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U. S. POLICY IN VIETNAM, AS IT RELATES TO
THE GENEVA AND S. E. A. T. O. AGREEMENTS

Bobby Shepherd

May 6, 1971

Honors, Special Studies.

Few chapters of American history have been filled with more importance and had more impact upon this nation politically, socially and morally than has the era of active involvement in the land war in Vietnam, during the mid 1960's. The war has taken almost 50,000 American lives, has contributed directly to the political end of one American president and has plunged the United States into an ordeal of re-examination and internal turmoil rarely seen in U. S. history.

As great as the impact of this war has been, it is remarkable that little is recalled by American citizens or acknowledged by the government, of its roots in the mid 1950's. Little is remembered of the great conferences of 1954-55, which sought to bring some peace and political order to Southeast Asia. Rarely has the United States government presented a factual comparison of our massive involvement in South Vietnam and the two legal documents which have done most to shape Southeast Asia in the last twenty years.

This paper will examine these two documents, The 1954 Geneva Accords and the Southeast Asia Collective Defense Treaty, commonly referred to as the S. E. A. T. O. Treaty, as they relate to American policy in Vietnam. Although this paper will center on these two documents, it will deal in a less extensive manner with other events, documents and "commitments", which necessarily are intertwined with the two doc-

uments already mentioned.

This paper is concerned with the legality not the morality of the involvement of the United States in Vietnam and it is concerned with those events which have a bearing on its legality as it is related to the two documents.

Before considering the basic subjects of this paper, It is necessary to review briefly the events in Post World War II Vietnamese history which would form the basis for the conflict still being waged today.

The situation as World War II ended in Southeast Asia, as concerns Vietnam was this. The Japanese forces which had ousted the French colonial authorities, had been defeated. The Viet Nam Doc Lap Dong Minh or Viet Minh, led by Ho Chi Minh had been set up to combat, "French and Japanese Fascism."¹ Basically the Viet Minh was a nationalistic group, it was however, led and controlled by Communist elements. The group fought against the Japanese, during the war, probably in an effort to free their own country more than to aid the allies. The French forces left in Vietnam were only the disarmed remnants of the pre-World War II colonial force. They were unable to resume control of Vietnam. At Potsdam, in July, 1945, the American, British and Soviet leaders made plans to divide Vietnam at the sixteenth parallel. British

¹Draper, Theodore, Abuse of Power, The Viking Press, New York, 1967, p. 18.

forces were to occupy the Southern sector while Chinese forces under Chiang Kai-shek were to occupy the North. The objective of these two armies were to evacuate all prisoners of war left in Vietnam and to disarm and capture all remaining Japanese soldiers in that country. No arrangements were made for the restoration of French authority in Vietnam. President Roosevelt, in the Malta and Yalta talks, had expressed his belief in the desirability of a trusteeship for Indo China, and his opposition to a restoration of French colonialism in that area.²

The British and Indian troops in the South area, at the order of their commander, General Gracey, disarmed the Viet Minh forces in their zone, in violation of his orders. His forces re-armed the French soldiers of that zone and allowed them to carry out a coup d'etat against the Viet Minh government. Open warfare between the nationalistic Viet Minh and the British and French forces began. When the British pulled out, 50,000 French troops remained in the Southern sector of Vietnam.³

In the Northern region, Chinese forces were hostile to both the Viet Minh and the French. They dealt with the pop-

²Foreign Relations of the United States, Diplomatic Papers, The Conferences at Malta and Yalta, 1945, p. 770.

³McTurnan, George and Lewis, John W., The United States in Vietnam, Delta Printing, 1967, p. 30.

ulation as severely as had the Japanese. The Chinese indicated an unwillingness to leave the country after their assignment was completed. As a result the Viet Minh had to choose between the Chinese and the French or fight both. Their hostility towards China proved the greater.

On March 6, 1946, the French agreed to recognize Ho Chi Minh's, "Democratic Republic of Vietnam," as a free state, forming part of the Indo Chinese Federation and the French Union. The French agreed to grant that state independence in five years. The agreement collapsed in months, as France, with U. S. weapons, sought to regain its position of power. A clash between the Viet Minh and French units at Haiphong on November 20, 1946, began a series of incidents which resulted in full scale combat in December of that year.

The United States was, at first, hesitant in backing the French colonial effort. The fall of China to the communists in 1949, however, caused the Truman administration to lean towards the French. U. S. aid to them increased. In February of 1950, the U. S. extended formal diplomatic recognition to the Bao Dai puppet regime in Vietnam. Soon aid to the French became associated with intervention in Korea and the Formosa straits in a policy of containment

towards China.⁴ The French soon were regarded as battling communist invasion rather than suppressing a patriotic or nationalistic movement. By 1952, the U. S. was providing 1/3 to 1/2 of the cost of the French war effort.⁵ In July, 1953, France promised to grant independence to Vietnam. Thus giving the U. S. and Secretary of State John Foster Dulles a basis for increasing its support.

In spite of U. S. aid, the French position deteriorated. At the battle of Dien Bien Phu, a major French force faced defeat. French Chief of Staff Paul Ely, informed President Eisenhower on March 20, 1954, that only massive U. S. intervention could stave off a French defeat. Over the advice of Chairman of the Joint Chiefs of Staff, Admiral Radford, Vice President Nixon and Secretary of State Dulles, Eisenhower refused to act.⁶ Dien Bien Phu fell.

Facing military defeat abroad and domestic crisis at home, the French sought a solution which would allow them to save face. The Geneva Conference provided such an exit.

The Geneva Conference was planned by American, Russian, British and French foreign ministers. Cambodia, The Viet Minh

⁴ibid., p. 31.

⁵op cit., Draper, Abuse of Power, p. 26.

⁶McTurnam and Lewis, The United States in Vietnam, p. 39.

Democratic Republic of Vietnam, Bao Dai's State of Vietnam, Laos and Communist China, also took part. It was held from April 26, to July 21, 1954. Both the French and the Viet Minh seemed eager to make a settlement. The newly elected Prime Minister of France, Pierre Mendes France, was eager to extricate French forces from the battlefields. The Viet Minh, led by Ho Chi Minh, possibly pressured by Russia and Communist China and eager to avoid further casualties, also seemed willing to compromise. With a battlefield advantage, The Viet Minh were in a favorable position. Both sides made considerable concessions.

The U. S.'s attitude towards the conference was ambiguous. With Congressional elections near, Eisenhower didn't want to be charged with losing Indo China in an unfavorable settlement or with blocking peace hopes.⁷ The attitude of our government seemed to be one of watch and wait. And, disassociating himself from the conference, Dulles left Under Secretary of State Bedell Smith to represent the U. S.

The results of the conference were expressed in two documents; the bilateral Agreement on the Cessation of Hostilities in Vietnam and the multi-lateral Final Declaration. These two documents will be explored, as U. S. policy towards Vietnam is considered in their relationship to them.

⁷ibid., p. 44.

The bilateral treaty included the following provisions; a provisional military demarcation line (fixed at the 17th parallel), "on either side of which the forces of the two parties shall be regrouped after their withdrawal," Viet Minh to the North, French Union Forces to the South. A maximum regrouping period of 300 days. Civil administration was to be handled by the controlling forces in each zone. General elections were to be held in the summer of 1956. The treaty banned additional troop reinforcements, arms or the establishment of new military bases. An international commission (Canada, India and Poland) was established to supervise the execution of the agreements.⁸

It is important to point out at this time, that the division of Vietnam was only provisional and not in any way meant to signify the permanent establishment of two separate states. Vietnam was still one nation, one half under the jurisdiction of the French, the other under the Viet Minh.

The Final Declaration of the convention was agreed to by all the nations present except the representatives of the United States and the delegates of the Bao Dai, State of Vietnam. This declaration endorsed the armistice agreement; made arrangements for detailed political and administrative processes; re-enforced the temporary nature of the provisional division line and took notice of the July, 1956 date

⁸ Cmd. 9239, Miscellaneous No. 20 (1954), Her Majesty's Stationery Office, London, 1954.

for general elections.

Although the United States refused to officially endorse this Final Declaration, a statement was made which implied its reluctant intention to abide by its provisions. In regard to the accords, the U. S. would, "refrain from the threat or the use of force to disturb them," further it, "would view any renewal of the aggression in violation of the aforesaid agreements with grave concern, and as seriously threatening international peace and security."⁹ A similar pledge was made by State of Vietnam Foreign Minister Tran Van Do on July 21, 1954.¹⁰

It is useful, at this point, to quote one provision of the Bilateral treaty which was endorsed by the Final Declaration; and a provision of that Final Declaration:

"4. The signatories of the present agreement and their successors in their function shall be responsible for the observance and enforcement of the terms and provisions thereof."¹¹

"The Conference takes note of the clauses in the agreement on the cessation of hostilities in Vietnam to the effect that no military base under the control of a foreign state may be established in the regrouping zones of the two parties, the latter having the obligation to see that the zones allotted to them shall not constitute part of any military alliance and shall

⁹McTurnan and Lewis, The United States in Vietnam. p. 51.

¹⁰Fifeld, Russell H., The Diplomacy of Southeast Asia, Harper and Brothers, New York, 1958., p. 296.

¹¹op cit., Cmd. 9239, Miscellaneous No. 20

not be utilized for the resumption of hostilities or in the service of an aggressive policy."¹²

The latter provision was taken by Ho Chi Minh, as insurance that elections would come about regardless of how the French fared in the South. It was probably included as a compromise measure in exchange for the Viet Minh's approval of a temporary partition at the 17th parallel. With the out right support of the Soviet Union and Great Britain along with the tacit approval of the United States, the Viet Minh were reasonably confident that the terms of the agreement would be adhered to.

When the desperate condition of the French armies in Vietnam in 1954 is considered, it is remarkable that the French and her allies left Geneva with as much as they did. In fact, both Dulles and President Eisenhower felt that the results of the conference were not as bad as had been expected. However, Dulles still regarded with horror any agreement which yielded to a communist oriented regime.¹³

After setting the stage, and considering briefly the provisions of the Geneva agreements, we can now look at U. S. policy towards Vietnam in the light of those provisions.

I feel it is safe to assume, that however distaste-

¹²ibid.

¹³Draper, Abuse of Power., p. 35.

ful, they had indicated by their statements at Geneva and by their lack of active participation in the talks themselves, that they would not seek to interfere with their execution. The accords seem basically to be the resolution of a state of conflict between the French and the Viet Minh's Democratic Republic of Vietnam, which had, at one time, received recognition from France. Thus a legal basis for peace in Vietnam had been set-up.

A discussion of forth coming American actions toward Vietnam and the Geneva accords must begin with an understanding of the attitude of the American leaders toward the Vietnam question. Secretary of State Dulles stated, during the conference, "American public opinion would never tolerate the guaranteeing of the subjection of millions of Vietnamese to Communist rule."¹⁴ This statement was typical of the attitude of many in the administration. The Viet Minh were regarded as a part of the international Communist movement. This was a period when the "domino theory," was much in vogue. According to this theory, the fall of Vietnam to the Communists would cause the rest of Indo China to fall, then Indonesia and Malaya, followed by the rest of Asia and the Pacific. This was the era of "brinkmanship," of confrontation between East and West, the Free and the Communist

¹⁴McTurnan and Lewis, The United States in Vietnam, p. 60.

World. Korea, Formosa and Greece were examples of this. The American government was, evidently, set on continuing this pattern in Vietnam and Indo China.

After the Geneva conference, the United States began a policy, towards Vietnam, which violated the intent if not the letter of those accords.

This violation took form, principally, in the disregarding, by the United States, of the temporary status of the 17th parallel provisional demarcation line. The United States began treating the Southern zone, The State of Vietnam, as a separate and sovereign nation.

More than a year before Geneva, the United States had developed a plan for an alliance of free Southeast Asian states. The primary purpose of this alliance would be to halt the communist advance in the area. The plan had been impossible to instigate before Geneva. The Asian nations were, as a group, hesitant to join in any alliance with France, while a colonial war was in progress in Vietnam.

The end of hostilities in Vietnam, opened the way for such an alliance. The Southeast Asia Collective Defence Treaty, or S. E. A. T. O. pact, was signed on September 8, 1954, at Manila. The treaty and its implications will be discussed in more detail later. The signing nations were, The U. S., Great Britain, France, Australia, New Zealand, The Philippines, Pakistan, and Thailand. Included in the protocol of that Treaty, but not actually signing, was

Cambodia, Laos and the, "free territory under the jurisdiction of the State of Vietnam."¹⁵ The Southern zone of Vietnam had entered into an alliance, if not technically, in fact and purpose. This was a violation of the Bilateral treaty and of the Final Declaration, which states, "... (the zones) shall not constitute part of any military alliance..." The S. E. A. T. O. treaty was certainly a military alliance. The treaty violated the Geneva accords in spirit, it implied that the 17th parallel had a political character and it ignored the neutrality of the Southern zone. It signalled the U. S.'s intent to underwrite a separate state in Southern Vietnam.¹⁶ The S. E. A. T. O. pact seems to be part of the United States answer to the domino theory. That answer being to draw the line at the 17th parallel in order to prevent further communist expansion. Dulles said, after Geneva, that handing over half of Vietnam to the Communists had, "eliminated the possibility of a domino effect in Southeast Asia," by, "saving" the other half, Laos and Cambodia.¹⁷ There are indications,

¹⁵ ibid., p. 62.

¹⁶ ibid., p. 63.

¹⁷ Draper, Abuse of Power, p. 36.

in fact, that S. E. A. T. O. was aimed primarily at defending Indo China against further communist advance, more than to protect the other Asian states.¹⁸ These facts raise the question of whether the U. S. ever intended to allow the re-unification to take place. This is re-enforced by the anti-subversion provision of the treaty aimed specifically towards Vietnam and Indo China.

As S. E. A. T. O. indicated a permanent status for the demarcation line, so did U. S. policy indicate its recognition of a sovereign State of Vietnam in the Southern zone. Originally, after the cease fire, U. S. aid to Vietnam was directed through the French Union forces there, and not to the Vietnamese themselves. Gradually as French authorities withdrew during the two year regroupment period, the United States took its place and attempted to build up a Southern state.

On July 7, 1954, Ngo Dinh Diem formed a government in the Southern zone. The Chief of State, Bao Dai, made Diem Premier, giving him full governmental power. The two leaders came to odds, with Diem finally triumphing. A referendum held on October 23, 1955, favored the deposition of Bao Dai and his replacement by Diem, the major-

¹⁸New York Times, New York, January 22, 1955, p.1.

ity was a highly questionable 98.2%.¹⁹ In ensuing struggles for power, the U. S. refused to support any government but Diem's. By early 1955, the U. S. was playing the major role in training and reorganizing the National Army. This again appears to have been an attempt to build a sovereign state in violation of the temporary status given it at the Geneva talks.

Congress seemed to go along with the administration in forgetting about re-unification. In 1954, Senator Mike Mansfield, in speaking of the Southern zone (State of Vietnam), talked of U. S. Aid creating, "...over a set period of time a self sustaining Vietnam free from further direct reliance on United States assistance."²⁰

President Eisenhower, in his 1954 letter to Diem, pledged U. S. economic assistance to the State of Vietnam.²¹ Resulting aid to the State of Vietnam was $\frac{1}{4}$ military and $\frac{3}{4}$ economic.²²

¹⁹ Fifield, The Diplomacy of Southeast Asia, p. 305.

²⁰ McCarthy, Joseph E., Illusion of Power in Vietnam. Carlton Press, New York, 1967. p. 71.

²¹ Ashmore, Harry S. and Baggs, William C., Mission to Hanoi., G. P. Putnam's Sons, New York, 1961. p. 250.

²² Larson, Don R. and Arthur., Vietnam and Beyond Rule of Law Research Center, Duke University, Durham, N. C., 1965.

It is to be remembered that the Geneva accords expressly forbid the introduction of, "all kinds of arms and munitions."

In the summer of 1955, Ho Chi Minh attempted to open the promised consultations on the elections of 1956. Diem refused. On July 16, 1955, Diem stated, "We have not signed the Geneva Agreements. We are not bound in any way by these agreements, signed against the will of the Vietnamese people."²³ The United States supported Diem in this matter. The U. S. position was summed up by Assistant Secretary of State, Walter S. Robertson, on June 1, 1956, "We believe in free elections, and we support President Diem fully in his position that if elections are held, there first must be conditions which preclude intimidation or coercion of the electorate."²⁴ This statement seems especially inappropriate if the conduct and results of the 1955, State of Vietnam referendum are considered.

It was the French who should have guaranteed the execution of the elections in 1956. On March 30, 1956, however, The State of Vietnam and France had reached agreement on the timetable for the complete withdrawal of the French Exped-

²³McTurnan and Lewis, The United States in Vietnam., p. 81.

²⁴Fifeld, The Diplomacy of Southeast Asia., p. 302.

itionary Corps. The French Military Mission itself came to an end on May 31, 1957. Long before this however the French had turned over authority in the Southern zone to Diem backed by the U. S.

The Geneva accords specifically state that the successors to either the French or The Viet Minh, were obligated to carry out the provisions of the Treaty.²⁵ As successor, in authority, to the French, Diem was legally bound to abide by the accords or to turn the government back over to the French. He took a third course, he disavowed certain sections of the treaty, as they applied to the State of Vietnam.²⁶ Of the three, "big" free world powers, only the United States supported Diem's actions. Both France and Great Britain refused to endorse his actions.

In two years, the United States had moved from a position of tacit approval for a separate State of Vietnam, by arming it, including it in the S. E. A. T. O. Treaty, both in violation of the Geneva accords and aiding it economically, to a position of out right recognition of the State, as a sovereign nation, by supporting Diem's refusal to honor the Geneva elections provisions.

The action of those two years are interesting when they are compared with statements made later by U. S. officials

²⁵Cmd. 9239, Miscellaneous.

²⁶McTurnan and Lewis, The United States in Vietnam.
p. 82.

In his 1966 State of The Union message, Lyndon Jognson said, "We stand by the Geneva Agreements of 1954 and 1962." In that same speech, Jognson stated:

"Not to many years ago Vietnam was a peaceful, if troubled, land. In the north was an independent communist government. In the south, a people struggled to build a nation with the friendly help of the united States.Then...North Vietnam decided on conquest."²⁷

U. S. News and World Report, reported in April of 1965, that the U. S. government was ready to discuss a settlement in Vietnam, if the communists would agree to respect the 1954 Geneva Agreements, which they signed, and let South Vietnam alone.²⁸ In 1966, Deputy Under Secretary for political Affairs, U. Alexis Johnson, declared:

"It is a travesty on the truth to allege that the present situation was brought about by the failure of the south to carry out the 1954 accords. In fact, it was the North that was not willing to submit itself to the test of free elections under international control."²⁹

A State Department White Paper in 1961 stated:

"It was the communists calculation that nationwide elections scheduled in the accords for 1956 would turn all of South Vietnam over to them....The authorities

²⁷Draper, Abuse of Power, p. 90.

²⁸U. S. News and World Report., April 5, 1965 p. 64.

²⁹Department of State Bulletin, April 4, 1966, p. 530.

refused to fall into this well laid trap."³⁰

In 1964, in an address on the campus of Syracuse University, Lyndon Johnson used the unilateral declaration on Geneva, by the U. S., in 1954, as a justification for our intervention in Vietnam. He accused, in fact, North Vietnam of violating the accords first. He did the same in another section of that same speech:

"In 1954, that Government (North Vietnam) pledged that it would, "respect the territory under the military control of the other party and engage in no hostile acts against the other party."³¹

There is, in fact, little indication that the North Vietnamese had violated this provision substantially until well after the election date, Summer 1956, had passed.

Secretary of State William Rogers stated, on March 27, 1969:

"Basically, and as essential elements in an ultimate settlement, we envisage:
Restoration of the provisional military demarcation line at the 17th parallel, with reunification to be resolved in the future by the free decision of the people of North Vietnam and South Vietnam."³²

³⁰Department of State publication 7308, released December, 1961.

³¹New York Times, New York, August 6, 1964, p. 7.

³²Hearings before Committee on Foreign Relations United States Senate, Ninety-first Congress, first session, March 27, 1969, y4. f76/2:R63.

As the information, events and statements of the last few pages are recounted, it is hard to find a solid and all encompassing U. S. policy strictly adhering to the Geneva accords of 1954. It neither supports them nor directly oppose them. They have been violated when it was convenient and adhered to when it was expedient to do so. In fact the Geneva accords appear to have had little effect at all in restraining this powerful nation's Vietnam policy.

The United States has used the S. E. A. T. O. treaty as being a solid commitment to commit American forces to the Vietnam conflict. In justifying U. S. policy there, the Johnson administration, under which our involvement has mushroomed, has used the S. E. A. T. O. pact along with President Eisenhower's letter to Diem in October of 1954 and President Kennedy's letter of December 14, 1961, as promises to automatically send troops and arms.³³

The latter two items are the easiest to dispense with. On April 20, 1964, Lyndon Johnson said, in New York, ".... In the case of Vietnam, our commitment today is just the same as the commitment made by President Eisenhower in 1954."³⁴ In 1966, he said, "our men in Vietnam are there: to keep a promise that was made 12 years ago."³⁵ In a news con-

³³ Draper, Abuse of Power., p. 156.

³⁴ Lawson, Vietnam and Beyond, p. 106-7.

³⁵ Ashmore and Baggs, Mission To Hanoi., p. 251.

ference in June of 1964, he stated:

"In the case of Vietnam, our commitment today is just the same as the commitment made by President Eisenhower to President Diem in 1954, a commitment to help these people help themselves."³⁶

Finally, in 1965, the president said, "Ten years ago we pledged our help. Three Presidents have supported that pledge. We will not break it."³⁷ At Johns Hopkins University, Johnson stated, "We are there because we have a promise to keep. Since 1954 every American president has offered support to the people of South Vietnam."³⁸

What was this "commitment," of the Eisenhower letter. The letter, made no mention of military aid, it was a conditional offer of economic assistance:

"We have been exploring ways and means to permit our aid to Vietnam to be more effective....I am accordingly, instructing the American ambassador to Vietnam to examine with you...how an intelligent program of American aid....can serve to assist Vietnam....It hopes that such aid, combined with your own continuing efforts, will contribute effectively toward an independent Vietnam, endowed with a strong government."³⁹

³⁶Department of State Bulletin, June 22, 1964.

³⁷Larson, Vietnam and Beyond., State of the Union Message.

³⁸New York Times, New York, "Lyndon Johnson at Johns Hopkins University,"

³⁹Larson, Vietnam and Beyond, p. 100.

Although some military aid, arms and munitions, followed the letter, there is no mention of any type of military commitment towards South Vietnam. In fact, in August of 1965, former President Eisenhower maintained that the letter was not a commitment by the U. S. to military intervention: "We were talking, at that time, not in terms of military support....We were talking about economic aid what we call foreign aid...."⁴⁰ This would seem to insubstantiate suggestions that the Eisenhower letter committed the U. S. to military intervention.

The Kennedy letter is less often sighted as establishing a commitment. In that letter Kennedy informed Diem that the United States, in response to his request, intended to, "promptly increase our assistance to your (Diem's) defense effort."⁴¹ Later statements by Kennedy would seem to indicate that he too was unwilling to make a solid commitment, in the form of substantial numbers of men, ".... they are the ones to win it (the war) or lose it," we could only send, "our men out there as advisors."⁴²

⁴⁰U. S. News and World Report., U. S. News and World Report Inc., Washington D. C., August 17, 1965, p. 15

⁴¹Draper, Abuse of Power., p. 159.

⁴²ibid.

With Kennedy's limited military aid to South Vietnam, it is doubtful that his letter can be construed to bind the U. S. to large scale military aid.

It seems doubtful that either letter, Eisenhower's in 1954 or Kennedy's in 1961 is substantial evidence of a long lasting legal U. S. military commitment to South Vietnam.

The S. E. A. T. O. treaty or Southeast Asia Collective Defense Treaty has also been the basis of the United States' action in Vietnam. It has been used by Presidents Johnson and Nixon in justifying our major role in the Indo China war.⁴³

In August of 1964, president Johnson, in recounting the U. S. commitments in Vietnam stated that in September of 1954, the U. S. Signed the Manila, S. E. A. T. O. pact, recognizing that aggression in South Vietnam would endanger the peace and safety of other nations and he insisted that the treaty bound the U. S. to military aid in South Vietnam.⁴⁴

This paper has already discussed the questionable legal basis, in relation to Geneva, of including South Vietnam in the protocol of the S. E. A. T. O. pact. This paper has also

⁴³ibid., p. 156.

⁴⁴Larson, Vietnam and Beyond, p. 107

recounted, briefly the origin of the S. E. A. T. O. treaty. The treaty, as has been stated, was aimed at correcting the imbalance between the communist and free nations, created by the French defeat in Indo China. Its primary purpose was to prevent the rest of Indo China from falling to the communists.

The major obligations under the treaty are expressed in Article IV; sections 1 and 2:

- "1. Each party recognizes that aggression by means of armed attack in the treaty area against any of the parties or against any State or territory which the parties by unanimous consent may here after designate, would endanger its own peace and safety,...and agrees to meet the common danger under its own constitutional processes."
- "2. If, in the opinion of any of the parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any party in the treaty area....is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the parties shall consult immediately in order to agree on the measures which shall be taken for the common defense."⁴⁵

These two provisions describe, 1.) Korea type, actual invasion and 2.) Indo China type, subversion. Secretary of State Dulles described the first type as, "....open

⁴⁵Draper, Abuse of Power., p. 157.

military aggression by the Chinese Communist regime." The second he referred to as, "disturbances formented from Communist China."⁴⁶ The latter type would fit the Vietnam conflict, at least in its earlier stages of the early and mid 1960's.

It is still unclear, if the accords, in a legal sense apply to those Protocol states, South Vietnam, Laos and Cambodia, as they did not sign the agreements. A communique issued during the Manila Conference in 1955, indicated that only the signees would be defended actively, with only assistance, hopefully given, to the Protocol area.⁴⁷ The legal grounds for the S. E. A. T. O. treaty to include Indo China in the protocol is highly questionable. As Walter Lippman states, "This was the first instance of an international treaty legally interfering in the internal affairs of non signatory."⁴⁸

The question remains; Did the S. E. A. T. O. treaty obligate the United States and the other signitories to take the military action which has been taken? Statements by several authorities would indicate that it does not.

⁴⁶Larson, Vietnam and Beyond., p. 102

⁴⁷New York Times, New York, January 22, 1955, p. 1.

⁴⁸McCarthy, Illusion of Power in Vietnam, p. 49.

In testifying before the Senate Foreign Relations Committee in November of 1954, Dulles declared:

"The treaty does not attempt to get into the difficult question as to how precisely we act.... Article IV, paragraph 2, contemplates that if the situation (of subversion) arises or threatens, that we should consult together immediately in order to agree on measures which should be taken. That is an obligation for consultation. It is not an obligation for action."⁴⁹

Dulles later stated, "if there is a revolutionary movement in Vietnam or in Thailand, we would consult together as to what to do about it,....But we have no undertaking to put it down; all we have is an undertaking to consult together as to what to do about it."⁵⁰

The Senate Foreign Relations Committee, in ratifying the treaty said:

"Neither obligations (article IV, sections 1 and 2) is an automatic commitment to warfare by the United States in any and all circumstances of Asian troubles.

The understanding is general between the administration and Congress that, if fighting broke out, Congress would be consulted before the United States became involved."⁵¹

⁴⁹U. S. Senate, The Southeast Asia Collective Defense Treaty, 83rd Congress, 2nd Session, Government Printing Office; 1954.

⁵⁰Muti, B. S. N., Vietnam Divided., Bombay Chronicle Press, Bombay, 1964, p. 47,

⁵¹New York Times, New York, January 22, 1955., p. 1.

In an editorial on January 13, 1955, The New York Times stated:

"It (the treaty) is not automatic in its application. It does, however, pledge the signatory powers to immediate consultation, ... and to take required actions within the limitations of their constitutional processes."⁵²

In a debate on the Senate floor, Senator George, Chairman of the Foreign Relations Committee, declared, that the U. S. Couldn't go to war under the treaty without the sanction of Congress. Senator Smith observed that there was no intention to commit United States ground forces in any hostilities in the treaty area.

The House Republican Committee on Planning and Research stated, "Article IV of the Southeast Asia Collective Defense Treaty....does not commit, in advance, any signatory to use its armed forces to deal with the aggressor."⁵³

Henry Cabot Lodge, former ambassador to South Vietnam, stated in 1965:

"It is a fact that the actions we are taking in Vietnam is not under the aegis of the United Nations or the Southeast Asia Treaty Organization...."⁵⁴

All of these statements are in harsh contrast to that

⁵²New York Times., editorial, January 23, 1955; IV 12.

⁵³House Republican Committee on Planning and Research, "Vietnam: Some neglected Aspects of the Historical Record."

⁵⁴U. S. News and World Report, February 15, 1965, pp. 64.

of Secretary of State Dean Rusk, on January 28, 1966, when he was asked by Senator J. W. Fulbright, whether or not the treaty committed us to action in Vietnam, he replied: "Yes Sir, I have no doubt that it does."

The S. E. A. T. O. treaty called for consultations, these meetings did take place, notably on October 1, 1961, April 8 to 10, 1963 and April 13 and 14, 1964. No concrete proposals were adopted at these meetings. None of the other signatories have seen fit to support our action in Vietnam or significantly act on their own. Since they have not acknowledged the necessity of action in Vietnam, we would seem to have little grounds for acting, on our own, under the S. E. A. T. O. treaty.⁵⁵

The S. E. A. T. O. pact was meant to be a multilateral defensive pact. There seems to be little basis for unilateral action.

My contention that the treaty does not form a legal commitment, rests on two factors. 1) It is questionable whether the inclusion of South Vietnam in its protocol is valid, in light of the Geneva accords, and 2) No specific arrangements can be found in the treaty, which bind any signatory to unilateral action. This latter view is supported by statements of John Foster Dulles, the designer of the treaty.

⁵⁵Larson, Vietnam and Beyond., p. 105.

It is difficult to discern a clear cut American policy regarding S. E. A. T. O. and Geneva. Contributing to this confusion has been the changing line of the official government description of the war's origin and its history. A prime example of this ambiguity can be found in the comparison of two documents, The State Department White Paper on Vietnam, issued in 1961 and The White Paper on the same subject released in 1965.

The 1961 version still describes Vietnam as one nation, "...divided...one-half provides a safe sanctuary from which subversion in the other half is directed." No mention of direct aggression is made. The document further states that, "The basic pattern of Viet Cong activity is not new, of course....most of the same methods were used in Malaya, In Greece and in The Philippines."⁵⁶ By 1965, the position of the government had changed. In the 1965 White Paper, the subversion in the South had changed to aggression, "South Vietnam is fighting for its life against a brutal campaign of terror and armed attack....This aggression has been going on for years...."

The White Paper further states, "The war in Vietnam is a new kind of war....a totally new brand of aggression." The divided nation had changed into two separate states;

⁵⁶From Department of State Publication, 7308, released December, 1961.

"...In Vietnam, a Communist government has set out deliberately to conquer a sovereign people in a neighboring state."⁵⁷

The Paper supports its charges of aggression with statistics on the flow of arms and munitions from the North to the South.

On April 20, 1964, Lyndon Johnson said, that to fail to respond to the need to defeat the Communists in the area (Vietnam), "would reflect on our honor as a nation, (and) would undermine world-wide confidence in our (cause)."⁵⁸ Our policies in Vietnam during the mid and late 1950's and the early 1960's, seems have followed this thinking. The U. S. was determined to stop Communist expansion at the 17th parallel. It did not allow the Geneva accords or S. E. A. T. O. limitations block that objective. It is probable that at its inception, our policy was influenced primarily by the concept of a International Communist Conspiracy. As Dr. Irving Greenberg testified before the Senate Foreign Relations Committee:

"Even opponents of the war would do well to recreate the moral climate of the early days of our intervention....There was a phase in which we saw Communist China as expansionist and North Vietnam as purely a Chinese satellite. In this phase the fear of another

⁵⁷From Department of State Publication, 7834, released February, 1965.

⁵⁸Larson, Vietnam and Beyond, p. 107.

Munich and the conviction that we dare not sell out or be indifferent...colored the judgement of many. But when....events and facts and growing knowledge of Vietnam revealed the falsity of our assumptions...We should have admitted (it)... This inability to admit error....has driven us deeper and deeper into the mire."⁵⁹

It is probable that the legal technicalities of the two documents, had little influence on American policy, except where it was useful. It is hard to say whether the United States was wrong in this. Certainly history is full of violations of trusts and treaties of all types. Certainly, the Communists in Vietnam are not guiltless. This paper has not dealt with Communist violations of the Geneva accords. There^{were} many. Certainly their reluctance to make France carry out the treaty agreements is not to their credit. Certainly both sides can be blamed for not using diplomacy before it was too late to alter their respective courses of action.

My reaction to the facts, events and statements recounted in this paper, is not one of blame for our government. It is one of disappointment. Surely, it is not in the spirit of our heritage and in keeping with our ideals, that we played so prominent a role in destroying the effectiveness of the Geneva accords. It is hardly in keeping with the concepts of honesty and national integrity, that we have

⁵⁹Hearings Before the Committee on Foreign Relations, United States Senate, May 7, 1970., p. 11, Y4 F 76/2: As 4/12.

used the S. E. A. T. O. agreement and other documents as the basis for our intervention in Vietnam.

The inability of the United States to change its course of action in the face of changing circumstances, is surely one of the greatest weaknesses in our policies toward Vietnam and Indo China.

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