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THE LESSONS OF MY LAI

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(*) The views expressed herein are the author's and do not represent the official views of any agency of the United States Government (*Please, see also next page*).

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I. — INTRODUCTION

It is often remarked that we learn from history that we learn nothing from history. This truism has been attributed to the German philosopher Georg Hegel (1770-1831) but the principle is certainly one of the ancient origins, reflecting the fact that the human race has generally exhibited a total inability to learn even the most elementary historical lessons. Of course, the tragedy is that this need not be so, mankind can learn from history. Indeed, if history teaches mankind anything about avoiding the mistakes and disasters of the past, it is that he must first understand the historical lessons — lessons often realized only after the expenditure of incredible amounts of human blood and treasure — and then inculcate those lessons in each succeeding generation.

As America concludes the celebration of the second anniversary of the Allied victory in the Gulf War (1), having correctly heeded the lessons of appeasement from World War II (2), another reminder of critical historical lessons is rapidly approaching. The spring of 1993 marks the twenty-fifth anniversary of the My Lai massacre — an appropriate time to seriously revisit the event and to reinforce the lessons learned.

The antithesis of the conduct of the US military in the Gulf War, My Lai echoes back to a nightmarish event that most Americans would like to forget. But My Lai must never be forgotten. It is precisely because of its horror and disgrace that My Lai must never be erased from the individual or collective memory of the United States. As will be demonstrated, there is no greater vehicle for inculcating the necessity for strict adherence to the law of war than My Lai. Indeed, to a large degree, from Grenada (1983) to Panama (1989) to the Gulf (1991), the United States military can take full credit for a commendable record in its adherence to the law of war because of its commitment to institutionalizing the lessons learned from My Lai. Accordingly, every American soldier must understand the significance of the lessons learned at My Lai and steadfastly keep them in his consciousness.

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II. — THE MASSACRE AT MY LAI

A. — An emblem of shame

Every army has its own mythology, its symbols of heroism as well as its symbols of shame. The army of the United States is no exception. In the sphere of heroism the American military has an incredible reservoir of noble and fantastic figures to draw from — men whose military proficiency and ethical conduct in combat have maintained an impeccable American reputation for both battlefield excellence and strict adherence to the laws regulating warfare. More than any other army in modern history, the American Army is able to proudly claim as its own some of the greatest soldiers in the history of warfare.

Unfortunately, the United States military also has its figures of shame; soldiers who have engaged in blatant violations of the most fundamental and civilized rules regulating behavior in combat. While American misconduct is certainly an aberration and not the norm, this fact does not lessen the severity of the shame. Without question, each and every grave breach (3) of the law of war represents a horrible scar on the credibility of the American armed forces, as well as on the civilized democracy which they protect.

In this context, the greatest emblem of American military shame in the 20th Century occurred during the Vietnam War, a war few Americans have yet to properly understand (4). While there were several cases of unlawful killings of unarmed civilians committed by American troops during the Indo-China War, by far the most violent, and hence the most infamous act, has come to be called the My Lai massacre.

Of course, any discussion of the American violations of the law of war during Vietnam, in general, and at My Lai, in particular, must be viewed against the background of the enemy's activities. In this context, American violations absolutely pale in comparison to the thousands upon thousands of command directed slaughters that were committed, and are still being committed, by the communist regime of then, North Vietnam. With respect to the American presence in Vietnam, My Lai can certainly be characterized as an aberration.

The American record in Vietnam with regard to observance of the law of war is not a succession of war crimes and does not support charges of a systematic

and wilful violation of existing agreements for standards of human decency in time of war, as many critics of the American involvement have alleged. Such charges were based on a distorted picture of the actual battlefield situation, on ignorance of existing rules of engagement, and on a tendency to construe every mistake of judgement as a wanton breach of the law of war (5).

In contrast, blatant violations of numerous provisions of the law of war, to include murder, torture and intimidations, were the *modus operandi* for the communists (6). In the estimate of one scholar, North Vietnam sponsored the slaughter of over one and a quarter million of its people from 1945 to 1987 (7). Included in this figure, since the fall of South Vietnam in 1975, are over 250,000 **boat people** and 250,000 other civilians who were either ruthlessly slaughtered outright or who perished in communist death camps set up to **re-educate** non-communists (8). Sadly, these massive crimes have never been punished, much less acknowledged by many human rights groups. «In sum, **re-education** was a label for revenge, punishment, and social prophylaxes. But unlike the Khmer Rouge who were too public about their mass killing, the Vietnamese regime cleverly and at first hid it from the outside world [*sic*]» (9).

Nonetheless, the enemy's barbaric conduct should offer little solace to the American conscience in the wake of My Lai. Misconduct by the communists in no way justifies what occurred at My Lai; it does, however, place the American violations in a real world perspective. For North Vietnam, the strategy for a communist victory was intentionally predicated on terror and propaganda; for the United States, the massacre at My Lai was an unfortunate contradiction.

B. — The facts of My Lai

The hard facts relating to the My Lai massacre are now fairly certain, thanks to a thorough criminal investigation aimed at the perpetrators of the crime and a collateral administrative investigation ordered by the Secretary of the Army and headed by Lieutenant General W. R. Peers (10). Despite an initial cover-up by some of those associated with the crime, the enormity of the atrocity made it unlikely that it could long be kept secret, although for well over a year the general public knew nothing of the incident (11).

On March 16, 1968 an American combat task force of the 23rd Infantry Division (the American Division) (12) launched an airmobile assault into the village complex of Son My in the province of Quang

Ngai, South Vietnam. As was the case for all such operations, the attack was executed only after the commander of the task force, Lieutenant Colonel Frank Barker (the task force was called Task Force Barker), had assembled the key junior commanders for a final review of the details of the combat operation.

This briefing, which took place on March 15, 1968, involved discussions on the positioning of helicopters, artillery preparation and the specific assignments of the three companies that comprised the task force. While the other two companies provided blocking and support functions, Charlie Company, commanded by Captain Ernest Medina, would take the primary responsibility for battling any enemy resistance encountered in the village.

At the briefing the commanders were reminded that intelligence reports had indicated that the village complex was a staging area for the 48th Viet Cong local force battalion and that the Americans could expect an enemy force of up to two hundred and fifty soldiers (13). In short, the US soldiers anticipated that they would be outnumbered by the enemy. Still, having yet to engage any enemy forces in direct combat, the Barker Task Force saw the operation as an opportunity to finally fight the ever elusive Viet Cong in the open (14).

The intelligence regarding a large enemy force proved to be incorrect. When the American combat forces landed they soon found that the village was occupied almost totally by non-combatants (15). Although the civilians offered no resistance whatsoever, some of the members of Charlie Company went on a **command directed** killing spree. Under the direct supervision of several company grade officers, First Lieutenant William L. Calley, Jr. being the most notorious, American troops murdered well over 200 unarmed South Vietnamese civilians.

The largest killing of civilians occurred in the hamlet of My Lai, known to the Americans by the nickname of « Pinkville », a part of the Son My complex. Thus, the entire massacre came to be known as the My Lai massacre. The murdered consisted primarily of women, children and old men; some shot in small groups, others as they fled. At My Lai most of the civilians had been methodically herded into large groups and then gunned down, primarily under the direct supervision of Lieutenant William Calley (17).

In addition to the unlawful killing of civilians, the soldiers engaged in the destruction of most of the homes and in the killing of the domestic animals in the village (18). Several cases of rape were also reported to have taken place during the massacre (19). When it was

over, the statistics told the story: one American soldier in Charlie Company had been wounded by friendly fire (20) and hundreds of South Vietnamese women, children and old men were dead.

The only positive aspect of the incident was the fact that some of the American soldiers had either refused to participate (21) or had openly attempted to halt the killings. Chief Warrant Officer Two (CW2) Hugh C. Thompson, Jr., was one of those who took specific actions to halt the killings. Tasked with piloting one of the helicopters during the operation, CW2 Thompson testified that he noticed large numbers of « wounded and dead civilians everywhere » (22). Assuming that the Americans on the ground would assist those who were wounded — as was the standard procedure — CW2 Thompson began to mark the location of the wounded Vietnamese civilians with smoke canisters as he flew overhead. To his horror, he witnessed the exact opposite. Drawn to the smoke, American soldiers were shooting the wounded that CW2 Thompson had so accurately marked. Still only partially realizing the full impact of what was happening on the ground, CW2 Thompson immediately landed his helicopter into My Lai, near a large drainage ditch filled with dead and dying civilians. As he began to assist those Vietnamese who were still alive to leave the area, Lieutenant Calley and a handful of troops approached.

When CW2 Thompson asked for assistance in caring for the civilians, Lieutenant Calley made it clear that he intended to kill the remaining non-combatants. CW2 Thompson recalled that Lieutenant Calley said: « The only way you'll get them (the civilians) out is with a hand grenade » (23). Instead of backing down from the clear designs of his superior officer, CW2 Thompson quickly ordered his M60 machine gunner, Private First Class Lawrence Colburn, to open fire on the US soldiers if they came any closer to the remaining civilians. CW2 Thompson then placed all the civilians he could on his helicopter and ferried them to safety.

C. — My Lai comes to light

The initial attempts to cover-up the crime could not quell the nightmares of those who had witnessed the slaughter. Rumors of the massacre persisted, coming to a boiling point when an ex-serviceman named Ron Ridenhour sent a second hand account of the massacre to President Richard Nixon, « twenty three members of Congress, the Secretary of State and Defense, the Secretary of the Army, and the chairman of the Joint Chiefs of Staff » (24).

Ridenhour had written a four page letter that chronicled detailed information from several of the soldiers who had either taken part in the bloody massacre or had witnessed it first hand. The letter read in part :

« It was late in April, 1968 that I first heard of 'Pinkville' (My Lai)... It was in the end of June, 1968 when I ran into Sargent [sic] Larry La Croix at the USO in Chu Lai. La Croix had been in 2nd Lt. Kally's [sic] platoon on the day Task Force Barker swept through 'Pinkville'. What he told me verified the stories of the others, but he also had something new to add. He had been a witness to Kally's gunning down of at least three separate groups of villagers. « It was terrible. They were slaughtering the villagers like so many sheep. » Kally's men were dragging people out of bunkers and hootches and putting them together in a group. The people in the group were men, women and children of all ages. As soon as he felt that the group was big enough, Kally ordered an M60 (machine gun) set up and the people killed. La Croix said he bore witness to this procedure at least three times... this account of Sargent La Croix confirmed the rumors that Gruver, Terry and Doherty had previously told me about Lieutenant Kally... I have considered sending this to newspapers, magazines, and broadcasting companies, but I somehow feel that investigation and action by the Congress of the United States is the appropriate procedure... » (25).

Ron Ridenhour's letter received prompt attention both in the media and in the Legislative and Executive branches of government. Needless to say, the initial military reaction was one of disbelief; no one believed that :

- 1) a massacre of that magnitude could have been committed by American civilians; and
- 2) that the massacre « could have remained hidden for so long » (26).

As the horrible truth of the crime came to light, however, the Army quickly launched the comprehensive Peers Commission investigation, popularly known as the Peers Report (27). At the same time the general public tasted the horror of the My Lai massacre through a series of gruesome photographs of the dead which had been taken by a former Army photographer named Ronald Haeberle. The color photographs appeared in the December 1969 issue of *Life* magazine.

D. — The impact of My Lai

In the subsequent judicial actions associated with the murders at My Lai, charges were preferred against four officers (28) and nine enlisted men (29). Twelve other officers were charged with military

type offenses associated with the cover-up (30). Of these, only Lieutenant William Calley was convicted (31). The other officers and enlisted men either had the charges against them dismissed or were found not guilty at their courts martial.

Tried before a military panel composed of six officers, Lieutenant Calley was found guilty of the premeditated murder of twenty-two non-combatants and of assault with intent to murder of a two year old child. Although Calley was sentenced to a dismissal and confinement at hard labor for life, the convening authority reduced this to a dismissal and twenty years at hard labor, and the Secretary of the Army further reduced the sentence to a dismissal and ten years at hard labor (32).

Aside from the issue of individual culpability for those involved in the massacre, My Lai had a devastating impact on the outcome of the Vietnam War. Given the total lack of any semblance of a grand strategy on the part of the United States to win the war (33), it can be argued that this atrocity did as much to harm the survival of an independent South Vietnam as any other single event in the Indo-China War. The public revelation of this massacre not only solidified the anti-war movement in the United States, but it cast a pall of confusion and shame over the nation at large that significantly contributed to the eventual abandonment of South Vietnam to the communist forces in the North.

Finally, the revelation of what happened at My Lai dealt a blow to the **esprit de corps** and professionalism of the United States Army that can still be felt 25 years later, having been seared like a hot iron upon the very soul of the American soldier (34). Beginning in 1969, a vocal and radical minority of communist sympathizers and war protestors incorporated opposition to the American ground soldier to their general opposition to the war. For these people, the **enemy** was now the US soldier, not the communists.

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III. — WHY DID MY LAI HAPPEN ?

Taken out of the context of the social and political machinations that were brewing in the United States in the late 1960's and early 1970's and viewed from a purely objective perspective, the immediate focus in the aftermath of the crime was summed up in a single word: « Why ? » Why did it happen ? How could so many American soldiers have become involved in such a heinous **war crime** (35) ? And, more importantly, how could the officers in command of the operation have ordered such atrocities or participated in the attempt to cover them up ? To realize that some civilians were killed as a collateral matter through military action against legitimate military targets was one thing, to have ground forces intentionally shoot innocent non-combatants in cold blood was incomprehensible.

A. — The Peers Report

The Peers Report did not cite only one factor as the cause for the massacre at My Lai. While the panel observed that « what may have influenced one man to commit atrocities had had no effect on another » (36), General Peers was determined that the final report should reflect some explanation as to why the massacre had occurred. Recognizing the inherent difficulty in finger pointing, the panel nonetheless identified several factors that seemed to be conducive to an environment which might lead to violations of the law of war.

1. Lack of proper training.

The lack of proper training in the law of war was a common theme in the interviews of the witnesses and subjects involved in My Lai. Perhaps the most graphic illustration of this factor was reflected at the trial of Lieutenant Calley, when he testified that the Geneva Convention classes conducted during Officer Candidate School were inadequate (37). In any event, the Peers Report entered specific findings that the soldiers that made up Task Force Barker had not received sufficient training in the « Law of War (Hague and Geneva Conventions), the safeguarding of non-combatants, or the Rules of Engagement » (38). Although the requirements set out in United States Army Republic of Vietnam (USARV) Regulation 350-1, dated 10 November 1967, made it clear that, at a minimum, all soldiers

were required to have annual refresher training in the Geneva Conventions, in many cases there was no command emphasis on this requirement. Hence, to that degree, the individual soldier did not know what was required of him.

Pocket sized guidance cards, which were a mandatory issue item to all soldiers to assist in learning and abiding by the law of war, were usually never read and seldom lasted past the first monsoon rains (39). In addition, Military Assistance Command Vietnam (MACV) Directive 20-4 (40), which required the immediate reporting of all violations of the law of war, was seldom stressed by the command structure.

Regardless of the deficiencies in law of war training, the Peers Report did not find this to be a significant reason for the grave breaches (41) of multiple murders which occurred at My Lai. Such deficiencies in training might excuse minor or technical breaches of the law of war, but not the grave *malum in se* breaches. The members of the Commission correctly noted that «there were some things a soldier did not have to be told were wrong — such as rounding up women and children and then mowing them down, shooting babies out of mother's arms, and raping» (42). It was patently obvious to the Commission that some of the members of the company were simply criminals (43), both enlisted and officers. Clearly these individuals found themselves in an environment where there was little if any deterrence to the overt expression of their criminal propensities.

2. Attitude toward Vietnamese.

A tendency by some of the members of Charlie Company to view the Vietnamese people as almost subhuman was thought to be another factor which may have contributed to the massacre. Of course, the use of derogatory terms to describe the Vietnamese as nothing but «gooks», «dinks», or «slopes» was not uncommon during the Vietnam War. In fact, soldiers in all wars have developed derogatory phrases to describe their enemies (44); it is easier to dispatch an enemy who can be characterized as **different**. In the My Lai case, however, the Peers report concluded that some of the members of Charlie Company had carried this tendency to dehumanize the enemy to an unreasonable extreme, viewing the «Vietnamese with contempt, considering them subhuman, on the level of dogs» (45).

To discover the reason for this degree of hatred, the Peers report had a detailed background analysis done on each individual in Company C. The results showed nothing unusual. The company was an average unit with 70% of the troops having high school diplomas and 19

having a college credits. The reason for the hatred was a result of a combination of several factors, the greatest of these merely a reflection of the arrogance inherent in the criminal mind, the least, but more common, related to the frustration of having to fight an enemy who refused to abide by the law of war (46).

3. Nature of the enemy.

One of the most telling factors in the Peers report dealt with examining the nature of the enemy that infested South Vietnam, with the implicit criticism that the United States military was never allowed to take the war to the real enemy – North Vietnam. In the South, the US military was asked to carry out primarily defensive operations against a well-trained and well-equipped guerilla force, who could not be distinguished from the local population and who refused to abide by the established principles of the law of war.

They would set up their bunkers in villages and attack from the midst of helpless civilians. Thus, surrounding themselves with and using innocent civilians to protect themselves is in itself a war crime and makes them criminally responsible for the resulting civilian dead... [T]hey would also directly attack villages and hamlets, kill the inhabitants, including children, in order to panic the civilians in the area and cause social chaos that the communist then could exploit (47).

The Viet Cong (VC) and regular North Vietnamese Army (NVA) soldiers knew every path, trail, and hut in their areas of operation. In addition, whether by brute force, which included public torture and execution, or psychological intimidation, the VC could count on the local support of the civilian population for shelter, food, and intelligence. As such, it was not uncommon for women and children to actively participate in military operations against US forces (48). With women and children participating in combat activities, by laying booby traps, serving as scouts or actually bearing arms, the American soldier had to disregard the traditional indicators such as sex and age as criteria categorizing the non-combatant and concentrate instead on the extremely difficult issue of hostile intent. The Peers Report recognized this dilemma:

The communist forces in South Vietnam had long recognized our general reluctance to do battle with them among the civilian populace and had used that knowledge to our tactical and strategic disadvantage throughout the history of the war in Vietnam. Exploitation of that reluctance by... (the enemy) forces caused a distortion of the classic distinction between combatants and non-combatants (49).

The difficulty of determining friend from foe was also woefully apparent in regards to the military-aged male Vietnamese. Having developed an incredible system of underground tunnels and caves, the VC and NVA were able to appear and disappear at will. Also, when under pressure, it took only seconds to remove all military insignia or equipment and to blend in with the local population.

Without question, the use of guerilla tactics, characterized by a heavy reliance on booby traps and hit and run missions, had a tremendous adverse psychological impact on the American commanders and their troops. In numerous interviews, the Peers Report noted the general attitude of the soldier was one of extreme tension at engaging this unseen enemy; an enemy who hid behind women and children and would not come out in the open to do battle (50).

Every civilian was viewed as a potential threat, every inch of ground as hiding a potential booby trap or mine. Descriptive terms such as «keyed up» were frequently used to describe the apprehension and frustration associated with going out on patrol or, in many cases, just being in **friendly** villages (51). It was not uncommon for a **friendly** village to be visited by the VC on any given night, setting mines that would kill Americans the next day. Consequently, some of those who testified naturally assumed that the «effects of mines and booby traps were the main reason for the atrocities committed by the task force» (52). This view is incorrect. While these factors undoubtedly contributed to the extraordinary level of tension in the task force, it would be far too simplistic to rely on the illegal warfighting tactics of the enemy as the primary reason for the atrocity. Indeed, if this factor was the main cause for My Lai, one would have expected many massacres similar to My Lai to have taken place throughout Vietnam.

4. Organizational problems.

One of the dominant characteristics of the Vietnam War was the lack of effective organization in the US Army's force structure. From brigades to platoons, shortages of personnel and frequent rotations resulted in *ad hoc* arrangements with regards to the composition of military units. Adding to the organizational deficiencies was the influx of poorly trained or ill-disciplined troops who were on «short» tours of a year (53). The short tour ensured problems in command and control; by the time the soldier had gained the necessary experience to be an effective member of the unit, he was eligible for transfer back to the «States». In the realm of directing combat operations, the lack of effective command and control can be disastrous.

Taking strong note of the overall organizational problems throughout the Army structure in Vietnam, the Peers Report found that certain specific organizational problems in Task Force Barker « played the most prominent part in the My Lai incident » (54). In focusing on Task Force Barker, it was apparent that the lack of staff personnel was a serious impediment to effective command and control. The task force could hardly function properly, particularly in such matters as development of intelligence, planning and supervision of operations, and even routine administration.

Along with the general organizational problems in the task force, there was the lack of clear plans and orders concerning the operation into Son My. Because the entire operation was based on intelligence that anticipated a large enemy force in the area, the American soldiers initially expected that they were going to be outnumbered by at least two to one (56). In addition, the task force leaders regularly employed the term « search and destroy » (57) without providing an adequate definition to the troops. « Search and destroy » was never meant to provide license to kill whatever was encountered on an operation, despite the connotation of the term. In this regard, the Peers Report found that no instructions were ever given as to how to handle the civilians that might be encountered during the Son My operation (58).

In the final analysis, the organizational problems outlined above contributed to an overall atmosphere that made the events at My Lai possible. But the real pin in the grenade was the most fundamental aspect of the command and control problem — lack of leadership at the ground level of the operation.

5. Leadership.

« You know what to do with them » (Lieutenant) Calley said, and walked off. Ten minutes later he returned and asked, « Haven't you got rid of them yet? I want them dead. Waste them »... We stood about ten to fifteen feet away from them (a group of 80 men, women and children herded together) and then he (Lieutenant Calley) started shooting them. I used more than a whole clip — used four or five clips (59).

Private Paul D. Meadlo (1969).

The factor that weighed the heaviest in explaining the massacre was none of the four discussed above. Rather, it was the lack of responsible leadership at the very level where it was most critical — at the junior officer level (60). Although the Peers Report faulted all levels of command — « [i]t appears ... that at all levels, from division down to platoon, leadership or the lack of it was perhaps the principal

causative factor in the tragic events before, during, and after the My Lai operation » (61) — the direct underlying deficiency most certainly rested at the company and platoon level.

By virtue of the chain of command structure of the military, the primary responsibility for ensuring adherence to the law of war rests on the officer corps, with particular professionalism demanded of those junior at the platoon and company level, where soldiers are most apt to encounter the vast majority of law of war issues. Simply, soldiers are expected to obey the law of war and their officers are expected to see that they do.

The difficult issue is not in how to deal with those soldiers or officers who in their individual capacities violate the law of war — they are punished by courts martial (62). Rather, the real difficulty is presented by the officer who orders his soldiers to commit war crimes, or who knowingly fails to control those under his command who violate the law of war (63). Clearly, the difficulty at My Lai rested in command directed breaches of the law of war in the context of lawful vs. unlawful orders.

Beginning with the premise that all soldiers are expected to obey lawful orders, and are subject to courts martial if they do not, how should one expect the soldier to react to an unlawful order, assuming, of course, that the soldier can even recognize the order as unlawful (64)?

« In considering the question whether a superior order constitutes a valid defense, the court shall take into consideration the fact that obedience to lawful military orders is the duty of every member of the armed forces; that the latter cannot be expected, in conditions of war discipline, to weigh scrupulously the legal merits of the orders received; that certain rules of warfare may be controversial; or that an act otherwise amounting to a war crime may be done in obedience to orders conceived as a measure of reprisal. At the same time it must be borne in mind that members of the armed forces are bound to obey only lawful orders » (65).

Furthermore, soldiers may not normally rely on the defense of superior orders should they obey an **unlawful order**; they are responsible for their own acts or omissions. When the defense of superior orders is raised, however, a two-tier test is applied. The first tier is a subjective one concentrating on whether or not the accused knew that the order was illegal. If the accused did not know that the order was illegal then the inquiry shifts to what the accused could reasonably have been expected to know regarding the legality of the order. « The fact that the law of war has been violated pursuant to an order of a

superior authority ... does not constitute a defense ... unless (the accused) did not know and could not reasonably have been expected to know that the act ordered was unlawful» (66). Although the objective tier of the two part test draws upon the reasonable man standard, it is really a reasonable man under the stresses present in that particular combat environment.

Moreover, the task of distinguishing the legitimacy of the orders of a superior must be viewed against the backdrop of the entire concept of enforced discipline, extending from boot camp until discharge. The requirement for enforced discipline is absolutely essential to ensure that in the unnatural conditions of the combat environment soldiers will be able to function properly. No army could ever survive without a system promoting genuine and enforced discipline, which is firmly rooted in the requirement to obey the directions of superiors. It follows then, that if soldiers are expected to obey all lawful orders, *a fortiori* they cannot be expected to scrupulously weigh the legal merits of orders received under the stresses of combat (67).

Accordingly, the officer corps of any army must be filled with only the finest available men and women. Nowhere is this requirement more essential than in the selection and placement of the men who serve as officers in combat units. Only men of the highest moral caliber and military skill should be assigned the responsibility of command. In commenting on leadership skills for officers, General George S. Patton, Jr. correctly stated: «If you do not enforce and maintain discipline, you (officers) are potential murderers» (68).

Herein is the underlying tragedy at My Lai: several of the junior officers on the scene were totally inadequate, not only in moral character and integrity, but also in basic military skills. Indeed, as exhibited by their behavior (69), these officers were totally unworthy of the responsibility of command.

When one details the background of William Calley, the centerpiece of the command directed killings, it is not surprising to discover that he was not the type of individual who should have been charged with leadership responsibilities of any nature. Having flunked out of a junior college in Miami, Calley moved west before enlisting in the Army in 1966 (70). Once in the Army, Calley was somehow selected to attend Officers Candidate School, where he graduated despite poor academic marks (71).

Assigned to the field as a platoon leader in a combat unit, the soldiers under his command quickly discovered that Lieutenant Calley did not even understand basic military combat skills. As one

rifleman in the platoon put it, « I wonder how he ever got through Officer Candidate School. He (Calley) couldn't read no darn [*sic*] map and a compass would confuse his ass » (72).

In summation, the factor that impacted most directly on the crime at My Lai clearly rested on the shoulders of a few junior officers on the ground, Lieutenant William Calley being one of the worst. All the evidence suggests that it was Lieutenant Calley who initiated much of the murder, acting both in his individual capacity and, far more shamefully, in his capacity as an officer in charge of subordinates. Abusing the authority of his position, Lieutenant Calley directly ordered the soldiers under his command to commit murder; some of the men obeyed while some did not. While no one can pardon the behavior of those who carried out the illegal orders, the real tragedy of My Lai was the absence of competent leadership.

6. The lack of a grand strategy on the part of the US.

A final factor that bears exploration is one that few commentators on Vietnam have properly gauged — the full impact that the lack of a grand strategy by the United States had on the outcome of the Indo-China conflict. In this regard, My Lai was possible due to the total and complete absence of a grand strategy to deal with the communist sponsored aggression against South Vietnam.

If the concept of a grand strategy is defined as the use of a state's full national power to achieve a particular objective, it is clear that at no time did the United States have a grand strategy in Vietnam for dealing with the communist aggression. On the other hand, it is just as obvious that the communists had from the very beginning a complete and dedicated grand strategy for conquering all of Indo-China through the use of revolutionary warfare (74).

The basic mechanics of a sound grand strategy takes advantage of one's strengths and the enemy's vulnerabilities, while neutralizing the enemy's strengths and one's vulnerabilities. In practically every category of factors associated with the art of waging war, the communists were able to fulfill this formula; the US was not. Thus, while the communists mobilized all of the people under their control in a unity of effort — from the military to the political — the United States consistently sought to dis-associate the American people from the war.

In the sphere of combat operations, the communists were particularly effective in drawing on their strengths. Conversely, the Americans typically refused to rely on US strengths. Aware that they

were no match for the far superior power of US combat forces, the communists primarily employed small hit and run tactics against selected targets; they quickly discovered that engaging the US in conventional warfare was pure folly. Coupled with guerilla tactics deliberately focused on becoming the unseen enemy, the communists illegally took advantage of the American respect for the law of war. By hiding themselves in civilian populations, the communists intentionally sought to blur the distinction between the combatant and the non-combatant, « hoping either for immunity from attack or to provoke ... indiscriminate attack » (75). Establishing well stocked sanctuaries in neighboring Cambodia and Laos, they were immune from defeat as long as the US refused to seriously attack these bases. In turn, the US never effectually used the overwhelming strength of its military to subdue and defeat North Vietnam. Instead, American measures were confined to patrolling efforts in reaction to communist attack in the territory of South Vietnam.

Finally, in tandem with their guerilla tactics, the communist's relied heavily on all forms of propaganda placing special emphasis on the **ambiguity of words** to erode the will of the US to continue the war. For example, they falsely portrayed the conflict as a protracted war waged by agrarian reformers with no end in sight, while simultaneously promising a negotiated settlement at any moment.

In summation, the ultimate success of the communist strategy rested primarily on the fact that the United States never developed a coherent grand strategy of its own. Necessarily, this mandated that the communist's grand strategy would eventually prevail. What is surprising is that it was not until 1968 that the impact of not having a viable grand strategy became apparent to the American soldier. When it did, however, the painful beginning of the demoralization of the United States military quickly followed. As the attendant anti-war protests at home increased, many soldiers questioned the efficacy of their sacrifices in Vietnam. More importantly, the soldiers realized that the emphasis of the American leadership was not on achieving peace through a military victory, but on peace through negotiations — negotiations which constantly promised an end to the war at any time. As a consequence, no one wanted to be the last casualty in a war that was not supported at home and which the US government refused to let the military win.

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IV. — THE LESSONS OF MY LAI

The massacre at My Lai cannot be undone. However, in developing a methodology for preventing future atrocities, the images of the horror of My Lai perfectly illustrate the necessity for abiding by the laws of war. In this regard, the Peers Report was a valuable tool in attempting to explain some of the factors that seemed to create an environment in which law of war violations were more likely to occur. Taken together, these factors can be reduced to three fundamental lessons.

A. — **Soldiers must understand the rationale for the law of war**

One of the most troubling issues for American soldiers is the realization that in many of the wars that the United States has fought, the enemy has openly and repeatedly violated numerous provisions of the law of war (76). In the Vietnam War, the NVA and the VC regularly engaged in command-directed atrocities on a massive scale (77). Just in relation to the treatment of prisoners, for example, every single American prisoner of war (POW) was subjected to torture and maltreatment in flagrant violation of the Geneva Conventions. For many US soldiers, knowledge of enemy violations presents an immediate negative response to law of war issues. The realization that the enemy may often refuse to abide by the law of war prompts an immediate **out** response — « Why should I care about the rules if the enemy doesn't? » Faced with such questions, it is not enough to simply inform the soldier that he or she will be punished for violations, it is imperative that the soldier understand the rationale for abiding by the law of war. Thus, it is critical that the soldier's question be answered so that he or she possesses a basic understanding of the entire concept of the development of rules regulating combat.

Indeed, if the military establishment cannot understand the fundamental rationale and historical basis for having a law of war, then it is certain that the tragedy at My Lai will be repeated. This then is the first lesson of My Lai; not only must soldiers know the law of war, they must be able to understand the necessity and rationale for having a law of war.

1. Necessity for the law of war.

Warfare is not a novel phenomenon: it is as old as human history itself. Even a cursory review of the practice reveals that all cultures and societies have participated in warfare, either in defense or in aggression. In addition, as long as mankind has practiced war, there have been rules to lessen and regulate the attendant sufferings associated with warfare. Thus, in the modern world, either by treaty law or through customary (78) international law, every nation is legally bound by a universal body of law called the law of war.

To the uninitiated in the study of war, it seems somewhat incongruent that one of man's most violent activities should be governed by rules of conduct. Some writers such as Leo Tolstoy have even argued that the very establishment of rules that seek to regulate warfare are *per se* immoral because such rules wrongfully cloak war with a form of legitimacy and are therefore counterproductive to the goal of eliminating the scourge of war. Accordingly, Tolstoy advanced the notion that the waging of war should not be regulated, «when it becomes too horrible, rational men will outlaw war altogether» (79).

Fortunately, most serious men of reason have rejected this utopian attitude, acknowledging the necessity of rules of conduct to mitigate the various categories of sufferings that are the natural consequence of war (80). The law of war was never intended to be an «idealistic proscription against war» (81).

The current *corpus* of the law of war consists of all of those laws, by treaty and customary principles, that are applicable to warfare. The cornerstones of the law of war are the Geneva Conventions of 1949 (82). The basic goal of the law of war is to limit the impact of the inevitable evils of war by:

- 1) protecting both combatants and non-combatants from unnecessary suffering;
- 2) safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and
- 3) facilitating the restoration of peace (83).

2. Origins of the law of war.

Many people have some vague notion that rules regulating warfare came out of the aftermath of World War II or, at the most, World War I.

Nothing could be further from the truth. As long as there have been wars there have been rules established to reduce the suffering to both the environment and to other humans. While some of these ancient rules would not be consistent with the modern humanitarian concepts reflected in the current law of war, it is interesting to note that many of the provisions in the modern law of war are derived directly from some of the earliest formulations of rules regulating warfare.

For example, in the book of Deuteronomy the ancient Hebrews were given specific instructions on the protections that were to be afforded to the persons or property of an enemy city under siege (84). Generally, if the city surrendered, the inhabitants were not to be harmed. If the city refused to surrender, but was subsequently captured, no women or children were to be molested. In all cases, torture was absolutely prohibited. Similarly, protection for the environment was codified. Fruit trees located outside of a besieged city were protected from unnecessary damage; the fruit could be eaten but it was unlawful to cut down the trees.

To observe that the modern law of war rests firmly upon an ancient foundation of humanitarian concerns that are intrinsically acceptable is only one reason why the law of war has enjoyed universal acceptance through time — the fact that such rules are morally valuable axioms only captures part of the truth as to their development and utility. Clearly, the historical development of rules regulating warfare also follows a general pattern of what might be termed **pragmatic necessity**. While many of the rules limiting suffering were undoubtedly based on humanitarian concerns, it can be argued that the basic rationale for having a law has been rooted in several collateral principles of self interest.

First, under the concept of reciprocity, nations would develop and adhere to laws of war because they were confident that the enemy would also do the same under a *quid pro quo* theory. This mutual assurance theory has long been recognized as not only a primary motivator for establishing rules regulating warfare, but as the centerpiece in almost every other function of international intercourse.

The second element in the historical development of the law of war rests in a similar vein of self interest, reflected so aptly by Alexander the Great's (85) admonitions to his incredible army on the eve of practically every battle: « Why should we destroy things which shall soon be ours ? » (86). Under this reasoning, particularly in the context of securing limited amounts of spoil, the destruction of anything beyond military targets to subdue the enemy's military forces would

be neither beneficial nor reasonable. Under modern principles, similar violations of the law of war would not contribute to the goal of the collection of legitimate reparations, a measure often employed against the aggressor nation (87).

A third line of reasoning draws on the related fact that abuses seldom shorten the length of the conflict and are never beneficial in facilitating the restoration of peace. The targeting of non-military property usually produces unwanted effects for those who engage in such activities. The event most often used to illustrate this point comes from the activities of General William Sherman during the War Between the States. General Sherman's widespread looting and burning of civilian homes and personal property on his march through Georgia in the fall of 1864 did not significantly contribute to the collapse of the Confederacy (88). On the contrary, his actions simply strengthened the resolve of the enemy to resist while sowing the seeds of hatred for generations to come (89).

Clearly, the intelligent warfighter makes every effort to comply with and even exceed the requirements of the law of war, particularly in regards to the treatment of prisoners of war and non-combatants. Not only does humane treatment demonstrate the best evidence that **your** side is the one that is waging a *jus in bello* (90), but it often serves as the best avenue to encounter enemy propaganda concerning law of war violations. As the pragmatic Prussian soldier and author, Karl von Clausewitz observed: «If we find that civilized nations do not ... devastate towns and countries, this is because their intelligence exercises greater influence on their mode of carrying on war, and has taught them a more effectual means of applying force ...» (91).

A fourth factor approaches the matter from a purely military perspective. Plainly put, the use of limited military resources for the destruction of civilian targets is a waste of assets and hence, detrimental to the goal of defeating the enemy's military. In short, such conduct is simply counterproductive, «it rarely gains the violator a distinct military advantage» (92).

The final rationale, albeit of greater impact in an area characterized by the widespread dissemination of information, rests in the very nature of the modern civilized nation/state. States that adhere to the principles of democratic institutions and fundamental human rights will not tolerate activities that are conducted in defiance of the rule of law (93). As brought out so strongly by the My Lai incident, civilized societies will not provide the necessary homefront support for any army that is perceived as acting in violation of the law of war. Although in

the radical regime (94) this factor is generally ignored, in the United States as in all democratic societies, this element of homefront support is absolutely essential to any deployment and sustainment of military forces. Indeed, the basic minimum « standards of morality transcends national boundaries » (95).

The necessity of homefront support is not always easy for the military to sustain. In part, the difficulty rests in the associated phenomenon of « imputed responsibility ». With reference to the nation's military, the term imputed responsibility recognizes the fact that the acts of a few soldiers who engage in egregious abuses of the law of war are immediately imputed to the entire military establishment. Thus, because Lieutenant Calley and a handful of others murdered babies at My Lai, segments of the public might tend to view all American soldiers in Vietnam as baby killers.

To a large degree, the mass media feeds this phenomenon, as reflected by almost every **Hollywood** movie concerning the Vietnam War. In American cinema, the soldier is routinely depicted as engaging in abuses of the law of war or in ingesting large quantities of illegal drugs. The fact that the vast majority of American soldiers did neither is not shown (96).

Accordingly, the best way for the military to combat the concept of imputed responsibility is to make every effort to see that abuses do not occur and, if they do, to promptly investigate and punish those proven to be guilty. Under no circumstances can a cover-up be justified — the light must be shed promptly and fully on all allegations of war crimes.

In the modern era then, the law of war is based on a combination of rationale reflecting a mixture of pragmatism and moral concerns. The competent warfighter should understand that the factors include :

- 1) humanitarian concerns based on moral precepts;
- 2) the concept of reciprocity in behavior;
- 3) the desire for reparations;
- 4) the desire to limit the scope and duration of the conflict and to facilitate the restoration of peace;
- 5) the effective use of military resources; and
- 6) the necessity for securing homefront support.

B. — Soldiers must be trained in the law of war

The second lesson from My Lai needs little introduction — to be effective the law of war must be constantly taught to soldiers. To a large degree, the US military has long held an outstanding reputation for adherence to the law of war because of its commitment to law of war training (97). Unfortunately, there have been periods where training has not been properly emphasized, providing fertile ground for violations of the law of war. If nothing else, the massacre at My Lai served as the « catalyst for a complete review of Army training in the law of war » (98).

The US Army has proponency for the law of war for all branches of the military. The current methodology for teaching the law of war attempts to tailor the training to the particular unit. Special Forces units, for example, not only receive constant classroom instruction on the law of war but also have difficult law of war questions dealing with special operations built into their training missions (99). The much reported event in the Gulf War in which a Special Forces team had to choose between killing an Iraqi girl or being discovered was a well-trained scenario resulting in a correct application of a very difficult law of war issue (100).

The red thread that runs throughout the issue of training the law of war is the role of the judge advocate. In this regard, the Army has dramatically expanded its use of military attorneys to ensure that US forces comply with all aspects of the law of war (101). All combat forces have an « operational law » (102) attorney assigned at the Division level. The function of this judge advocate is not only to ensure compliance with and adherence to the law of war but to examine the full range of international and domestic law that impacts « specifically upon legal issues associated with the planning for and deployment of US forces overseas in both peacetime and combat environments » (103). This is a major change from the role of judge advocate in Vietnam — a role primarily delegated to the administration of criminal law.

Currently, the function of the judge advocate can be divided into two elements — he has both preventive and active roles. In the preventive role, the judge advocate advises commanders on potential issues dealing with rules of engagement, targeting, and all other relevant aspects of the law of war. In addition, the judge advocate is deeply involved in providing instruction and training to soldiers within his or her particular command.

In the active role, the judge advocate is involved in the investigation of allegations of law of war violations. The requirement to investigate is either carried out directly by the legal officer or is closely monitored by the judge advocate. Finally, the judge advocate will be called upon to either prosecute or defend those charged with violations.

**C. — Officers must ensure compliance
with the law of war through training and leadership**

· As noted, the importance of professional conduct on the battlefield extends to both the strategic, political, and social realms. In turn, the primary responsibility for ensuring professional conduct falls directly on the officer corps. Nowhere is the need for law of war training more critical than in the proper development of the military's officer corps. Thus, no officer should be given the responsibility of leadership without two essential factors:

- 1) technical proficiency in their profession of arms;
- 2) the highest ethical and moral courage.

Under the ancient Roman adage that no man can control others until he can first control himself, officers must be thoroughly prepared in both of these areas. Combat command should only be offered to officers who have been thoroughly scrutinized and put through extensive field training exercises designed to test combat pressures.

There can be no question that the primary cause of My Lai was the lack of disciplined control, i.e., the lack of any real leadership. Such leadership is absolutely essential in preventing law of war violations. The associated tensions set out by the Peers Report were not the real problem at My Lai — tensions of combat will always be present in one form or another. The real problem was in the effective control of those tensions. Control of warfighting pressures rests not only with the individual soldier but directly with his commanding officer.

Sadly, many of the officers in Charlie Company not only allowed the illegal manifestations of battlefield stress to be exhibited by their troops, but through their orders and examples they initiated and actively participated in the atrocities. There can be little doubt that proper officer leadership could have prevented the law of war violations at My Lai. Consequently, the primary responsibility for these crimes are on their heads. The function of leadership is to hold up the professional torch at all times, at all costs.

V – CONCLUSION

Future My Lais cannot be prevented unless the answers to the « why » of My Lai are repeated over and over; until they are inculcated into every warfighter in uniform. Just as Americans must never forget their rallying cries of honor and nobility – « Remember the Alamo » (104) – they must be forced to deal with their nightmares – « My Lai ». On the other hand, it is precisely because of its horror and repulsiveness that My Lai is uniquely suited to serve as the primary vehicle to address the entire issue of adherence to the law of war as well as the necessity for effective leadership in the modern era.

The final caveat is that American military cannot afford to take these lessons lightly. Given the fact that knowledge acquired beyond basic trial and error methodologies requires varying degrees of academic effort, it is not surprising that over time, both individually and collectively, many lessons of history will be forgotten and thus, repeated. This fact is particularly devastating when viewed in the context of man's efforts to reduce the continuing pattern of human warfare. Accordingly, not only must the lessons of My Lai be remembered – they must be inculcated.

NOTES AND REFERENCES

(1) See Michael Cramer, *Kuwait: Back to the Past*, Time, Aug. 5, 1991, at 33. The ground phase of the military campaign in the Gulf lasted only 100 hours, from 24 to 28 February 1991. For an excellent overview of the entire operation, see *The Gulf War*, Military Review, Sept. 1991.

(2) The current debate wages over the wisdom of reducing the military might of the United States.

(3) See *infra* note 41 and accompanying text.

(4) See, e.g., *The Vietnam Debate* (John Norton Moore ed., 1990); John Norton Moore, *Law and the Indo-China War* (1972).

There exists an entire series of myths concerning the Vietnam War dealing with such issues as the lawfulness of the US intervention, the nature and purposes of the Communist Party in North Vietnam, and the reasons for the failure of the United States to carry war into North Vietnam to win a military victory.

(5) R.J. Rummel, *Death by Government: Genocide and Mass Murder in the Twentieth Century* (forthcoming 1993) (manuscript at 31, on file with author).

(6) See *infra* note 49 and accompanying text.

(7) Rummel, *supra* note 5, at 1.

(8) *Id.* at 48-52.

(9) *Id.* at 46.

(10) Lt. Gen. William R. Peers, *The My Lai Inquiry* (1979) [hereinafter Peers Report]. The Secretary of the Army and the Chief of Staff, United States Army, issued a joint directive for Lt. Gen. W.R. Peers to explore the original Army investigations of what occurred on March 16, 1968 in Son My Village, Quang Ngai Province, Republic of Vietnam. The overall investigation is known as the Peers Report. Specifically, General Peers was tasked to determine:

1. The adequacy of such investigations or inquiries and subsequent reviews and reports within the chain of command; and

2. Whether any suppression or withholding of information by persons involved in the incident had taken place.

See also Joseph Goldstein and al., *The My Lai Massacre and its Cover-up: Beyond the Reach of Law?* 29 (1976) [hereinafter My Lai Massacre].

(11) For an excellent discussion of the initial breaking of the story see William Wilson, *I Prayed to God that this Thing was Fiction...*, American Heritage, Feb. 1990, at 44.

(12) *Id.* The troops making up the task force were from the 1st Battalion, 20th Infantry, 11th Light Infantry Brigade.

(13) Peers Report, *supra* note 10, at 47. Total enemy strength in Quang Ngai Province in the spring of 1968 was thought to be between ten and fourteen thousand men.

(14) My Lai Massacre, *supra* note 10, at 492. The Son My area had been the scene of numerous incidents where many Americans had been killed or wounded by booby traps and snipers during the past few months. Charlie Company had lost two dead and thirteen wounded in a minefield on February 25, 1968. On March 14, 1968, a popular sergeant had been killed and three other soldiers wounded by a booby trap. In total, Charlie Company had lost 20 soldiers killed or wounded in the Son My area.

(15) *Id.* at 103. Of enemy combatants the Peers Report found the following: « The evidence indicates that only three or four were confirmed as Viet Cong, although there were undoubtedly several unarmed Viet Cong men, women and children among them and many more active supporters and sympathizers... ».

(16) Although the official count of the dead was 175, this figure was certainly low. The dead may have reached almost 400. *Id.* at 1, 134. *But see* George Esper, *Twenty Years Later, My Lai Remains a Symbol of Shame*, Los Angeles Times, March 13, 1988, at 2A; Rummel *supra* note 5, at 31. Rummel puts the figure at 347. The current communist regime in Vietnam has erected a plaque in My Lai with the names of 540, women and children listed as dying in the massacre.

(17) *But see infra* note 28.

(18) *See* Peers Report *supra* note 10, at 277. The report from the Son My Village Chief dated March 22, 1968 listed as destroyed 90% of the animals and houses.

(19) *See* Esper, *supra* note 16; My Lai Massacre *supra* note 10, at 343. The Peers Report made specific findings in reference to one platoon leader, Lieutenant Steven K. Books: « Although he knew that a number of his men habitually raped Vietnamese women in villages during operations, on 16 March 1968, he observed, did not prevent, and failed to report several rapes by members of his platoon while in My Lai ... on 16 March.

(20) *See* My Lai Massacre, *supra* note 10, at 493. It is probable that the single casualty was a self-inflicted gun shot wound by one of the members of Company C who was seeking to avoid participation in the operation.

(21) *See* Wilson, *supra* note 11, at 49. One of the soldiers who has refused to participate was Sergeant Michael Bernhardt. Sergeant Bernhardt did not, however, attempt to halt his fellow soldiers from the killings. He stated, « It was point blank murder, and I was standing there watching it ».

(22) *Id.* at 50.

(23) *Id.*

(24) *Id.* at 46.

(25) My Lai Massacre, *supra* note 10, at 36.

(26) Peers Report *supra* note 10, at 7. *See also* My Lai Massacre *supra* note 10, at 274-75. The Army knew the communists had reported the alleged killings of civilians at My Lai but the reports were largely ignored as in keeping with the common communist technique of outrageous propaganda. One notice that was captured in late March 1968 was entitled: « Concerning Crimes Committed by US Imperialists and their Lackeys who killed more than 500 Civilians at Tinh Khe Village (Son My), Son Tinh District ». It stated:

Xam Lang (Thuan Yen) Subhamlet of Tu Cung Hamlet and Xom Go Subhamlet of Co Luy were pounded by artillery for hours.

After shelling, nine helicopters landed troops who besieged the two small hamlets, killing and destroying. They formed themselves into three groups: one group was in charge of killing civilians, one group burned huts, and the third group destroyed vegetation and trees and killed animals.

Wherever they went, civilians were killed, houses and vegetation were destroyed and cows, buffalo, chickens, and ducks were also killed.

They even killed old people and children: pregnant women were raped and killed. This was by far the most barbaric killing in human history.

(27) *See* Peers Report, *supra* note 10 and accompanying text.

(28) Two other key officers involved in the massacre, Lieutenant Steven Brooks and Lieutenant Colonel Frank Barker, had been killed in Vietnam before the formal investigation into My Lai had begun. The Peers Report found that Lieutenant Brooks had « directed and supervised the men of his platoon in the systematic killing of at least 60-70 non-combatants in the subhamlets of My Lai and Bin Tay ». The Peers Report found that Colonel Barker had been involved in the cover-up of the massacre. See My Lai Massacre *supra* note 10, at 343. The officers charged with murder were Captain Ernest L. Medina, Captain Eugene M. Kotouc, 1st Lieutenant William L. Calley, Jr., and 1st Lieutenant Thomas K. Willingham. See Peers Report, *supra* note 10, at 227.

(29) The enlisted men charged with murder were Sergeant Kenneth L. Hodges, Sergeant Charles E. Hutton, Sergeant David Mitchell, Sergeant Escquiel Torres, Specialist 4 William F. Doherty, Specialist 4 Robert W. T'Souvas, Corporal Kenneth Schiel, Private Max Hutson, and Private Gerald A. Smith. See Peers Report, *supra* note 10, at 227.

(30) These consisted of Major General Samuel W. Koster, Brigadier General George H. Young, Colonel Oran K. Henderson, Colonel Nels A. Parson, Lieutenant Colonel Robert B. Luper, Major Charles C. Calhoun, Major David C. Gavin, Major Robert W. Boatman, and 1st Lieutenant Dennis H. Johnson. See Peers Report, *supra* note 10, at 221-222.

(31) *United States v. Calley*, 22 U.S.C.M.A. 534, 48 C.M.R. 19.

(32) William Calley, Jr., actually only served a total of three years, under house arrest at Fort Benning, Georgia and a short period at Fort Leavenworth, Kansas. Calley was released when his sentence was overturned by a Federal District Judge. When the Fifth Circuit Court of Appeals reinstated the conviction, Calley was not returned to confinement. He works today in his father-in-law's jewelry store in Columbus, Georgia. See Wilson, *supra* note 11, at 53.

(33) See *infra* text accompanying notes 73-75.

(34) *Army Teaches Gulf Soldiers How to Avoid My Lai Type Massacre*, Pittsburgh Press, Feb. 24, 1991, at A12 [hereinafter *Avoid My Lai*].

(35) For a legal definition of the term, see Dep't of the Army, Field Manual 27-10, The Law of Land Warfare, at § 499 (July 1956) [hereinafter FM 27-10]: « The term *war crime* is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime ». The definition in FM 27-10 would include both customary and treaty law in the parameters of the law of war. For a layman's definition, see also The Judge Advocate General's School, US Army, JA 401, International Law Basic Course Deskbook (Feb. 1992) at 4-1: « A non-legal, generic term for all illegal actions relating to the inception or conduct of warfare. It includes all the separate categories of offenses tried at Nuremberg ». A more accurate term for this would be: « Crimes Under International Law ». Under a strict definition, the murder of civilian co-belligerents would be a crime but not necessarily a war crime as the victims are not protected persons under any international agreement or general customary principles relating to the conduct of war. However, by popular reference such acts are commonly referred to as war crimes.

(36) Peers Report *supra* note 10, at 229.

(37) See *United States v. Calley*, 46 C.M.R. 1131 (A.C.M.R.) *aff'd* 22 C.M.A. 534, 48 C.M.R. 19 (1973). *But see* Interview with Lindsay Dorrier, in Charlottesville, VA. (12 Mar. 1992). A former classmate of Calley, Mr Dorrier recalls that the Officer Candidate School did provide adequate law of war training to the students. Indeed, all those going through Officer Candidate School received training in the four Geneva Conventions.

(38) Peers Report, *supra* note 10, at 230.

(39) See My Lai Massacre, *supra* note 10, at 220. Four of the cards were entitled «The Enemy in Your Hands», «Nine Rules», «Code of Conduct», and «Geneva Conventions».

(40) Military Assistance Command Vietnam (MACV) Directive 20-4 (20 Apr. 1965) required the immediate reporting of any alleged violation of the law of war to the next higher military authority as well as directly to MACV Headquarters located in Saigon.

(41) The term grave breaches is technically only related to those violations set out as such in the Geneva Convention. For example, grave breaches would include the following acts committed against persons or property protected by the Geneva Conventions: willful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health. See FM 27-10 *supra* note 35, at 179.

(42) Peers Report, *supra* note 10, at 230.

(43) While one may possess a propensity for criminal behavior, all behavior is directly controlled by the individual's volition. In turn, the act of choosing to commit a crime is often related to crude cost benefit analysis. Obviously, crime is more likely to occur in an environment where the likelihood of punishment is minimal. For an excellent discussion on how the criminal mind functions, see Dr. Stanton E. Samenvow, Jr., *Inside the Criminal Mind* 6 (1984).

Criminals cause crime — not bad neighborhoods, inadequate parents, television, schools, drugs, or punishment. Crime resides in the minds of human beings and is not caused by social conditions. Once we as a society recognize this simple fact, we shall take measures radically different from current ones. To be sure, we shall continue to remedy intolerable social conditions for this is worthwhile in and of itself. But we shall not expect criminals to change because of such efforts.

(44) In World War II Americans called the Germans «Krauts» and the Japanese were called «Nips». In the Gulf War, some US troops referred to the Iraqis as «Rag Heads».

(45) Peers Report, *supra* note 10, at 230.

(46) See *infra* note 49 and accompanying text.

(47) Rummel, *supra* note 5, at 24.

(48) My Lai Massacre *supra* note 10, at 199.

(49) *Id.* at 198-99.

(50) *Id.*

(52) Peers Report, *supra* note 10, at 234. The suggestion that members of Task Force Barker were high on marijuana or alcohol were found to be without substance and not a significant factor in the operation.

(52) *Id.* at 235.

(53) *Id.* Many of the combat officer positions were rotated after only six months in the field.

(54) *Id.*

(55) *Id.* at 235.

(56) See *supra* note 13, and accompanying text.

(57) Peers Report, *supra* note 10, at 236. The term «search and destroy» is a term no longer used in the military. During Vietnam it was defined as a «military operation conducted for the purpose of seeking out and destroying enemy forces, installations, resources, and base areas». See My Lai Massacre, *supra* note 10, at 389.

(59) Wilson, *supra* note 11, at 52; My Lai Massacre, *supra* note 10, at 499. Another witness, Private First Class Dennis Conti, related at the trial of Lieutenant Calley that he and Meadlo were told to «take care of the people». But when Lieutenant Calley returned he was upset that the civilians had not been killed. Lieutenant Calley then stated: «I mean kill them».

(60) My Lai was not the only command directed atrocity in Vietnam. A few less extensive killings did take place where superiors ordered subordinates to kill civilians. See e.g. Gary D. Solis, *Marines and Military Law in Vietnam: Trial by Fire* 176 (1989). Lance Corporal Michael S. Krichten (Vietnam, 1970):

[Lance Corporal] Herrod gave the order to kill ... the people, and I told him not to do it ... Then he says, « Well, I have orders to do this by the company commander, and I want it done », and he said it again, « I want these people killed! » And I turned to PFC Boyd, and I said to PFC Boyd, « Is he crazy, or what? » And Boyd said, « I don't know, he must be. » ... And then everybody started opening up on the people.

(61) Peers Report, *supra* note 10, at 232.

(62) See FM 27-10 *supra* note 35, at § 506(a). Under the Geneva Conventions, each nation is under a strict obligation to search for all persons alleged to have committed war crimes, to investigate the allegations of war crimes and to prosecute or extradite those so accused. In this regard, it is the policy of the United States that all US military personnel so accused are prosecuted by military courts martial under the substantive provisions of the Uniform Code of Military Justice. See also Gerhard von Glahn, *Law among Nations* 870-91 (1991).

(63) See Lawrence Taylor, *A Trial of Generals* 165-67 (1981).

Under the concept of command responsibility or indirect responsibility, commanders can be charged with the law of war violations committed by their subordinates if they ordered the crimes committed or « knew that a crime was about to be committed, had the power to prevent it, and failed to exercise that power ». In the United States, this standard has come to be called the Medina Standard, so named for Captain Ernest Medina. A second standard for indirect responsibility that has been the object of much debate and is recognized only in the United States, is the Yamasita Standard. The Yamasita Standard is named for the World War II Japanese general, Tomoyuki Yamasita, who was tried before a military commission for war crimes committed by soldiers under his command. The primary charge against Yamasita revolved around the 20,000 Japanese sailors who went on a murder and rape rampage in Manila near the end of the war. Although the prosecution was unable to prove that Yamasita ordered the crimes or even knew about them, he was convicted under a **should have known** standard. This **should have known** theory held that if, through normal events, the commander **should have known** of the war crimes and did nothing to stop them, he is guilty of the actions of his soldiers. This **should have known** standard applies only when the war crimes are associated with a widespread pattern of abuse over a prolonged period of time. In such a scenario, the commander is presumed to have knowledge of the crime or to have abandoned his command.

(64) See FM 27-10, *supra* note 35, at § 509.

(65) *Id.* at § 509.

(66) *Id.*

(67) *Id.*

(68) Peter B. Williamson, *Patton's Principles: A Handbook for Managers who mean it* 35 (1979).

(69) See *supra* note 43 and accompanying text.

For an interesting observation concerning the nature of man, see *The Dictionary of War Quotations* 341 (Justin Wintle ed., 1989) Anne Frank wrote in 1942:

I don't believe that the big men, the politicians and the capitalists alone, are guilty of war. Oh no, the little man is just as guilty, otherwise the peoples of the world would have risen in revolt long ago. There's in people simply an urge to

kill, to murder and rage, and until all mankind, without exception, undergoes a great change, wars will be waged. Everything that has been built up, cultivated, and grown will be destroyed and disfigured, after which mankind will have to begin all over gain.

(70) Wilson, *supra* note 11, at 50.

(71) *Id.*

(72) *Id.* Remarks of rifleman Roy L. A. Wood.

(73) *The Art of War: Sun Tzu* 9 (James Clavell ed., 1983).

(74) See Kevin M. Generous, *Vietnam, The Secret War* (1985).

The term «revolutionary war» refers to a strategy characterized by disformation and guerilla tactics.

(75) Thomas J. Begines, *The American Military and the Western Idea*, *Military Review*, March 1992, at 39, 42.

(76) See Louis Henkin Et Al., *Might v. Right* 126 (2nd ed. 1991).

The Iraqi conduct during the Gulf War made a mockery of almost every precept in international law. In fact, throughout the entire Gulf War, Saddam Hussein made no attempt to even conceal his open and flagrant violations of the law of war, the United Nations Charter, or any other applicable international norm. As one Pentagon official noted, «it was as if Saddam Hussein awoke each morning and asked, 'What international law shall I violate today?'».

(77) Rummel *supra* note 5, and accompanying text.

(78) A state may express its consent to be bound by a treaty in a number of fashions:

- 1) signature, followed by ratification;
- 2) accession; or
- 3) a declaration of succession.

Even absent consent, however, a state may nonetheless become bound by those standards and norms of behavior that have, through widespread acceptance in the international community, passed into the realm of customary principles of international law. The derivation of customary principles comes through the recognition of past uniformities among nations. Evidences of customary international law may be found by looking at judicial rulings, the writings of renowned jurists, diplomatic interactions, and other documentary sources. See Statute of the International Court of Justice, art. 38, 59 Stat. 1031, T.S. No. 993, 3 Bevens 1179. Thus, both international law and the law of war have numerous sources.

(79) Leo Tolstoy, *War and Peace* 45 (19).

(80) See generally Dietrich Schindler and Jiri Toman, *The Laws of Armed Conflicts* (1988).

(81) See Dep't of Army Pam 27-161-2, *International Law* Vol. 11, act 35 (23 Oct. 1962).

(82) The 1949 Geneva Conventions cover four categories:

- 1) Geneva Convention of August 12, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31;
- 2) Geneva Convention of August 12, 1949 for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85;
- 3) Geneva Convention of August 12, 1949, Relative to the Treatment of Prisoners of War, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135;
- 4) Geneva Convention of August 12, 1949, Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3316, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

(83) FM 27-10, *supra* note 35, at § 2.

(84) Deuteronomy 20: 10-20. *But see* Deuteronomy 21: 17-18.

Some mandates were given for the Hebrews to kill all of the citizens of a few selected cultures. This practice was the exception and was related to halting the spread of systematic human sacrifice and phallic cult practices associated with those cultures.

(85) Alexander the Great (356-323 B.C.) conquered an enormous empire which extended from India to Europe and Asia Minor to North Africa. Alexander is recognized as the finest strategist, tactician and military commander in the ancient world. *See* R. Ernest Dupuy and Trevor N. Dupuy, *The Encyclopedia of Military History* 47-54 (1977).

(86) *Id.*

(87) *Definition of Aggression*, G.A. Res 3314, 29 G.O.A.R. Supp. 31, UN Doc. A/9631, at 142. The UN Definition of Aggression Resolution states in part:

Article 1.

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations ...

Article 2.

The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression ...

Article 3.

Any of the following acts, regardless of a declaration of war, shall ... qualify as an act of aggression:

- a) The invasion or attack by the armed forces of a State ... of another State or part thereof;
- b) Bombardment by the armed forces of a State against the territory of another State ...;
- c) The blockade of the ports or coasts of a State by the armed forces of another State;
- d) An attack by the armed forces of a State on the land, sea or air forces, or marine and airfleets of another State;
- e) The use of armed forces of one State ... in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

(88) *See* Jeffrey A. Addicott, «Operation Desert Storm: R.E. Lee or W.T. Sherman?», 136 *Military Law Review* 115, (1992).

(89) *See e.g.*, Russel F. Weigley, *History of the United States Army* 301 (1984).

(90) *Jus in bello* refers to just conduct in war or abiding by the law of war under the concept of proportionality, military necessity, and unnecessary suffering. The concept of waging a just war, *jus ad bellum*, encompasses several elements to include:

- 1) just cause;
- 2) legitimate authority;
- 3) just intentions;
- 4) public declaration of causes and intentions;
- 5) proportionality in results;
- 6) last resort; and
- 7) a reasonable hope of success.

However, with the adoption of the United Nations Charter, *jus ad bellum* is no longer a viable tool in determining when force is lawful. The United Nations Charter mandates that the analysis for determining the legitimate use of force turn under the self defense provisions of Article 51.

(91) Karl von Clausewitz, *On War* 4 (J. Graham trans. 1918).

(92) H. Wayne Elliott, *Theory and Practice: Some Suggestions for the Law of War Trainer*, Army Lawyer, July 1983, at 1.

(93) *Id.* at 7.

(94) The term «radical regime» was coined by Professor John Norton Moore, Walter L. Brown Professor at Law, University of Virginia School of Law, to describe those totalitarian systems that are likely to resort to violence to achieve goals. See John Norton Moore, Frederick S. Tipson and Robert F. Turner, *National Security Law* 77 (1990). Professor Moore describes the characteristics of the radical regime as follows:

A radical totalitarian regime ... seems to blend together a mixture of a failing centrally planned economy, severe limitations on economic freedom, a one party political system, an absence of an independent judiciary, a police state with minimal human rights and political freedoms at home, denials of the right to emigrate, heavy involvement of the military in political leadership, a large percentage of the GNP devoted to the military sector, a high percentage of the population in the military, leaders strongly motivated by an ideology of «true beliefs» including willingness to use force, aggressively anti-Western and antidemocratic in behavior, and selective support for wars of national liberation, terrorism, and disinformation against Western or democratic interests.

(95) *Id.*

(96) See Solis, *supra* note 60, at vii.

The vast majority of military personnel in Vietnam served with honor. In the Marines « [o]f the 448,000 Marines that served in Vietnam, only a small percentage came into contact with the military justice system. By far the greater number served honorably and never committed illegal or improper acts ».

(97) But see Frederick A. Graf, *Knowing the Law*, Proceedings, June 1988, at 58. If the US record is measured against the rules and not against its adversaries the record has « been far from perfect ».

(98) Elliott, *supra* note 92, at 9.

(99) See Gary L. Walsh, *Role of the Judge Advocate in Special Operations*, The Army Lawyer, Aug. 1989, at 6-8.

(100) Douglas Waller, *Secret Warriors*, Newsweek, June 17, 1991, at 20. Each Special Forces Group has a military attorney assigned as the Group Judge Advocate. Part of the function of this officer is to deal with operational law issues associated with special operations.

(101) See e.g., James A. Burger, *International Law – The Role of the Legal Advisor, and Law of War Instruction*, *The Army Lawyer*, Sept. 1978, at 22; William H. Parks, *The Law of War Advisor*, 31 JAG J. 1 (1980).

(102) See David E. Graham, *Operational Law (OPLAW) – A Concept Comes of Age*, *The Army Lawyer*, July 1987, at 9.

(103) One major effort to better prepare operational law attorneys was the establishment of the Center for Law and Military Operations (CLAMO) by Secretary of the Army, John O. Marsh, Jr., in December of 1988. CLAMO is located at The Judge Advocate General's School in Charlottesville, Virginia. The goal of the Center is to examine both current and potential legal issues attendant to military operations through: the use of professional exchanges such as symposia, consultations, and advice; writing, reviewing, editing, commenting on, and publishing, as appropriate, reports, treatises, articles, or other written materials; and ensuring access to a well stocked joint service OPLAW library. In short, the Center serves as a source for, guide to, and clearinghouse of information about operational law and national security law. See Jeffrey F. Addicott, *Operational Law Note: Proceedings of the First Center for Law and Military Operations Symposium*, 18-20, Apr. 1990, *The Army Lawyer*, Dec 1990, at 47-57.

(104) See Lon Tinkle, *The Alamo* (1958). For 13 days in March of 1836, 187 Americans fought off a Mexican Army that outnumbered them by 30 to 1. The battle took place in the Alamo at San Antonio, Texas. Although all of the Americans could have escaped they choose to fulfill their duty, even knowing it meant certain death – all died in combat (killing 1600 Mexicans in the process) to buy time for the birth of the Texas Republic. The subsequent battle cry of « Remember the Alamo », was used by General Sam Houston in the defeat of the same Mexican forces later that year.

RÉSUMÉ.

Leçons du passé : My Lai

1. But.

Célébration du vingt-cinquième anniversaire du « massacre » de My Lai comme moyen apte à inculquer des leçons critiques du droit de la guerre.

2. Faits.

a. Pendant que l'Amérique ne laisse pas passer le deuxième anniversaire de la belle victoire des alliés dans le Golfe, surveillant attentivement les leçons de la politique d'apaisement au cours de la deuxième guerre mondiale, un autre souvenir des leçons critiques du passé approche très vite. Lors du printemps 1993 on va célébrer le vingt-cinquième anniversaire du massacre de My Lai — un moment approprié pour repasser profondément et renforcer les conclusions.

b. Le 16 mars 1968, une unité de combat américaine commençait une attaque aérienne sur les villages de Son My dans la province de Quang Ngai, au Sud-Vietnam. Cette région était connue comme point de repos pour le 48^e bataillon local du Vietcong. Sous le commandement direct de plusieurs commandants de compagnie, avec le Premier Lieutenant William L. Calley Jr. comme le plus connu, les troupes américaines tuaient plus de 200 civils sud-vietnamiens sans armes. Puisque la tuerie la plus grande avait lieu dans le village de My Lai, l'incident était rendu public comme le massacre de My Lai.

c. My Lai, l'antithèse du comportement de l'armée américaine dans la guerre du Golfe, résonne comme un cauchemar que les Américains voudraient oublier. De l'autre côté, c'est justement par l'horreur et la honte que My Lai ne peut jamais être effacé de la mémoire individuelle et collective des Etats-Unis. Bien que l'incident de My Lai était certainement un faux pas vis-à-vis du comportement général des soldats américains au Vietnam, on ne peut pas s'imaginer un meilleur accompagnateur pour inculquer la nécessité d'une application stricte du droit de la guerre que l'évènement de My Lai. L'armée des Etats-Unis peut, de la Grenade par Panama jusqu'au Golfe, se glorifier largement du témoignage louable de sa loyauté au droit de la guerre par son engagement d'institutionnaliser les leçons qu'on a retenues de My Lai. Par conséquent, chaque soldat américain doit comprendre la signification des leçons de My Lai et les retenir fermement dans sa conscience.

d. Le rapport de Peers (le Lt Gen. W.R. Peers a été invité à donner un aperçu de l'enquête militaire concernant My Lai) mentionne différents éléments qui ont contribué au massacre. Les éléments les plus importants sont :

- 1) Manque d'entraînement convenable au droit de la guerre.
- 2) Le fait que l'ennemi se soumet rarement au droit de la guerre, en utilisant d'habitude des civils féminins et des enfants comme combattants.
- 3) Manque de commandement efficace — surtout au niveau des officiers subalternes.
- 4) Tendance de déshumaniser l'ennemi.
- 5) Problèmes d'organisation dans la structure de l'armée américaine.

3. Le rapport de Peers était un instrument utile dans la tentative d'expliquer quelques éléments par lesquels il était possible de créer une atmosphère qui suscite les infractions au droit de la guerre. Tout bien considéré, on peut ramener ces éléments à ces trois leçons fondamentales :

- a. Les soldats doivent comprendre la raison d'être du droit de la guerre.
- b. A tous les niveaux, on doit entraîner les soldats aux exigences du droit de la guerre.
- c. Un commandement efficace implique que tous les officiers assurent l'observation du droit de la guerre.

4. On ne peut pas éviter des My Lai futures, à moins que les procureurs militaires réussissent à considérer comme hautement prioritaires leur mission d'enseigner le droit de la guerre et d'y exercer tant les juges militaires que les soldats. Le vingt-cinquième anniversaire de My Lai devrait être considéré comme un engagement renouvelé avec le droit de la guerre.

SAMENVATTING.

Lessen uit het verleden : My Lai

1. Doel.

Herdenking van de vijftiendertigste verjaardag van het « bloedbad » in My Lai als een passend middel om de kritieke lessen van oorlogsrecht in te prenten.

2. Feiten.

a. Terwijl Amerika de tweede verjaardag van de prachtige overwinning van de geallieerden in de Golf niet ongemerkt laat voorbij gaan, nauwkeurig lettend op de lessen van de verzoeningspolitiek gedurende de tweede wereldoorlog, nadert er snel een andere herinnering aan kritieke historische lessen. Tijdens de lente van 1993 herdenkt men de vijftiendertigste verjaardag van het bloedbad in My Lai — een geschikt ogenblik om de gebeurtenis nog eens grondig door te nemen en de getrokken lessen te versterken.

b. Op 16 maart 1968 begon een Amerikaanse gevechtseenheid een mobiel luchtaanval op de dorpengroep Son My in de provincie Quang Ngai, Zuid-Vietnam. Dit gebied was gekend als een rustplaats voor het 48^e plaatselijke bataljon van de Vietcong. Onder de directe leiding van verscheidene compagnie-commandanten, met Eerste Luitenant William L. Calley Jr. als meest bekende, doodden de Amerikaanse troepen meer dan 200 ongewapende zuid-vietnamese burgers. Aangezien de grootste slachting plaatsgreep in het dorp My Lai, werd het incident bekend als het My Lai Bloedbad.

c. My Lai als antithese van de houding van het Amerikaanse leger in de Golfoorlog, weerklinkt als een nachtmerrie dat de meeste Amerikanen zouden willen vergeten. Aan de andere kant is het juist vanwege de gruwel en de schande dat My Lai nooit uit het individuele en het collectieve geheugen van de Verenigde Staten mag gewist worden. Alhoewel het My Lai incident zeker een miststap was ten opzichte van de algemene houding van de Amerikaanse soldaten in Vietnam, is het toch klaar dat er geen betere geleider kan zijn om de noodzaak voor een strikte naleving van het oorlogsrecht in te prenten dan het gebeuren in My Lai. Het leger van de Verenigde Staten kan, van Granada over Panama tot de Golf, in grote mate de prijzenswaardige getuigenis als een verdienste aanrekenen in zijn trouw aan het oorlogsrecht door zijn verbintenis, de lessen uit My Lai geleerd tot een officiële instelling te maken. Bijgevolg moet iedere Amerikaanse soldaat de betekenis van de lessen die uit My Lai geleerd werden begrijpen en ze onwrikbaar in zijn bewustzijn vasthouden.

d. Het Peers rapport (Lt Gen. W.R. Peers werd gevraagd een overzicht te geven van het legeronderzoek rond My Lai) vermeldt verscheidene factoren die hebben bijgedragen tot het bloedbad. De belangrijkste daarvan zijn :

- 1) Gebrek aan een aangepaste training in oorlogsrecht.
- 2) Het feit dat de vijand zich zelden onderwerpt aan het oorlogsrecht, door gewoonlijk gebruik te maken van vrouwelijke burgers en kinderen als strijders.
- 3) Gebrek aan krachtadig leiderschap — vooral op het niveau van de lagere officieren.
- 4) Neiging om de vijand te doen ontaarden.
- 5) Organisatorische problemen in de structuur van het Amerikaanse leger.

3. Het Peers-rapport was een nuttig instrument in een poging om sommige van de factoren, waarin het mogelijk was een atmosfeer te creëren waar sneller het oorlogsrecht wordt overtreden, te verklaren. Alles bij elkaar genomen kunnen deze factoren teruggebracht worden tot drie fundamentele lessen.

- a. Soldaten moeten de basis voor het oorlogsrecht begrijpen.
- b. Op alle niveaus moeten de soldaten grondig getraind worden in de vereisten van het oorlogsrecht.
- c. Krachtadig leiderschap houdt in dat alle officieren nakoming van het oorlogsrecht verzekeren.

4. Toekomstige My Lais kunnen niet voorkomen worden, tenzij militaire procureurs het volbrengen van hun rol als leraar en trainer van het oorlogsrecht — zowel aan militaire-auditeurs als aan soldaten — blijven zien als een topprioriteit. De vijftiende verjaardag van My Lai zou opgevat moeten worden als een hernieuwde verbintenis met het oorlogsrecht.

ZUSAMMENFASSUNG.

Lehren aus der Vergangenheit: My Lai

1. Zweck.

Vermittlung wesentlicher Erfahrungen und Lehren im Bereich des Kriegsrechts anlässlich des 25. Jahrestages des Massakers von My Lai.

2. Hintergrundinformationen.

a. Jetzt, da die Vereinigten Staaten den zweiten Jahrestag des herausragenden Sieges der Alliierten im Golf begehen und in konsequenter Befolgung der Lehren aus dem Zweiten Weltkrieg ihre Beschwichtigungspolitik betreiben, naht in Eile ein anderes Mahnzeichen wichtiger historischer Erfahrungen. Im Frühjahr 1993 jährt sich das Massaker von My Lai zum 25. Mal – ein geeigneter Zeitpunkt, um das Geschehen noch einmal zu überdenken und die daraus gezogenen Lehren erneut zu verinnerlichen.

b. Am 16. März 1968 flog ein US-Kampfverband einen Luftlandeangriff gegen den Dorfkomplex Son My in der südvietnamesischen Provinz Quang Ngai. Dieser Komplex war als Sammelraum des dort stationierten 48. Vietkong-Bataillons bekannt. Vor den Augen mehrerer Kompanieoffiziere, von denen First Lieutenant William L. Calley, Jr. der berüchtigtste war, töteten amerikanische Soldaten weit mehr als 200 unbewaffnete südvietnamesische Zivilisten. Da ein Großteil der Morde in dem Dorf May Lai geschah, ging der Vorfall als Massaker von My Lai in die Geschichte ein.

c. Als Antithese zum Verhalten der US-Soldaten im Golfkrieg ruft My Lai Erinnerungen an ein alptraumartiges Ereignis wach, das die meisten Amerikaner am liebsten vergessen würden. Andererseits sind gerade der Schrecken und das Entsetzen der Grund dafür, daß My Lai nicht aus der Erinnerung des einzelnen oder dem Kollektivgedächtnis der USA getilgt werden darf. Auch wenn My Lai sicherlich extrem vom normalen Verhalten der US-Soldaten in Vietnam abweicht, ist doch unbestritten, daß das Geschehen in My Lai in einzigartiger Weise geeignet ist, die Notwendigkeit der strikten Einhaltung des Kriegsrechts zu verdeutlichen. Die lobenwerte Bilanz, die die Vereinigten Staaten in der Einhaltung des Kriegsrechts – von Grenada über Panama bis hin zum Golfkrieg – aufzuweisen haben, ist fast ausschließlich dem Willen und der Bereitschaft der Streitkräfte zu verdanken, die Lehren aus My Lai zu einem Bestandteil ihrer Institution zu machen. Von jedem amerikanischen Soldaten wird danach verlangt, daß er sich der Bedeutung der in My Lai gemachten Erfahrungen bewußt ist und die daraus gezogenen Lehren in Erinnerung behält.

d. Der Peers Report (benannt nach LTG W.R. Peers, der mit der Überprüfung der My Lai-Untersuchungen der US-Armee beauftragt war) nennt verschiedene Faktoren, die für das Geschehen in My Lai verantwortlich waren:

- 1) unzureichende Ausbildung im Kriegsrecht;
- 2) die Tatsache, daß der Gegner selten die Bestimmungen des Kriegsrechts befolgte und häufig Zivilisten – Frauen und Kinder – als Kombattanten einsetzte;
- 3) Mangel an effektiver Führung, insbesondere auch auf der Ebene der jüngeren Offiziere;

- 4) die Tendenz, im Feind nicht den Menschen zu sehen;
- 5) organisatorische Probleme in der Struktur der US-Armee.

3. Während der Peers Report ein geeignetes Mittel bei dem Versuch war, eine Erklärung für einige der Faktoren zu finden, die offensichtlich zur Entstehung eines die Verübung von Kriegsverbrechen begünstigenden Umfeldes beitrugen, lassen sich diese Faktoren im Grunde genommen auf drei wesentliche Lektionen reduzieren:

- a. Den Soldaten muß die Notwendigkeit des Kriegsrechts einsichtig sein.
- b. Die Soldaten sollten auf allen Ebenen eingehend mit den Bestimmungen des Kriegsrechts vertraut gemacht werden.
- c. Effektive Führung setzt voraus, daß alle Offiziere die Einhaltung des Kriegsrechts sicherstellen.

4. Zukünftige My Lai lassen sich nur dann verhindern, wenn die Juristen in den Streitkräften auch weiterhin den Schwerpunkt ihres Lehr- und Ausbildungsauftrages darin sehen, Soldaten und Rechtsoffiziere mit den Regeln des Kriegsrechts vertraut zu machen. Der 25. Jahrestag von My Lai sollte zum Anlaß für eine Erneuerung des Bekenntnisses zum Kriegsrecht genommen werden.

RIASSUNTO.

Lezioni del passato :

My Lai

1. Scopo.

Celebrazione del 25° anniversario del «massacro» di My Lai come lezione critica del diritto della guerra.

2. Fatti.

a. Mentre l'America non lascia passare inosservato il secondo anniversario della bella vittoria degli alleati nel Golfo, sorvegliando attentamente le lezioni della politica di pacificazione dopo la seconda guerra mondiale, un altro ricordo delle lezioni critiche del passato si avvicina rapidamente. Nella primavera del 1993 si celebrerà il venticinquesimo anniversario del massacro di My Lai — un momento appropriato per rivisitare profondamente e rafforzare le conclusioni.

b. Il 16 marzo 1968, un'unità di combattimento americana iniziava un attacco aereo sui villaggi di Son Hay nella provincia di Quang Ngai, nel sud Vietnam. Questa regione era conosciuta come punto di riposo del 48° battaglione locale del Vietcong. Agli ordini di vari comandanti di compagnia — tra i quali, il più conosciuto, il primo tenente William Calley — le truppe americane uccidevano più di 200 civili sud-ietnamiti inermi.

Poichè la più grande carneficina era avvenuta nel villaggio di My Lai, l'incidente era reso pubblico come il massacro di My Lai.

c. My Lai l'antitesi del comportamento dell'esercito americano nella guerra del Golfo, è come un incubo che gli Americani vorrebbero dimenticare. Dall'altro lato, è proprio a causa dell'orrore e della vergogna che My Lai non può essere cancellato dalla memoria individuale e collettiva degli Stati Uniti. Benchè l'incidente de My Lai sia da considerare un passo falso in rapporto al comportamento generale dei soldati americani in Vietnam, esso costituisce il migliore supporto per dimostrare la necessità d'una rigorosa applicazione del diritto della guerra. L'esercito degli Stati Uniti, da Granada per Panama sino al Golfo, può gloriarsi largamente di aver lodevolmente testimoniato la sua lealtà verso il diritto della guerra, attraverso il suo impegno ad istituzionalizzare le lezioni di My Lai. Per conseguenza, ogni soldato americano deve comprendere il significato delle lezioni di My Lai e conservarle fermamente nella propria coscienza.

d. Il rapporto Peers (il ten.gen. W.R. Peers è stato invitato a dare un quadro dell'inchiesta militare su My Lai) ha menzionato diversi elementi che hanno contribuito al massacro. Gli elementi più importanti sono :

- 1) Mancanza di un sufficiente addestramento al diritto della guerra.
- 2) Il fatto che il nemico raramente si conformava al diritto della guerra, utilizzando abitualmente, come combattenti, civili donne e bambini.
- 3) Mancanza di un comando efficace, soprattutto a livello degli ufficiali subalterni.
- 4) Tendenza a disumanizzare il nemico.
- 5) Problemi di organizzazione nella struttura dell'esercito americano.

3. Il rapporto di Peers è da considerare uno strumento utile nel tentativo di spiegare come sia stato possibile creare un'atmosfera favorevole alle violazioni del diritto della guerra. Tutto ben considerato, possiamo riportare i motivi a tre lezioni fondamentali:

- a. I soldati debbono comprendere la ragione d'essere del diritto della guerra.
- b. A tutti i livelli, è necessario addestrare i militari alle esigenze del diritto della guerra.
- c. Un comando efficiente implica che tutti gli ufficiali assicurino l'osservanza del diritto della guerra.

4. Non si possono evitare future My Lai, a meno che i procuratori militari riescano a considerare come altamente prioritaria la loro missione di insegnare il diritto della guerra e di addestrarvi tanto i giudici militari che i soldati. Il 25° anniversario di My Lai dovrebbe essere considerato come un impegno rinnovato con il diritto della guerra.

RESUMEN.

**Lecciones del pasado :
My Lai**

1. Objeto.

Celebración del vigésimo quinto aniversario de la « matanza » de My Lai como método apto para impartir lecciones críticas sobre derecho de la guerra.

2. Hechos.

a. Mientras que América no olvida el segundo aniversario de la victoria de los Aliados en el Golfo, revisando la política de paz desarrollada durante la segunda guerra mundial, otro recuerdo de lecciones críticas del pasado se aproxima rápidamente. En la primavera de 1993 se celebrará el vigésimo quinto aniversario de la matanza de My Lai, un acontecimiento apropiado para repasarlo profundamente y extraer conclusiones.

b. El 16 de marzo de 1968, una unidad de combate americana comenzaba un ataque aéreo contra las aldeas de My Lai, en la provincia de Quang Ngai, en Vietnam del Sur. Esta región era conocida como punto de descanso del 48º batallón local del Vietcong. Bajo el mando directo de varios comandantes de compañía, de los que el más conocido fue el Primer Teniente William L. Calley Jr., las tropas americanas mataron a más de 200 civiles subvietnamitas desarmados. Puesto que la matanza mayor ocurrió en la aldea de My Lai, el incidente es conocido públicamente por este nombre.

c. My Lai, la antítesis del compartimiento del ejército americano en la guerra del Golfo, resuena como una pesadeilla que los americanos quisieran olvidar. Pero, del otro lado, es precisamente el horror y la vergüenza lo que hacen que My Lai no pueda jamás borrarse de la memoria individual y colectiva de los Estados Unidos. Aunque el incidente de My Lai sea realmente un paso en falso frente al comportamiento general de los soldados americanos en Vietnam, es imposible imaginar un ejemplo mejor para inculcar la necesidad de una aplicación estricta del derecho de la guerra que aquel acontecimiento. El ejército de los Estados Unidos puede gloriarse de su comportamiento, desde Granada al Golfo pasando por Panamá, dando testimonio de su lealtad al derecho de la guerra por su compromiso de institucionalizar las lecciones recibidas en My Lai. En consecuencia, cada soldado americano debe entender la significación de las lecciones de My Lai y retenerlas firmemente en su conciencia.

d. El informe Peers (el Tte. General W.R. Peers fue invitado a dar su opinión sobre la encuesta militar relativa a My Lai) menciona diferentes elementos que contribuyeron a la hecatombe. Los más importantes son :

- 1) Falta de entrenamiento adecuado en relación con el derecho de la guerra.
- 2) El hecho de que el enemigo rara vez se sometía al derecho de la guerra y habitualmente utilizaba mujeres y niños civiles como combatientes.
- 3) Falta de un mando eficaz — especialmente a nivel de oficiales subalternos.
- 4) Tendencia a deshumanizar al enemigo.
- 5) Problemas de organización en la estructura del ejército americano.

3. El informe Peers fué un instrumento útil en la tentativa de explicar algunas circunstancias cuya concurrencia hace posible crear una atmosfera que conduce a la infracción del derecho de la guerra. Una plena consideración de todo ello, puede llevarnos a estas tres lecciones fundamentales:

- a. Los soldados deben comprender la razón de ser del derecho de la guerra.
- b. Se debe entrenar a los militares, a todos los niveles, en las exigencias del derecho de la guerra.
- c. Un mando eficaz implica que todos los oficiales aseguren la observancia del derecho de la guerra.

4. No se podrán evitar futuros My Lais, a menos que los fiscales militares consigan contemplar como parte altamente prioritaria de su misión la enseñanza del derecho de la guerra y su aplicación tanto por parte de los jueces militares como de los propios soldados. El vigésimo quinto aniversario de My Lai debería ser considerado como un compromiso renovado con el derecho de la guerra.
