecution, and trial of cases falling within military jurisdiction for all of the Vietnamese armed forces. The directorate also operated confinement facilities in each corps area for the detention of individuals awaiting trial by the military courts, which were located at Da Nang, Nha Trang, Saigon, and Can Tho.

The Regular Military Courts were activated by Ordinance Number 8 of 14 May 1951 which promulgated the Code of Military Justice. The presiding judge in each court was a civilian, chosen from the local Court of Appeals. The alternate presiding judge was a field grade officer from the Directorate of Military Justice. The other members of the court were detailed from local military units. The prosecutor and his staff were Directorate of Military Justice personnel, but there was no military defense counsel. An accused could hire civilian counsel, or, if he did not have the means, civilian counsel would be appointed for him from the local bar. The jurisdiction of these courts was extensive. They had jurisdiction over all military personnel of the regular armed forces, all paramilitary personnel in a military status, and even some civilians who were granted the status of military personnel because of their connection with the armed forces, for violations of military law and ordinary criminal law. These courts could adjudge any penalty including the death penalty. Appeals from these courts were made to the Supreme Court.

The military field courts were established by Decree Law 11/62 of 21 May 1962 to hear expeditiously *flagrante delicto* cases in which the evidence was considered so clear or the offense was so simple that

extensive pretrial investigation was not warranted. Under the Vietnamese concept, *flagrante delicto* included not only cases of individuals actually caught in the act of committing an offense, but also cases in which individuals were caught having in their possession "any object, weapon, material or document which could lead to the belief that he is the author of the crime or an accomplice thereof."

Decree Law 4/66 assigned the field courts additional jurisdiction during the state of war over cases of bribery, influence peddling, embezzlement of funds, and illegal speculations, regardless of whether the accused was a civilian or a serviceman, and regardless of whether the accused was apprehended in *flagrante delicto*. Decree Law 15/66 assigned the military field courts jurisdiction over cases of desertion, encouraging desertion, and protecting and harboring deserters. Under Decree Law 11/62 the court included one presiding judge and four military jurors. There was no provision for objection and appeal and the judgment was executed immediately after being pronounced, provided the death penalty was not included. In 1970, however, the Supreme Court, employing the American idea of judicial review, decided that much of the jurisdiction, court composition, and procedure of the military field courts was unconstitutional. Under Decree Law 06/70, 23 June 1970, military field courts were vested with jurisdiction over deserters and accomplices, servicemen and assimilated servicemen apprehended in *flagrante delicto,* and their civilian accomplices and accessories in the case of all felonies and misdemeanors prescribed by the Code of Military Justice, the Code of Criminal Law, and other rules and regulations. The military field court was revised under the June decree to include one presiding judge and four associate judges. If the presiding judge was a civilian judge, he had to be a chief judge or an associate judge of the Court of Appeals; if military, he had to be of the rank of major or higher. The associate judges of the military field courts had to be professional military judges appointed by the Supreme Court. Decree Law 06/70 also provided for an appeal to the Supreme Court in all cases except desertion.

The Law and the People

In theory, the Vietnamese court structure appears to extend nationwide in a highly sophisticated and comprehensive manner. In reality, however, the activities of most of the courts and virtually all of the civilian bar were limited to the principal cities. In the countryside, Courts of Peace were the only legal instrumentalities. These courts were not staffed by judges or qualified attorneys. The Justices of the Peace who presided over these courts, were provincial administrators, often military officers, lacking legal training and experience. Since there were few lawyers or judges at the local level, the average

Vietnamese could not see the administration of the law as being substantially different from any other exercise of governmental authority.

Traditionally, the Vietnamese have not relied on the law to settle their disputes or affirm their rights because they were not familiar with the law, and the legal apparatus was not easily available to them. A major factor in the remoteness of the law from the people had been the shortage of practicing attorneys in Vietnam. In 1967 there were only 193 fully qualified attorneys in all of South Vietnam. Of this small number, 150 practiced in Saigon, and thirty of the forty-four provinces had no lawyers at all. In addition to the practicing attorneys there were approximately 100 judges, a category which included prosecutors as well as magistrates. Only two schools produced lawyers in Vietnam, one at Hue and the other at Saigon. The Law School at Saigon had about 4,000 students, but only a fraction were studying law as U.S. students would know it. The others studied economics, public administration, political science, and international affairs. In 1964, for example, only twelve probationers were admitted to the bar for the entire country.

In considering these figures it is well to remember that the demand for legal services in Vietnamese society has been vastly different from that of Western, or, more particularly, American society. The Vietnamese economy is not an industrial or commercial one. There are relatively few automobiles, insurance companies, and real estate transactions to generate legal business. Average income is low, but it takes relatively little to live on. In addition to these and many other factors that tended to keep the lawyer population low, lawyers in a civil law system are not expected to provide the same services in the same manner as do lawyers in a common law system such as that in the United States. Finally, there is much to be said for local, nonjudicial, and prompt settlement of petty disputes and minor offenses, and this method has worked quite well in many instances in Vietnam. In any case, the law as symbolized by the operation of the legislature and the courts with the active participation of the citizenry, represented by qualified counsel, has not played a significant role in the forming or functioning of Vietnamese society.

The role of law in society is relevant to the conduct of war in two respects. First, the law can play a vital part in the effort to control the people and resources of a country and to curtail subversive activities. If there are well-written laws, effective co-operation between the police and the courts, and an efficient method for processing cases at the local level, people soon become familiar with the requirements of wartime measures; they realize that the laws are being enforced and that those who violate them will be punished. This awareness promotes increased voluntary compliance by the great majority of

the population, and it acts as a positive deterrent to those inclined to break the law. Second, and no less important, the law can help the war effort by effectively and justly operating within the courts at the local level, thus providing order as well as a highly visible symbol of the government's capability and its concern for the needs of the people. The need for personal security and a means for settling disputes are basic to organized society; by administering to those needs through the law, a government can engender loyalty and foster a spirit of participation and co-operation among the people that can pay high dividends in a counterinsurgency effort.

In the Vietnam War, because of the existence of insurgency and counterinsurgency and because worldwide scrutiny was applied to the struggling government of South Vietnam, law assumed even more importance than might have been expected. Insurgency characteristically capitalizes on existing law to shield insurgents, exploit weaknesses in the governmental and legal structure, and in general uses the nation's law to aggravate any division between the populace and the counterinsurgency forces. On the other hand, the government's forces look to the law for new powers and authority in order to control the insurgents, and in doing so can very easily further alienate the populace from its own government. Failure by the government to grasp the intricacies of the equation can easily lead it to increasingly oppressive rule and deeper complications in its effort to extricate itself from the insurgency. One of the most subtle but significant questions the government has to answer is how to combine all forces, military and civilian, in the solution of insurgency. Sharp or traditional lines of demarcation as to what is civilian and what is military are not apparent in such a situation. The commander who does not see and provide in his counterinsurgency plans for the role of such civilian agencies as the police, the prosecutors, the courts, the jails, and the law generally has likely foredoomed his military efforts.

Communist forces have generally well understood the political military interrelationships, and the war in Vietnam was not in this regard an exception. The Free World forces, possibly in part because of the number and sovereignty of their components, seemed slower to grasp the significance of the role law plays in insurgency, slower to create the necessary civilian-military team, and slower to ensure that law supported them in their relations and operations involving the people of Vietnam instead of eroding or working against their goals.

The goldfish bowl aspects of the Vietnam War—the constant presence, reporting, and commentary of a worldwide press relatively free to roam about South Vietnam within the protection of the Free World forces—contributed heavily to the influence that world opinion of law or its absence would have on the war effort of the Republic of Vietnam. To fight for its life while at the same time

building a rule of law, to create a bench and bar and establish a civil service where none has existed is a tough task for any government. To do it under the constant and critical eye of a press that compares what it sees with what it expects of its own experienced and sophisticated governments further complicated the matter in Vietnam. Not only was it important to have a just administration of law; that administration had to appear just to the public media or the government would pay a price before world opinion. The enemies of the Republic of Vietnam, however, the Viet Cong and the North Vietnamese, were not tested in the same manner and consequently were in a position to gain considerable propaganda and political advantage. Recognizing these circumstances, and the opportunities as well as the dangers they presented, the MACV Staff Judge Advocate took steps early to bring the political-military aspects of law into focus.

CHAPTER III

The Judge Advocate Advisory Role

A unique aspect of MACV judge advocate activities was the advisory function. The use of the word advisory, which was the customary U.S. label for other MACV activities, is misleading in that it suggests that the American military lawyers were advising their Vietnamese counterparts in the application of Vietnamese law. A more accurate title would be liaison function, since the judge advocates and the Vietnamese lawyers exchanged information and co-ordinated their activities in the field of military law. It is true that the American military lawyers did, on occasion, offer advice to their Vietnamese counterparts, as in the case of applying the Geneva Conventions and in the control of desertion, but most of the Americans' so-called advisory efforts were directed toward collecting information on the workings of military law and military legal institutions; assisting their Vietnamese counterparts in securing necessary funds, people, and material to accomplish their tasks; obtaining references and answering inquiries concerning American law; and ensuring that American and Vietnamese respective military law programs worked in harmony with one another.

The judge advocate mission of providing effective legal counsel for the U.S. command required close co-ordination with all the legal agencies of the government of Vietnam. Beyond functional co-operation, however, the MACV Staff Judge Advocate was also charged with assisting the Republic of Vietnam armed forces legal branch, the Directorate of Military Justice, to develop in a manner that would effectively contribute to the prosecution of the war. While advisory activities in the strict sense were limited to the Directorate of Military Justice, members of the MACV Judge Advocate's office also established communication with members of the government and civilian legal community and assisted them in developing legal institutions whenever possible. This association was only natural in a country where the bar was small and concentrated mainly in Saigon, where military and civilian legal problems were often intertwined, and where there was no U.S. civilian legal community to work with the local bar. Cases in which mutual professional respect and friend-

ship among attorneys exerted a positive influence enabling clients to resolve their differences were countless. In Vietnam the cordial relationship between U.S. military attorneys and Vietnamese lawyers benefited both governments.

Beginnings and Development to 1965

While the Advisory Branch of the MACV Judge Advocate's office was not formally established until 1965, judge advocates had been cultivating friendships with Vietnamese attorneys for some five years. The positive results of such voluntary activity on the part of judge advocates are illustrated in an excerpt from a trip report prepared by Colonel Lawrence Fuller, Chief, International Affairs Division, Office of The Judge Advocate General, Department of the Army, who toured the Pacific commands in late 1962. Speaking of the efforts of Colonel George F. Westerman as Staff Judge Advocate to the U.S. Military Assistance Advisory Group, Indochina, the report states:

> Colonel Westerman is doing an exceptional job as SJA in Vietnam. In addition to a well-run office two things should be mentioned. First, he has excellent relations with the embassy where he serves as their lawyer, also. Many of the embassy people knew him in Paris, came to rely on him there, and continue that reliance here. Second, he devotes his evening hours to several worthwhile kinds of instruction. Twice a week he teaches American Jurisprudence to law school students continuing Colonel [Paul] Durbin's classes. Twice a week he teaches a class in American Political Ideals to undergraduate classes in the university, reaching a group [the university undergraduate] that worldwide is the natural target for communist propaganda. Finally, twice a week he teaches English to a class of judges and officials of the Ministry of Justice and has a morning session for the Minister of Justice alone. As a result any question involving the United States coming before the Ministry of Justice or the Saigon courts comes before one of Colonel Westerman's students. This latter activity has already paid off as the Ministry of Justice has now indicated that Vietnam will have no objection to the convening of U.S. courts-martial in Vietnam and will use its processes to make local witnesses available. This has been a problem to us throughout Indo-China since 1954 and is the first breakthrough we have had. For eight years the Department of State insisted that because of local objections we could not convene courts in Vietnam, Laos, Cambodia, and Thailand. Colonel Westerman by his round-the-clock efforts is making countless friends for himself and for the United States.

The efforts of Colonels Durbin and Westerman were continued and expanded by subsequent judge advocates. By 1965 a multifaceted advisory program was accounting for a significant portion of the time of the MACV judge advocate's office. Special emphasis was placed on aiding the Vietnamese to develop legal programs that would increase the efficiency of the armed forces, deter subversive activities of the Viet Cong, and promote loyalty to the Saigon government.

One important advisory effort was the collection, translation, and interpretation of Vietnamese decrees and regulations relating to the resources control program, military discipline, and other subjects having a bearing on the conduct of the war. The MACV Judge Advocate's office was the first agency in the U.S. command to undertake this task in a comprehensive way. As the documents were translated by the Vietnamese attorney working in the Judge Advocate's office, copies were forwarded to appropriate U.S. government agencies and MACV staff sections so that all U.S. personnel could keep abreast of changes in the Vietnamese system and work more effectively with their Vietnamese counterparts. For example, in January 1965 distribution of Minister of Defense Decree 546 to all U.S. advisers was completed. This law was significant to the resources control program because it granted broad authority to the Vietnamese military police to conduct investigations and make arrests, particularly in cases concerning offenses against state security, which included the unlawful acts of the Viet Cong and their accomplices, sympathizers, and collaborators. Previously there had been large jurisdictional gaps where matters of state security were concerned. This broadened jurisdiction was especially important in areas away from the principal cities, where law enforcement officers were thinly spread and it was important to take decisive action quickly in order to prevent offenses or to apprehend offenders. The distribution of this decree complemented a comprehensive study on the resources control, arrest, and search and seizure laws of the Republic of Vietnam, which had been prepared by the MACV Staff Judge Advocate's office and was also distributed to U.S. advisers in January 1965. By March this study had been translated into Vietnamese and distributed to U.S. advisers for use in conjunction with their Vietnamese counterparts. In May the translation into English of all Vietnamese resource control laws, orders, and directives was completed. A special edition of seventy mimeographed sets was furnished to the Naval Advisory Group for distribution to all U.S. vessels on patrol in Vietnamese territorial waters.

In order to broaden the base of known Vietnamese law, opinions prepared by the Vietnamese civilian attorney in the MACV Staff Judge Advocate's office were serialized, stenciled, and distributed to all U.S. service lawyers in Vietnam. The first three published opinions were titled "A Study of the Attorney Profession," "Procedures for Transaction in Real Estate," and "Acquirement of Real Estate in Vietnam by Foreigners." The MACV Staff Judge Advocate's office prepared an English-Vietnamese Law Dictionary, copies of which were furnished to all U.S. and Vietnamese military and civilian lawyers and judges in Vietnam. The office had recommended that the MACV Adjutant General establish a uniform indexing

system and format for translated versions of Vietnamese decrees, directives, and other documents, but pending action by the Adjutant General the Staff Judge Advocate's office continued to collect, translate, mimeograph, index, and distribute Vietnamese government documents. By July 1965 eighty-five documents had been so prepared, all relating to some aspect of Vietnamese law. Summaries and reports on Republic of Vietnam armed forces military justice and the republic's civil legal system were also prepared by the MACV Staff Judge Advocate's office to assist the field advisory effort.

In addition to collecting and utilizing Vietnamese laws, the Staff Judge Advocate's office also furnished appropriate law books, texts, and other legal materials to the Vietnamese. In order to assist the Minister of Justice of Vietnam in preparing an election law, the Staff Judge Advocate sent him in April 1965 a copy of the Precinct Chairman's Manual: Korean Election Law of 1948, which was prepared when Korea was under U.S. military government, and a report by the U.S. Presidential Commission on Registration and Voting Participation. During the same month the Minister of Justice and Minister of the Interior were also sent copies of Law and Population Control in Counterinsurgency, prepared by The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia. In May forty Judge Advocate General's School texts on international law were distributed to various Vietnamese agencies and individuals, including the ministries of foreign affairs, interior, and justice, the law school in Saigon, and the Vietnamese judge advocate officers. In June similar distribution was made of texts on civil law and the law of land warfare. The Staff Judge Advocate's office also participated in Law Books-USA, a program funded by voluntary contributions from U.S. lawyers to provide foreign lawyers with sets of eight American paperback lawbooks. In June thirty-five sets of such lawbooks were obtained for distribution to Vietnamese lawyers, judges, military law officers, and others who would benefit by them.

Judge advocates devoted considerable time in 1965 to working with Vietnamese agencies and the U.S. command to assist the Vietnamese in strengthening their governmental institutions. At that time these institutions were under tremendous pressure from several sources. Although many Vietnamese leaders were well educated and highly sophisticated, the government as a whole did not have the physical means or administrative experience to cope with the mushrooming demands placed on the bureaucracy by the war. There were far too few trained civil servants, and these were not available at all in large areas of the country. The Communists and other dissident factions were relentless in their efforts to thwart government programs, both military and civilian, and the rapid turnover of governments in Saigon further aggravated the situation. The Vietnamese govern-

ment was under the difficulty of improving its programs and undertaking new ones to hold the country together, while at the same time it was struggling for its very existence against a determined and ruthless enemy. The U.S. command worked vigorously to strengthen and assist the Vietnam government as rapidly as possible, mindful to respect Vietnamese sovereignty and keenly aware that American solutions would not always work with Vietnamese problems. Most of the Vietnamese attorneys with whom MACV judge advocates worked were competent, dedicated men who were concerned over the plight of their country and who worked to improve their government. They needed reinforcement and encouragement, rather than direction.

In the MACV Staff Judge Advocate's office, priority was given to advising the Vietnamese military establishments, which traditionally placed little emphasis on legal proceedings as a means of discipline. In January 1965 the Staff Judge Advocate, Colonel Prugh, encouraged a study designed to promote a higher degree of discipline and respect for military justice in the Vietnamese Army. Materials relating to military justice training were furnished to the Director of Military Justice, and a program was initiated to develop reliable data on disciplinary conditions in Vietnamese Army units in the field. In March the Staff Judge Advocate of the Vietnamese high command presented to the MACV Staff Judge Advocate a plan for the organization of judge advocate offices at the Vietnamese corps headquarters for the purpose of promoting military justice in the field and bringing offenders to speedy trial. The plan was later co-ordinated with the Director of Military Justice. Proposed tables of organization and equipment for the newly established office of the Staff Judge Advocate of the high command and for the proposed corps judge advocate offices were discussed and translated into English. Also in March a study was made of the Vietnamese armed forces claims procedures, and, after co-ordination with the MACV comptroller, arrangements were made to have a representative of the Claims Branch participate in financial management team surveys and other activities of the Military Community Action Program, which was aimed at providing more timely and realistic payment of claims by the Vietnamese armed forces to Vietnamese civilians.

To resolve problems common to Vietnamese and U.S. and other Free World Military Assistance Forces in the areas of law, order, and dicipline, a proposal was submitted by MACV to the Director of Military Justice for the establishment of a Military Community Affairs Council. Liaison was maintained by the MACV Staff Judge Advocate with the judge advocate of the Korean forces, who was furnished information and copies of appropriate MACV directives covering legal and disciplinary matters, and other data describing the Vietnamese civilian and military legal system.

A chronic problem throughout the war was the desertion rate in the Vietnamese armed forces. As early as May 1965 the MACV Staff Judge Advocate wrote to the J–1 of the Vietnamese high command detailing some proposed solutions. In conjunction with the letter, the Staff Judge Advocate also sent a plan for control of desertion in the Vietnamese armed forces to the MACV assistant chief of staff, J–1. It was not unusual for studies or proposals initiated by the staff Judge Advocate's office to be submitted to U.S. command staff sections as well as to appropriate Vietnamese agencies so that parallel action could be taken. In May 1965 also a staff study "to examine the role of the Civil Law in the Counterinsurgency in Vietnam and to make pertinent recommendations" was prepared and sent to the Commander, U.S. Military Assistance Command, Vietnam, and subsequently to the U.S. Ambassador and the director of the U.S. Overseas Mission. (*See Appendix C.*) The staff study pointed to the need for improving the effectiveness of the Vietnamese civilian legal institutions and recommended that the director of the U.S. Overseas Mission study those aspects relative to the civilian advisory effort. A staff study calling for the establishment of a civilian advisory effort in law was prepared and also submitted to the commander, who approved and transmitted it to the director of the U.S. Overseas Mission. Among various other papers submitted to the commander and to the MACV chief of staff were current judge advocate law programs dealing with Vietnamese resources control laws; apprehension, trial, and punishment; improvement in effectiveness of current search and seizure laws; information and education in the law; and building a popular base of respect for the rule of law in Vietnamese society.

The Gendarmerie

Assisting the Vietnamese to create, strengthen, reorganize, or replace governmental institutions and agencies was a challenging task. The judge advocate advisers had not only to understand the theory of the Vietnamese system, but they had to be thoroughly familiar with the actual operation of the laws under the Vietnamese government and the interaction of law agencies with other government agencies. A high degree of co-ordination was required of all Vietnamese agencies and U.S. staff sections involved. Given the basic unfamiliarity of most Americans with the Vietnamese legal system, the instability of Vietnam's government, the tremendous pressure for effective action generated by the war, and the American penchant for innovation, it was inevitable that some of the changes made in Vietnamese institutions would be unsuccessful. An interesting example of an advisory breakdown in the legal area was the demise of the Gendarmerie.

The Vietnamese Gendarmerie, patterned on the French force of

the same name, was a national organization of "judicial police" that filled a gap between the military and civilian law enforcement agencies. It was a rural police force spread throughout the countryside, and composed of men who were intimately familiar with the areas to which they were assigned. Known as "The Red Hats," because of their distinctive red headgear, these men were a familiar and respected symbol of authority. The Gendarmerie played a very important investigative role, especially away from the major cities. As judicial police they conducted investigations for the courts and had the authority to take sworn statements that were admissible in court. In the Vietnamese legal system they played a vital role in bringing the rule of law to the people of the countryside. Unfortunately, during the process of reorganizing the various Vietnamese law enforcement agencies, a decision was made that the Gendarmerie was not worth keeping; funds for Gendarme operations were cut from the approved budget, and the organization went out of existence in January 1965. A huge backlog of cases piled up in the Vietnamese courts because there was no one to investigate or process them. Given the conditions existing in Vietnam at the time, it is not difficult to see how the mistake of abolishing the Gendarmerie was made. Very few Americans understood the place of the Gendarmerie, since there is no equivalent force anywhere in the U.S. legal system. U.S. military advisers were not concerned with what were considered civilian police matters, and the civilian public safety advisers of the U.S. Overseas Mission, who were working with the Vietnamese National Police, naturally viewed police functions in terms of their own organizational experience. Since the Gendarmerie did not fall into any familiar category of American law enforcement organization, it was abolished.

The worst aspect of the reorganization was that when the Gendarmerie was disbanded about half the men were transferred to the civilian National Police and the other half to the Vietnamese military police, but no systematic effort was made to transfer Gendarmes and their cases together, so that investigations could be completed. Since both the National Police and the military police were being developed along American lines, there was no law enforcement agency designed to carry on effectively the judicial police work of the Gendarmerie. As a result, thousands of cases were never completed. As the full significance of what had happened came to light, Colonel Nguyen Mong Bich, the Vietnamese Director of Military Justice, took steps to fill the void by establishing among the military police a section initially called the Military Judicial Police, This section was later named the Criminal Investigators, following the American pattern and adding the concept of the judicial policeman with special authority as a sworn investigator for the court. The demise of the

Gendarmerie, however, severely disrupted Vietnamese military judicial operations for a considerable period of time.

Law Society of Free Vietnam

One of the more enjoyable advisory activities was the organization of the Law Society of Free Vietnam in May 1965. The society initiated a cultural program designed to enable American military lawyers to exchange views and to discuss differences in law systems and doctrines with members of the Vietnamese legal profession. It was intended that the program would not only establish better relations between American military lawyers and members of the Vietnamese legal profession, but that it would also foster the use of law as a weapon in counterinsurgency. The program, entitled The Role of Law in Contemporary Society, consisted of a series of thirteen seminars, meeting every other week. The meetings included panel discussions, mixed team debates, individual presentations, critiques, and selected motion pictures, followed by a social hour. The beginning of the seminar series was scheduled to coincide with Law Day, celebrated on the first day of May. The Law Society sent to the armed forces radio service a list of spot announcements for broadcast from 26 April through 2 May; transmitted materials for news articles; requested area chaplains to note Law Day in their sermons; and suggested issuance of appropriate statements by major subordinate commanders.

The first meeting of the Law Society was held on 5 May 1965 at the Vietnamese-American Association in Saigon. Lieutenant Richard E. Reider, a U.S. Navy legal officer, spoke on The Citizen's Role in Law. Among the prominent persons to attend the first seminar were U. Alexis Johnson, Deputy American Ambassador; Barry Zorthian, Director, U.S. Information Service in Saigon; Ly Binh Hue, Public Prosecutor of Saigon; Huynh Duc Buu, Assistant Public Prosecutor; Vu Tiem Tuan, Judge, Saigon Court of Appeals; and Colonel Nguyen Mong Bich, Director of Military Justice, later a Justice of the Supreme Court. For the second program, Lawyers in Contemporary Society, the speaker was Vuong Van Bac, Treasurer of the Bar of Saigon, Secretary General of the Association of Vietnamese Lawyers, and a member of the faculty of the National Institute of Administration and of the University of Dalat (later a negotiator at the Paris peace talks, ambassador to London, and subsequently Foreign Minister). At the third seminar Colonel Nguyen Mong Bich spoke on The Function of the Courts. To illustrate the fourth program, "Trial by Jury," a mock trial written by Colonel John M. Rankin, U.S. Air Force, Assistant Staff Judge Advocate, MACV, was presented to the audience, which included many distinguished Vietnamese jurists. On 14 July 1965, Mrs. Nguyen Phyong Thiep, a prominent attorney in Saigon, presented a paper on The Juvenile Program; on 28 July



VIETNAM JUSTICES HOLD PANEL DISCUSSION AT MEETING OF LAW SOCIETY IN SAIGON. *U. Alexis Johnson is in the foreground, Colonel Prugh standing, right.*

Lieutenant Colonel Malcolm L. McCain, Staff Judge Advocate, First Logistics Command, U.S. Army, Vietnam, discussed Judicial Review Procedures.

The seminars continued to draw large and interested audiences from the Vietnamese and American communities. After each seminar Vietnamese members of the audience were eager to express their views. Speeches and presentations were generally printed in both English and Vietnamese and distributed to the audience; some were reprinted in Saigon newspapers. These meetings fostered a democratic exchange of ideas, increased the legal knowledge of the participants, and provided a cordial atmosphere for professional contacts. Most important, the seminars presented a sampling of American legal ideas and attitudes to an influential segment of Vietnamese society in a manner the Vietnamese could accept without resentment. These Vietnamese lawyers and judges, who were able scholars in their own right, were introduced to new alternatives for dealing with legal problems and stimulated to analyze and improve their own legal institutions. The Americans, in turn, learned from the Vietnamese.

While judge advocate staff members spent most of their time in Saigon, they made periodic trips to other parts of the country to study what effect programs initiated in Saigon were having in the field. In late 1964 and again in early 1965 the MACV Staff Judge Advocate,

accompanied by his counterpart, the Director of Military Justice, made visits to the Vietnamese commanding generals of the four corps to discuss discipline procedures, desertion rates, and the handling of Viet Cong prisoners. In May 1965 they visited the U.S. Marine legal officer at Da Nang to co-ordinate legal activities involving newly arrived U.S. marines with Vietnamese authorities in the Da Nang area. At the request of the MACV Staff Judge Advocate the Director of Military Justice made a special visit to the Vietnamese commanding general of I Corps to ensure that several recently captured terrorists would be dealt with in a military trial. There had been a press story to the effect that the terrorists were to be executed without even an attempt at trial, but this did not occur and Vietnamese legal processes were fully observed. Convincing the Vietnamese commander to adhere to legal procedures in dealing with Viet Cong agents was of more than theoretical interest to the U.S. command since the Viet Cong had publicly avowed a policy of reprisal against U.S. prisoners of war, and did in fact later execute at least three prisoners allegedly in reprisal for executions by the Vietnamese of other Viet Cong terrorists.

The Advisory Division

It was the opinion of the MACV Staff Judge Advocate that legal advisory activities could contribute significantly to the allied mission in South Vietnam, and that a legal advisory program deserved official recognition and support. A request to use American legal resources to establish an advisory branch was submitted by the MACV Staff Judge Advocate to the Commander, U.S. Military Assistance Command, Vietnam, in January 1965. The request was approved and the Advisory Branch, initially consisting of a chief and two field representatives, came into existence in July 1965. While the number of people and methods of operation of the Advisory Branch varied somewhat in subsequent years, the original plan called for an advisory chief to be stationed at the Staff Judge Advocate's office in Saigon, and one field adviser to be located in each of the four corps areas. The Advisory Division continued to function until the Agreement on Ending the War and Restoring Peace in Vietnam became effective on 27 January 1973. At that time the incumbent chief of the Advisory Division became the legal adviser to the U.S. Delegation to the Four Party Joint Military Commission in Saigon during the sixty days of that body's operations.

The chief of the division worked directly with the Directorate of Military Justice and other Vietnamese governmental agencies on such matters as budgeting, tables of organization and equipment, law reform, desertion control, administration of the military courts and prisons, and other programs to assist the Vietnamese to improve

the functioning of their legal system. The advisory chief received and analyzed reports and information from the judge advocate field advisers, assisted them in their work in the corps areas in any way possible, and co-ordinated the whole judge advocate advisory program.

The field advisers were the eyes and ears of the MACV Staff Judge Advocate in the respective corps areas, monitoring the status of law and order away from Saigon—morale and military discipline in the field units, the effectiveness of resources control measures, the desertion control program, and the functioning of the military courts and prisons. Working in conjunction with other U.S. advisers, they assisted their Vietnamese counterparts to improve legal facilities and legal programs. When possible, they established contacts in the local legal community, and made recommendations to the Staff Judge Advocate in Saigon for improving existing programs or establishing new ones. Finally, they acted as liaison between the U.S. command and Vietnamese legal officials in their own corps areas, providing limited legal services to the U.S. advisory headquarters to which they were assigned.

The status of the field advisers varied from corps to corps and from time to time throughout the war. I Corps, the northermost and most distant corps area from Saigon, had a resident judge advocate adviser from August 1965 until March 1973. Originally stationed in Hue, where the university, the civilian and military courts, and the prison were located, the judge advocate adviser moved to Da Nang after *Tet* of 1968, when the military courts and prison also moved to Da Nang. II Corps, comprised of the Central Highlands provinces, and by far the largest corps area in terms of geography, had a resident judge advocate adviser from 1965 until 1973. The III Corps judge advocate adviser was stationed at the MACV Staff Judge Advocate's office in Saigon, where he assisted the advisory chief and taught courses at the Saigon University Law School, performing corps advisory functions as well. The IV Corps judge advocate adviser was located in Can Tho in the Mekong Delta. Originally all field advisers were assigned to the MACV Staff Judge Advocate's office, with duty stations in their respective corps areas. Later, the judge advocate advisers for I, II, and IV Corps were assigned to the Regional Assistance Command headquarters in those corps areas. This assignment made the countrywide judge advocate advisory program less cohesive, but lines of communication were maintained. The extent to which judge advocate field advisers were actually able to devote their efforts to advisory work varied considerably from time to time and place to place, depending to a great extent on the relationship between the judge advocate adviser and the U.S. commander for whom he worked, and on the legal needs of the local U.S. command at the time.

Over the years there was a marked contrast between the advisory work in Saigon and the activities of the field advisers in the outlying areas. In Saigon, advisory efforts were focused on such areas as the organization, staffing, and budgeting of Vietnamese legal institutions, particularly the Directorate of Military Justice; the collection, translation, and indexing of Vietnamese legal materials; educational programs for the Vietnamese legal community; monitoring the military courts and prisons; and trying to obtain materials to upgrade Vietnamese legal facilities and the military prison in Saigon. The judge advocate advisory work in Saigon included collecting and disseminating Vietnamese legal materials, answering specific questions pertaining to Vietnamese and American law, preparing staff studies, and participating as members of various MACV and joint MACV–Vietnamese committees. One example of the last category was the MACV judge advocate adviser's participation as a member of a joint committee which developed a national mobilization study for the Vietnamese armed forces in the fall of 1972.

Educational Program

One of the most vigorously pursued and successful long-range advisory efforts was the educational program, which was developed during the tours of Colonels Durbin and Westerman. From the early sixties until March 1973 members of the MACV Staff Judge Advocate's office continued to teach courses in government and law at Saigon University and to tutor in English Vietnamese lawyers who were then, or later became, Supreme Court justices, Minister of Justice, Minister of Interior, or key Directorate of Military Justice personnel.

The Staff Judge Advocate was successful in obtaining authorization for members of the Directorate of Military Justice and other government officials to receive assignments and grants for study in the United States. For example, in 1965, the Prosecutor and Assistant Prosecutor of the Saigon Court visited the United States as part of the Foreign Leader and Specialist Program of the Department of State. Such visits were highly successful and were continued over the years to allow a representative cross section of the Vietnamese legal community to observe American legal institutions. Annual orientation tours were also programed for key personnel of the Directorate of Military Justice to visit U.S. military and civilian courts, schools, and prisons.

A program was also initiated whereby selected officers of the Directorate of Military Justice were sent to The Judge Advocate General's School in Charlottesville, Virginia, as members of one of the school's eight-week basic courses or nine-month advanced courses in military law. An average of two language-qualified officers a year

were sent to Charlottesville; the highest point was reached in January 1970 when four officers qualified for attendance. Also in 1970, an officer of the Directorate of Military Justice was accepted by Tulane University to attend a one-year program in comparative jurisprudence leading to an LL.M. degree. This assignment was the culmination of efforts by the Judge Advocate Advisory Division to send a deserving member of the Directorate of Military Justice to America for advanced legal studies.

Educational programs were not limited to sending Vietnamese attorneys to the States. Efforts were also made to increase the awareness of the Vietnamese to the importance of law within their own military system. As part of the continuing efforts to make American legal publications available to the Vietnamese, the Directorate of Military Justice was placed on the subscription list for *The Army Lawyer*, the *Military Law Review*, and the *Judge Advocate Legal Service* periodicals. The *U.S. Supreme Court Reporter* was made available to the Vietnamese Supreme Court. In early 1970 the Ministry of Defense authorized the Directorate of Military Justice to start publication of a semiannual Military Law Review. This publication had been recommended by the Advisory Division to fill the need for dissemination of information on changes and progress in the Vietnamese legal system. The MACV judge advocate staff regularly contributed articles on American military law to this publication.

A major step forward was taken in mid-1969 with the initiation of a law curriculum for cadets at the Vietnamese Military Academy at Dalat and the assignment of one member of the Vietnamese Military Justice Corps to the academy as professor of law. Previously there had been only occasional legal lectures and no regular legal instruction at the academy, which is the Vietnamese equivalent of West Point. In November 1971 the Directorate of Military Justice opened its own school for training military lawyers, administrative personnel, and court clerks. The school was located in Saigon and was staffed by two Directorate of Military Justice officers—Major Tran Lai Mien, who had attended the advanced course of The Judge Advocate General's School at Charlottesville, and Major Tran Hua Dinh, who had recently returned from comparative law studies at Tulane University.

Judge advocate advisers also remained active in legal society and educational programs in Saigon, particularly the educational seminars sponsored by the Vietnamese–American Association. A Saigon chapter of the Federal Bar Association was formed, and held periodic meetings to which all U.S. attorneys in the country were invited. The observance of May 1st as Law Day grew from its simple beginning in 1965 to an annual tradition where all U.S. and Vietnamese attorneys who could make the trip came to Saigon for appropriate legal pro-

grams and festivities. The 1972 Law Day reception, held at the U.S. Embassy, was hosted by Ambassador Ellsworth Bunker and General Creighton W. Abrams, and was attended by U.S. and Vietnamese attorneys from all parts of Vietnam.

The Field Advisers

The work of the judge advocate field advisers was quite different from the legal advisory activities carried on in Saigon. The field adviser was the only person in his corps area doing legal advisory work with the Vietnamese. Field advisers did not have a staff to assist them, and available library facilities were apt to be minimal. The U.S. and Vietnamese officers with whom the field advisers dealt were usually considerably older and ranked above the judge advocate advisers. Keeping informed of developments in the corps area which were of interest to the Staff Judge Advocate, as well as establishing contacts in U.S. and Vietnamese military units and civilian agencies, usually required considerable traveling by the field MACV adviser. The language difference was a problem; however, many Vietnamese judge advocates spoke French or some English, and interpreters were usually available.

Living and working conditions and daily activities of the field advisers varied widely. Some advisers were able to work with their Vietnamese counterparts on a daily basis and devoted most of their time to advisory activities; others, of necessity, functioned primarily as command judge advocates for the U.S. advisory headquarters to which they were assigned. The success of a field adviser's tour of duty depended on many factors—his own drive, personality, and ingenuity; the personality of his counterpart and the adviser's ability to establish rapport with him; the support given the adviser by the local U.S. command; and the legal needs of the area at that particular time. The work of the field advisers was innovative in a very real sense in that each adviser was required to discover and act on problem areas in which he could most effectively render assistance. Seldom was there a book solution for the problems he encountered.

Advisory activities involved such diverse legal areas as Vietnamese military justice procedures, questions arising from the Pentalateral Agreement, operation of the re-education centers, provincial jails and military prisons, the Vietnamese claims program, the National Police, the military police, desertion control, resources control, security programs, and various aspects of the pacification program. Often the most pressing advisory problems were more practical than legal in nature, such as arranging transportation for Vietnamese legal officers, providing storage for records of trial, or obtaining material and equipment to improve the military courts and prison facilities.

It was not unusual for incidents with potential legal implications

to occur in Vietnam, involving business enterprises, government agencies, and individuals from several different nations. Questions of any complexity, or with potentially serious legal consequences, were referred to the MACV Staff Judge Advocate in Saigon, but the field adviser was sometimes the initial legal point of contact and the investigator of fact for such incidents.

A feeling for the wide range of activities which fell within the work of the judge advocate field advisers can be gained from an account of some of the experiences of Captain John T. Sherwood, who was the first judge advocate adviser for II Corps from August 1965 until May 1966. Shortly after Captain Sherwood assumed his duties, a U.S. B–57 bomber crashed in the commercial section of downtown Nha Trang, causing several casualties and extensive damage to houses and shops in the area. While the legal authority of the U.S. command to pay claims for such "combat" damage was in doubt, the MACV Staff Judge Advocate nevertheless moved swiftly to assess the damage and to assist those who had suffered physical and financial injury to submit requests for compensation. As part of this effort, the judge advocate field adviser spent two days working with a committee of Vietnamese citizens to inspect damage in order to determine an equitable amount for settlement in accordance with applicable Vietnamese standards. The adviser also conferred with the Nha Trang Provost Marshal concerning the conduct of some National Police, who allegedly were ineffective in preventing looting after the crash. The judge advocate adviser took part in negotiations between the French-owned electric company that serviced Nha Trang (the Eastern Construction Company) and a representative of the U.S. 5th Special Forces Group concerning liability for property damage caused by a Filipino national employed by the company who drove a Civilian Irregular Defense Group vehicle into an electric company transformer. (The U.S. Special Forces trained and financed the Civilian Irregular Defense Group.)

Captain Sherwood's activities were not confined to Nha Trang. Indeed, in August and September of 1965 he traveled extensively: to Qui Nhon to visit the province jail and observe the status of the Vietnamese military police and military justice instructions in units of the Regional Forces and Popular Forces; to Dalat to visit the Military Academy, the Command and General Staff School, and the U.S. Overseas Mission province representative; and to Ban Me Thuot to meet the sector adviser, the U.S. 23d Division staff, and the U.S. Overseas Mission representative. At Ban Me Thuot Captain Sherwood attended an oath of allegiance ceremony whereby 300 dissident Montagnards returned to the government side. On 17 September he flew to Saigon to confer with the Director of Military Justice and the Vietnamese Judge Advocate staff. He spent 23 to 25 September

inspecting Regional Forces and Popular Forces training at Tuy Hoa and observing the pacification program in Phu Yen Province. At the end of September Captain Sherwood visited Vietnamese II Corps headquarters at Pleiku, where he met the corps legal staff and arranged for the shipment of records between the corps headquarters in Pleiku and the Military Court in Nha Trang. While at Pleiku, Captain Sherwood also conferred with U.S. commanders on military justice problems, redrafted a provost marshal directive concerning the confiscation of military payment certificates from Vietnamese employees of U.S. installations, discussed the desertion problem of the Regional Forces and Popular Forces with U.S. advisers, and visited a Vietnamese refugee camp.

Although such a great amount of travel was not required of Captain Sherwood every month, he was constantly provided with new and interesting experiences. He reviewed a treatise on Vietnamese law written in English by a Vietnamese judge advocate officer. He represented two U.S. soldiers charged with rape, attempted rape, robbery, and assault at a pretrial investigation. He visited the Khanh Hoa Military Prison, the Duc My National Training Center for Vietnamese army recruits, and the Song Mao National Regional Force Training Center. He conferred in Bangkok with the staff judge advocate of the Joint U.S. Military Advisory Group, Thailand, on the legal status of U.S. military personnel visiting in Thailand, and on the feasibility of an advisory effort for military lawyers in Thailand. He made three parachute jumps with the first Montagnards ever to be airborne-trained. He participated in a political warfare exercise in which leaflets were dropped from the air over territory controlled by the North Vietnamese. He made a visit to the Khanh Hoa Province jail. He made a detailed study of the methods used by U.S. units in II Corps for handling captured enemy personnel. (To gather facts for this study, he made a visit to the 1st Air Cavalry Division (Airmobile) at An Khe, to the 3d Brigade, 25th Infantry Division, at Ban Me Thuot and Pleiku, and to the 1st Brigade, 101st Airborne Division, at Phan Rang and Tuy Hoa. He made an effort to determine to what extent cards on treatment of prisoners of war were being disseminated by the Vietnamese Army and to what extent the contents of the cards were understood by the Vietnamese troops, many of whom were illiterate.)

As can be seen from the great diversity of the activities detailed above, it is difficult to characterize the work of the judge advocate field advisers. Each adviser determined his own program through analysis of the legal needs and the opportunities existing at his duty station at the time of his tour. Early advisers, like Captain Sherwood, spent a great deal of time ascertaining conditions in their respective corps areas and building an identity for themselves while working for

acceptance of the legal advisory program. As the number of U.S. advisers and troops throughout Vietnam increased and the legal advisory program became established, later judge advocate advisers were able to devote their efforts to other matters. But each field adviser had to gain anew the confidence of his Vietnamese counterpart and of the U.S. forces with whom he dealt, and each had to rely on his own tact, resourcefulness, and legal ability in order to accomplish his mission successfully.

The Prison Advisory Program

One facet of the advisory program for which neither civilian nor military legal training had prepared the judge advocate advisers of the Military Assistance Command was working with the Vietnamese military prison system. In the American Army, military confinement facilities were administered by the Military Police Corps. In the Vietnamese system, as in the Chinese and some other systems, the military prisons were administered by the Military Justice Corps. Since MACV judge advocates were advisers to the Directorate of Military Justice, they also became advisers to the military prisons. One such prison was located in each of the four corps areas, in conjunction with the military court serving that area. The term military prison did not include the prison on Con Son Island, which was considered a civilian prison, even though it contained political prisoners who could have been tried by military courts.

The Vietnamese military prisons were pretrial detention centers only. The great majority of prisoners were charged with desertion. The average deserter spent about three months in confinement awaiting his trial; one charged with more complicated and serious offenses might spend a year or more in pretrial confinement. Time spent in pretrial confinement was credited toward service of sentence, and deserters and petty criminals sentenced to confinement upon conviction were usually remanded to an army labor battalion to serve the remainder of their terms. Those convicted of more serious crimes were sent to civilian prisons to serve their sentences. Each of the military prisons was under the supervision of the chief prosecutor of the military court for the corps area. The Directorate of Military Justice officials who operated the prisons were not attorneys; neither, for the most part, were they trained prison specialists. Prison conditions tended to be inferior in comparison to standards one would expect in American military prisons, but life in Vietnamese military prisons was not appreciably more spartan than that of many civilians or of soldiers in the field.

Judge advocate advisory efforts for the military prisons fell into two general categories: obtaining sorely needed building materials

and supplies, and attempting to provide a certain degree of administrative guidance and technical expertise.

The material needs that existed for the prison system are illustrated by the advisory experience with the Da Nang military prison in 1972. Prior to 1970 the prison had been located in Hue. During *Tet* of 1968 the prison, along with many other U.S. and Vietnamese facilities in and around the city, came under siege by the Communists. The prison was not overrun, but after the *Tet* offensive a decision was made to move it to Da Nang, which was considered more secure. The move to Da Nang would also bring about a considerable increase in administrative efficiency, since both the military court and the military field court had been moved to Da Nang. Several sites near Da Nang were considered, and rejected as being insufficiently secure from enemy attack. Finally, an abandoned engineer compound in east Da Nang was selected as an acceptable site.

The move was begun in 1970, and the facility was officially opened on 1 July 1971. The new prison consisted of eight stucco buildings surrounded by barbed wire. There was no front gate for the outer compound; there were no defensive fortifications, no sleeping facilities for cadre or prisoners, no messing facilities, no potable water, and no electricity. Slowly, prison officials and the judge advocate adviser began making improvements, most of which were wiped out by a typhoon in October 1971. As U.S. units in I Corps began to move out of the line and return to the United States, however, surplus and scrap supplies and materials became available through advisory channels.

From January until June 1972 approximately seventy-five truckloads of building materials, steel cargo (CONEX) containers, furniture, and items of military clothing and equipment were obtained for the prison. The great bulk of the material acquired was considered not reusable by the American forces, but Vietnamese ingenuity found practical uses for even the most unlikely pieces. For example, a front gate was fashioned by welding together discarded pieces of pipe and a huge aluminum sliding warehouse door. The materials acquired were used to construct fourteen defensive bunkers, sleeping platforms for 1,200 prisoners, a stage, a guardhouse, and a handicraft office, and to furnish the mess hall, a visiting hall, a conference hall, a dispensary and doctor's office, a canteen, a cadre lounge and cadre barracks, and the prison administrative offices. Acquisition of a water trailer and water tank enabled potable water to be transported and stored for use in the kitchen. Guards were furnished with helmets, flak jackets, web gear, and rain gear.

Encouraged by the success of the self-help projects, prison officials were able to secure from a construction company a donation of 400



CHAPEL OF THE MILITARY PRISON AT DANANG. *Judge advocates helped to procure building materials.*

bags of cement, which were used to construct a chapel and a pagoda for use by the prisoners and cadre. Ingenuity on the part of the prison commandant and marketing assistance from the judge advocate adviser enabled the prison to increase the assets of the prison general purpose fund by 65 percent in a three-month period through the sale of woven straw lobsters. Other handicraft projects were tried on an experimental basis, and a vegetable garden was started. The persistent efforts of the prison commandant and the judge advocate adviser to work through Vietnamese logistical channels were rewarded when a doctor was assigned to work at the prison on a regular basis, and when a generator was sent to the prison, which previously had been without electric power. An allocation of funds from Saigon made possible the start of construction of two administration buildings, several latrines, and a kitchen in August 1972, by which time the Da Nang prison was well on its way to becoming a model institution in the Vietnamese military penal system.

While the day-to-day work with the prisons was carried on by the field advisers, the MACV Staff Judge Advocate in Saigon was also active in obtaining materials for the prisons and in devising ways to improve the administration of the prison system. Over the years, large quantities of construction materials were obtained, enabling the Vietnamese to complete such major projects as an evidence building at the Saigon Military Prison and an annex to the Saigon Military Prison, both completed in 1970, and an evidence building at the Nhah Trang Military Prison in 1971. Smaller projects, such as the construction of sleeping platforms, were carried on continuously as material became available. Some major projects, such as the construction of the fourth and newest military prison at Can Tho in the spring of 1970 and an additional cell block at the Saigon Military

Prison in 1971, were funded through government channels.

Although the Directorate of Military Justice was responsible for the operation of the military prisons, few of its officials had any formal training or previous experience in penal administration. Because of the high wartime desertion rates, the military prisons were often overcrowded, and prison populations were subject to fluctuations of as much as 50 percent over a short period, depending on the time of the year, tactical conditions in the field, and periodic amnesty programs instituted by the Vietnamese government to relieve overcrowding in the prisons and to return troops to the field. It was not unusual for as few as fifty guards and administrative cadre (a total of all shifts, including officers) to control over 1,200 prisoners. Prisoners were essentially self-regulating within the compounds. Escape attempts were surprisingly few, and discipline was generally excellent. The average allocation for prisoner support in 1972 was 10¢ (U.S.) per prisoner per day. Given these conditions, problems of prison administration were inevitable.

Officers from the MACV Staff Judge Advocate's office in Saigon periodically visited the military prison in each corps area, monitoring progress and co-ordinating advisory programs with the field advisers.Recognizing the need for more professional help in the prison advisory program, Colonel Robert K. Weaver, the MACV Staff Judge Advocate, in 1970 was able to augment the Advisory Division staff by having a U.S. Military Police Corps officer assigned as a special adviser to the pretrial confinement facilities under the Vietnamese Directorate of Military Justice. Following an inspection of four prisons in November 1970 the American military police adviser prepared an administrative checklist for the entire functioning of the confinement facilities, covering custody, control, and confinement practices pertaining to health, comfort, and sanitation. The checklist was translated into Vietnamese and delivered to the Directorate of Military Justice for use in a three-month sampling which would indicate areas of needed improvement and facilitate the development of standard operating procedures.

Colonel Weaver arranged visits to Vietnamese military prisons by U.S. staff members with expertise in the operation of confinement facilities, such as the MACV J–1, the MACV Command Surgeon, and the chief of the Provost Marshal Prisoner of War Division. After these visits the observations and recommendations of the members were compiled, analyzed, and forwarded to the Director of Military Justice and the Minister of National Defense. In 1971 a group of twelve Vietnamese prison officials and noncommissioned officers was conducted on a detailed tour of both the old and new U.S. Army confinement facilities at Long Binh post. In June 1972 plans were made for formal school training and subsequent on-the-job training

at the Military Police School at Fort Gordon, Georgia, for several Directorate of Military Justice prison officials in fiscal year 1974.

When the Paris Agreement on Ending the War and Restoring Peace in Vietnam entered into force the judge advocate advisory role came to an end. Legal advisory activities in Vietnam had ranged from conferring with government ministers in Saigon to inspecting troop training in Tuy Hoa and obtaining lumber for a prison in Da Nang. Advisory "subjects" are not found in any law school curriculum, and coping with the diversity of advisory activities challenged the legal talents of the U.S. military attorneys who participated in this fascinating work. Each undertaking was important in assisting the Vietnamese to improve and strengthen their legal system.

CHAPTER IV

Prisoners of War and War Crimes

As the war in Vietnam intensified, the issue of prisoners of war and war crimes gained in significance, both in Vietnam and worldwide. The MACV Staff Judge Advocate became deeply involved in this issue, developing legal policy and implementing rules based on the Geneva Conventions, United States policy, and Free World forces interests.

Application of Geneva Conventions to Prisoners of War

The application of the Geneva Conventions of 12 August 1949 to captives in the Vietnam War was complicated by the perplexing legal nature of that conflict. In the classic sense, the conventions presume a declared state of war between two or more sovereign states, each fielding a regular army fighting on a readily identifiable battlefront. Virtually none of these classic conditions existed in the Vietnam conflict.

The United States recognized the sovereignty of South Vietnam, as did some eighty-seven other nations. Indeed, South Vietnam is a member of several special committees of the United Nations, and would have been a member of the United Nations itself had it not been for a Soviet veto in 1957.

The United States has not accorded full diplomatic recognition to North Vietnam, as have some twenty-seven other states. However, the United States has acknowledged North Vietnam's agreement to the Geneva Conventions of 1949, and it has treated North Vietnam as a separate state in the context of Article 12 of the Geneva Prisoner of War Conventions.

Throughout the course of the war the government of North Vietnam was most reluctant to admit to any involvement in South Vietnam, constantly maintaining all of Vietnam to be one country and the Saigon government a puppet regime, beleaguered by indigenous patriots who wished to restore the country to the people. The Republic of Vietnam, while asserting its separation from North Vietnam and its existence as a sovereign state, steadfastly refused to accord to

the Viet Cong any degree of legitimacy, either as a separate political entity or as an agent of Hanoi.

Neither the United States nor North Vietnam issued a declaration of war. South Vietnam declared a state of emergency in 1964 and a state of war in 1965, actions taken primarily to increase its internal powers.

The types of combat forces in the war ranged the full spectrum from the regular divisions of the United States, South Vietnam, and North Vietnam to the Regional Forces and Popular Forces of the government of South Vietnam, the Main Force and Local Force battalions of the Viet Cong, the Civilian Irregular Defense Group of South Vietnam, and the secret self-defense groups of the Viet Cong. The battlefield was nowhere and everywhere, with no identifiable front lines, and no safe rear areas. Fighting occurred over the length and breadth of South Vietnam, on the seas, into Laos and Cambodia, and in the air over North Vietnam. It involved combatants and civilians from a dozen different nations. Politically, militarily, and in terms of international law, the Vietnam conflict posed problems of deep complexity. The inherent difficulty of attempting to apply traditional principles of international law to such a legally confusing conflict is well illustrated by the issue of prisoners of war.

As combat units of the United States became heavily engaged in the war in 1965, the question arose as to the proper disposition for battlefield captives and others detained by U.S. units during military operations. In 1965 the United States determined to turn over to the Vietnamese armed forces all individuals captured by U.S. forces. Such an arrangement is permissible under the Geneva Prisoner of War Conventions, which provide for the capturing power to release prisoners to a detaining power as long as both the capturing and the detaining powers fulfill certain obligations concerning the welfare of the prisoners.

While the legal basis for a transfer of prisoners was sound, carrying out the transfer was beset by serious legal and practical difficulties. The Republic of Vietnam regarded the Viet Cong as criminals who violated the security laws of South Vietnam and who consequently were subject to trial for their crimes. As indigenous offenders, the Viet Cong did not technically merit prisoner of war status, although they were entitled to humane treatment under Article 3, Geneva Prisoner of War Conventions. Under Article 12, the United States retained responsibility for treatment of its captives in accordance with the Geneva Conventions even after transfer of the captives to the South Vietnamese. At the same time, the United States was concerned that Americans held captive in North and South Vietnam receive humane treatment and be accorded the full benefits and protection of prisoners of war. In the south, where the government of

South Vietnam had tried and publicly executed some Viet Cong agents, there had been retributory executions of Americans by the Viet Cong. In the north, the Hanoi government stated that it would treat captured American flyers humanely, but it would not accord them prisoner of war status as they were "pirates" engaged in unprovoked attacks on North Vietnam. Hanoi repeatedly threatened to try United States pilots in accordance with Vietnamese laws, but never carried out this threat. U.S. policy was for the United States to do all in its power to alleviate the plight of American prisoners. It was expected that efforts by the United States to ensure humane treatment for Viet Cong and North Vietnamese Army captives would bring reciprocal benefits for American captives.

Early in the war there had been some question in the United States command as to whether the struggle against the Viet Cong constituted an armed international conflict as contemplated in Article 2, Geneva Prisoner of War Conventions, or a conflict not of international nature, to which Article 3 would be applicable. With the infusion of large numbers of United States and North Vietnamese combat units and the coming of the Korean, Australian, Thai, and New Zealand contingents of the Free World Military Assistance Forces, any practical doubts as to the international nature of the conflict were resolved. Although North Vietnam made a strong argument that the conflict in Vietnam was essentially an internal domestic struggle, the official position of the United States, stated as early as 1965, and repeated consistently thereafter, was that the hostilities constituted an armed international conflict, that North Vietnam was a belligerent, that the Viet Cong were agents of the government of North Vietnam, and that the Geneva Conventions applied in full. This view was urged upon the government of South Vietnam, which acceded reluctantly, but subsequently came out in full support of the conventions.

A major practical difficulty in implementing a prisoner of war program was that the Vietnamese government had no facilities suitable for the confinement and care of prisoners of war. In December 1964, the Vietnamese Director of Military Justice took the MACV Staff Judge Advocate on a tour of courts and confinement facilities throughout South Vietnam. As a result of his observations during that tour the Staff Judge Advocate prepared a study pointing out some of the serious problems that existed in handling Viet Cong suspects and prisoners. These problems were quickly becoming joint U.S.-Vietnamese problems, because combat captives and Viet Cong suspects picked up by U.S. forces, Free World Military Assistance Forces, and Vietnamese forces were all delivered to Vietnamese authorities for interrogation, processing, and possible confinement.

During 1965 the number of political prisoners in confinement

rose almost 100 percent, from 9,895 in January to 18,786 in December. These were primarily members of the Viet Cong, but also included some Viet Cong sympathizers, supporters, or collaborators. A total of 24,878 of these political prisoners were confined during the year (compared with 14,029 in 1964), while 15,987 such prisoners were released during the same period. The total rated capacity of all South Vietnam civilian jails and prisons was about 21,400. Few political prisoners, terrorists, or prisoners of war were customarily held in Vietnamese military prisons, which were used primarily as pretrial detention centers for Army deserters and other military offenders. After June 1965 the prison population steadily rose until by early 1966 there was no space for more prisoners in the existing jails and prisons. The practical effect of this was that as new prisoners were confined others had to be discharged. Average time of confinement for all prisoners, including Viet Cong, was about six months. Thus a few months after apprehension a Viet Cong member could be, and usually was, back in operation, while had he been a prisoner of war he would have been restrained "for the duration."

Lack of physical space was but one of many serious problems. An important factor in the operations of the jails and prisons was simply the cost of feeding the prisoners. At an average allowance of 14 piasters (10¢) per prisoner per day, the monthly cost by early 1966 ran to about ten and a half million piasters a month. Confinement authorities complained of chronic difficulty in feeding the large number of prisoners they were required to care for, and the jailer in one province was understandably reluctant to accept and feed prisoners from other provinces. Again, the result was that many prisoners were released after a short time simply because they could not be fed.

Confinement facilities were also handicapped by a severe shortage of qualified administrative and security officers. As an illustration, in 1965 at the Tam Hiep prison there were 30 guards for all shifts and 50 other personnel to control and train almost 1,000 prisoners. In 1966 at Nha Trang Province jail there were 26 guards and 1 instructor for about 440 prisoners. The situation was further aggravated by the frequent loss of guards, jailers, wardens, and instructors who were drafted into the military. This manpower shortage not only thwarted any meaningful classification and rehabilitation program for the prisoners, but also seriously threatened the security of jails and prisons, which were prime Viet Cong targets as long as they held Viet Cong prisoners.

In terms of the war effort, probably the most serious shortcoming of the prisons was the fact that common criminals, Viet Cong suspects, prisoners of war, and even juvenile delinquents were all mixed together. This enabled Viet Cong agents to foment resentment against the government of the Republic of Vietnam and to proselitize their

fellow prisoners; it also increased a Viet Cong's chance for early release as part of the normal inflow-outflow of the prison population. The following figures show the population of Vietnamese jails and prisons that housed political prisoners as of the end of 1965. The figures do not include military prisons, which at that time also held some Viet Cong who were taken in combat and more closely resembled the classical prisoners of war.

Prisons	*Total prisoners*	*Viet Cong*	*Prisoners of war*
Con Son National Prison	3,551	2,934	41
Chi Hoa National Prison	4,179	1,513	0
Tam Hiep National Prison	946	809	137
Thu Duc National Prison	673	296	0
42 Province Jails	14,035	12,069	886
	23,384	17,621	1,064

Three possible ways of alleviating the overcrowded conditions in the prisons, brought on by the escalation of the war, were suggested: a prisoner of war camp construction program; a broadening of the prisoner of war concept beyond the terms of Article 4 of the Geneva Prisoner of War Conventions so as to include more Viet Cong in the prisoner of war category; and the establishment by the Vietnamese government of re-education centers to separate and rehabilitate suspects who either did not qualify for prisoner of war status or were to be brought before a criminal court as civilian defendants.

In August 1965 the U.S. government and the Vietnamese government notified the International Committee of the Red Cross that their armed forces were abiding by and would continue to abide by the Geneva Conventions. In September a Vietnamese-U.S. joint military committee was appointed to work out details on the application of the Geneva Prisoner of War Conventions in Vietnam. By October the committee had issued three-by-five-inch cards and other training aids for the troops, explaining prisoner of war treatment under the Geneva Conventions. A program of instruction for all U.S. and Vietnamese military units was established to teach the basic rules to be applied in the handling of prisoners. U.S. units and advisers were instructed to identify and record all captives turned over to the Vietnamese, specifying to whom the captives were transferred. Vietnamese military legal advisers were briefed by the MACV Staff Judge Advocate on the legal aspects of applying the conventions. The Commander, U.S. Military Assistance Command, Vietnam, established a policy that all suspected Viet Cong captives taken by U.S. forces were to be treated initially as prisoners of war by the capturing unit. Capturing units were responsible for all of the enemy taken prisoner during the course of operations, from the time of their capture to the time the prisoners were released to Vietnamese authorities. Captives were to be interrogated and detained by U.S. forces

only long enough to obtain from them any legitimate tactical intelligence they possessed. Captives were then to be sent to a combined U.S.-Vietnamese Army interrogation center for classification and further processing. Prisoners of war were sent to prisoner of war camps; innocent civilians were released and returned to the place of capture, if possible; civilian defendants were turned over to Vietnamese civil authorities or the province security committee; former Viet Cong seeking amnesty under the Chieu Hoi (Open Arms) program were sent to the Chieu Hoi center. Chieu Hoi was an amnesty program established by the Vietnamese government to encourage Viet Cong to return to government control.

The classification of Viet Cong combatants and Viet Cong suspects posed an interesting legal problem. Because it believed the Viet Cong were traitors and criminals, the Vietnam government was reluctant to accord prisoner of war status to Viet Cong captives. Furthermore it was certainly arguable that many Viet Cong did not meet the criteria of guerrillas entitled to prisoner of war status under Article 4, Geneva Prisoner of War Conventions. However, civil incarceration and criminal trial of the great number of Viet Cong was too much for the civil resources at hand. In addition, Article 22 prohibited the mingling of civil defendants with prisoners of war. By broadly construing Article 4, so as to accord full prisoner of war status to Viet Cong Main Force and Local Force troops, as well as regular North Vietnamese Army troops, any Viet Cong taken in combat would be detained for a prisoner of war camp rather than a civilian jail. The MACV policy was that all combatants captured during military operations were to be accorded prisoner of war status, irrespective of the type of unit to which they belonged. Terrorists, spies, and saboteurs were excluded from consideration as prisoners of war. Suspected Viet Cong captured under circumstances not warranting their treatment as prisoners of war were handled as civilian defendants. MACV policy concerning the classification and treatment of prisoners of war was first codified in MACV Directive 381-11, dated 5 March 1966. (*See Appendix D.*)

The delegate of the International Committee of the Red Cross speaking in Saigon had the following to say about the MACV policy concerning treatment of Viet Cong as prisoners of war:

> The MACV instruction . . . is a brilliant expression of a liberal and realistic attitude. . . . This text could very well be a most important one in the history of the humanitarian law, for it is the first time . . . that a government goes far beyond the requirements of the Geneva Convention in an official instruction to its armed forces. The dreams of today are the realities of tomorrow, and the day those definitions or similar ones will become embodied in an international treaty . . . will be a great one for man concerned about the protection of men who cannot protect themselves.

. . . May it then be remembered that this light first shone in the darkness of this tragic war of Vietnam.

Establishing a Prisoner of War Program

On 27 November 1965 the Joint Military Committee proposed a workable plan for application of the Geneva Prisoner of War Conventions by the U.S., Vietnamese, and Free World forces. The plan called for the construction of five prisoner of war camps, one in each corps tactical zone and one in the Capital Military Region (Saigon), each having an initial capacity of 1,000 prisoners. Each camp would be staffed by Vietnamese military police, with U.S. military police prisoner of war advisers also assigned to each stockade. The plan was approved in December 1965—a temporary prisoner of war camp was to be established at Bien Hoa in early January 1966, with permanent prisoner of war camps to follow. Prisoner of war camp construction continued to receive priority command attention in 1966. The Bien Hoa camp in III Corps was opened in May, the Pleiku camp in II Corps was completed in August, and the Da Nang camp in I Corps was opened in November. Late in the year work was begun on the Can Tho camp in IV Corps.

The objectives for the prisoner of war program for 1967 were ambitious: to identify and transfer prisoners of war in civilian jails and prisons to Vietnamese Army prisoner of war camps; to establish a program of repatriation of prisoners of war; to promulgate the provisions of the Geneva Conventions of 1949; to establish effective prisoner of war accountability procedures and maintain records for the identification and handling of prisoners of war; to construct additional prisoner of war camps as required; to establish prisoner of war labor and educational programs; to adhere to the Geneva Prisoner of War Conventions as closely as possible with respect to mail, medical attention, Red Cross visits, visiting privileges, and health and welfare.

By the end of 1967 the prisoner of war camp capacity had increased from 3,000 to 13,000. In March 1968 a camp for female prisoners of war was established at Qui Nhon, and in April steps were taken to concentrate all Viet Cong prisoners of war under age eighteen at the Bien Hoa camp, where they received special rehabilitation, education, and vocational training. A central prisoner of war camp was constructed at Phu Quoc Island, off the coast of Cambodia, and by the end of 1968 the prisoner of war camps could house a population of 21,000 normally, and a total of 32,000 on an emergency or short-range basis. All gradually expanded until by 11 December 1971 the Vietnamese government held 35,665 prisoners of war in six camps. Of these, 13,365 had been captured by U.S. forces.

Inspections by the International Committee of the Red Cross

Construction of the prisoner camps was a major feat in itself, but the U.S. and Vietnamese governments worked hard in many other areas to fulfill their responsibilities under the Geneva Conventions. At first the Vietnam government was reluctant to co-operate with the International Committee of the Red Cross with respect to inspections and furnishing lists of prisoners. Furthermore, the Democratic Republic of North Vietnam refused to allow the Red Cross any access to their prisoners and the South Vietnamese felt there should be reciprocity. In South Vietnam confinement facilities were the responsibility of the Minister of the Interior, and at the urging of the United States he agreed to allow more visits by Red Cross representatives to Vietnamese civil prisons and re-education centers where prisoners of war were being detained until the completion of the camps. In early 1966, as a result of U.S. efforts, representatives of the International Committee of the Red Cross visited prisons at Tam Hiep, Con Son, and Da Nang, and the prisoner of war camp under construction at Bien Hoa. After it was completed, the Bien Hoa camp was again visited by Red Cross representatives in August 1966. The representatives were favorably impressed with the camp and agreed to provide health and welfare items on their next visit. In October 1966 the committee's representatives visited detention facilities in Da Nang and Pleiku, and again they were favorably impressed. Another Red Cross representative, accompanied by a Saigon delegation, made an extensive tour from 29 November until 8 December 1966 of South Vietnamese, Free World, and U.S. prisoner of war facilities throughout the Republic of Vietnam. The representative visited Vietnamese prisoner of war camps in I, II, and III Corps Tactical Zones; two Vietnamese Army hospitals; the Australian prisoner of war collecting point and field hospital; the Republic of Korea Capitol Division collecting point and hospital; the four U.S. collecting points and six U.S. hospitals; the III Marine Amphibious Force special detention facility at Da Nang; and the Philippine hospital at Tay Ninh. In 1967 members of the international press accompanied the representatives on their visits to two camps.

Despite the many problems they encountered, the record is clear that the United States and Vietnam made a vigorous effort to adhere to the exacting standards of the Geneva Prisoner of War Conventions. Within the Military Assistance Command, Vietnam, the provost marshal was responsible for advising the Vietnamese prisoner of war camps, ensuring that they were operated in conformity with Geneva requirements, and acting as the point of contact for representatives of the International Committee of the Red Cross. MACV policy and procedures pertaining to Red Cross inspections of prisoner of war



INTERNATIONAL COMMITTEE OF THE RED CROSS VISITS VIETNAMESE ARMY PRISONER OF WAR CAMP AT LONG BINH

camps were set forth in MACV Directive 190-6. (*See Appendix E.*)

In August 1966 a committee began to screen prisoners who had been placed in civilian jails before the construction of the prisoner of war camps. The committee, which was composed of representatives from MACV directorates of personnel, intelligence, and logistics and their Vietnamese counterparts, screened all four national prisons and 37 provincial jails. The committee identified 1,202 men as prisoners of war; all but 27 of these had been transferred to prisoner of war camps by the end of 1967, as the screening process continued.

Several programs to improve the living standards of prisoners of war were approved in 1967, among them a pilot educational program to teach reading and writing. Mailing privileges were granted the prisoners and visitation rights given the families of Viet Cong prisoners of war. Health and comfort items were issued free, and a dispensary with a medical doctor and staff was established at each camp. In August 1967 the MACV directorate of personnel established a Prisoner of War Work Advisory Detachment to encourage and assist work programs at the prisoner of war camps. In December 1967, the Vietnamese government approved a labor program whereby prisoners of war would work and be paid 8 piasters per day. This program, which was in accordance with recommendations of the Geneva Prisoner of War Conventions, became effective 1 April 1968.

Repatriation Efforts

Throughout the course of the war the allies maintained a major and sustained effort to promote a reciprocal program of prisoner repatriation. On 3 February 1967, twenty-eight North Vietnamese prisoners of war were released at the Ben Hai River to return to North Vietnam through the demilitarized zone. On 11 March 1967, two Viet Cong prisoners of war captured by U.S. forces were released in response to the release of two U.S. prisoners of war. On 20 March two North Vietnamese PT boat crewmen were repatriated through Cambodia; on 22 March the South Vietnamese released twenty-two Viet Cong prisoners of war and on 23 June 1967 three Viet Cong captured by U.S. forces were released at a jungle rendezvous in exchange for the release of two U.S. prisoners and one Filipino captured by the Viet Cong. In April 1967 a screening program was begun to identify prisoners of war who, because of illness, were qualified for release under Articles 109 and 110 of the Geneva Conventions. The screening team included two Swiss physicians under contract to the International Committee of the Red Cross (ICRC). Of the 286 prisoners screened, 135 qualified medically for repatriation. Of those qualified for repatriation, only 39 wished to return to North Vietnam. To this group was added a female prisoner of war who had given birth in a South Vietnamese hospital. The 40 prisoners and the infant were repatriated to North Vietnam through the demilitarized zone on 12 June 1967; on the same day four Viet Cong–U.S. prisoners–were released in South Vietnam. During 1967 a total of 139 prisoners of war were released in South Vietnam or repatriated to North Vietnam.

In 1968 the government of South Vietnam, with U.S. support, sought to repatriate 40 sick and wounded prisoners of war to North Vietnam under Articles 109 and 110 of the Geneva Conventions. The prisoners were examined by a Red Cross physician and had expressed a desire to return to the north. The Vietnamese made the repatriation offer through the Red Cross, which sent a telegram to the North Vietnamese Minister of Foreign Affairs, proposing repatriation in late January or early February. When no reply was received, the South Vietnamese asked the International Committee of the Red Cross to renew its efforts in May, but there was still no reply by the end of the year. Efforts by the South Vietnamese and the Red Cross to repatriate these 40 prisoners of war, and 24 civilians as well, continued through 1969, but to no avail. At the Paris Peace Talks of 13 November 1969 the South Vietnamese proposed returning 62 sick and wounded prisoners of war to North Vietnam. The offer was declined. It was the position of the South Vietnamese that if Geneva Prisoner of War Articles 109 and 110 required the capturing state to

repatriate the sick and wounded, these articles also required the home state of the prisoners of war to accept those prisoners who wished repatriation. The South Vietnamese even proposed transporting sick and wounded prisoners of war by sea to any port or point on the coast of North Vietnam, but received no response to this offer.

During 1969 the Republic of Vietnam did release 191 Viet Cong prisoners of war in South Vietnam for reasons of youth, age, or pregnancy under Article 21 of the Geneva Prisoner of War Conventions. Also, some prisoners of war who were not deemed to be "hard-core" Viet Cong were transferred to the favored Hoi Chanh status, under the Chieu Hoi amnesty program. These transfers particularly applied to youths seventeen and under. Efforts to repatriate prisoners of war to North Vietnam and to secure the release of U.S. and South Vietnamese prisoners of war continued through 1970, but met with little success. In January 1971 the Republic of Vietnam offered to repatriate all sick and wounded prisoners to North Vietnam. This offer was ignored. On 29 April 1971 the Vietnam government requested North Vietnam to conclude a bilateral agreement for the repatriation or internment in a neutral country of those prisoners of war who had been held captive for a long period of time. This offer was ignored, but in May 1971 North Vietnam finally agreed to accept 570 sick and wounded prisoners. The International Committee of the Red Cross interviewed 660 sick and wounded prisoners, of whom only 13 wished to be repatriated. As arranged, these thirteen were taken by sea to a point off the coast of North Vietnam; but before they were released North Vietnam canceled the agreement to accept the prisoners and they were returned to Da Nang. This ended repatriations for the remainder of 1971.

Throughout the war the United States had urged the South Vietnamese to release qualified prisoners of war, seeking possible reciprocal action by North Vietnam. The South Vietnamese had been understandably reluctant to release unilaterally large numbers of able-bodied prisoners of war, but after the national election of October 1970, the Republic of Vietnam transferred 2,300 Viet Cong prisoners who pledged loyalty to the government to Chieu Hoi centers and released 623 outright. Through 1 March 1972, South Vietnam released a total of 5,960 prisoners of war. Of this total 188 were repatriated to North Vietnam, 900 were released in South Vietnam, 1,784 were reclassified, and 3,084 were accepted into the Chieu Hoi program. In contrast, by the end of 1971 the Communists had released 53 American prisoners of war; they had allowed no visits by the International Committee of the Red Cross to Communist prisoner of war camps in North Vietnam or South Vietnam; and they had made no effort to repatriate sick and wounded prisoners. Mailing privileges for U.S. prisoners held in North Vietnam had been al-

lowed sporadically and in an arbitrary manner. Finally, the Communists had refused to furnish a comprehensive and accurate list of the prisoners they held. Although both the Viet Cong and North Vietnamese consistently maintained that their prisoners received humane treatment, their efforts to comply with the provisions of the Geneva Prisoner of War Conventions were negligible.

MACV Policy on Prevention and Investigation of War Crimes

The first MACV directive dealing specifically with war crimes was Directive 20-4, dated 20 April 1965. Its purpose was to designate the agencies responsible for conducting investigations of alleged or apparent violations of the Geneva Conventions inflicted by hostile forces upon U.S. military or civilian personnel assigned to Vietnam. The directive defined war crimes as violations of the law of war, and stated that "grave breaches" of the Geneva Conventions, such as willful killing, torture, or inhuman treatment of persons protected by the conventions constituted war crimes. The directive also addressed itself to "prohibited acts" under common Article 3 of the Geneva Conventions, defining them as those acts which "would be war crimes but for the fact the existing conflict is not yet deemed to be international in character." In retrospect, this early directive is interesting in two respects. The directive concerned itself only with those violations inflicted by hostile forces upon U.S. citizens, and it stated that the fighting in Vietnam was not yet an armed international conflict in the legal sense.

The reasons for drafting the directive in this manner were immediate and practical. Prior to the introduction of ground combat units in Vietnam in March 1965, U.S. troops in Vietnam served in an advisory capacity; U.S. units had not planned or executed combat operations or taken prisoners, and there were no indications that U.S. advisers were violating the Geneva Conventions. To the contrary, the only atrocities known to the U.S. command at the time were those committed against U.S. advisers by the Communists. MACV Directive 20-4 was promulgated to ensure appropriate investigation of such atrocities. (*See Appendix F.*) As to the international nature of the conflict, the principal enemy of the Republic of Vietnam at the time was the Viet Cong, whose members the republic regarded as domestic criminals. The government of North Vietnam did not admit that its troops were in the south, or that it was in any way sponsoring the Viet Cong, whom it considered local patriots struggling against a dictatorial regime.

MACV Directive 20-4 was updated on 25 March 1966 with several significant changes. The scope of the directive was broadened to include war crimes committed by U.S. personnel as well as those against U.S. personnel. In consonance with the official U.S. position

that the struggle in Vietnam by then constituted an armed international conflict, no mention was made of a lesser category of "prohibited acts," as defined in the earlier directive, and eighteen examples of acts which constituted war crimes were given.

The directive clearly stated that the willful killing, torture, or inhuman treatment of, or willfully causing great suffering or serious injury to the body or health of persons taking no active part in the hostilities, including members of the armed forces who had laid down their arms or who were not combatants because of sickness, wounds, or any other cause, was a war crime. Other acts specified as war crimes were maltreatment of dead bodies, firing on localities which were undefended and without military significance, pillage or purposeless destruction, killing without trial of spies or other persons who committed hostile acts, and compelling prisoners of war or civilians to perform labor prohibited by the Geneva Conventions.

The directive went on to fix responsibility on every member of the U.S. armed forces for reporting incidents which could constitute war crimes. It stated that "It is the responsibility of all military personnel having knowledge or receiving a report of an incident or of an act thought to be a war crime to make such incident known to his commanding officer as soon as practicable. Personnel performing investigative, intelligence, police, photographic, grave registration or medical functions, as well as those in contact with the enemy will, in the normal course of their duties, make every effort to detect the commission of war crimes and will report the essential facts to their commanding officer."

As was the practice for all MACV directives, MACV Directive 20-4 was updated periodically. It was also supplemented by a number of other directives pertaining to the Geneva Conventions, war crimes, and prisoners of war. MACV Directive 27-5, Legal Services: War Crimes, and Other Prohibited Acts, dated 2 November 1967, listed acts which constituted war crimes and stated, "Commission of any act, enumerated in paragraph 4, above, or constituting a war crime is prohibited. Violation of this directive will be punishable in accordance with the provisions of the Uniform Code of Military Justice." Other regulations pertinent to war crimes and prisoners of war were MACV Directive 190-3, Military Police: Enemy Prisoners of War, 6 April 1967; MACV Directive 20-5, Inspections and Investigations: Prisoners of War–Determination of Eligibility, 17 May 1966; MACV Directive 381-46, Military Intelligence: Combined Screening of Detainees, 27 December 1967; MACV Directive 335-1, Reports of Serious Crimes or Other Incidents, 5 January 1966; and Geneva Conventions Checksheet sent to all judge advocates in Vietnam. (*See Appendix G.*)

Throughout 1965, 1966, and 1967 the most grievous breaches of

the Geneva Conventions continued to be those committed by the Communists, and there were several cases where U.S. troops were murdered and their bodies mutilated by the Viet Cong or North Vietnamese. The Viet Cong policy of kidnapping civilians, assassinating public officials, and terrorizing entire populations continued. Communist tactics against the Montagnards, indigenous mountain tribes, were particularly vicious.

On the American side, the sudden massive U.S. troop buildup in Vietnam that began in 1965 created many problems for the U.S. command, and incidents of war crimes by U.S. troops began to be reported. For example, during the period between 1 January 1965 and 31 August 1973, there were 241 cases (excluding My Lai) which involved allegations of war crimes against United States Army troops. One hundred and sixty of these cases, upon investigation, were determined to be unsubstantiated. Substantiated allegations of war crimes violations committed in Vietnam by personnel subject to the Uniform Code of Military Justice were prosecuted under the provisions of the code. From January 1965 through August 1973, 36 cases involving war crimes allegations against Army personnel were tried by court-martial. Sixteen cases involving thirty men resulted in acquittal or dismissal after arraignment. Twenty cases involving thirty-one Army servicemen resulted in conviction. By the time the U.S. troop buildup was in full swing, various MACV directives contained a sufficient body of law clearly to define, prohibit, and provide for the investigation of war crimes. The constant rotation of troops created a continual need to get the information to the troops.

Troop Education

Long before U.S. troop units were engaged in combat in Vietnam, the Army had included in its training programs material designed to inculcate in the troops a knowledge of their rights and obligations under the Geneva Conventions of 1949. Army Regulation 350-216, dated 19 December 1965, placed upon the Commanding General, Continental Army Command, the responsibility of incorporating within appropriate training programs periods of instruction designed to insure that all members of the Army were familiar with the 1949 Geneva Conventions. The soldier's first introduction to the Geneva Conventions was during basic training, where he received two hours of formal instruction, followed by a test, the results of which were noted on his record. During advanced individual training, instruction in the Geneva Conventions was integrated with other subjects and principles were applied during field exercises. Annex B of Continental Army Command Regulation 350-1, dated 15 June 1965, required commanders to take continuing action to incorporate instruction on

the Geneva Conventions in their training programs. Training programs pertaining to the Geneva Conventions were the subject of a comprehensive review, and several steps were taken to increase and improve instruction by the use of training films and combined judge advocate-combat arms officer training teams.

In Vietnam, Geneva Conventions training was intensified and became more formalized as troop strength increased. As early as August 1965, the Commander, U.S.Military Assistance Command, Vietnam, directed that the educational program for all U.S. military personnel in South Vietnam include the issuance of a three-by-five-inch card containing the basic requirements of the Geneva Conventions pertaining to the treatment of prisoners of war. By October 1965 cards had been prepared in English for U.S. personnel and in Vietnamese for Vietnamese armed forces personnel. U.S. units were instructed in the basic rules of handling prisoners and MACV judge advocate personnel briefed Vietnamese military legal personnel on the application of the conventions. Troops arriving in Vietnam received Geneva Conventions orientation during their initial in-processing period, where they also received a copy of the card, "The Enemy in Your Hands." (*See Appendix H.*)

The Commander, U.S. Military Assistance Command, Vietnam, continuously and emphatically stressed the importance of all troops acting in accordance with the laws of war. In November 1965, he discussed with the chief of staff of the Vietnamese Joint General Staff the importance of adhering to the Geneva Conventions pertaining to the treatment of prisoners of war. The commander conferred periodically with Vietnamese officials on this subject and on the importance of proper deportment by all troops in general. The results of this concern became noticeable in several areas, one noteworthy example being the promulgation in March 1967 by the Vietnamese government of a National Decree stating the provisions of the four Geneva Conventions of 12 August 1949. In August 1966 the Commander, U.S. Military Assistance Command, Vietnam, personally wrote separate letters to all of his major commanders on this same theme, stating in part, "Active command interest in this program, in coordination with Republic of Vietnam Armed Forces authorities, which assures that prisoners of war and combat captives are properly processed and handled in accordance with International Law is vital."

This theme was repeated over and over again. A MACV command information bulletin, titled Application of the Geneva Prisoner of War Conventions in Vietnam, dated October 1966, instructed the U.S. troops that the Geneva Prisoner of War Conventions applied to Vietnam even though there was no formal declaration of war by the United States. Moreover, the United States was applying not

only the letter of the law, but also the spirit of the Geneva Conventions, which were designed to protect the individual who could no longer protect himself. Prisoner of war treatment was to be extended to all Viet Cong and to all members of regular North Vietnamese units, whether captured in combat or not, as long as they were not criminals, spies, saboteurs, or terrorists. Criminals, spies, saboteurs, and terrorists were to be given humane treatment and turned over to the Vietnamese government for trial.

The bulletin explained the steps to be taken immediately upon capture of enemy personnel, and stressed that prisoners must be protected from torture, humiliation, degrading treatment, reprisals, or any act of violence. The categories of detained persons (innocent civilians, prisoners of war, returnees, and civil defendants) were listed, with a reference to the MACV directive which outlined processing procedures for each type of detainee. The bulletin went on to explain the importance of observing humanitarian principles in waging war, giving specific reasons why it was in the interest of the U.S. for American troops to treat prisoners humanely. In conclusion, the bulletin urged the troops to follow the rules on the card, "The Enemy in Your Hands." In addition, through U.S. judge advocate resources in Vietnam the MACV Staff Judge Advocate's office monitored the troop education program and disciplinary aspects of Geneva Conventions violations.

These efforts on the part of the U.S. command were commended by the Red Cross in a letter of 5 January 1968 to W. Averell Harriman, U.S. Ambassador at Large. Samuel A. Gonard, President of the International Committee of the Red Cross, wrote: "We are convinced that in the context of the war in Vietnam the U.S. Forces are devoting a major effort to the spread of knowledge of the Geneva Conventions."

War Crimes Investigation

For the most part, war crimes committed by U.S. forces in Vietnam fell into two principal categories: willful murder or assault of noncombatants; and mutilation and maltreatment of dead bodies. Serious incidents involving assault, rape, and murder that were not directly connected with military operations in the field were not characterized as war crimes but were reported through military police channels as violations of the Uniform Code of Military Justice.

Acts constituting war crimes were also offenses against the Uniform Code of Military Justice, and as such were investigated by agents of the Criminal Investigation Division. Pertinent MACV directives required a concurrent investigation of war crimes by an investigating officer who was concerned not only with the details

of the crime, such as the persons involved and where, when, and what occurred, but also with the broader question of how and why the incident took place. The scope of this investigation included an examination of the established rules of engagement and command and control procedures that were in effect at the time, and how these procedures were implemented. The question to be determined was whether there was any failure of command responsibility.

When an investigation was completed, the report was delivered to the general court-martial convening authority, who had appointed the investigating officer. The appointing authority reviewed the report and approved or disapproved it. If approved, the report of the investigation with the appointing authority's indorsement was forwarded through channels to the Commander, U.S. Military Assistance Command, Vietnam. At MACV headquarters it was circulated to appropriate staff offices, including the Staff Judge Advocate, for review. The report could be returned for further action or approved by the MACV commander or chief of staff. After final review, a war crimes investigation report concerning any person was forwarded to The Judge Advocate General, Department of the Army.

The Commander, U.S. Military Assistance Command, Vietnam, had considered establishing special war crimes teams and having the Army maintain centralized files on war crimes for all services, but this was not done because the laws prohibiting war crimes and the administrative and judicial machinery for investigating and punishing such offenses were judged adequate. Murder, rape, assault, arson, pillage, and larceny were all punishable as offenses against various sections of the Uniform Code of Military Justice, and there were many directives from Military Assistance Command, U.S. Army, Vietnam, and units specifying and prohibiting various acts in the war crimes category. Representatives of the military police, Criminal Investigation Division, Inspector General, and Judge Advocate had experience in conducting investigations; they, as well as the commanders, and, indeed, all military personnel, had the responsibility for reporting possible violations of the laws of war so that an appropriate investigation could be conducted as specified by regulation.

Despite laws and preventive education, war crimes were committed. Most were isolated incidents, offenses committed by individual U.S. soldiers or small groups. Investigations were conducted, and the records of courts-martial proceedings contain the cases of individuals who were tried and punished. My Lai, the most notorious offense committed by U.S. troops in combat in Vietnam, was not the result of inadequate laws or lack of command emphasis on those laws; it was the failure of unit leaders to enforce the clear

and well-known procedures set forth in applicable regulations. It is tragically true that troops on both sides committed atrocities; but had it not been for the genuine concern of commanders at the highest levels that U.S., Vietnamese, and allied forces conduct themselves humanely and in accordance with the laws of war, the Vietnam War probably would have been far more brutal.

It was evident that international law was inadequate to protect victims in wars of insurgency and counterinsurgency, civil war, and undeclared war. The efforts of the international community to codify the humanitarian law of war in 1949 drew upon examples from World War II which simply did not fit in Vietnam. The law left much room for expediency, political manipulation, and propaganda. The hazy line between civilian and combatant became even vaguer in Vietnam.

There was an absence of effective power to insure compliance by both sides with the Geneva Conventions or to give reassurance of at least minimum protection for victims of the armed conflict. The inability of the International Committee of the Red Cross to function effectively on behalf of U.S., South Vietnamese, or other Free World forces was particularly tragic. The law of war was not completely ineffective; certainly many combatants and noncombatants survived the war because of the application of the law of war. The U.S. military lawyers' role in applying the known and developed humanitarian rules for armed conflict brought credit to the legal profession and to the U.S. Armed Forces.

CHAPTER V

Claims Administration

The arrival in South Vietnam of massive amounts of matériel and large numbers of troops in the mid-1960s clearly established the need for an effective claims program to cope with incidents that would involve claims for compensation against the United States. It was also apparent that a well-organized and well-administered indemnification program would be an invaluable asset to the Republic of Vietnam and its allies. Not only would such a program deny the insurgents a propaganda weapon, but it would create a climate favorable to respect for law and order.

There was special need for an effective claims program in a country beset by insurgency, where a portion of the population was hostile to the government, and another substantial portion was apathetic. The apathy was engendered by a temporary lack of relationship with the government, by a historical dissociation and a reluctance to resort to a court of law to settle contentions, or by a loss of faith in the benefits of government.

It was clear that before the insurgency could be overcome the Republic of Vietnam had to win over a large section of the population that was neither friendly nor hostile to the government. One method to offset hostility to a degree, and to give assurance to the apathetical portion of the population, was to provide fair indemnification for losses attributable to governmental activity. Fair, timely restitution would show the concern of the government for justice and the welfare of its citizens, assist in spreading the government's influence, and serve to neutralize the enemy's propaganda. It would present the insurgent with a governmental activity he could neither match in service to the populace nor overcome by fear or violence.

Operations Before 1966

The U.S. claims operations in South Vietnam immediately before the major troop influx in 1965 and 1966 were conducted within the Claims and Tort Law Section of the Office of the Staff Judge Advocate, Military Assistance Command, Vietnam. The pace of claims operations was fairly steady. Although each increase in mili-

tary activity brought an increase in foreign claims—claims filed by inhabitants of South Vietnam against the United States—most cases at this time were military claims arising from the loss or destruction of personal possessions of MACV advisers or U.S. Special Forces troops.

The MACV Staff Judge Advocate's office soon gained a reputation for getting into the field to provide fast claims service for such losses. Three incidents will serve to illustrate the methods of the claims teams in dealing with military claims.

The bombing of the large Brinks Hotel in downtown Saigon, where a number of officers were billeted, during Christmas of 1964 was one of the first Viet Cong attacks directed solely against Americans. The smoke had hardly lifted when the MACV Staff Judge Advocate's representatives were on the scene, photographing and recording the evidence. By the following morning notices were posted informing the survivors of the location of nearby offices for filing their military claims. Because of the diligent efforts of the MACV Staff Judge Advocate Claims Branch, substantially all claims of U.S. personnel were paid within several days of the explosion.

A second incident, a Viet Cong attack in Pleiku in early February 1965, promptly brought two members of the Saigon claims team to the site to receive Army claims generated by the incident. An enlisted claims clerk remained for a week to assist in accurate investigation and preparation of the many claims, and in less than two weeks money was on the way to the last of those American soldiers who had been affected by the attack.

The Pleiku claims processing procedures were used successfully again in the hotel bombing of 10 February 1965 at Qui Nhon in which twenty-two Americans were killed and twenty-one wounded. Most of the residents of the destroyed quarters lost all their possessions, equipment, and clothing. At the suggestion of the MACV judge advocate involved in the claims efforts, the survivors were flown to Saigon, where they received their claims money and were able to obtain necessary clothing and personal items at the Saigon exchange outlets before returning to their section stations that same day.

The achievements of the claims teams are all the more noteworthy when some of the hardships associated with claims operations are taken into account.

The Claims and Tort Law Section of the Staff Judge Advocate, MACV, consisted in 1965 of one officer, several enlisted men, and four or five Vietnamese. The office was primarily administered by a young Vietnamese national of Chinese origin who alone controlled and could locate claims in process. Files and index cards were arranged in Chinese fashion, from back to front and from bottom to top. There was a lack of qualified interpreters, and generally each



JUDGE ADVOCATE CLAIMS OFFICER EXAMINES VIET CONG BOMB DAMAGE TO BILLET IN SAIGON

claim form was completed for the claimant by one experienced but painfully slow Vietnamese national.

Payment of claims also presented major difficulties. The normal method of payment was by check, but it was discovered that it was almost impossible for a Vietnamese national outside Saigon to cash a check without incurring a discount of 50 percent or more. This problem was solved by the appointment of Class A agents, who were sent into the field to find the claimant, secure his acceptance of the amount, and disburse payment in cash by actually negotiating the check.

In early 1965 the number of military and foreign claims mounted by staggering multiples and descended upon the relatively small staff, driving the claims operation of the MACV Staff Judge Advocate's office toward a crisis that was averted only by the hard work and initiative of the Americans and Vietnamese working together.

The first step in coping with the rise in the number of claims was to obtain qualified enlisted claims clerks and interpreters. To keep the work load under control, the U.S. claims personnel worked late each night, identifying, indexing, and processing promptly each claim filed. A fully cross-indexed card system was set up. As new U.S. units arrived in Vietnam, members of the MACV Staff Judge Advo-

cate Claims Section visited them to explain claims processing procedures, basic Vietnam government structure, and sources of aid for those injured by combat action. Claims regulations were completely rewritten to adjust procedures to the realities and to educate further the claims personnel of incoming units. Trilingual (English, Vietnamese, and Chinese) claims forms were prepared and printed.

In addition to handling these routine matters, the chief of the Claims Section participated in the negotiations with the Korean government concerning the payment of foreign claims generated by troops of the Army of the Republic of Korea who were active in South Vietnam. In fact, the MACV Staff Judge Advocate's office was to play a vital role in the negotiation and implementation of certain claims agreements with the Vietnamese government and the Free World allies which came to be known as "knock-for-knock" agreements. These compacts contained provisions whereby the government of one nation waived the claims against the government of the second nation for damage to government property. The agreements did not, however, waive the personal right of an individual to claim damages in the case of negligence of a member of the force of another allied nation. The arrangements nevertheless removed a potential irritant to the relationships among the Free World forces.

Claims Developments

A significant problem that had arisen by late 1965 was the proper handling of claims arising out of the operations of U.S. forces.

The Foreign Claims Act specifically excluded from payment any claim resulting directly or indirectly from combat. Thus, if an aircraft took off on a combat mission, compensation for any damage done by its armament or by a crash of the aircraft itself was barred from payment by the so-called combat exclusion provision. It was not legally possible to plead a change in the nature of the flight by abandoning the mission or even the aircraft.

In August 1965 a military aircraft was disabled by a mechanical failure while on a combat mission. The crew, before bailing out, set the controls of the aircraft so that if everything went according to plan the aircraft would crash at sea. But, for some unknown reason, the aircraft circled and crashed in a village, causing personal injury and deaths and a great deal of property damage. Use of contingency funds was necessary to pay the claims since combat exclusion barred payment under the Foreign Claims Act. A trio dispatched from the MACV Staff Judge Advocate Claims Section spent two weeks processing claims on the spot with the Vietnamese villagers. In order to gain the good will of the people, the United States was as liberal in the disposition of these claims as the law would allow.

The case illustrated also the kind of incidents, growing in number, that led to claims in the gray area between combat and noncombat claims. Finally, in 1968, at the suggestion of MACV, the Foreign Claims Act was amended by Congress to allow payment of certain claims indirectly related to combat activities of the U.S. forces.

Claims Responsibility

The responsibilities and organization of the claims supervisory authority in South Vietnam underwent a change in 1966 and again in 1968. The Secretary of Defense assigned the U.S. Army primary responsibility for the processing of all claims arising in the Republic of Vietnam under the Foreign Claims Act and the Military Claims Act. This action served to remove the problem of disparity between processing procedures and jurisdiction among the several services.

In 1966 The Judge Advocate General of the Army assigned claims supervisory authority to the Commanding General, U.S. Army, Ryukyu Islands (Okinawa), with authority to appoint necessary foreign claims commissions in South Vietnam upon the request of the Staff Judge Advocate of Headquarters, U.S. Army, Vietnam. Finally, in 1968, the Commanding General, U.S. Army, Vietnam, was assigned claims supervisory authority with respect to claims matters, including the authority to appoint foreign claims commissions in Vietnam.

During the period 1965–73, the highest total of claims offices operating at any one time was forty, in 1970. Of this total, fourteen were foreign claims commissions. Two of the foreign claims commissions were three-member commissions located in the Saigon foreign claims office and had approval authority on amounts up to $15,000. The remaining twelve were one-man commissions having authority to settle claims not exceeding $1,000. These one-man commissions were located throughout South Vietnam, usually at either division or area command headquarters. Payments to foreign nationals were made directly to them at each foreign claims office by check and were negotiable in piasters only.

Claims Obligations

It is illuminating to compare the expenditures under the claims program in South Vietnam during the early years under MACV and later during the years of peak U.S. troop strength. During fiscal year 1965 total claims obligations amounted to only $10,000. The following fiscal year, payments rose tenfold to $102,000. During fiscal year 1967, $650,181 was obligated for the settlement of foreign claims and $127,184 for personnel claims. Fiscal year 1968 produced

total expenditures exceeding one million dollars in Vietnam for the first time when $531,000 was obligated for personnel claims and $1,098,000 for foreign claims. Fiscal year 1969 produced further increases when U.S. troop strength reached its highest level. A total of $1,993,000 was obligated: $757,000 for personnel claims and $1,236,000 for foreign claims payments. In fiscal year 1970, foreign claims obligations rose to $1,534,000 and total claims obligations were $2,555,000.

Solatium Payments

In South Vietnam it was the custom for a representative of the United States to pay a visit of condolence to a Vietnamese injured by military activities or to the survivors of a deceased victim, and for a small amount of money or goods such as rice, cooking oils, or food stuffs to be given. The visit and payment took place when U.S. personnel were involved in the incident that caused injury, regardless of who was at fault, and even if the incident was technically caused by combat. The donation was not an admission of fault, but was intended to show compassion. By caring for the victims, the United States could assist the civic action program in Vietnam. The recipient of the solatium payment would also be advised of the procedures required to present a claim against the U.S. government, if appropriate, and the location of the nearest U.S. foreign claims commission office.

The condolence visit was successful in that the personal expression of compassion by a representative of the United States made a favorable impression on Vietnamese victims who had previously regarded the American claims system as efficient, honest, fair, and generous—but cold. At the Military Assistance Command, Vietnam, a member of the Staff Judge Advocate's office was designated to make condolence payments in incidents involving MACV personnel in the Saigon-Cholon area.

Vietnamese Government Claims Programs

The joint efforts of the United States and the Republic of Vietnam to establish a Vietnamese claims program had to take into account several aspects of the Vietnamese legal system.

As Vietnam moved into the 1960s, the judicial organization, although rather elaborate and comprehensive on paper, functioned in practice only in the major cities. Courts at the lowest levels of government throughout the countryside were administered by justices who were in most cases not legally trained and whose powers were dependent upon such factors as the military situation, the strength of local military personalities, and the National Police effort in the area.

Although civil disputes such as claims could come before these

courts, there was a fundamental reluctance by the Vietnamese to resort to the legal system. The result was that the courts themselves played a rather insignificant role in Vietnamese society. The inclination to settle disputes informally with one's neighbor, added to the paucity of lawyers in Vietnam and the inability of most peasants to afford counsel when available, easily explains the vitality in the old Vietnamese adage that it is better to go to hell than go to court.

It was in the interests of the United States to develop its own effective claims service as a part of American legal responsibilities to the Vietnamese people in time of war; but the service also pointed a way to the officials of the Vietnamese government that they, as representatives of the government, could gain the confidence of the people by acknowledging their legal rights and by showing an interest in the problems and losses caused by Vietnamese military units.

Three types of claims services were set up and administered by different agencies within the central Vietnamese government: combat claims, administered by the Directorate of Psychological War; noncombat claims, by the Directorate of Finance and Budget; and defoliation claims, by the Ministry of Interior.

By agreement, the government of Vietnam had responsibility for the processing and payment of all combat claims generated by the military units of the Republic of Vietnam, the United States, and the Free World forces. These were administered by the Psychological War Directorate through the Military Civic Action Program, commonly referred to as MILCAP. The program had its own regulations, procedures, and forms, and its activities and budget were monitored and approved by U.S. authorities. The MACV Political War Directorate was the U.S. counterpart office for the operations of the Military Civic Action Program. Once the determination was made that the claim was combat-generated, the claimant was required to complete the Vietnamese form, add proof of ownership and loss, and submit it through Vietnamese channels.

In cases where U.S. forces had been involved with the combat loss, U.S. claims officers were encouraged to assist the Vietnamese local authorities in processing the claims as rapidly as possible. If the claim was under 200,000 piasters, a committee at province level acted on the matter. This committee included the senior U.S. Army adviser and Vietnamese province chief. Although the amount of compensation that could be recovered under the Military Civic Action Program was limited—death cases, for example, ranged from $50 to $300—the program did represent a visible, viable recourse to the Vietnamese people at province levels.

The government of Vietnam accepted full responsibility for the defoliation program and indemnification for damage to domestic crops. Although few defoliation indemnifications were made through

1966, the existence of the program and the publicity given its availability added to the joint efforts of the governments of the United States and South Vietnam to rally rural support.

The noncombat claims against the armed forces of Vietnam were handled by the Ministry of National Defense through the Directorate of Finance and Audit. Money for these claims was programed annually by the Vietnamese in the budget, which required the approval of the U.S. Military Assistance Command, Vietnam, and the U.S. Embassy.

The salutary effect of all these programs together cannot be measured. One inescapable conclusion, however, is that the cooperative administration and U.S. monitoring of the government of Vietnam claims programs set the central government along the road toward fostering a popular respect for the law.

CHAPTER VI

The Legal Status of Forces in Vietnam

In accordance with the Mutual Defense Assistance Act of 1949, the United States first sent military advisers to Vietnam to assist the French Union forces. The basic international agreement—Mutual Defense Assistance in Indochina—governing the legal status, rights, and obligations of U.S. personnel in Indochina was signed in Saigon on 23 December 1950 by the United States, France, Cambodia, Laos, and Vietnam. This agreement, known as the Pentalateral Agreement, was similar to other standard mutual defense assistance agreements that the United States had concluded with its allies. The agreement was short and its terms were broad and general. *(See Appendix I.)*

Under Article III of the agreement each government undertook to enter into necessary arrangements with the United States concerning all matters relative to the furnishing of materials, and to consult with the United States in establishing means for utilizing the assistance furnished. Under Article IV the governments agreed that all products, material, or equipment furnished by the United States in connection with the agreement would receive duty-free treatment, and would be exempt from taxation upon importation, exportation, or movement within Indochina. Clause 2 of Article IV stipulated that the states of Indochina were to receive within their territory those U.S. citizens who were necessary to carry out the agreement, and that the receiving states would accord to U.S. citizens thus engaged all facilities needed to carry out their responsibilities. U.S. citizens sent to Indochina to implement the agreement were to operate as part of the diplomatic mission of the United States.

Annex B to the basic agreement affirmed that U.S. citizens entering Indochina under the terms of the agreement were to operate as members of the diplomatic mission, and stated that such citizens were to be accorded the same legal status vis-à-vis the host country as were members of the diplomatic mission of corresponding rank. Annex B then divided U.S. personnel into three categories, and defined the legal status of each category. The first category consisted of the senior military members of the U.S. mission, and these were accorded full diplomatic status. Personnel in the second category,

which was not defined, were to enjoy certain diplomatic privileges and such immunities as being outside the civil and criminal jurisdiction of the host country, having the right of free egress, and being exempt from customs duties and restrictions, and various taxes. Personnel in the third category, also undefined, were to receive the same legal status as the clerical personnel of the diplomatic mission. In conclusion, Annex B stated that "it is understood among the five governments that the number of personnel in the three categories above will be kept as low as possible."

In 1958 the United States informed the government of Vietnam that it would consider top U.S. military commanders in the first category, having full diplomatic status, officers and warrant officers in the second, or exempt category, and enlisted men in the third category, a status equivalent to that of clerical employees of the diplomatic mission.

U.S. Troop Buildup

When the Pentalateral Agreement was signed in 1950, the signatory parties obviously meant the agreement to apply to the activities of the small U.S. Military Advisory Assistance Group staffs operating at the time in Cambodia, Laos, and Vietnam. During the early 1950s, there were 200 to 300 of these military advisers in Vietnam, and by the end of 1960 there were still only 685. As the tempo of Communist military activity increased, so did the size of the U.S. force in Vietnam. By the end of 1961 there were 3,000 U.S. troops in Vietnam. The U.S. Military Assistance Command, Vietnam, was activated in February 1962, and by the end of 1962 there were 11,000 U.S. troops in Vietnam. In 1965, when the first U.S. ground combat units were introduced, U.S. troop strength leaped from 23,000 early in the year to 184,000 by the end of the year. At the peak of the buildup, in 1969, there were 540,000 U.S. troops; 1,100 U.S. civilians hired directly by the Department of Defense; and 9,000 U.S. civilian employees of U.S. contractors in the Republic of Vietnam.

It is unlikely that the diplomats who signed the Pentalateral Agreement in 1950 ever imagined that its simple provisions would govern the legal status and activities of almost 600,000 Americans in Vietnam. Yet despite the size of the American force in Vietnam, the range of its activities, and the vast number of its facilities and installations, no more detailed agreement was ever negotiated, and the Pentalateral Agreement remained in effect as the governing document pertaining to the legal status of all U.S. material and personnel in Vietnam.

Initially, the U.S. military force in Vietnam consisted of a relatively small number of advisers engaged in essentially noncombatant

activities. These advisers were not organized in standard military units but were considered the military arm of the U.S. diplomatic mission. It was to this situation that the Pentalateral Agreement was meant to apply. As the war intensified, the U.S. military force increased enormously. Had the larger number of U.S. troops remained in a noncombatant role, a more detailed treaty, in the nature of a status of forces agreement such as those negotiated between the United States and the North Atlantic Treaty Organization allies, might have been appropriate. But since the regular Marine and Army units introduced from March 1965 on were soon engaged in major combat operations against main force Viet Cong and North Vietnamese Army units, a status of forces agreement, which is essentially a peacetime document, never became necessary.

The United States has never relinquished jurisdiction over its armed forces during combat; to do so in Vietnam would have been as unprecedented as it would have been impractical. During World War II, for example, the United States kept jurisdiction over U.S. troops in the United Kingdom. There were approximately one million U.S. servicemen in Great Britain preparatory to the Normandy invasion. The English legal system is quite similar to that of the United States; the British courts functioned efficiently; there were innumerable contacts between the U.S. and British governments and between U.S. troops and British citizens; and U.S. troops were not engaged in combat operations in Britain. The United States nevertheless retained exclusive jurisdiction over its armed forces, as it has in every other case where U.S. troops have been sent in a combat status.

When American combat units were gradually phased out of Vietnam, advisory duties once again became paramount. But Vietnam was still a combat zone, and U.S. troops were directly engaged in the hostilities until the end of U.S. participation in the war. By the time of the major U.S. troop withdrawals in 1970-71, solutions for most of the problems with which a status of forces type of agreement is designed to cope had already been worked out by the Republic of Vietnam and its allies, to their mutual satisfaction.

In addition to the political reasons for keeping the Pentalateral Agreement in effect, there were also practical factors operating against the negotiation of a more detailed treaty. The negotiation of a status of forces type of agreement requires a major effort on the part of the participating governments. Hugh investments of man-hours are usually involved; volumes have been filled with the minutes of working meetings alone. The more detailed the treaty, the more prolonged the negotiations; yet, regardless of how detailed and specific the agreement may be, problems of interpretation and administration are unavoidable. The bulk of U.S. and allied forces

were sent to Vietnam on short notice during a period when the Vietnamese government was undergoing a grave military crisis, accompanied by political turbulence that rendered uncertain the performance of many governmental services. The Vietnamese government did not seek to enter into a major, and probably protracted, series of diplomatic negotiations, and the U.S. diplomatic mission and other allied military and diplomatic missions determined that their own energies were better expended in the prosecution of the war.

It was consistently the position of the U.S. command that U.S. interests would not be served by the negotiation of a status of forces type of treaty during hostilities. The Pentalateral Agreement provided a minimal but adequate framework for the job at hand, and the very paucity of its provisions allowed a flexible approach to solving problems, an advantage of considerable value in coping with the myriad complications that arose.

Given the size of the American force in Vietnam, it was inevitable that problems involving relationships between the U.S. command and the Vietnamese government and citizenry would develop. The practical effect of working with the agreement as the basic controlling document was that difficulties had to be dealt with on a case-by-case basis as they arose. The emphasis, at least on the U.S. side, was on practical conciliation to keep things going rather than on detailed, legalistic agreements to resolve every point of friction between the U.S. command and Vietnamese government agencies. As a result of this pragmatic approach, many differences of opinion were not settled in a clear-cut, binding fashion, but neither were they allowed to become stumbling blocks in the war effort.

A prompt, liberal, and efficient foreign claims program by the U.S. forces, as well as the other Free World forces, dealt with many of the cases that might otherwise have led to demands for some form of status of forces agreement by the host government. The success of this program kept friction between the U.S. and other Free World forces and the Vietnamese at a minimum.

Application of the Pentalateral Agreement to U.S. Personnel

United States policy concerning the immunity from Vietnamese legal processes granted the U.S. military force under the terms of the Pentalateral Agreement was set forth in a MACV directive, Legal Services and Legal Obligations in Vietnam, dated 16 June 1965, and was intended to minimize legal problems in the command. This directive informed the U.S. troops that they were under the jurisdiction of the U.S. Uniform Code of Military Justice and that

the Code of Conduct applied to all military personnel. It explained to the troops that although the Vietnamese police and courts did not exercise civil or criminal jurisdiction over U.S. military personnel and Department of Defense civilians, Americans were to comply with Vietnamese laws, including traffic laws and laws pertaining to curfew, off-limits areas, and currency. If Vietnamese authorities apprehended U.S. citizens for suspected offenses, the suspects were to comply and co-operate, and were to notify U.S. military police or their own unit commanders as soon as possible. A U.S. soldier who received a Vietnamese traffic citation, a summons to a Vietnamese court, or other Vietnamese notice of legal process was to report the fact to his unit commander and seek advice from the staff judge advocate serving his command. Soldiers involved in traffic accidents were to furnish identification to U.S. and Vietnamese authorities and to injured parties, if requested. Unless their military duties required them to proceed elsewhere immediately, U.S. troops were to remain at the scene of an accident or, if requested, accompany Vietnamese policemen to a police station. If restrained by Vietnamese police, U.S. troops were to inform their unit command, provost marshal or staff judge advocate as soon as possible. Under no circumstances were U.S. troops to resist by force Vietnamese policemen acting in the performance of their duty.

The directive also cited, and instructed military personnel to study, other MACV directives pertaining to motor vehicles, weapons, personal conduct, the purchasing and disposition of tax free items, and the importation and disposition of personal property. While all MACV directives were updated periodically, MACV policy in regard to Vietnamese legal authorities remained the same—U.S. troops were to comply with Vietnamese laws, be courteous and co-operative toward Vietnamese officials, report all incidents to U.S. authorities, and seek advice from the unit judge advocate. (*See Appendix J.*)

Legal relations between U.S. troops and Vietnamese authorities did not prove to be a major irritant to U.S.-Vietnamese relations because U.S. troops were subject to military discipline. Many offenses against Vietnamese law, such as larceny and crimes against persons, were also offenses under the Uniform Code of Military Justice. Other acts detrimental to Vietnamese society, such as black market activities and currency manipulation, were proscribed by various MACV directives and other military general regulations, and thus were also punishable under the Uniform Code of Military Justice. U.S. soldiers who committed illegal acts detrimental to Vietnamese society were tried and convicted by courts-martial, and this enforcement of the law by the U.S. command had an understandably beneficial effect on U.S.-Vietnamese relations.

The legal status of U.S. civilians in Vietnam was not as clear.

Members of the diplomatic mission and direct hire employees of the Department of Defense and other U.S. agencies were immune from Vietnamese civil and criminal legal process. Other U.S. civilians, such as contractor employees, merchant seamen, newsmen, independent businessmen, and tourists did not fall under the terms of the Pentalateral Agreement and were subject to Vietnamese jurisdiction. The Vietnamese, however, were not eager to try U.S. civilians in cases where no serious bodily harm was inflicted on Vietnamese citizens, or where legal proof might be difficult to obtain as in black market activities or currency manipulation cases, or where the major harm caused by the offense was to the United States, as in cases of theft of U.S. property. Efforts to subject U.S. civilians to military discipline were generally not effective. As a result, the illegal activities of U.S. civilians became a cause for major concern to the U.S. command.

Application of the Pentalateral Agreement to U.S. Matériel

According to the U.S. interpretation of the Pentalateral Agreement, all products, supplies, and equipment brought into Vietnam under the Military Assistance Program were to receive tariff and tax free treatment. This included all matériel brought in by the U.S. armed forces, their agencies and instrumentalities, including items brought in by contractors in furtherance of U.S. government contracts, and items brought in by the military exchange system and its concessionaires. While there were problems concerning Vietnamese attempts to exercise authority over matériel that was clearly military in nature, most friction between the U.S. command and Vietnamese administrative agencies arose over matériel imported by the exchanges and exchange concessionaires, the commissary, officer and enlisted men's club, messes, military banking facilities, and contractors.

Customs

When the massive U.S. buildup began in 1965, it soon became apparent that the Vietnamese port facilities were not capable of dealing in a satisfactory manner with the quantity of U.S. matériel being poured into the country. Hampered by inadequate docking and warehouse facilities, the unloading, transporting, and storage of freight was in itself a task of staggering proportions. The situation was further aggravated by the attitude of some customs officials who functioned in a business as usual manner, even to the extent of attempting to require the registration of all U.S. military vehicles in accordance with Vietnamese law. The upshot was that the United

States operated its own port facilities, using land and other real and personal properties provided by the government of Vietnam through an interministerial real estate commission (part of the Vietnamese Joint General Staff), and utilizing U.S. troops and civilians to carry out operation and control procedures. Vietnamese customs officials made sporadic attempts to re-establish authority over port operations, but jurisdiction remained in the U.S. command and no import duties were paid.

As might be expected, a point of considerable sensitivity was the importation of nonmilitary goods by the military exchange system and the exchange concessionaires. The military exchange system began operations in Vietnam under the control of the Navy in 1956. The small number of military men and their dependents were served by eight exchanges, most of them in the Saigon area. With the introduction of ground combat units in 1965, exchange operations were assumed by the Army and Air Force exchange system. By the end of 1966 there were 146 U.S. retail exchange outlets in Vietnam, with a net income of $160 million. By the end of 1967 there were 304 retail outlets with gross sales of $333 million. In addition to such basic items as soap, toothpaste, shoe polish, stationery, and cigarettes, the exchanges also sold liquor, radios, television sets, expensive stereo equipment, diamonds, and furs. Exchange concessionaires who sold diamonds, furs, silks, watches, leather goods, and other luxury items had virtually unlimited duty free import privileges.

In 1967 the Vietnamese Minister of Economy and Finance complained to the U.S. command of widespread misuse of exchange goods. It was the Vietnamese position that goods imported without tax under the terms of the Pentalateral Agreement were being sold in illegitimate private business deals, and that many exchange items were diverted into the black market. Such abuses violated Vietnamese customs and commerce laws, fueled inflation in the Vietnamese economy, and injured Vietnamese businessmen.

In order to verify the validity of Vietnamese charges and ascertain appropriate corrective action, the Military Assistance Command established the Irregular Practices Committee to investigate abuses in the exchange system, and allied problems of black market activities and currency offenses. The committee was composed of representatives of the U.S. Overseas Mission and officers from MACV staff sections, including the Staff Judge Advocate. The committee verified that there were indeed serious problems in the handling of such a volume of imported goods in the exchange system. The theft loss for the Mekong Delta region, which had the fewest U.S. troops in the country, was $240,000 for the first eight months of 1967. The Military Assistance Command, Vietnam, also investigated an

apparent loss of $8 million which occurred between December 1965 and January 1967.

After studying the situation, the committee's chief recommendation was that existing laws and regulations be vigorously enforced, and that new controls be imposed on the importation, distribution, and sale of exchange merchandise. The committee also noted that there was a lack of co-operation by Vietnamese police in returning stolen merchandise, and there was evidence to indicate that some Vietnamese police officials were involved in the black market. The committee recommended that the Vietnamese government crack down on black market wholesalers and eliminate corruption in the police department.

Basing his decision on the committee's recommendations, the U.S. Ambassador ordered an across-the-board tightening up of exchange policies and procedures. The Irregular Practices Committee was made permanent and ordered to report to the U.S. Deputy Chief of Mission at frequent, regular intervals. Efforts to curb abuses in the exchange system and to curtail black market activity continued through 1969 and 1970, by which time the MACV Staff Judge Advocate was meeting weekly with the Vietnamese Minister of Finance, the Director of Customs, the Minister of Economy, and representatives of the U.S. Agency for International Development and the U.S. Embassy. In order to give emphasis and continuity to this work a new MACV staff position, Assistant Chief of Staff for Economic Affairs, was created; it was to be filled by a general officer. Additional controls placed on exchange procedures were somewhat successful in curbing abuses, but U.S. policy regarding the duty free importation of luxury exchange items remained unchanged.

Taxes

It was consistently the position of the United States that goods brought into Vietnam that qualified under the terms of the Pentalateral Agreement were to be duty free at port of entry and were to be exempt from payment of all taxes within Vietnam. U.S. citizens and those U.S. activities conducted in furtherance of the Agreement, were also exempt from payment of all taxes. The U.S. position was simply stated, and allowed no exceptions. Unfortunately, the tax structure of Vietnam was not centralized nor organized in a fashion easy to comprehend. In Vietnam the power to tax was ill-defined and often regarded as a prerogative of office holders. As a result there were taxes imposed by local authorities, municipal taxes, taxes levied by autonomous governmental entities such as the port of Da Nang, and national taxes. There were excise taxes, surtaxes, use taxes,

transportation taxes, and taxes paid for practicing a profession or trade. Even at the national level there was confusion, since cabinet ministers exercised a considerable degree of independence and there was little co-ordination between ministries.

The continual effort to uphold the rights of the United States and to secure compliance with the terms of the Pentalateral Agreement from the many Vietnamese taxing authorities was a source of frustration to U.S. military attorneys. By 1968 the MACV Staff Judge Advocate's Office had discovered fifty taxes known to be imposed by the government of Vietnam. All were applicable to the Vietnamese, and there had been attempts to levy some on the United States, its agencies, or instrumentalities.

Vietnamese taxes fell into five categories. First, there were import and export taxes imposed by customs officials. Under the terms of the Pentalateral Agreement, the United States was clearly exempt from such taxes. Second, there were port taxes imposed on ships using the port facilities of Da Nang and Cam Ranh Bay. The port of Da Nang imposed loading, unloading, and circulation taxes, a surtax, commercial office taxes, port labor taxes, mooring anchorage, and pier taxes, merchandise taxes, and warehouse fees. At Cam Ranh Bay ships were subject to a customs tax. The third type of tax was a consumption tax levied on consumable products, primarily meat and ice. The Vietnamese government imposed the tax on the Vietnamese vendor, who in turn raised the price of goods he sold to the United States. The Military Assistance Command, Vietnam, viewed this as a direct tax on the United States and therefore a violation of the Pentalateral Agreement. There were other excise taxes, but they were not levied on goods imported from the United States. The fourth type of tax was an annual licensing fee for exercising a trade or carrying on an industry, or business in Vietnam. The fee varied depending on the size and importance of the firm. The U.S. position was that such fees could not be imposed on businesses that were contractors or agents for the United States because the payment of such fees would increase the price of the services rendered to the United States and thus be a tax on the United States. The final category was the tax on imported products, designed to equalize the market price of all similar products sold in Vietnam. The United States was not concerned with the imposition of such taxes on goods intended for sale to Vietnamese nationals for the goods would enter the Vietnamese market in competition with Vietnamese goods. The United States did object to the imposition of such taxes on discarded or surplus U.S. military property which was "sold" in Vietnam in the sense that title passed there, but which was intended for export out of Vietnam, and thus would not be competing on the Vietnamese market. Tax on such sales would lower the price the United States

could get for its property and would therefore be a tax on the United States—in effect, an export tax.

The problem of dealing with the many and varied Vietnamese tax laws was greatly alleviated in 1968 when the MACV Staff Judge Advocate's office published an English language, cross-indexed, annotated compendium of Vietnamese tax laws. This work was fully co-ordinated with the U.S. Embassy and the U.S. Agency for International Development, and the official U.S. position as to the applicability of each tax was published in the compendium. Publication of the compendium did not eliminate tax problems, but it did make them considerable easier to deal with.

Contractor Activities

Pursuant to Department of Defense policy, many support functions which might have been performed by the military in Vietnam were delegated to U.S. civilians and Vietnamese and other nationals employed by U.S. contractors. One of the results of this policy was to make the contractor a major economic force in Vietnam, both in terms of the dollar value of work performed and the number of people employed. Some of the larger contractors took it upon themselves to approach the Vietnamese government directly in order to secure tax concessions and other business advantages. A number of the concessions gained by the contractors and some of the obligations they agreed to incur were in conflict with the terms of the Pentalateral Agreement as interpreted by the U.S. government. This independent action on the part of the contractors resulted in considerable confusion.

In 1967 the Vietnamese government promulgated a law to establish "Fiscal Measures in Favor of U.S. Contractor." The title of this document is misleading. The measures prescribed were not favorable to the United States, and the document attempted to define the rights and obligations of departments of the U.S. Agency for International Development and the U.S. military, in addition to those of private contractors. Some of the measures proposed were severe, with potentially far-reaching consequences. For example, Vietnamese officials took the position that since U.S. servicemen could obtain their basic living needs from the exchanges, they had no need for personal importations, and none would be allowed unless duty was paid on the goods brought into the country. Similarly, the Vietnamese government attempted to bar entry of all club and mess supplies, reasoning that the clubs and messes could also fill their needs through the exchange system. When the United States pointed out that these measures violated the terms of the Pentalateral Agreement, some Vietnamese officials responded that the fiscal

measures law superseded the agreement. The U.S. representatives declined to accept this unilateral abrogation of the treaty by the Vietnamese government, and the goods continued to be imported through U.S. facilities as before. The fiscal measures law remained in effect but was not enforced. The United States agreed to furnish Vietnamese authorities with documents describing incoming cargo, for information purposes only. The legal situation remained clouded, but the supply system continued to function.

The utilization of the sparse provisions of the Pentalateral Agreement as a means for managing U.S. forces in Vietnam entailed a demanding and sometimes exasperating effort on the part of the lawyers involved. This is not to imply, however, that the interests of the United States would have been better served by the conclusion of a more detailed agreement. In Vietnam the United States was engaged in large-scale combat operations and a massive political, economic, and social effort to support a government and save a nation. Conditions in Vietnam were complex, confusing, and constantly changing. Detailed, long-range plans of any kind were subject to almost instant obsolescence. The Pentalateral Agreement left many legal questions to be settled on a case-by-case basis, but, on balance, the terms of the agreement were favorable to prosecuting the war and accomplishing the mission of the Free World forces in Vietnam.

CHAPTER VII

Discipline and Criminal Law

Criminal offenses in the Army were not a serious problem in the early years of U.S. involvement in Vietnam. At the beginning of 1965 the monthly Army court-martial rate in Vietnam was 1.17 per 1,000; at the end of 1965 it was 2.03 per 1,000. The Army-wide court-martial rate for 1965 was 3.55 per 1,000.

Prior to the massive troop buildup that began in 1965, the U.S. military force was relatively small and consisted largely of individually screened volunteers and selected units with a high percentage of career officers and noncommissioned officers. Most American civilians in the country at that time were dedicated career government employees. A few courts-martial were held in Vietnam; all serious Army cases were sent to Okinawa for trial, and the Navy and Air Force sent their serious cases to the Philippines. Serious crime in the small U.S. civilian community was virtually nonexistent. There was no drug problem, and black market dealings and currency manipulation were insignificant compared to the levels reached in later years.

After 1965, as troop levels rose rapidly and major U.S. contractors began operations on a countrywide scale, the picture began to change. Not only did the number of foreigners in Vietnam multiply many times, but the nature of the foreign population changed. As the war progressed and the American Army expanded, the Army was forced to rely heavily on relatively inexperienced officers and noncommissioned officers, young draftees, and volunteers. While the overwhelming majority of these men performed exceptionally well in the service of their country, there were those whose immaturity and lack of motivation made them susceptible to misconduct. On the civilian side, many of the contractor employees who flooded the country were drawn by the prospect of easy money and an exciting, unrestricted life. The presence of Free World Military Assistance Forces from Korea, Australia, New Zealand, Thailand, and the Philippines further complicated the legal scene.

It did not take long for the less respectable elements of the war-disrupted, conglomerate society to devise schemes to exploit the situation, often in conjunction with U.S. or allied troops or civilians. Most illegal activity for profit fed on the massive influx of U.S. goods

and money, which could not be absorbed into the local economy. As commander of all Free World forces in Vietnam, the Commander, U.S. Military Assistance Command, Vietnam, was concerned with the state of discipline within the entire allied community. The Republic of Vietnam military establishment and the various Free World military forces each had its own system of military justice and could maintain discipline and punish offenders within its ranks.

The concern of the Commander, Military Assistance Command, at the allied level, therefore, centered primarily on the prevention of flagrant, widespread corruption, or violations of the Geneva Conventions and mutual assistance agreements which could hinder the war effort by causing dissension among the allies or by drawing the censure of world opinion. Allied commanders recognized the need for maintaining high standards of behavior, and co-ordinated with the Commander, U.S. Military Assistance Command, in establishing policies and settling problems. The commander himself was not only concerned with discipline among U.S. troops, but he was also responsible for administering military justice within the entire allied command.

Military Justice in Vietnam

The evolution of a military justice organization for Vietnam was determined by the fact that MACV was a unified subcommand under the Pacific Command. This meant that the Commander, U.S. Military Assistance Command, Vietnam, commanded all Army, Air Force, Navy, and Marine Corps units in Vietnam, and command headquarters was comprised of members of each of the services. Within each service, the rules prescribing the authority to convene general courts-martial were contained in service directives promulgated at the department level of the service. Rules for convening special and summary courts-martial were issued by MACV. In Vietnam the commanders of the Army, Navy, Air Force, and Marine elements exercised jurisdiction over their respective services. Within MACV headquarters, an officer from each service was designated commanding officer for all headquarters personnel of his service.

Few serious crimes were committed by troops in Vietnam prior to 1965, and the Military Assistance Command was not staffed to administer a heavy volume of military justice cases. There were few U.S. lawyers in Vietnam, military judges were flown in from Okinawa as needed, and there was no military confinement facility for U.S. troops in Vietnam. Before March 1965 only summary and special courts-martial were tried in Vietnam, and these were restricted to cases in which only U.S. military personnel were parties and no Vietnamese witnesses were required. On 10 March 1965 the Secretary of the Army authorized the Commanding Officer, U.S. Army Support

Command, Vietnam, to convene general courts-martial. The major U.S. Army units which began arriving in mid-1965 brought with them their own courts-martial jurisdiction and their own judge advocate officers to administer the military justice and other legal programs of the command.

Headquarters, U.S. Army Vietnam, was activated at Long Binh in 1966, and took over from the Military Assistance Command direct responsibility for co-ordinating and administering the military justice program in Vietnam for the Army. General Westmoreland, Commander, Military Assistance Command, was also Commanding General, U.S. Army, Vietnam. The day-to-day operations of U.S. Army, Vietnam, were directed by Brigadier General John Norton, Deputy Commanding General ,who was appointed by General Westmoreland. U.S. Army, Vietnam, was responsible for providing control, service, and support for all U.S. Army forces that comprised the Army component of the Military Assistance Command. As new Army units arrived in Vietnam, they were assigned to U.S. Army, Vietnam. Army judge advocate replacements arriving in Vietnam were assigned directly to MACV or to U.S. Army, Vietnam, with the overwhelming majority going to U.S. Army, Vietnam, where they were reassigned to specific units. At the peak of the buildup in 1969 there were 135 Army judge advocate officers in Vietnam. Of these, 128 were providing legal support for units of U.S. Army, Vietnam, and only 7 were assigned to U.S. Military Assistance Command, Vietnam. The Air Force, Navy, and Marine Corps continued to administer their respective military justice programs with their own attorneys.

With the rapid troop buildup, the military attorneys trying courts-martial in Vietnam labored under a staggering case load. (*See Appendix K.*) Time imposed unrelenting pressure on all who were involved with a case. Given the twelve-month tour of duty in Vietnam, it was an unusual case that did not involve at least a few key persons who were due to rotate back to the United States in a short time. Because the Army was reluctant to hold people in Vietnam beyond their rotation dates, or to have them returned from the States for any but the most serious cases, justice in Vietnam had to be swift if there was to be justice at all. Under the best of conditions the preparation of a case for trial requires a formidable amount of work and a reasonable amount of time. In the Vietnam war zone, there were aggravations enough to frustrate the most placid attorney, and the simplest cases sometimes required more work and time than had been anticipated. Judge advocates were not immune to the turmoil caused by the twelve-month rotation cycle, and this, coupled with transfers within Vietnam from one unit to another, meant that the offices of the judge advocates often suffered from a high turnover rate of legal and clerical personnel.

Clerical personnel generally had little or no preparatory legal training; essential office equipment was apt to be in short supply from time to time; and it was not unusual for an attorney or clerk to spend hours on the telephone trying to get through to a base in another part of Vietnam in order to obtain needed information. The search for the location of participants in trials was often frustrating, and the co-ordination necessary to bring all elements together at the right time and place was difficult and sometimes impossible to achieve.

Of course, not all crimes were committed at the major base camps. If an offense occurred in the field or at an artillery fire support base in a remote jungle clearing, judge advocates went to the scene to interview witnesses or examine evidence. Security conditions seldom permitted surface travel, and air transportation was at a premium, with the highest priorities naturally given to tactical, logistical, and command requirements.

Interviewing witnesses posed some special problems. If the witnesses were all from one unit and that unit was in the field, commanders were understandably reluctant to relieve the men from an operation and return them to base camp for an interview. The alternative solution of bringing the trial and defense counsel, and sometimes the accused, an investigating officer, and a stenographer out to the field to interview the witnesses often was not feasible. If the witnesses were from several different units, as sometimes happened if the offense occurred at a major base or rest and recreation center, co-ordination with each of the units was necessary to obtain interviews. Securing physical evidence which required laboratory analysis was also difficult. If a case required analysis of ballistics or drug samples, material usually had to be sent to Saigon or Japan, and sometimes weeks passed before the test results were returned.

Transmitting the required paperwork up and down the chain of command could be a frustrating and lengthy process where units were spread all over an entire corps area and commanders changed locations frequently. Transcribing the volumes of testimony from investigations and trials was a tedious, time-consuming job for the hastily trained court-reporters who prepared the records of trial.

Trials involving Vietnamese witnesses added another dimension. In many cases it was difficult to locate civilian witnesses, even with the assistance of the National Police. When Vietnamese witnesses were available, there was frequently a communication problem because of the difference in language and culture. Sometimes an offense did not come to light until long after the incident had occurred. Investigation then became extremely difficult, since there was a high probability that essential evidence or witnesses were no

longer available, or that some of the principal suspects had been discharged and were no longer subject to military jurisdiction.

Most cases involving Vietnamese victims were investigated and tried as common law crimes because larceny, assault, rape, and murder are offenses against the U.S. Uniform Code of Military Justice regardless of the nationality of the victim.

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 investigation, the same administrative processing, the same type of evidence, and the same standards of proof as any other homicide case tried under the code. The My Lai case first came to light in the United States, and the 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 Staff Judge Advocate was asked to provide co-ordination and support for 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, from the Joint General Staff, whose authorization was required before any Americans could interview any Vietnamese concerning the case.

Headquarters, Military Assistance Command, Vietnam, was not a courts-martial convening authority and its judge advocates were seldom involved in the trial of courts-martial. The MACV Staff Judge Advocate assisted the Commander, Military Assistance Command, in establishing legal policies applicable to the entire U.S. command, in devising jurisdiction organization for the administration of military justice within the command, and in monitoring the justice program to promote equal application of law throughout the command. The MACV Staff Judge Advocate also co-ordinated with appropriate Vietnamese officials on criminal problems of interest to both governments, such as black market activities, currency manipulation, and drug violations.

Black Market Activities

Vietnamese port and storage facilities were not adequate to process the huge volume of U.S. goods that came ashore to support the sudden troop buildup which began in March 1965. As a result, there was considerable confusion in off-loading, transporting, storing, and distributing cargo. Under the circumstances it is hardly surprising that some goods never arrived at their destination. While there were losses of machinery, vehicles, construction material, and virtually every other type of commodity, military exchange merchandise was in especially great demand on the black market because exchange goods were generally small in bulk, high in value, easily disposed of, and not available on the civilian market.

During the early months of the troop buildup there were no proper storage facilities for exchange goods, which had to be kept in thirteen different locations in the Saigon area alone. Goods had to be moved from the port in open, often unguarded, vehicles to storage compounds where there was little security. As a result, loss and pilferage were constant. Exchange losses for 1965 were $2.25 million from total sales of $50 million for a loss rate of 4.5 percent.

Black market operations were harmful in several ways, the most obvious being the dollar loss to the exchanges from stolen merchandise, and the added expense of increased security measures. The most serious effects of this illegal activity, however, were borne by the Vietnamese. The easy money to be made in the black market went into the hands of a very small percentage of the population, and even fewer Vietnamese achieved substantial wealth through the black market. But the profits generated by the sale of black market goods aggravated the already inflated economy, driving up prices for all Vietnamese. Moreover, the obvious disparity in the economic condition of those Vietnamese dealing in the black market and other shady enterprises and those who struggled to eke out an honest living in the wartime economy fostered a spirit of cynicism detrimental to the government's cause.

General Westmoreland realized the seriousness of the situation and sought to bring it under control. In 1966 items in great demand, such as cigarettes, cameras, electric fans, record players, tuner-amplifiers, movie and slide projectors, radios, tape recorders, typewriters, television sets, watches, and beer were rationed. Premier Ngyen Cao Ky warned the Saigon street vendors that illegal sales would no longer be tolerated, and when his warnings were ignored, the Vietnamese police moved in on 17 November 1966, smashing street stalls and confiscating merchandise. Some of the stalls were back in operation by the end of the year, but few of the luxury items which previously had been prominently displayed were openly vended.

In 1967 the Irregular Practices Committee, consisting of three U.S. Embassy representatives and the MACV Staff Judge Advocate, was formed to find ways to curb black market activity. In October of that year, following the initial report of the committee, the ambassador took action to implement the recommendations of the committee. An automated system for recording dollar conversions and purchases of dollars was instituted. A method of identifying civilians who abused military privileges and of revoking their privilege cards was devised. There was better inspection of exchange concessionaire goods and military directives against illegal activities were revised and made more stringent.

Currency Violations

Illegal currency transactions were often tied to black market commodity sales, and produced many of the same harmful effects. The war had brought rampant inflation to Vietnam, with the result that the Vietnamese national currency, the piaster, had constantly shrunk in value in terms of the U.S. dollar. Even though the piaster was devalued several times during the war, the going rate for U.S. currency in terms of piasters in the Vietnamese market place was considerably higher than was the official rate of exchange agreed upon by the two governments. Thus, someone with access to both U.S. and Vietnamese currency who had currency exchange privileges could take X number of piasters and purchase $1.00 U.S. currency (X being the official rate of exchange at a U.S. installation). He could then take the U.S. dollar, go into the Vietnamese market, and purchase X+Y piasters for his dollar—Y being the difference between the official rate and the black market exchange rate. The Y number of piasters was the profit on each transaction. Because this kind of manipulation allowed an individual to recirculate his money constantly, a relatively small initial capital investment could quickly be turned into a sizable fortune.

Until 1 September 1965, U.S. dollars were used as an authorized medium of exchange in Vietnam. After that date, U.S. troops were paid only in Military Payment Certificates, and generally all U.S. civilian firms dealt only in certificates or piasters. The certificates were scrip money, printed by the United States and freely negotiable as money at all U.S. facilities. The only use for which certificates were not negotiable was conversion into U.S. green dollars, which were withdrawn from the economy. Soldiers and U.S. civilian employees who received pay in Vietnam were paid in military certificates. If they wished to send money home, they could take out an allotment payable to an individual or a bank account, or buy money orders, or open a checking account at a military banking facility in Vietnam. Checks or money orders cashed within Vietnam were

payable only in certificates. U.S. personnel who needed piasters for authorized purchases of Vietnamese goods or services could exchange certificates for piasters at official exchange facilities.

The purpose of withdrawing all U.S. dollars from circulation in Vietnam was to keep separate the U.S. and Vietnamese monetary systems, thus deterring black market operations and currency manipulation, and removing some of the inflationary pressure on the Vietnamese economy. The issue of Military Pay Certificates in the American community made illegal currency transactions more difficult but did not eradicate them, since certificates soon began to pass for dollars in the black market as well as in U.S. facilities. This was possible because, while certificates could not be negotiated for dollars in Vietnam, they could be used to purchase money orders or to write checks that could be sent outside of Vietnam and then cashed in dollars or other currency. In order to counter such activities, the U.S. command in 1966 put controls on the use of U.S. postal money orders. No individual was allowed to purchase a money order for any amount in excess of the pay drawn by him that month (pay vouchers had to be shown); the names and addresses of purchasers and payees were recorded, and purchases which were considered to be excessive were reported to the U.S. Internal Revenue Service for investigation.

The court-martial statistics reflect the growth of black market activity in Vietnam. In 1967 there were 64 courts-martial for currency and commodity violations on the black market, while in 1968 there were 232 commodity violaters (including 12 civilians) and 239 currency violaters (of whom 105 were civilians). Because of the growing number of currency violations, a change of Military Payment Certificates, called a conversion, was called for. The first series of certificates, issued in 1965, was still in use in 1968, by which time it was recognized that a substantial amount in certificates had fallen into the hands of unauthorized persons, such as black market money changers.

On conversion day, which was predetermined and held a close secret (28 October 1968), all individuals authorized to possess certificates were required to turn over all certificates in their possession to specially appointed finance agents stationed at each military installation. No one was allowed to leave the installation until he had turned in his certificates, and certificates were accepted only from individuals who held the required identification authorizing possession of certificates. A record was kept of the amount turned in by each individual, and an equal amount of money printed in the new certificate series was returned to each individual. Once the conversion was complete, no certificates from the old series were accepted for conversion, nor were old certificates any longer negotiable as cash.

Thus, the old series of Military Payment Certificates became worthless, and anyone holding such notes suffered loss directly proportional to the value of the notes he held. On this first conversion date, $276,931,802.50 in certificates were converted. The amount of $6,228,597.50 in old certificates was not accounted for, and presumed to be in the hands of unauthorized persons.

As troop strength peaked in 1969, further steps were taken to combat black market commodity and currency violations. A second currency conversion was accomplished on 11 August 1969. On 2 November 1969 the Military Assistance Command promulgated new regulations specifying activities prohibited for U.S. military personnel; U.S. nationals employed by, serving with, or accompanying the armed forces; other nationals employed by the United States; contractors invited by the United States and doing business in Vietnam; all nonappropriated fund activities and their concessionaires; and all persons authorized to use exchanges, clubs, post offices, and other U.S. military facilities. The regulations specifically prohibited more than two dozen activities, most of them involving the unauthorized possession, acquisition, or transfer of exchange merchandise, Military Payment Certificates, dollars, identification cards, or ration cards.

The Drug Problem

The U.S. command found the problem of drug abuse particularly hard to deal with in Vietnam. In September 1966 the U.S. Military Assistance Command made a survey of the availability of drugs in the greater Saigon area—Saigon, Cholon, and Tan Son Nhut. The survey showed that there were twenty-nine fixed outlets in this area, and that drugs were readily available from cycle and pedicab drivers, bar girls, shopkeepers, hotel clerks, and others who dealt with the public. The Vietnamese drug laws were ill-defined. No central Vietnamese narcotic enforcement agency existed, and enforcement of existing laws was lax. There was no government control over marihuana and only a little over opium. The U.S. Embassy was informed of the results of the survey, and on 12 November 1966 General Westmoreland asked the embassy for action on the matter; none had been taken by the year's end. Of the 100 drug cases investigated in the U.S. command in Vietnam from 1 July 1965 to 30 June 1966, 96 involved marihuana.

By 1967 marihuana cigarettes were selling for 20¢ each in Saigon and $1.00 each in Da Nang. Opium was $1.00 per injection, and morphine $5.00 per vial. Heroin had not appeared on the market. There were 1,391 U.S. military investigations, involving 1,688 persons, for use of marihuana in 1967. This monthly rate of .25 per 1,000 troops was still lower than the Army-wide average of .30 per 1,000 troops. There were 29 hard narcotics investigations, involving

25 persons, for illegal possession, use, or sale of opium and morphine. There were 427 courts-martial for marihuana and hard narcotics abuse in Vietnam in 1967.

In October 1968 the Vietnamese government publicly condemned the use of or trafficking in marihuana and opium, and issued instructions to province chiefs to forbid the growing of marihuana. The recently established Vietnamese Narcotics Bureau was expanded, and the U.S. government sent an agent from the Bureau of Narcotics and Dangerous Drugs to Saigon to provide professional assistance to the Vietnamese. A program of using aircraft to discover marihuana crops and sending in Vietnamese troops to destroy the crops was instituted. In June 1968 the marihuana use rate among U.S. troops, based on reported incidents, was 1.3 per 1,000 (194 cases); by December it had climbed to 4.5 per 1,000 (523 cases). The opium rate rose from .003 per 1,000 in June to .068 by December. There was a continued rise in the drug use rate in 1969, with 8,440 apprehensions. During 1970 there were 11,058 arrests of which 1,146 involved hard narcotics.

In August 1970 the Drug Abuse Task Force was formed to seek new solutions to the drug problem and make recommendations to General Westmoreland. The task force included representatives from most of the U.S. staff agencies, major subordinate commands of MACV, the embassy, the U.S. Agency for International Development, customs, and the Bureau of Narcotics and Dangerous Drugs. The task force worked through September to complete a report, the conclusions of which were embodied in MACV Directive 190-4 of December 1970. The objectives of this directive were to eradicate the sources of drugs, to strengthen customs and postal procedures, to improve detection facilities, to co-ordinate the various drug abuse programs, to integrate law enforcement programs, to improve statistical reporting, and to rehabilitate drug abusers.

The campaign against drug abuse was waged on many fronts. Commanders incorporated drug abuse talks as part of the command information program; drug abuse councils were established in commands throughout Vietnam; chaplains, physicians, and judge advocate officers worked to impress on the troops the dangers of drug abuse; amnesty programs were established and detoxification centers were opened; law enforcement agencies intensified their efforts; and in 1971 individual and unit urinalysis tests to detect the presence of narcotics in the bloodstream were instituted.

Despite the concerted efforts of the command, there was an alarming increase in the use of hard narcotics in 1971, when the number of offenders involved with hard drugs, mostly heroin, increased sevenfold, to 7,026. This trend was particularly disturbing in view of the continually decreasing troop strength in Vietnam. On 18 June 1971 the Secretary of Defense sent a message to the U.S. services informing

them of the presidential direction that the drug problem be given urgent and immediate attention and announcing a program to identify military personnel leaving Vietnam who were on narcotics and to give them the opportunity for drug treatment at facilities in the United States.

The U.S. command made a tremendous effort to curb drug abuse in Vietnam, and some progress was made, but drugs were to remain a significant problem until late 1972, when troop strength figures began to drop to the level of 1964 and earlier years. As the drug problem intensified from 1966 to 1972, the legal emphasis for dealing with drug offenders gradually shifted from prosecution to administrative action.

It became increasingly clear that trial by court-martial was an awkward, ineffective, and expensive means of attempting to cope with a large-scale problem. Moreover, the public attitude toward individual drug users, particularly young soldiers, was changing; the public began to see these men not as criminals deserving punishment, but as suffering individuals requiring treatment. This attitude was reflected by the government and the armed services. Soldiers on drugs were encouraged to take advantage of the amnesty programs, detoxification centers, and drug counseling programs, which became increasingly available in Vietnam in 1970 and 1971. Soldiers whose behavior indicated that they lacked the desire or ability to rehabilitate themselves were eliminated through administrative channels. Soldiers who had unresolved court-martial charges pending against them for drug offenses and who did not wish to remain in the service often were allowed to resign for the good of the service rather than face trial by court-martial, unless the facts pertaining to the charges indicated they were active, commercial pushers of drugs, in which case trial was sought.

Criminal Jurisdiction Over Civilians

Prior to 1965 most U.S. civilians in Vietnam were career government employees and serious criminal acts in the civilian community were a rarity. As the number of civilians, primarily employees of U.S. contractors, in Vietnam increased, so did the incidence of crime attributable to them. Offenses committed by U.S. civilians were of three general types: rowdyism, abuse of military privileges, and black market activities and currency manipulation.

The U.S. Ambassador requested the MACV Staff Judge Advocate to prepare a staff study on the limits of the ambassador's existing authority over U.S. civilians in Vietnam. The study, completed in April 1966, looked to the United States Code, executive orders, the Pentalateral Agreement, and economic and other agreements between the United States and Vietnam for authority. The staff study con-

cluded that the ambassador could issue police regulations for all U.S. citizens in Vietnam if the regulations were not in violation of U.S. or Vietnamese laws, and that the armed forces police could enforce such regulations. The authority of the armed forces police to deal with civilians was based on the Vietnamese citizen's arrest law, which was similar to citizen's arrest laws in many U.S. states; on the need for military security; and on the authority of the ambassador as the senior U.S. official in Vietnam.

The embassy assumed the responsibility for furnishing each U.S. civilian with an identification card, and for ensuring that all U.S. civilians were aware of the agreement authorizing the armed forces police to exercise certain police powers over them. Discretion and minimum force were to be used by armed forces policemen in dealing with civilians, and U.S. civilians who were apprehended were to be released on their own recognizance, released to their employers or supervisors, or released to the U.S. Consulate or Embassy, as applicable.

The year 1967 brought an increase in serious crimes committed by U.S. civilians in Vietnam, and intensified discussion between the U.S. command in Saigon and the State Department in Washington over the policy of trying U.S. civilians by military courts. Of special concern to U.S. officials in Saigon were Americans involved in black market activities and currency manipulation. The State Department, however, considered administrative measures, such as withdrawing military privileges and loss of employment, to be sufficient for dealing with most offenses, and believed that only the most serious and exceptional cases should be tried by court-martial.

The difference of opinion between the U.S. command in Saigon and the State Department concerning the exercise of criminal jurisdiction by the military over U.S. civilians in Vietnam arose over a total of sixteen cases which the U.S. Military Assistance Command desired to try during the period from November 1966 to August 1968. In six of these cases the command requested and received State Department approval to seek a waiver of jurisdiction from the Vietnamese. Two of the cases were dropped by the U.S. command because of problems that arose between the time charges were preferred and the time the command obtained State Department permission to seek a waiver of jurisdiction from the Vietnamese government. In the remaining four cases, a waiver of jurisdiction was sought and was granted by the Vietnamese, and the cases were tried.

One of the four cases which was tried with the consent of the State Department was that of William Averette, charged with conspiracy to commit larceny and attempted larceny of 36,000 U.S. government-owned batteries. Averette was tried by general court-martial, convicted, and ultimately sentenced to confinement at hard labor for

one year and fined $500. On 30 April 1970, the U.S. Court of Military Appeals, the highest court in the military system, reversed Averette's conviction and ruled that the military had no jurisdiction over civilians in Vietnam because Article 2(10) of the Uniform Code of Military Justice was applicable only in time of a declared war. Thus, the question of whether, as a matter of policy, the military should try civilians in Vietnam was made moot. As a matter of law, the services could not exercise criminal jurisdiction over civilians in Vietnam, and no further cases were tried.

Administrative Measures

Because judicial action was ineffective in curtailing the illegal activities of U.S. civilians in Vietnam, the MACV command came to rely increasingly on the administrative sanctions which had been proposed in 1966. Military privileges were withdrawn from offending civilians, particularly U.S. contractor employees, throughout 1966, 1967, and 1968, but it was not until 1969 and 1970 that the administrative "debarment" program reached its most uniform and widespread application. (Debarment was the term used to denote withdrawal of military privileges and a determination of unfitness for employment in Vietnam.)

In addition to MACV Memorandum 190-1, which assigned responsibilities for investigation and proceedings pertaining to debarment actions, the debarment policy was further formalized in September 1969 when Defense Procurement Circular 73 was made a part of all contracts for employment of civilians in Vietnam. This clause notified all civilian employees planning to work in Vietnam under U.S. government-sponsored contracts that they were to abide by the regulations and rules of conduct established by MACV, and that if they engaged in illegal activities they would lose their military privileges and be barred from employment in Vietnam. The employing contractor agreed that he would terminate the employment of an employee barred by MACV.

In January 1970 the U.S. Embassy announced that, as a matter of U.S. policy, contractor employees whose privileges were suspended or withdrawn for cause by MACV would be considered unacceptable for continued employment under U.S. government contracts. In February MACV determined that this policy would be applied retroactively; that is, individuals whose military privileges had been revoked in the past were also unacceptable for continued employment.

As of January 1968 there were seventy-five individuals on the MACV Provost Marshal's debarment roster. By February 1970 the number had grown to 613; by April 1971 there were 943 U.S. civilians and nationals of other countries from whom military privileges had been withdrawn and who were unacceptable for employment in

Vietnam under U.S. financed contracts or as U.S. government direct hire employees on nonappropriated funds. Most debarment cases, perhaps over 90 percent, involved currency manipulation, smuggling, or postal and black market violations. There were also debarments for firearms violations, larceny of government property, and serious driving offenses. Once their employment was terminated and their access to U.S. military facilities was cut off, many debarred civilians left Vietnam. Others, however, remained in Vietnam working at jobs unrelated to the U.S. government and living on the Vietnam economy.

CHAPTER VIII

Summing Up

Winston Churchill once wrote:

> Civilization means a society based upon the opinion of civilians. It means that violence, the rule of warriors and despotic chiefs, the conditions of camps and warfare, of riot and tyranny, give place to parliaments where laws are made, and independent courts of justice in which over long periods those laws are maintained.

The American forces brought with them to South Vietnam an elaborate system of legal code and procedure, administered by their own lawyers and judges. All these composed well-defined, precise parts of the institution of American law and were for the United States military attorney familiar tools. Probably no other modern fighting force in the world today has a legal system surpassing that of the armed services of the United States; this system accompanied and generally served well the U.S. forces overseas in combat.

In order to render effective counsel to the Vietnamese legal community, it was first necessary for the MACV judge advocates to move away from their comfortably familiar American military law system. Any attempt to solve any of the command's legal problems in Vietnam by using only American methods would have guaranteed failure. This circumstance led to a new educational experience for the MACV judge advocates, who were obliged to exert a tremendous effort to find, assemble, and digest Vietnamese laws and procedures. It was also necessary for the judge advocates to understand the groundings of Vietnamese law—its roots in familial, religious, ethnic, and other disciplines of the South Vietnamese people—before any attempt could be made at constructive assistance in the development of the Vietnamese legal system. This collection, digest, and dissemination of materials on South Vietnamese law continued throughout MACV judge advocate operations in Vietnam and was a significant contribution in itself to comparative law literature.

In some areas, the legal system and legal philosophy of the United States did give the judge advocates acceptable solutions for problems confronting the U.S. advisers' Vietnamese counterparts. The discussion of claims, for example, illustrates the concern of the United States and the allied forces even during tense combat situations to

provide recompense for injuries caused to the persons and property of the innocent victims of war. A claims responsibility has been a long-standing tenet of the United States armed services. Discharge of that responsibility by the United States and the assumption of certain claims responsibilities by the South Vietnamese government served to develop a salutary identification in the claimant's mind between his personal plight and the concern of a compassionate government. The efforts of the U.S. Military Assistance Command to control, and to eliminate when possible, such pernicious activities as black market profiteering and currency manipulation were also examples of unilateral initiatives which later melded with the efforts of the South Vietnamese authorities to control these illicit operations.

One rather brief international agreement served as a link between the application of American and South Vietnamese legal systems in the country. This was the Pentalateral Agreement of 1950, which remained viable and which governed throughout the war years in significant areas such as jurisdiction and status. Noteworthy is the fact that neither the United States nor Vietnam found it imperative to renegotiate this agreement, even though conditions changed radically and rapidly in the second decade following its signing. It was evidence of governmental pragmatism administered well through mutual respect, good will, and co-operation.

The application of the Geneva Conventions to prisoners of war and war crimes was complicated by the legal nature of the Vietnam conflict. The 1965 agreement under which the United States turned over its prisoners to the Vietnamese armed forces required great effort by many MACV advisers to assure accordance with the Geneva Conventions. The success of that effort earned the admiration of the international community.

For the United States one additional complication of the Vietnam War was that it related to no other combat experience of the young American soldier. He found himself in the jungles of a Southeast Asian land, with no definable enemy or enemy lines. This lack of certainties in itself was his foe. The combat situations in which circumstances placed the young soldier were scarcely in the minds of the drafters of the 1949 Geneva Conventions, yet he performed his mission well. Part of the credit for his record is due to the diligent planning by the Commander, U.S. Military Assistance Command, Vietnam, for an effective policy on war crimes prevention and investigation, and a program aimed at troop information and education. The rare blemishes, such as the occurence at My Lai, must not be allowed to obscure the lifesaving accomplishments achieved by the vast majority of our combat troops when they were dealing with the victims of the war.

My Lai, which came in the period immediately following the

bloody but abortive *Tet* offensive of 1968, revealed that there is a need to keep an eye on legal planning over the course of time to be sure it retains its vitality, relevance, accuracy, and worth. The dilutions of time and continual rotation of troops and officers on an annual basis are bound to weaken the legal structure unless it is regularly strengthened with special care and attention. Even so, no absolute insurance can be obtained that there will never be gross criminal abberations such as My Lai.

Could the risks have been minimized had the legal effort been greater at that critical time? I cannot now say, but one could suspect so. To what extent is part of the failure due to deficiencies in earlier law planning? This can only be speculation, but I am quite willing to recognize that there is a relationship. Had I to do the job over again, with all the resources of law manpower which were always afforded my office by the Commander, Military Assistance Command, Vietnam, I would assign full-time planning duties to an experienced senior military lawyer in my office. We did not do this in 1965–66 because it seemed we could plan sufficiently within the operating divisions of the office, but it is apparent to me now that in a buildup, even one as measured and paced as in those days of early 1965 in Vietnam, planning for future legal services required just as much attention as any other aspect of military preparations. Planning is too demanding to be performed well by a military lawyer already completely encumbered with day-to-day work he regards as essential. It must be accomplished by one who can stand off to the side and visualize the direction of change and the resulting requirements; yet he must be familiar with the scene and the developing situation.

This certainly is not to say that change was unforeseen. Many changes and requirements were visualized early on. The plans for providing adequate numbers of military lawyers, with an appreciation for needed specialties and equipment for the several service components, were on the whole adequate and satisfactory. But these were traditional requirements, predictable wherever in the world large forces are assigned. They did not take into account the special role law plays in wars of insurgency and counterinsurgency.

The judge advocate field advisers added an important dimension to the law effort of the Military Assistance Command, Vietnam. They provided a U.S. military lawyer to the senior American military adviser in each of the four corps areas of South Vietnam; they observed the actual functioning of the American foreign claims operations, so important to good relations between a visiting force and the people of the host country; they saw the way refugees and prisoners were actually handled and processed; they established rapport with the key law and military figures in their zone of responsibility; and they reported military law problems as they perceived them. The field

advisers gave to their Vietnamese military counterparts advice and counsel, information, and support. And probably most valuable of all, they learned to understand something of the people of Vietnam, the better to gauge how we could best work together toward our common goals.

In order for our field advisers to perform their duties, they needed to have English translations of the current applicable laws on such matters as arrest, search, and seizure; resources and population control; confinement facilities; and the relationship between the military and the civilian police and judicial apparatus. To provide these officers with the required documents, we set about collecting all known Republic of Vietnam decrees that bore upon our interests. We had them translated as best we could, reproduced, and distributed to all U.S. personnel—and to many of our Vietnamese counterparts—who needed to know of them. In all of this we were greatly encouraged and aided by the Vietnamese lawyers and judges, military and civilian.

The collection of decrees naturally led to the need to index the documents and their contents for ready field use. This task continuously occupied the attention of several people in the Advisory Division, once the decree collection program got under way. The results, in knowledge of applicable law and in establishing a base of understanding as to legal matters between the American and Vietnamese military lawyers, were beyond our expectations. From this base we were able to develop ideas and plans for changes in our procedures and regulations to the common benefit of the commands and the people we served.

In our search for knowledge and understanding of the Vietnamese, the Law Society of Free Vietnam was conceived. Its purpose was to provide a forum for the exchange of legal ideas and information among the broadest number of informed participants—all lawyers and judges in South Vietnam, regardless of nationality, and all interested law students. The Law Society functioned for over a year, greatly aided by the Vietnamese-American Association, and accomplished much it set out to do. As the war became hotter, however, it became increasingly difficult to assemble the society, and it gradually ceased to exist. The personal associations it fostered continued, however, and benefited the individuals and the institutions that they represented for a much longer period. Even today former members of the Law Society serve the Republic of Vietnam in important positions.

Once it became clear that the conflict in Vietnam had become a war, the application of the U.S. Uniform Code of Military Justice and the suppression of war crimes as distinguished from common crimes became of prime importance. We were concerned that, insofar

as we were able to accomplish it, all the Free World forces would be made aware of the applicable law and would apply it. From this developed fairly close working relationships among the military lawyers of the Free World forces, especially among the Vietnamese, American, Australian, and Korean lawyers. Contact with the representatives of the International Committee of the Red Cross and collection of data on prisoners, their apprehension and disposition, became important. Throughout all the activities of the Staff Judge Advocate, the bonds of professional association that existed between the American and the Vietnamese military lawyers were the most significant asset we had. These bonds required daily care and attention in order to grow strong, but this care and attention returned dividends in friendship, understanding, and co-operation that remain substantial even today.

Throughout the period dealt with in this monograph, the attitude of the Military Assistance Command toward legal service to the command was almost ideal. There was never an obstacle to seeing the commander-client. The entire headquarters was receptive to helpful suggestions, ideas, and innovations. Never did the legal office propose an action that was not readily approved, and even requests for resources, most especially manpower, were promptly and favorably acted upon. The major difficulty, as it is for most lawyers, was the proper allocation of available professional time. There was always a heavy pressure of time-consuming work and little opportunity for reflection and long-range planning, but this was a problem only the lawyers themselves could resolve.

The law library and necessary references ultimately were adequate, but since most of the pressing work was in areas for which there was little precedent or exploratory study material, any inadequacies of the law materials in the earlier days of the Military Assistance Command were of minor significance.

Because the lawyers assigned to the MACV legal office were from the Army, Navy, and Air Force, they were all concerned at first that they would be working in a strange and difficult legal environment. This concern was warranted by the special nature of the conflict in Vietnam but not by any service differences in procedure, terminology, or methodology. It did not take any of the lawyers, regardless of his branch of service, long to grasp his role and make whatever minor adjustments were necessary in his own work style to meet the needs of the office. Service co-operation and unity of purpose were paramount.

The American Embassy in Saigon was especially helpful and useful to the MACV Staff Judge Advocate, who also furnished legal advice to the embassy. Key legal issues were personally briefed to the ambassador (at first, General Maxwell Taylor and subsequently

Henry Cabot Lodge), and the ambassador's staff was kept informed of all major legal problems and developments. The legal programs affecting in any way the Vietnamese people or communities were of special interest to the embassy, and the Staff Judge Advocate was encouraged in a variety of ways by the embassy staff to expand his associations with the bench and bar of the Republic of Vietnam. There was rarely any other person or office in the American mission that could do this until the U.S. Agency for International Development, in 1968, created a civilian legal advisory position. For most of the period of this monograph the military lawyers of MACV and its service components were the only U.S. lawyers in Vietnam interested officially in law matters, military or civilian.

Finally, no discussion of legal matters in Vietnam is complete without a tribute to the South Vietnamese military lawyers who were the counterparts of the MACV judge advocates. Dedicated professional advocates, scholarly in both Vietnamese and French legal systems, these men also showed themselves eager to obtain a firm grasp of American jurisprudence. They were patriotic lawyers, judges, and law professors called to serve their country by using their skills to solve the peculiar problems caused by so unique a war. The Vietnamese lawyers were quick to impart knowledge of their legal system and equally quick to learn the American military and civilian law systems. Some concepts and high principles from American law have been incorporated into the Vietnamese military law and procedures —a tribute to the excellent rapport established by the MACV judge advocate advisers with members of the Vietnamese legal profession.

American military attorneys undertook a variety of programs and grasped numerous opportunities to educate the Vietnamese in American civilian laws. The recipients of these educational programs were those who now sit, or will sit, in positions of influence, shaping the future affairs and institutions of the South Vietnamese government. In truth, it may be said that the MACV military lawyers left the Vietnamese a legacy—American law, and respect for the potential of law in the conduct of affairs of a free and civilized people.

Appendix A

Chronological Listings of Staff Judge Advocates in Vietnam, June 1959–March 1973

U.S. Army Element, Military Assistance Advisory Group, Vietnam

Colonel Paul J. Durbin	June 1959–July 1961
Colonel George C. Eblen	August 1961–July 1962
Colonel George F. Westerman	August 1962–July 1963
Colonel Richard L. Jones	July 1963–November 1963

U.S. Military Assistance Command, Vietnam

Colonel Robert J. DeMund	December 1963–November 1964
Colonel George S. Prugh	November 1964–June 1966
Colonel Edward W. Haughney	July 1966–July 1967
Colonel Robert H. Ivey	July 1967–March 1969
Colonel Bruce C. Babbitt	May 1969–August 1969
Colonel Lawrence H. Williams	August 1969–July 1970
Colonel Robert K. Weaver	July 1970–June 1971
Colonel Lawrence P. Hansen	June 1971–August 1971
Colonel James F. Senechal	November 1971–December 1972

U.S. Army Vietnam/Military Assistance Command, Vietnam

Colonel Joseph N. Tenhet, Jr.	December 1972–March 1973

Appendix B

Compilation of Laws Dealing With Offenses Against National Security in the Republic of Vietnam, 1967

1. To combat communist subversion and insurgency, successive governments of the Republic of Vietnam (RVN) have promulgated emergency enactments setting forth offenses against the national security. The extremely difficult political and military situation has afforded a poor environment for law-making, so that the resulting collection of Decrees and Decree-Laws does not form a harmonious and comprehensive whole. Copies of English translations of the laws, decrees, and related publications mentioned herein are available in the office of the Staff Judge Advocate, U. S. Military Assistance Command, Vietnam.

2. The new constitution, promulgated 1 April 1967, provides in Article 4:

a. The Republic of Vietnam opposes Communism in any form.

b. Every activity designed to publicize or carry out Communism is prohibited.

The public policy is thus clear, it being left for specific enactments to define offenses and provide punishment therefor.

3. Under the new Constitution, the authority of the Executive to issue decrees is very limited. Legislative authority is vested in the National Assembly. However, for the purposes of this study, it will be assumed that the existing executive decrees in the field of national security will continue in force until repealed, superseded or nullified by legislative, executive or judicial act.

4. For purposes of convenience, offenses have been separated into two main groups, each using the same terminology employed in the decrees. However, it should be understood that the legal terms used are not synonymous with those defined and employed in Western law books or dictionaries.

Offenses Punishable by Imprisonment for More Than Five Years or by Death

Under this heading are crimes in the nature of treason, sedition, espionage, and sabotage. Acts of insurgency, revolt, or terrorism, and acts directed against defense or government facilities, are prohibited as set

forth below. A brief description of some of these offenses, with references to the appropriate law or decree, follows:

Ordinance 47 of 21 August 1956

a. Bear arms against the RVN. Art.4(1)
b. Solicit or aid aggression against the RVN, by a foreign nation or a communist organization. Art.1&4(2)
c. Help the personnel of a foreign nation or a communist organization to illegally enter or live on Vietnamese territory, or help them communicate with each other or move out of Vietnamese territory. Art.1(5)&4(2)
d. Give or attempt to give classified defense information to a foreign nation or a communist organization. Art.2(1)&4(2)
e. Sabotage defense ordnance. Art.2(3)&4(2)
f. Undermine public or military morale. Art.2(4)&4(2)
g. Obtain information on defense facilities, by subterfuge or without authorization. Art.3&4(2)
h. Carry on communications prejudicial to national defense. Art.3(2)&4(2)
i. Solicit others, or agree to do, any of the above acts. Art.5
j. Recruit troops for a foreign nation or personnel for a communist organization. Art.7(3)
k. Knowingly communicate or maintain relations with the personnel of a communist organization or the citizens or agents of an enemy nation in time or war. Art.7(4)
l. Knowingly carry on commercial transactions, whether directly or through others, with the personnel of a communist organization or the citizens or agents of an enemy nation in time of war. Art.7(5)
m. Prejudice the territorial integrity of the country or cause the RVN to lose control over any part of her territory. Art.8(1)
n. Conspire with foreign agents with intent to prejudice the military or diplomatic situation of the RVN. Art.8(2)
o. Unauthorized entry into restricted areas around defense installations. Art.8(6)
p. Aiders and abettors are defined (Art. 9) and are liable to the same punishment as those who actually commit the crime (Art. 59, Penal Code of South Vietnam).
q. Failure to inform the authorities of prohibited activities is punishable. Art.10

Law No. 10/59 of 6 May 1959

r. Listed acts of sabotage or terrorism, or attempts thereat, committed with specified intent are punishable. Art.1&2
s. Adhere to an organization as a member, or conspire with others, so as to aid in the planning or commission of the foregoing offenses. Art.3

Decree-Law No. 18/64 of 7 August 1964

t. Terrorists, saboteurs, and speculators who injure the nation's economy, apprehended *en flagrant délit*, will be sentenced to death. Art.5

Decree-Law No. 004/65 of 19 July 1965

u. Any person who joins a communist organization or conspires with the communists, to bear arms against the RVN, shall be sentenced to death and total or partial confiscation of his property. Art.14

v. A person who rebels (against the RVN), or recruits troops and furnishes them with weapons and ammunition, without order or authorization from the Government, shall be sentenced to death. Art.15

w. Inciting a mob, in order to disturb the security of the State. Art.16

x. Disseminating communist propaganda or directives; attempting to undermine the anti-communist spirit of the country or to prejudice the struggle of the people and the Armed Forces; plotting to act under guise of peace or neutralism in accordance with communist doctrine. Art.17

Decree-Law No. 004/66 of 15 February 1966

y. *Hooliganism:* Carrying illegal weapons without justified reason and with intent to commit other offenses; forging or using forged permits. Art.20
Those persons who gather in assemblage of two or more and attack, resist or obstruct the public forces in their duties shall be put to death. The killing of such offenders in self defense shall be excused. Art.22

*Offenses Punishable by Imprisonment for Five Years or Less**

Decree-Law No. 93/SL/CT of 1 February 1964

z. Acts in furtherance of Communism or pro-Communist Neutralism. Art.1&2

Law No. 004/65 of 17 May 1965

aa. Communist propaganda and political activity: substantially the same prohibited activities as in subparagraph "x" above.
(In general, activity described under "aa" and "z" may be charged under "x", which is a subsequent enactment providing heavier sentences during the State of War, declared 24 June 1965.)

Draft Evasion and Desertion

bb. Draft evaders and their accomplices are subject to sentences of confinement at hard labor.
Art.10-13, Decree-Law 4/65 of 19 July 1965;
Art.11, Decree-Law 4/66 of 15 Feb. 1966

cc. Deserters and their accomplices are subject to sentence of confinement at hard labor or to death, depending on the circumstances of desertion. Their sentence is to be served in military field labor battalions.
Art.1–3, Decree-Law No. 015/66 of 21 April 1966

*These offenses are usually characterized in charges and indictments as "endangering the national security" or "jeopardizing the national security." See Article 91, Penal Code of South Vietnam.

Appendix C

THE ROLE OF CIVIL LAW IN COUNTERINSURGENCY
Staff Study for Colonel George S. Prugh, 1965

Purpose: To examine the role of the Civil Law in the counterinsurgency in Vietnam and to make pertinent recommendations.

Assumptions: None

Discussion:

1. *Why this study was made:*

a. In the course of examining the legal system of Vietnam to determine where improvements could be made to make the system more effective in the prosecution of the war against the Viet Cong, it becomes apparent that a great gap exists between the work of the police and the work of the judiciary. In short, apprehension of Viet Cong becomes more efficient but the disposition of their cases is far from satisfactory. Some reflection on this specific problem leads to doubts concerning the utility of the civil code system generally as an effective tool against insurgency. At the same time it becomes apparent that the place of law in the counterinsurgency efforts is not well understood or studied, despite the fact that the establishment of a rule of law and order in the society is probably the most important goal that could be achieved.

b. That portions of this inquiry were a proper study for civilian lawyers is readily apparent but there are none in Vietnam to do it.

c. With these thoughts the study was begun by questioning leaders of the Vietnamese bench and bar, civilian and military, speaking with students, practitioners, and laymen, and collecting some of the factual data.

2. *The Legal System of Vietnam:*

a. *French Civil Code Heritage:*

The French heritage is heavy in the entire legal system, military and civilian. The older, more renowned lawyers and judges are often found to be French educated, French and non-English speaking. Professional works are often published in French. The French trappings as well as institutions are adapted by the Vietnamese, and these are superimposed over the Vietnamese society without much change. The Code Napoleon influence is naturally strong, and the civil code system, as distinguished from the common law, is employed. Trial by jury is not employed, the technique of cross-examination is severely limited, and the authority of an examining

magistrate is much enlarged as compared with US or common law practice.

b. *Internal Geographical Differences:*

The geographical divisions of Tonkin, Amman, and Cochin are reflected in the law in that in the Republic of Vietnam there are two distinct criminal codes, one for central Vietnam (Amman) and the other for the south (Cochin). There are as a result two distinct courts systems—one with its principal office in Hue and the other in Saigon.

c. *Courts:*

(1) There is one supreme court, the Cour de Cassation, which sits in Saigon. Below this court are two courts of appeal, one at Hue and one at Saigon. Each of these courts takes appeals from courts of first instance, that is, the usual trial court consisting of a magistrate, an examining magistrate, and a prosecutor, or from courts of peace with extended jurisdiction, in which all of the foregoing functions are accomplished by one man. Below these two types of courts are justices of the peace, who handle the most minor cases. On paper the structure seems to be complete enough (See Tab A).

(2) In fact, it is only in the major cities that these courts can be depended upon to function as intended. The justices of the peace are not legally trained and their powers are dependent upon such factors as the military situation, the strength of the local military personalities, the province and district chiefs, and the national police effort in the area.

(3) These courts do not handle military offense cases, they do not handle cases of offenses against state security, and generally they do not take any cases involving military personnel regardless of the offense of which they may be charged. The courts are not themselves expected to be the law enforcers—the province or district chief will be the prime mover, with the prosecutor being some influence in this regard. These courts do handle cases involving draft dodgers and resources control offenses, however.

(4) Civil disputes may come to these courts, but there is a basic reluctance by the Vietnamese to take their differences to court. In this regard one law student was heard to remark that there is an old Vietnamese saying, "better to go to hell than to go to court". Another said that to go to court was a mark of shame, an acknowledgement that one was unable to solve his problems with his neighbor "on moral grounds". The result is that the courts themselves play a rather insignificant role in the Vietnamese society. Few people can afford legal counsel, there is a fundamental dislike of going to law, and there are remarkably few lawyers available.

d. *Bar:*

It has been said that there are about 160 lawyers in Vietnam. There is probably a similar number of "judges", a term which includes not only the trial magistrates but the examining magistrates and the prosecutive staff. When this number is contrasted with, say, a large state in the United States with a similar population, the Vietnamese have about 1% of the lawyers that would be available in a comparable state in the United States. The

net result is that not only the courts but the entire legal profession plays a small part in the Vietnamese society.

e. *Statutes:*

What part law plays in Vietnam is essentially repressive and not desirable from the standpoint of the citizen. There are a great many laws, but these are not widely transmitted, are not well known by the people affected by them, are rarely removed from effect even when superseded, and are not readily available to the general public. In addition, there are a great many directives that have the force and effect of law which, because they are given limited distribution or are classified in nature, are not at all known to the public. This adds to a feeling of disrespect or disregard of the law. Lack of enforcement adds further to the deterioration of the respect for any Vietnamese law.

f. *Summary:*

In summary, then, we find a system of law which was originally engrafted upon the society and not devised for its own institutions, a bar which lacks vigor and strength and seems primarily interested in operating on a passive "closed shop" basis, and a public which is ignorant of its own law, lacks respects for its own law, and has no real interest in its enforcement.

3. *Current Role of Courts and Bar in Counterinsurgency:*

a. *Trial of VC Suspects:*

There is very little benefit to the nation's counterinsurgency effort by the bar and bench. Since there are few lawyers available outside of the major cities there are no trials of VC suspects, accomplices, or sympathizers away from these cities. Such offenders are tried in the military tribunals, if at all.

b. *Need for Counsel:*

There is a need for counsel in such cases but they are only available at the trial and even there not of widespread use. Frequently suspects are held for extraordinarily long periods in detention prior to trial.

c. *Delay:*

The elaborate French civil code procedures in contested cases require an inordinate delay, extending sometimes into many months, and often into years.

d. *Alternative Procedures:*

Because these labors are not often productive even after the heavy investment of time, there is frequent recourse to some other method. For example, suspects will often be sent to re-education centers for two year periods (renewable) without any form of trial. It is reported that in many cases the suspect is released without any punishment or, at worst, only a few months "re-education" and he thereafter shows up at his old haunts. The law plays no part in this activity in any way.

4. *Role Court and Bar Could Play in Counterinsurgency:*

A vigorous bench and bar could be of great value to this country in its counterinsurgency efforts.

(1) *State Security Offenses:*

First of all, it would provide a forum for the reasonably prompt and effective trial of persons charged with offenses against the State, and conviction of those who have committed such offenses.

(2) *Resources Control:*

Second, it would provide a forum for the enforcement of the resources control laws.

(3) *General Law Enforcement:*

Third, it would provide a service, much needed, for the general enforcement of laws.

(4) *Identification with Law:*

Fourth, the bench and bar could be a vehicle for identification of the individual with his country's laws by use of a jury system (now being actively considered by the Minister of Justice).

(5) *Government Participation:*

Fifth, the courts and lawyers could serve as a representative of the service provided by the central government.

(6) *Emergence from Traditionalism:*

Sixth, the courts and the law provide a method for breaking down the barrier of the traditionalist society of Vietnam.

(7) *Professional aid to Government:*

Seventh, the vigorous bar would provide the government with professional advice not available to it (witness the government's plight in trying to get professional help in connection with the election law drafts).

(8) *New Ideas:*

Eighth, injection of new ideas in the bench and bar provides an opportunity to wear away some of the dead hand of the French heritage which really drags the entire legal profession and prevents its growth. This would mean that the legal system could be by Vietnamese, of Vietnamese, and for Vietnamese.

(9) *Recodification:*

Ninth, the bench and bar could aid the government by pointing out those statutes which are no longer to be enforced, recodifying the law into usable terms, and an orderly arrangement, and seeing to the law's dissemination. This would begin to build some respect for the law, eliminate some of the fear and start a base on which an orderly government can be built.

5. *Means to Generate these Developments:*

The military lawyers have been trying to inject some of the leadership needed to develop the bench and bar as indicated above. The task is too large for them to accomplish, in the light of their regularly assigned tasks. They can still be of material help but it is clear that there should be a full time civilian effort to generate the programs desired. It is estimated that three full time practitioners, devoting their entire effort to an advisory

program for the civilian bench and bar, could make a real breakthrough within two years and have their influence widely felt within five years. One of these could be located in the central part of Vietnam, spending considerable time at the law school at Hue. The second would do the same for the south, also teaching at Saigon Faculte de Droit, and the third would be the chief and coordinator with the Minister of Justice and the Bench. From these three could come the plans for contractual assistance in the recodification program, the training of indigenous experts, and the handling of technical assistance from CONUS. If recruitment of civilian practitioners proves an obstacle possibly Army officers on excess leave would be available.

6. *Urgency:*

With the current feeling running against French influences and in favor of new ideas, there is too good an opportunity at the present, and it should not be missed. The Minister of Justice is receptive to US help, there is an abiding need, the bar itself has taken far too long to make any real progress by itself in the recodification effort, and the Government seems to realize that the courts and the legal system are not being much help in the war effort. Now is the time for the US to move energetically in the law field in Vietnam.

7. *Military Role:*

Because of the natural tendency of Americans to inject the American concepts into their considerations when dealing with matters of law, there is some confusion as to the relative roles of the military and civilian in the law enforcement process. In the civil law system employed in Vietnam all offenses against State security (VC type cases) are properly tried in *miliary* tribunals. This is so even though the initial police effort may be a civilian, through the national police. Resource control and draft dodger cases are tried in the civilian courts, however. There will remain a large function to be performed by US military lawyers as advisors to their RVNAF counterparts operating the military tribunal structure and prosecuting the VC. But the fact remains that the initial law work in VC cases is civilian, so there is a need for a similar effort in the civilian courts and prosecutive agencies.

Recommendation:

That this matter be brought to the attention of the Director of USOM, with a view to encouraging his agency to establish a facility to aid and advise the RVN civilian legal institutions in order to improve their effectiveness in the bringing of law and order to Vietnam.

Appendix D

Exploitation of Human Sources and Captured Documents

Headquarters
United States Military Assistance Command, Vietnam
APO San Francisco 96222

Directive
Number 381–11 [1]

5 August 1968
(MACJ26)

Military Intelligence

Exploitation of Human Sources and Captured Documents

1. *Purpose.* This directive announces policy and prescribes responsibilities and procedures for the intelligence exploitation of human sources and documents captured or acquired by United States military forces.

2. *Definitions.*

a. Detainees. Persons who have been detained but whose individual status has not yet been determined. All detainees must be classified expeditiously as Prisoners of War, Returnees, Civil Defendants or Innocent Civilians. The various categories of detainees are described at Annex A, MACV Directive 351–46.

b. Doubtful Cases. Persons who have committed a belligerent act and whose entitlement to status as a PW is in doubt. Doubtful cases will be processed as outlined in MACV Directive 20–5.

c. Very Important Sources. Human sources assessed by the G2/SZ to be of significant intelligence value because of their rank, level of access to information, area of knowledgeability, or particular unit to which assigned.

d. Documents. All written, printed, drawn or engraved material, sound or voice resoundings, photographs, exposed films, insignia, or reproductions of any of the foregoing.

3. *General.* The intelligence exploitation of human sources and captured documents is accomplished through a combined MACV/RVNAF/FWMAF exploitation system. The concept of combined interrogation of sources and exploitation of captured documents is practiced at all echelons from sector to national level. This mutually supporting system provides for the exchange of captured documents, human sources, and intelligence reports,

[1] This directive supersedes MACV Directive 381–11, 4 May 1967.


COMBINED
INTERROGATION CENTERS
SOUTH VIETNAM 1968
COMBINED MILITARY INTERROGATION CENTER
COMBINED CORPS INTERROGATION CENTER
COMBINED DIVISION INTERROGATION CENTER
0 50 100 MILES
0 50 100 KILOMETERS
Hue
Da Nang
I
CORPS
Quang
Ngai
Pleiku
An Khe
Qui
Nhon
II
CORPS
Ban Me Thuot
Nha
Trang
III
CORPS
Cu
Chi
Bien Hoa
Xuan Loc
Duc
Hoa
Phu
Loi
SAIGON
Sa Dec
Can Tho
My
Tho
IV
CORPS
Bac Lieu

MAP 2

and is designed to satisfy tactical strategic, and counterintelligence requirements of the US, RVNAF, and FWMAF. The system is comprised of the following:

a. A Combined Military Interrogation Center (CMIC) located in Saigon.

b. A Combined Document Exploitation Center (CDEC) located in Saigon.

c. Combined Interrogation Center (CIC) located in Corps Tactical Zones. [*Map 2*]

d. US interrogation teams attached to ARVN sectors, special zones, divisions, and corps; and ARVN interrogation teams attached to US/FWMAF separate brigades, division, and field force headquarters.

e. Additional interrogation and document exploitation support provided during specific operations as follows:

(1) The ARVN Section S2 will provide US/FWMAF one or more personnel when an operation is conducted in one province. When an operation involves more than one province, the ARVN S2/G2, at special zone, division, or corps will provide personnel to assist in human source and document exploitation.

(2) The Province National Police, National Police Special Branch, and the Special Branch US Advisor may also provide interrogation support, document screening, and exploitation assistance.

(3) Upon request of US/RVNAF/FWMAF, combined interrogation and document exploitation field teams are provided by the ACofS, J–2.

4. *Responsibilities.*

a. The ACofS, J–2 is responsible for developing plans, policies, and procedures for the intelligence exploitation of human sources and captured documents. The priority for exploitation is tactical and strategic intelligence, psychological operations and public information.

b. Commanders of subordinate commands as defined in MACV Directive 310–2 will insure compliance with the procedures contained here.

5. *Exploitation of Human Sources.* Interrogation.

a. Detainees.

(1) Detainees will be screened expeditiously by the capturing unit to determine PW or non-PW status, to segregate knowledgeable sources, and to establish interrogation priorities. All classified detainees will be disposed of as prescribed by paragraph 5 of Annex A to MACV Directive 381–46.

(2) Interrogation of sources may be conducted at all levels of command; however, interrogation will normally be limited to that information which is of immediate value to the tactical commander or his subordinate units/agencies. All interrogations will be conducted according to the Geneva Conventions Relative to the Treatment of Prisoners of War (GPW) with particular regard to the prohibitions against maltreatment contained in Article 17 and the fact that these prohibitions apply equally to detainees/PW (Article 5, GPW). When US personnel have knowledge that violation

of these provisions occur on the part of FWMAF or RVNAF, the senior US commander involved in the operation should point out the violation to the FWMAF or RVNAF commander. A report will then be forwarded to this Headquarters, ATTN: MACJA.

(3) Sources should be exploited initially to satisfy the priority intelligence requirements of tactical units. There must be adequate coordination at all levels so that common requirements are pooled for servicing by the unit or agency having custody of the source. In accordance with collection priorities, but with emphasis on timely fulfillment of urgent military requirements, reciprocal arrangements should be made for subsequent accesses to sources by interrogators representing US Counterintelligency (CI), RVN Military Security Service (MSS), US advisors to National Police Special Branch, National Police Special Branch, the Sector S2 Advisor, Sector S2, and the National Interrogation Center (NIC). When it is not feasible for representatives of the above units/agencies to interrogate sources, the capturing unit will, when conditions permit, conduct the interrogation on behalf of these units/agencies.

(4) The normal evacuation of PW's is from capturing unit to division or separate brigade, then to Corps PW Camp. Selected PW's may be released to the ARVN Corps CIC, and in the case of very important PW's directly to the CMIC in Saigon for detailed interrogation. Knowledgeable sources, regardless of rank, will move through the interrogation chain as shown at Annex B.

(5) PW's who have been captured by US forces or who have been turned over to US forces by FWMAF, as delineated in MACV Directive 190–3 will remain in US military channels until released to the CMIC, the ARVN Corps CIC, or to an ARVN PW camp. PW accountability procedures are explained in MACV Directive 190–3.

(6) If it is necessary to reinterrogate a PW after he is turned over to an ARVN Corps PW Camp, the source may be retrieved by coordination with the ARVN Corps G1. Retrieval of PW's interned at the Central PW Camp on Phu Quoc Island will be coordinated by the ACofS, J–1.

(7) Exploitation of sources held at GMIC normally involves a period of from one to seven days. Exceptional cases can be held at CMIC up to four months, but any source held at CMIC in excess of four months will require the approval of the J2/JGS and the ACofS, J–2.

b. Returnees.

(1) Returnees are particularly fruitful sources of information because, unlike PW's, they have made a personal decision to reject their former allegiance. The psychological barrier of "name, rank, service number, and date and place of birth" does not exist. Interrogation, exploitation, detention, and processing must take into full account the significantly different status of the returnees.

(2) GVN authorities require that the returnee be delivered to a Chieu Hoi agency within 48 hours of the original contact with friendly elements.

During this period he may be interrogated for perishable information of immediate tactical value. If, for some reason, he cannot be delivered to the local Chieu Hoi agency within this length of time, immediate notification must be given the Province Chieu Hoi officials of the arrival of the returnee. Interrogation and exploitation should be accomplished as expeditiously as possible.

(3) Returnees reporting to GVN agencies or directly to the Province Chieu Hoi Center will be available at the Chieu Hoi Center for interrogation upon request by the local senior US intelligence officer to local Chieu Hoi officials. GVN Chieu Hoi regulations require that interrogations be conducted in the Chieu Hoi Centers which are located at Province, Region, and National levels. The purpose of these regulations is to prevent hostile interrogation or mistreatment of Hoi Chanh. In special cases, however, returnees may be removed from the Center provided Chieu Hoi officials are aware and are in agreement with proposed action. The local senior US intelligence officer will establish continuing liaison with ARVN and GVN Chieu Hoi officials to insure that returnees who report directly to the Province Chieu Hoi Center are properly interrogated and reported.

(4) Returnees may be asked to volunteer to assist military operations as guides or informants; however, such request must be approved by the local Chieu Hoi officials. Units using returnees in such operations will insure that the individuals are adequately protected, fed, housed, and returned to the Chieu Hoi Center immediately upon completion of the operation. A report will be furnished the local Chieu Hoi officials of the results of the operation in order to properly reward the returnee for his information.

(5) Receipt for confiscated weapons, monies, and documents will be issued to the returnee by the receiving unit or agency prior to transfer of the returnee to the Chieu Hoi Center.

(6) Returnees should not be evacuated as PW's, but should be delivered to the nearest Chieu Hoi official or office (there is an office in each district). If for some reason returnees must be evacuated through intelligence channels to higher or adjacent headquarters, the CMIC, or a Corps CIC, the local Chieu Hoi officials must be notified.

c. Refugees. The interrogation of refugees possessing information that satisfies military intelligence requirements will be accomplished by the Sector S2 or the S2 Advisor.[2]

[2] The remainder of the directive, pertaining to the processing of administrative reports and the exploitation of documents, has not been reproduced.

(1) Coordinate the inspection program to include liaison with the ICRC, J1/JGS, RVNAF, and FWMAF.

(2) Escort ICRC delegation to PW facilities throughout the RVN.

(3) Advise the Provost Marshal General (PMG), RVNAF, on compliance with the Geneva Conventions at RVNAF facilities.

(4) Monitor the ICRC visit reporting system.

b. The ACofS, J–3, MACV, will provide air transportation for ICRC visits to PW facilities.

c. The Staff Judge Advocate, MACV, will provide legal guidance concerning the applicability of the Geneva Conventions.

d. CG, USARV; CG, III MAF; and COMNAFORV, will establish necessary procedures at all US forces operated detainee/PW facilities within their jurisdiction to insure that:

(1) Proper escort of ICRC delegates is provided.

(2) Adequate copies of the Geneva Conventions are available to detainees/PW's.

(3) The Geneva Conventions are complied with.

(4) Interrogation of all detainees/PW's is conducted within the observation of a military policeman (or suitable third party if no military policeman is available).

6. *Procedures.*

a. Upon receipt of proposed itinerary of the ICRC delegation, the ACofS, J–1, MACV, will:

(1) Obtain transportation from Chief, Army Aviation Support Branch, J–3, MACV.

(2) Appoint an escort officer to accompany the delegation.

b. If the inspection concerns a US facility, the ACofS, J–1, MACV, will notify the component command concerned and request the command to:

(1) Arrange for local transportation, meals, and billets as required.

(2) Appoint an escort officer to accompany the delegation.

c. If the inspection concerns an RVNAF facility, upon request of J1/JGS, the ACofS, J–1, MACV, will request the deputy senior advisor of the visited CTZ to arrange for local transportation, meals, and billeting as required.

d. If the inspection concerns a FWMAF facility, the ACofS, J–1, MACV, will conduct liaison with the respective FWMAF headquarters to arrange for local transportation, meals, and billeting as required.

7. *Reports.* Reports submitted in accordance with this directive use Report Control Symbol MACJ1–62. (RCS: MACJ1–62.)

a. US Facilities. The component command escort officer will record discrepancies noted by the ICRC on Part I of MACV Form 453 (see Annex A), and forwarded the form to the subordinate command responsible for the facility. The responsible commander will insure that the PW facility commander records corrective action taken on Part II of the form and forwards it to the component command commander. The component com-

Appendix E

International Committee of the Red Cross Inspections of Detainee and Prisoner of War Facilities

Headquarters
United States Military Assistance Command, Vietnam
APO San Francisco 96222

Directive
Number 190–6

8 January 1969
(MACJ1)

Military Police

ICRC Inspections of Detainee/Prisoner of War Facilities
(RCS: MACJ1–62)

1. *Purpose.* The purpose of this directive is to establish policies, responsibilities, and procedures in connection with inspections of detainee/Prisoner of War (PW) facilities in the Republic of Vietnam (RVN) by the International Committee of the Red Cross (ICRC).

2. *Applicability.* This directive is applicable to all commands responsible for US Forces operated detainee/PW facilities and Army advisory groups responsible for advising facilities at which detainee/PW's may be temporarily or permanently detained.

3. *Definitions.*

a. Detainees. Definitions applicable to detainees are set forth in Annex A, MACV Directive 381–46.

b. Prisoners of War. Definitions applicable to PW's are set forth in Annex A, MACV Directive 381–46.

4. *Policy.*

a. All personnel detained will be extended the full protection of the Geneva Conventions of 12 August 1949.

b. The Saigon delegation of the ICRC is recognized as the authority on the Geneva Conventions and is authorized to inspect all detainee/PW facilities in the RVN.

c. Violations of the Geneva Conventions are considered serious breaches of international law and every effort will be made by commanders and advisors to insure full compliance.

5. *Responsibilities.*

a. The ACofS, J–1, MACV, will:

mand commander will record any additional corrective action taken at his level and forward the form, together with the ICRC prepared report, to this headquarters, ATTN: MACJ15, for transmission to CINCPAC with information copies to AMEMB, CINCUSARPAC, DA, JCS, and SECSTATE.

b. RVNAF Facilities. The MACV escort officer will record discrepancies noted by the ICRC on Part I of MACV Form 453, and forward the form to the appropriate CTZ Senior Advisor (SA). CTZ SA will insure that the PW camp advisor records corrective action taken, as reported to the advisor by his counterpart, in Part II of the MACV Form 453, and forward the form to this headquarters, ATTN: MACJ15. The ACofS, J–1, MACV, will record any additional corrective action taken, as reported to the SA PMG/RVNAF by the PMG/RVMAF, in Part III of MACV Form 453 and forward the completed form, together with the ICRC prepared report (if available), to addressees indicated in paragraph 7a.

c. FWMAF Facilities. The MACV escort officer will record discrepancies noted by the ICRC on Part I of MACV Form 453. Then, using any information obtained through follow-on liaison with the FWMAF headquarters concerned, the MACV escort officer will complete Parts II and III of the form. The MACV Form 453 will then be forwarded by the ACofS, J-1, MACV, together with the ICRC prepared report (if available), to addressees indicated in paragraph 7a.

8. *References*

a. DA Pamphlet 27–1.
b. FM 22–10.
c. MACV Directive 381–11.
d. MACV Directive 190–3.
e. MACV Directive 20–4.

FOR THE COMMANDER:

CHARLES A. CORCORAN
Major General, USA
Chief of Staff

Annex A to MACV Directive 190-6

REPORT OF ICRC VISIT			DATE OF VISIT
PART I	Facility Visited	Escort Officer	Facility CO/US Advisor
ICRC Delegates			
List Discrepancies/Comments noted			
DATE	Typed Name, Rank & Title		Signature
PART II	To be completed by Facility CO (US Facility), CTZ SA (RVNAF Facility) or MACJ15 (FWMAF Facility)		
List Actions taken to correct discrepancies noted in Part I			
DATE	Typed Name, Rank & Title		Signature
PART III	To be completed by Component Commander Concerned (US Facility) or MACJ15 (MVNAF or FWMAF Facility)		
List additional actions taken to correct discrepancies noted in Part I			
DATE	Typed Name, Rank & Title		Signature

MACV Form 453
28 Dec 68

Appendix F

Inspections and Investigations of War Crimes

Headquarters
United States Military Assistance Command, Vietnam
APO San Francisco 96222

Directive
Number 20–4 [1]

18 May 1968
(MACJA)

Inspections and Investigations
War Crimes

1. *Purpose.* To provide uniform procedures for the collection and perpetuation of evidence relative to war crimes incidents and to designate the agencies responsible for the conduct of investigations for alleged or possible violations of the Geneva Convention of 12 August 1949 For the Protection of War Victims.

2. *Applicability.* This directive is applicable to all alleged or possible war crimes violations of the subject Geneva Conventions, inflicted by hostile forces upon US military or civilian personnel assigned in Vietnam, or by US military personnel upon hostile military or civilan personnel.

3. *Definitions.*

a. War Crime. Every violation of the law of war is a war crime. (Chapter 8, DA Field Manual 27–10, The Law of Land Warfare, July 1956.)

b. Grave Breach. A grave breach of the Geneva Conventions is the most serious type of war crime. Examples of grave breaches are: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, taking of hostages, compelling a prisoner of war to serve in the forces of the hostile power.

c. Other War Crimes. Examples are: making use of poisoned or otherwise forbidden arms or ammunition, treacherous request for quarter, maltreatment of dead bodies, firing on localities which are undefended and without military significance, abuse of or firing on the flag of truce, misuse of the Red Cross emblem, use of civilian clothing by troops to conceal their military character during battle, poisoning of wells or streams, pillage or purposeless destruction, improper use of privileged buildings for military purposes, compelling prisoners of war to perform prohibited labor, killing

[1] This directive supersedes MACV Directive 20-4 (O), 27 April 1967.

spies or other persons who have committed hostile acts without trial, compelling civilians to perform prohibited labor, and violations of surrender terms.

4. *Coordination.* Investigations of alleged or possible war crimes will be coordinated with the Staff Advocate, MACV.

5. *Responsibilities.*

a. It is the responsibility of all military personnel having knowledge or receiving a report of an incident or of an act thought to be a war crime to make such incident known to his commanding officer as soon as practicable. Personnel performing investigative, intelligence, police, photographic, grave registration, or medical functions, as well as those in contact with the enemy, will, in the normal course of their duty, make every effort to detect the commission of war crimes and will report the essential facts to their commanding officer. Persons discovering war crimes will take all reasonable action under the circumstances to preserve physical evidence, to note identity of witnesses present, and to record (by photograph, sketch, or descriptive notes) the circumstances and surroundings.

b. Commanders and MACV staff sections receiving reports of probable war crimes will, in addition to any other required reports, report the facts as soon as practicable to the Staff Judge Advocate, MACV, and will make pertinent collateral information available to the appointing authority and investigating officers.

c. The Staff Judge Advocate, MACV will:

(1) Immediately notify the appropriate appointing authority (see paragraph 5d, below) of the receipt of a report of an alleged or possible war crime.

(2) Assist and advise the appointed investigating officer, in coordination with the Staff Judge Advocate or Legal Officer of the appointing authority.

(3) Receive and review completed and approved investigations from the appointing authority.

(4) Maintain a file on all war crime investigations.

(5) Make appropriate recommendations to COMUSMACV concerning use of the evidence obtained and disposition of the report of investigation.

d. Appointing Authority:

(1) Appoint an investigating officer and, if appropriate, designate a qualified criminal investigator as technical assistant. Upon receipt of notification of an alleged or possible war crime concerning a member of his command, one of the following appointing authorities will, with all dispatch, appoint an investigating officer to prepare and transmit to him a report of investigation.

(a) Army. Officers who exercise General Court-martial jurisdiction (or their designees) are appointing authorities for cases involving personnel under their General Court-martial jurisdiction. The CG, US Army Element, USMACV (or his designee) is the appointing authority for cases involving US Army personnel assigned to USMACV and any other person believed

to be a US serviceman but not sufficiently identified or otherwise provided for by another appointing authority. Commanders of brigades (or their designees), who have a Judge Advocate assigned to their staff, are appointing authorities for cases involving personnel of their brigades.

(b) Air Force. The Commander, 7th Air Force, (or his designee) is the appointing authority in cases involving US Air Force personnel.

(c) Navy. Commander, US Naval Forces, Vietnam, (or his designee) is the appointing authority in cases involving US Naval or Marine Corps personnel, except naval or marine personnel attached to Marine Corps commands.

(d) Marine Corps. The CG, III Marine Amphibious Force (or his designee) is the appointing authority in cases involving US Marine Corps personnel and naval personnel attached to Marine Corps commands.

(e) Coast Guard. Commander, Coast Guard Squadron #1 (or his designee) is the appointing authority in case involving US Coast Guard personnel.

(2) If two or more appointing authorities are concerned with the same incident, they will agree upon the appointment of one investigating officer, with such additional assistants as may be necessary, to make inquiry on behalf of all concerned.

(3) When the completed Report of Investigation (ROI) has been submitted to the appointing authority by the investigating officer, the appointing authority will receive, review, and, if appropriate, approve the report. Three copies of the ROI will be transmitted to COMUSMACV, ATTN: MACJA.

e. The investigating officer, with technical assistance furnished by qualified criminal investigators will:

(1) Promptly make inquiry to determine the facts and circumstances surrounding the alleged or apparent war crime, to include the following:

(a) Identity, organization, and status of victim.

(b) Nature of violation committed.

(c) Cause of injury or death and manner in which injury or death occurred.

(d) Time and place of commission.

(e) Identity of individuals or organizations suspected of commission of the act.

(f) Names, identification, addresses (or units) of witnesses or suspected witnesses.

(2) Collect all necessary evidence, statements, and exhibits, to include:

(a) Medical or autopsy reports.

(b) Photographic evidence, preferably taken at the scene of discovery, and properly identified as to time, place, subject, witnesses, and photographer.

(c) Statements of witnesses of any of the circumstances surrounding the

incident and the discovery of evidence regarding the incident. Whenever practicable, statements should be under oath.

(d) Military reports, including after-action reports and those from intelligence sources, to identify suspected individuals and units.

(e) Physical evidence, such as weapons, clothing, bullets, shell casings, rope, etc., pertinent to the case.

(3) Without delay, prepare and submit his recommendations as to the disposition of the investigation report to the appointing authority.

6. *Reports.* Report by paragraph 5d, above, is exempt from reports control under the provisions of paragraph 390, AR 335–15.

FOR THE COMMANDER:

WALTER T. KERWIN, JR.
Major General, USA
Chief of Staff

Appendix G

Geneva Conventions Checksheet

(Sent with covering letter in 1967 from U.S. Military Assistance Command, Vietnam, Staff Judge Advocate to all judge advocates in the Republic of Vietnam.)

1. Are the following publications available in adequate quantities:
   a. DA Pamphlet 20–151, "Lectures of the Geneva Conventions of 1949." _____ _____
   b. DA Pamphlet 27–1, "Treaties Governing Land Warfare," 1956. _____ _____
   c. Field Manual 19–40, "Enemy Prisoners of War and Civilian Internees." _____ _____
   d. Field Manual 27–10, "The Law of Land Warfare," 1956. _____ _____
   e. Army Regulation 633–50, "Prisoners of War Administration, Employment and Compensation." _____ _____
   (These may be procured through service supply channels)
2. Number and percentage of members of your command who have received instruction in the Geneva Conventions during the past year.
   No. _____. %_____.
3. Number and percentage of members of your command who have received instructions in the Geneva Conventions.[1]
   No. _____. %_____.
4. How often does your command conduct training in the Geneva Conventions? _____
5. By whom (JA personnel; others: officer, noncom, etc.) is such training given?
   _____.

[1] Should your combat situation make it unduly difficult to obtain this information for your entire command, an estimate based on spot checks or other appropriate sampling will suffice.

6. Are copies of MACV Directives 20–4, 20–5, 190–3, and 380–11 available to your command? (If not, they may be obtained from MACAG) _____ _____
7. Have these directives been properly implemented and all members of your command advised of their substance? _____ _____
8. Have the MACV PW pocket cards been disseminated to all members of your command? _____ _____
9. Have any instructions been promulgated by your command on treatment of enemy personnel at time of capture? _____ _____
10. Are command procedures adequate to insure proper treatment of enemy personnel at time of capture? _____ _____
11. Is the "interrogating officer" who determines initially whether there is doubt as to the eligibility of captured personnel to PW treatment properly qualified by training and experience? _____ _____
12. No. of cases reviewed pursuant to provisions of paragraph 61(2), page 7, MACV Dir 20–5. _____.
    In how many of these cases did you accord detained persons PW status? _____.
    Refer the issue of status to a tribunal? _____.
13. No. of cases reviewed pursuant to provisions of paragraph 61(3), page 7, MACV Dir. 20–5. _____.
    No. of such cases in which you concurred with interrogating officer's determination. _____.
    No. of such cases in which you accorded PW status. _____.
14. How many war crimes investigations have been undertaken in your command since effective date MACV Directive 20–4? _____.
15. Do records of your command reflect the names of members of your command who have violated the Geneva Conventions and the types of violations which they are alleged to have committed? _____ _____
16. How many of your personnel have been disciplined for mistreatment of enemy personnel? _____

17. Indicate types of punishment imposed on offenders. (Use continuation sheet if necessary).

Staff Judge Advocate
Command
Date

THE ENEMY IN YOUR HANDS

1. HANDLE HIM FIRMLY, PROMPTLY, BUT HUMANELY.

The captive in your hands must be **disarmed, searched,** secured and watched. But he must also be treated at all times as a human being. He must not be tortured, killed, mutilated, or degraded, even if he refuses to talk. If the captive is a woman, treat her with all respect due her sex.

2. TAKE THE CAPTIVE QUICKLY TO SECURITY

As soon as possible evacuate the captive to a place of safety and interrogation designated by your commander. Military documents taken from the captive are also sent to the interrogators, but the captive will keep his personal equipment except weapons.

3. MISTREATMENT OF ANY CAPTIVE IS A CRIMINAL OFFENSE. EVERY SOLDIER IS PERSONALLY RESPONSIBLE FOR THE ENEMY IN HIS HANDS.

It is both dishonorable and foolish to mistreat a captive. It is also a punishable offense. Not even a beaten enemy will surrender if he knows his captors will torture or kill him. He will resist and make his capture more costly. Fair treatment of captives encourages the enemy to surrender.

4. TREAT THE SICK AND WOUNDED CAPTIVE AS BEST YOU CAN.

The captive saved may be an intelligence source. In any case he is a human being and must be treated like one. The soldier who ignores the sick and wounded degrades his uniform.

5. ALL PERSONS IN YOUR HANDS, WHETHER SUSPECTS, CIVILIANS, OR COMBAT CAPTIVES, MUST BE PROTECTED AGAINST VIOLENCE, INSULTS, CURIOSITY, AND REPRISALS OF ANY KIND.

Leave punishment to the courts and judges. The soldier shows his strength by his fairness, firmness, and humanity to the persons in his hands.

Appendix H

"The Enemy in Your Hands"

(Reproduction of 3x5 card of instructions issued to all troops.)



THE ENEMY IN YOUR HANDS

AS A MEMBER OF THE US MILITARY FORCES, YOU WILL COMPLY WITH THE GENEVA PRISONER OF WAR CONVENTIONS OF 1949 TO WHICH YOUR COUNTRY ADHERES. UNDER THESE CONVENTIONS:

YOU CAN AND WILL

DISARM YOUR PRISONER
IMMEDIATELY SEARCH HIM THOROUGHLY
REQUIRE HIM TO BE SILENT
SEGREGATE HIM FROM OTHER PRISONERS
GUARD HIM CAREFULLY
TAKE HIM TO THE PLACE DESIGNATED BY YOUR COMMANDER

YOU CANNOT AND MUST NOT

MISTREAT YOUR PRISONER
HUMILIATE OR DEGRADE HIM
TAKE ANY OF HIS PERSONAL EFFECTS WHICH DO NOT HAVE SIGNIFICANT MILITARY VALUE
REFUSE HIM MEDICAL TREATMENT IF REQUIRED AND AVAILABLE

ALWAYS TREAT YOUR PRISONER HUMANELY

KEY PHRASES.

ENGLISH	VIETNAMESE
Halt	Đứng lại
Lay down your gun	Buông súng xuống
Put up your hands	Đưa tay lên
Keep your hands on your head	Đưa tay lên đầu
I will search you	Tôi khám ông
Do not talk	Đừng nói chuyện
Walk there	Lại đằng kia
Turn Right	Xây bên phải
Turn Left	Xây bên trái

"The courage and skill of our men in battle will be matched by their magnanimity when the battle ends. And all American military action in Vietnam will stop as soon as aggression by others is stopped."

21 August 1965 — Lyndon B. Johnson

Appendix I

Mutual Defense Assistance in Indochina

Agreement Signed at Saigon December 23, 1950; Entered into Force December 23, 1950

The Government of the United States of America, and the Governments of Cambodia, France, Laos and Vietnam:

—Recognizing the common interest of the free peoples of the world in the maintenance of the independence, peace, and security of nations devoted to the principles of freedom;

—Considering that the Governments of Cambodia, France, Laos and Vietnam are engaged in a cooperative effort toward these goals as members of the French Union;

—Considering that, in furtherance of those common principles, the Government of the United States of America has enacted Public Law 329, 81st Congress, which permits the United States of America to furnish military assistance to certain other nations dedicated to those principles:

—Desiring to set forth the understandings which shall govern the furnishings of military assistance by the United States of America under Public Law 329, 81st Congress, to the forces of the Associated States and the French Union in Indochina,

Have agreed as follows:

Article I

Any assistance furnished under this agreement will be governed by the following basic considerations:

1. All equipment, material and services, made available by the United States of America under the terms of this agreement to the States signatory to it, in accordance with their needs, will be furnished under such provisions, and subject to such terms, conditions and termination provisions of Public Law 329, 81st Congress, as amended, as affect the furnishing of such assistance, and such other applicable United States of America law as may hereafter come into effect.

2. In accordance with the principles of mutual aid, each Government receiving equipment, material, or services from the Government of the United States of America under this agreement agrees to facilitate the production, transport, within its means, and the transfer to the Government of

the United States of America for such period of time, in such quantities and upon such terms and conditions of purchase as may be agreed upon, of raw and semi-processed materials required by the United States of America as a result of deficiencies or potential deficiencies in its own resources, and which may be available in their territories.

The conditions governing such transfers will be the object of particular agreements and will take into account the needs of these states and the normal requirements of the French Union with respect to internal consumption and commercial export of such materials.

Article II

The signatory powers, recognizing that the effectiveness of military assistance will be enhanced if maximum use is made of existing facilities,

Have resolved that:

1. The Governments of Cambodia, France, Laos and Vietnam shall cooperate to assure the efficient reception, distribution and maintenance of such equipment and materials as are furnished by the United States of America for use in Indochina.

2. Each Government receiving aid from the United States of America shall, unless otherwise agreed to by the Government of the United States of America, retain title to all such equipment, material or services so transferred.

3. Each Government receiving aid from the United States of America shall also retain full possession and control of the equipment, material or services to which they have such title, taking into account the accords and agreements which now exist between Cambodia, France, Laos and Vietnam.

4. With respect to aid received from the United States of America, each State shall designate a member or representative of the High Military Committee and authorize such person to receive from the Government of the United States of America the title to the materials received. Each State shall, as the need exists, provide for such extensions of that authority as may be necessary to insure the most efficient reception, distribution and maintenance of such equipment and materials as are furnished by the United States of America.

5. For aid received from the United States of America destined exclusively for forces of the French Union in Indochina, the Commander in Chief of the French Forces in the Far East or his delegates shall be the person authorized to accept title.

Article III

Taking into consideration the military conventions concluded between France and the Governments of Cambodia, Laos, and Vietnam, each Government receiving grants of equipment, material or services from the

Government of the United States of America pursuant to this agreement,

Undertakes:

1. To use effectively such assistance only within the framework of the mutual defense of Indochina.

2. To take appropriate measures consistent with security to keep the public informed of operations under this agreement.

3. To take security measures which will be agreed upon with the United States of America in each case to prevent the disclosure or compromise of classified articles, services, or information received under this agreement.

4. To take appropriate action to prevent the illegal transportation into, out of, and within the area of Indochina, including the territorial waters thereof, of any equipment or materials substitutable for, or of similar category to, those being supplied by the United States of America under this agreement.

5. To provide local currency for such administrative and operating expenses of the Government of the United States of America as may arise in Indochina in connection with this agreement, taking into account ability to provide such currency. An Annex to this agreement will be agreed between the United States of America on one hand the States of Cambodia, France, Laos and Vietnam on the other, with a view to making arrangements for the provision of local currency within the limits of an overall sum to be fixed by common agreement.

6. To enter into any necessary arrangements of details with the Government of the United States of America with respect to the patents, the use of local facilities, and all other matters relating to operations in connection with furnishings and delivering of materials in accordance with this agreement.

7. To consult with the Government of the United States of America, from time to time, to establish means for the most practicable technical utilization of the assistance furnished pursuant to this agreement.

Article IV

To facilitate operations under this agreement, each Government agrees:

1. To grant, except when otherwise agreed, duty-free treatment and exemption from taxation upon importation, exportation, or movement within Indochina, of products, material or equipment furnished by the United States in connection wth this agreement.

2. To receive within its territory such personnel of the United States of America as may be required for the purposes of this agreement and to extend to such personnel facilities freely and fully to carry out their assigned responsibilities, including observation of the progress and the technical use made of the assistance granted. Such personnel will in their relations to the Government of the country to which they are assigned, operate as part of the diplomatic mission under the direction and control of the Chief of such mission of the Government which they are serving.

Article V

1. This agreement shall enter into force upon signature. Any party may withdraw from this agreement by giving written notice to all other parties three months in advance.

2. The Annexes to this agreement form an integral part hereof.

3. This agreement shall be registered with the Secretary General of the United Nations in compliance with the provisions of Article 102 of the Charter of the United Nations.

In witness thereof the respective representatives, duly authorized for this purpose, have signed the present agreement.

Done in quintuplicate in the English, Cambodian, French and Vietnamese languages at Saigon on this 23 day of December, 1950.

All texts will be authentic, but in case of divergence, the English and French shall prevail.

DONALD R. HEATH

HUU — VORABONG

V. SAI — G. DE LATTRE

(Seal)

Annex A

In implementation of paragraph 5 of Article III of the agreement for Mutual Defense Assistance in Indochina, the Governments of Cambodia, France, Laos and Vietnam will deposit piasters at such times as requested in accounts designated by the diplomatic missions of the United States at Phnom Penh, Vientiane, and Saigon, not to exceed in total 6,142,230$ piasters for the use of these missions on behalf of the Government of the United States of America for administrative expenses in the States of Cambodia, Laos and Vietnam in connection with carrying out that agreement for the period ending June 30, 1951.

The piasters will be furnished by each of the Governments of Cambodia, France, Laos and Vietnam in accordance with percentages agreed upon among the four Governments, taking into consideration the amount of military aid received by each Government. This Annex will be renewed with appropriate modifications for the fiscal year ending June 30, 1952 and similarly thereafter before the end of each current fiscal year, for the duration of the agreement.

Annex B

In recognition of the fact that personnel who are nationals of one country, including personnel temporarily assigned, will in their relations with the Government of the country to which they are assigned, operate as part of the Diplomatic Mission of the Government of their country under the direction and control of the Chief of that Mission, it is understood, in connection

with Article IV, paragraph 2, of the Mutual Defense Assistance Agreement, that the status of such personnel, considered as part of the Diplomatic Mission of such other Government, will be the same as the status of personnel of corresponding rank of that Diplomatic Mission who are nationals of that country.

The personnel will be divided into 3 categories:

(a) Upon appropriate notification of the other, full diplomatic status will be granted to the senior military member and the senior Army, Navy and Air Force officer assigned thereto, and to their respective immediate deputies.

(b) The second category of personnel will enjoy privileges and immunities conferred by international custom, as recognized by each Government, to certain categories of personnel of the Diplomatic Mission of the other, such as the immunity from civil and criminal jurisdiction of the host country, immunity of official papers from search and seizure, right of free egress, exemption from customs duties or similar taxes or restrictions in respect of personally owned property imported into the host country by such personnel for their personal use and consumption, without prejudice to the existing regulations on foreign exchange, exemption from internal taxation by the host country upon salaries of such personnel. Privileges and courtesies incident to diplomatic status such as diplomatic automobile license plates, inclusion on the "Diplomatic List", and social courtesies may be waived by both Governments for this category of personnel.

(c) The third category of personnel will receive the same status as the clerical personnel of the Diplomatic Mission.

It is understood among the five Governments that the number of personnel in the three categories above will be kept as low as possible.

Annex C

All the countries which are signatory to the agreement for Mutual Defense Assistance in Indochina agree that the benefits of any modification or ameliorations of this agreement in favor of any one of the contracting parties will be extended to all the countries party to the agreement.

Ch 1, Directive Number 27—1, HQ MACV 30 September 1965

SOP FOR LITIGATION ACTIONS UNDER THE PENTALATERAL AGREEMENT.

I. *General.*

A. *Background.*

During 1949 France approved self-government for Vietnam within the French Union. On 23 December 1950 the newly created self-governing nation entered into a multi-lateral mutual defense assistance agreement with the US, France, Cambodia, and Laos. This agreement is known as the Pentalateral Agreement. The agreement is still in effect and is so regarded by both the US and the Republic of Vietnam.

B. *Grant of Immunity from Jurisdiction.*

Under Article 4 and Annex B of the Agreement, immunity from criminal and civil jurisdiction is granted to US military personnel in Vietnam along with certain categories of civilians (Para 10, MACV Directive 27–1).

C. *Responsibility of US Personnel.*

This grant of immunity, however, imposes upon US personnel the responsibility, under appropriate US instructions, of complying with Vietnamese law and law enforcement authorities insofar as it is consistent with US law and US military requirements to do so.

II. *Procedures.*

A. *Apprehension of US Military Personnel by Vietnamese Authorities.*

1. When an American serviceman is apprehended by Vietnamese authorities, he will comply and cooperate with them (Para 11, MACV Directive 27–1).

2. If the serviceman is requested to accompany the Vietnamese law enforcement authorities to their booking station, he will comply with their requests. The serviceman will inform US military police or his unit CO as soon as possible.

3. If the serviceman has a military obligation requiring him to proceed elsewhere, he will attempt to persuade the law enforcement officials to allow him to proceed with his mission, after fully identifying himself. If the situation permits, he will attempt to telephone the US military police for assistance. If the serviceman is required by the law enforcement officials to remain at the scene or accompany the policeman, he will do so if he is unable to persuade the police to allow him to proceed. In no case will he resist the Vietnamese police by using force. If he is allowed to leave, or call, he will notify his CO or the US MPs as soon as practicable. In situations such as this, the serviceman must use mature judgment, weighing the importance of his mission as compared with creating an incident which might be detrimental to US-Vietnamese relations.

Annex A to MACV Directive 27–1, Dated 16 April 1965

Appendix J

LEGAL SERVICES IN VIETNAM
HEADQUARTERS
UNITED STATES MILITARY ASSISTANCE COMMAND, VIETNAM
APO San Francisco 96222

DIRECTIVE
NUMBER 27–6 [1]

14 September 1968
(MACJA)

LEGAL SERVICES
LEGAL SERVICES AND LEGAL OBLIGATIONS IN VIETNAM

1. *Purpose.* The information set forth below is to acquaint personnel with some of the new obligations assumed and benefits derived from serving in Vietnam.

2. *Jurisdiction.*

a. US Law. Both the Uniform Code of Military Justice and the Code of Conduct for members of the US Armed Forces govern the conduct of all US military personnel in Vietnam. Furthermore, the United States is a signatory of the Geneva Conventions of 1949, and all US military personnel are expected to conduct themselves in a manner in keeping with the highest traditions of US fighting men when handling prisoners of war. All incoming personnel are issued a wallet sized card which outlines the duties and responsibilities of US forces with respect to PW's.

b. Vietnamese Law and the Pentalateral Agreement.

(1) Under the terms of an international agreement between the US and Vietnam, military personnel and certain civilians have been granted immunity from the criminal and civil jurisdiction of the Vietnamese courts. Therefore, an American serviceman cannot be tried in Vietnamese courts unless the US Government waives his immunity from jurisdiction.

(2) Notwithstanding the immunity from jurisdiction, US military personnel and DOD civilians must obey the Vietnamese law unless it is inconsistent with their military requirements. Compliance with Vietnamese laws is particularly important in the areas of traffic, curfew, and currency regulations. US personnel, if apprehended by Vietnamese authorities, will comply and cooperate, and will notify the military police or their unit commander as soon as possible. Personnel receiving a VN traffic citation, a summons to a VN court, or other legal VN process, will report the fact

[1] This directive supersedes MACJA Letter, 30 June 1967, subject: Legal Services and Legal Obligations in Vietnam.

to their unit commander. Personnel involved in an accident or incident, are to reveal their name and organization to the investigating National Policeman or Joint Patrol and furnish similar identification to injured parties seeking it. Obtain similar information concerning the other party. If asked to remain on the scene, or if asked to accompany a National Policeman to a booking station, personnel will comply unless military obligation requires otherwise. However, personnel will in no case resist by force the National Policeman who is in the performance of his duty. Personnel so restrained will inform either their unit commander, Provost Marshal or Staff Judge Advocate as soon as possible.

(3) Before a serviceman becomes a plaintiff in a Vietnamese court consultation must be had with a Judge Advocate or legal officer, and the SJA, USMACV will be notified. US military personnel may sue in local courts if and when permission is granted by US authority. Under Vietnamese law, if the suit is filed, the defendant may file a counter claim. That claim can be either civil or criminal, as VN courts try all aspects of a case in the one trial, at the same time. Filing a suit waives the serviceman's immunity. Therefore, the serviceman would be subject to the jurisdiction of the court and could be liable for any counter claims. The serviceman, if he should be found guilty of a crime relative to the case, such as perjury, may be punished for it by the Vietnamese.

3. *Business Activities.* MACV personnel are prohibited from engaging in any business or commercial enterprises for profit conducted in Vietnam. This prohibition does not extend to business transactions for the purchase or sale of property located outside Vietnam.

4. *US Personnel.* To avoid legal and disciplinary problems, the following directives must be read and adhered to: MACV Directive 643–1, subject: Customs Control; MACV Directive 58–3, subject: Privately-Owned motor vehicles; MACV Directive 210–5, subject: Custody and Control of Weapons; MACV Directive 632–2, subject: Personal Conduct and Activities of US Forces Personnel; and MACV Directive 37–6, subject: Regulation of Currency and Operation of Military Banking Facilities.

5. *Legal Assistance.* Military personnel and DOD civilian employees are entitled to legal assistance at any military legal office in Vietnam. Legal assistance officers will advise, assist and counsel on personal legal problems. They cannot represent individuals in court, or in matters pertaining to a profit-making activity, or in a claim against the United States. Although appointments are not necessary, they are encouraged to insure prompt service.

6. *Claims.*

a. Claimants should contact the Claims Officer of their respective services for information on the processing of claims for damage to household goods or loss of personal property.

b. Extreme care should be taken in securing personal property. As a general rule, claims for loss of money, jewelry, cameras, and other items

of relatively high value will not be approved unless they were secured within a locked container in a locked room and there is evidence of a forcible entry. In connection with items of extraordinary value which are not commercially insured, they should not be retained in this command unless an individual is prepared to personally absorb their loss in the event of hostile action or theft. It is recommended that an inventory of personal valuables be maintained.

7. *Federal and State Income Taxation.*

a. Vietnam and its adjacent waters have been designated as a "Combat Zone."

b. The time for filing returns, declarations of estimated taxes, and the payment of any tax or estimated tax is automatically postponed without interest or penalty for the period of service in the combat zone (or while continuously hospitalized outside the United States as a result of an injury received or disease contracted while serving in the combat zone) and for the next 180 days thereafter. This relief is available to the spouse of a serviceman only if a joint return is filed.

c. Enlisted personnel and warrant officers in a "Combat Zone" receive all of their military pay and allowances including reenlistment bonus, tax exempt. Commissioned officers receive up to $500.00 of their monthly taxable pay exempt while in a combat zone. Any period of service in a combat zone during a month is sufficient to qualify for the tax exemption for the entire month. For example, personnel arriving in Vietnam on 31 May would be entitled to the tax exemption for the entire month of May.

d. No withholding of federal income tax from wages of any member of the Armed Forces is required during the month of which any part of his service was in a combat zone. Commissioned officers desiring to anticipate the tax on their pay above the $500.00 exemption must initiate action to accomplish the necessary withholding; otherwise, no tax will be withheld.

e. All personnel are urged to consult Annex A on State Income Taxations for a general outline of tax regulations pertaining especially to persons serving in the Vietnam combat zone.

8. *Reports.* This directive requires no report.

9. *References.*

a. MACV Directive 37–6.
b. MACV Directive 58–3.
c. MACV Directive 210–5.
d. MACV Directive 632–2.
e. MACV Directive 643–1.

FOR THE COMMANDER:

CHARLES A. CORCORAN
Major General, USA
Chief of Staff

Appendix K

U.S. Army Disciplinary Actions, Republic of Vietnam, 1965–1972 [a]

Year	General courts-martial tried	Special courts-martial tried	Summary courts-martial tried	Nonjudicial punishment administered (Article 15)
1965	25	488	301	[b]
1966	176	2723	2187	[b]
1967	283	4840	2090	46,392
1968	302	6798	2119	59,178
1969	377	7314	2231	66,702
1970	300	4964	597	64,534
1971	350	3678	434	41,237
1972	113	774	187	3,283

[a] Figures do not include cases which were investigated but never tried, or cases that were disposed of through administrative action. Data from which the figures were compiled were obtained from the files of the U.S. Army Judiciary.

[b] Figures not available.

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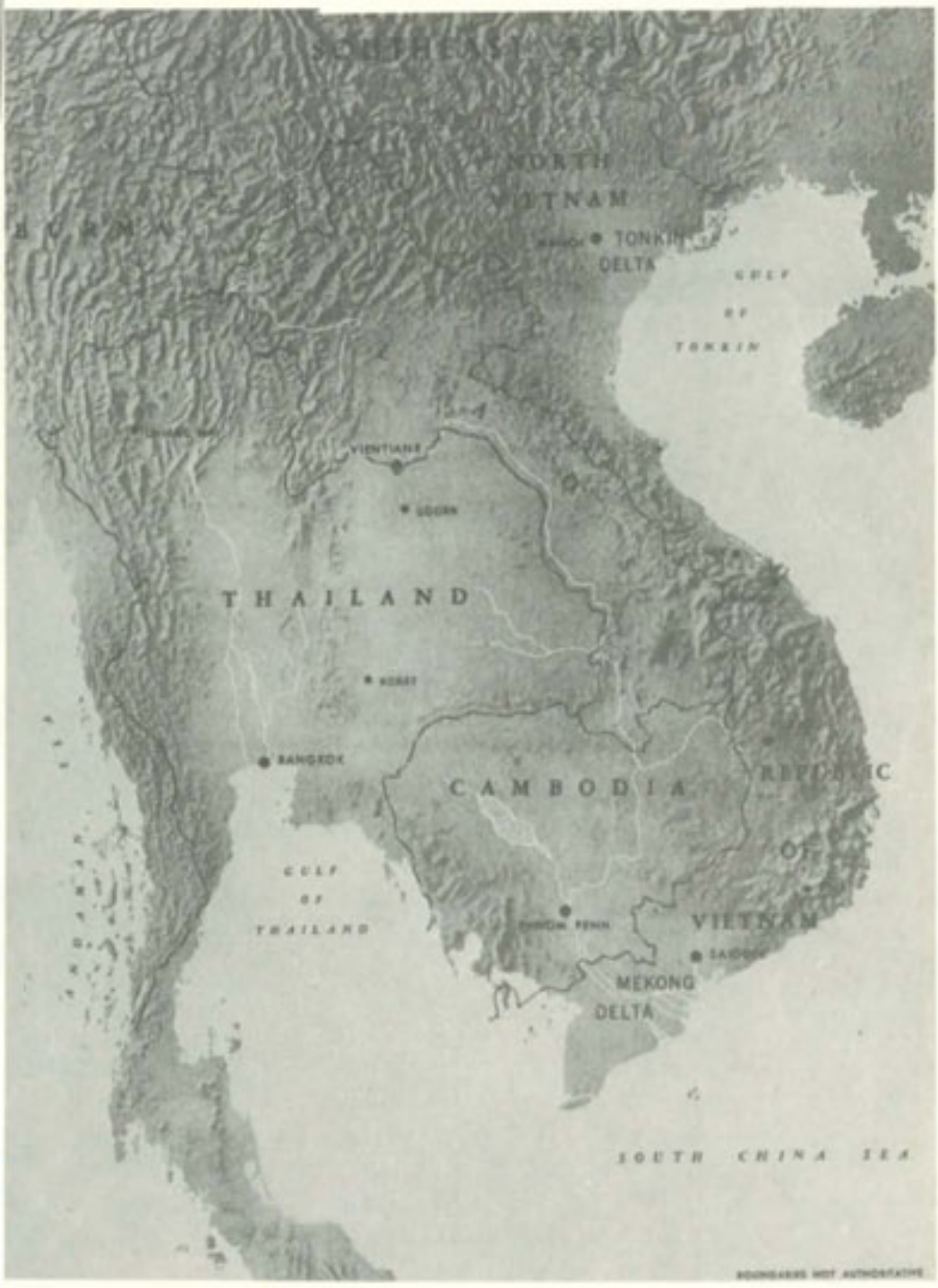
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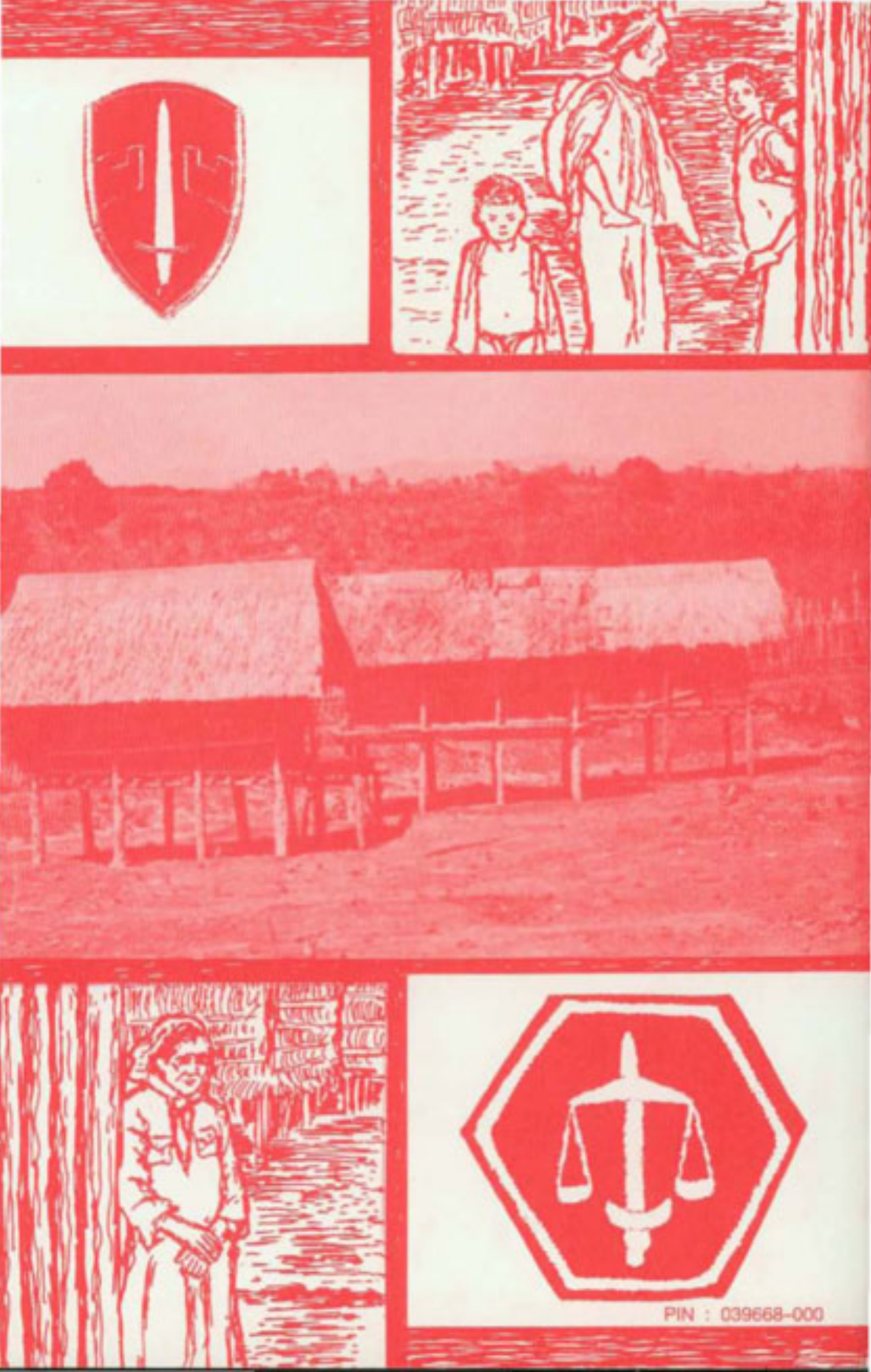
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