

DEPARTMENT OF STATE

THE LEGAL ADVISER

November 22, 1954

CONFIDENTIAL

TO : PSA - Mr. Kenneth Young  
FROM : L/FE - Conrad E. Snow. *CS*  
SUBJECT: Viet Minh Interference with Escape of Catholic Refugees  
from North Viet-Nam

*Legal opinion  
Dr. Vinton  
Refers to 11/22/54*

1. You request an informal legal opinion as to whether alleged interference by the Viet Minh with the exit of Catholic refugees from territory controlled by the Viet Minh for the purpose of going to Viet-Nam is a violation of the agreements reached at Geneva on July 20, 1954, and on July 21, 1954.

2. Article 14 of the Agreement on the Cessation of Hostilities in Viet-Nam provides:

"d) From the date of entry into force of the present Agreement until the movement of troops is completed, any civilians residing in a district controlled by one party who wish to go and live in the zone assigned to the other party shall be permitted and helped to do so by the authorities in that district."

3. Article 8 of the Final Declaration of the Geneva Conference provides:

"8. The provisions of the agreements on the cessation of hostilities intended to ensure the protection of individuals and of property must be most strictly applied and must, in particular, allow everyone in Viet-Nam to decide freely in which zone he wishes to live."

4. The effect of these two articles is that everyone in Viet-Nam is entitled to decide freely in which zone he wishes to live, and that any civilians residing in a district controlled by one party who wish to go and live in the zone assigned to the other party must be permitted, and in fact helped, to do so by the authorities of the district where they reside. Consequently, any interference with the transit of such a person from one zone to the other is a violation of the agreements. The answer to your question is in the affirmative.

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5. The Agreement on the Cessation of Hostilities provides a clear remedy for violations of the agreement. Although under Article 28 of the Agreement, responsibility for its execution rests with the parties, under Article 29 the control and supervision of this execution is insured by an International Commission. This Commission, under Article 35, sets up fixed and mobile inspection teams. Under Article 39 if any inspection team is unable to settle an incident or considers that there is a violation or a threat of a serious violation, it must inform the International Commission. The Commission must study the report and conclusions of the inspection team, and inform the parties of the measures which should be taken for the settlement of the incident, the ending of the violation or the removal of the threat of violation. The recommendations of the International Commission, under Article 41, may be by majority vote (subject to certain exceptions not here material). If one of the parties (Article 43) refuses to put into effect a recommendation of the Commission, the parties concerned, or the Commission itself, "shall inform the members of the Geneva Conference."

6. Accordingly if the French authorities claim that the Viet Minh have violated the terms of the Agreement, they should call the incident to the attention of an inspection team, which should investigate and report to the International Commission, which in turn should <sup>make</sup> recommendations to the parties. Until one of the parties has refused to put into effect a recommendation of the Commission there is no higher recourse to the members of the Geneva Conference.

7. The United States is not a party to either of the Agreements. //

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IMPLEMENTATION OF THE GENEVA AGREEMENTS ON CESSATION OF HOSTILITIES  
WITH REGARD TO MOVEMENT OF CIVILIANS FROM COMMUNIST-HELD AREA TO THE SOUTH1. Provision of the Agreements with regard to movement of civilians.

The agreement on the cessation of hostilities signed at Geneva on July 20 by the Commander in Chief of the French Union Forces in Indo-China and the Commander in Chief of the People's Army of Viet Nam provided in paragraph 4 of Article 14 that:

"From the date of entry into force of the present agreement until the movement of troops is completed, any civilians residing in a district controlled by one party who wishes to go and live in the zone assigned to the other party shall be permitted and helped to do so by the authorities in the district."

Article 8 of the Final Declaration of the Geneva Conference provides:

"The provisions of the agreement on the cessation of hostilities intended to ensure the protection of individuals and of property must be most strictly applied and must, in particular, allow everyone in Viet-Nam to decide freely in which zone he wishes to live."

2. Machinery for Supervision of the Agreement.

The agreement on the cessation of hostilities provides for an International Commission composed of representatives of Canada, India, and Poland and places upon it the responsibility for supervision of the implementation of the various articles of the agreement. The agreement also provides for a number of mobile inspection teams, made up of an equal number of representatives of each of the three states comprising the Commission, to check implementation of the various articles in different areas. These teams report to the International Commission, and provision is made for individual members to submit minority reports. The International Commission is empowered to make recommendations concerning implementation to a joint commission made up of representatives of the two parties concerned. On issues such as movement of civilians this can be done by majority decision of the International Commission members. If one of the two parties to the agreement refuses to put into effect the recommendations of the Commission, either party to the agreement or the International Commission itself may inform the members of the Geneva Conference.

3. Implementation to date of Paragraph 4, Article 14.

To date more than 500,000 persons have been moved from North Viet-Nam to free Viet-Nam. These include about 100,000 troops and militia, both French and Vietnamese, and about 400,000 civilians comprising both families of troops and militia, and other civilians who did not wish to remain in the Communist-

controlled areas. About 40,000 of these were "self-evacuated", moving south by their own means, but the remainder were transported by the joint efforts of the United States Navy and of the French. Transportation, shelter, medical care, food, clothing, technical help and assistance in finding gainful occupations are being provided these people through the combined efforts of the United States and the French and Vietnamese governments. The Foreign Operations Administration Mission in Free Viet Nam, together with American voluntary relief agencies and other organizations are sparing no effort at the scene to assure the successful relocation of these refugees. The United States, according to FOA reports, has already spent \$6,000,000 for such items as building materials, tents, blankets, food and medical supplies and is prepared to spend much more, \$40,000,000 having already been tentatively allocated for this purpose. Tents and other temporary facilities were flown to the area by the U.S. Air Forces when the movement was first begun. Effort is now being made to help these refugees become settled in entirely new villages, and the FOA reports that 200,000 have already been permanently resettled.

The task of providing in a few weeks' time new homes and means of earning a living for such a vast number of people, however, would be one of vast proportions even under normal conditions. It is particularly difficult in an area where vast political, military and economic adjustments have suddenly been further complicated by the temporary division of the country. In spite of the generous allocations of funds made by the United States and the efforts of the governments and agencies concerned, there will inevitably be some hardships and discomforts for many of the refugees before fully adequate provision can be made for all.

#### 4. Reports of Obstructive Tactics by the Viet Minh.

In view of the limited ability of our small Consulate in Hanoi, in the Viet Minh zone, to visit and report on developments in the rural areas in which the alleged Viet Minh restraints against free emigration are taking place, we are dependent on unverified reports from other sources. The information which comes to us is necessarily indirect and partly speculative, but it is apparent that, at least up until quite recently, the Viet Minh have not fully adhered to paragraph 4 of Article 14. This information indicates that some of the refugees who have moved to the South claim that they encountered considerable efforts of a varying nature on the part of the Viet Minh to prevent them from doing so, and it has been reported that thousands of others seeking to leave the North have found it impossible to do so. It is also known that the Viet Minh objected to French vessels entering Viet Minh territorial waters to rescue some 4000 refugees from a sand bar in the Tra Ly River. The rescue of these people was, however, effected by the French at sea. On November 20, Mr. Manilal J. Desai, Chairman of the International Armistice Commission, was widely reported to have said that in the past ten days Viet Minh had granted exit permits to 5,230 Roman Catholics, and that some 2,368 of these had already been evacuated. At Phat Dien, where a control commission team is located, and where a large number of the refugees still desiring to leave are reported to be located, it is reported that they are being slowly evacuated to the South. There are reported to be large numbers desiring to move south from Bui Chu and Thai Binh provinces.

The Chairman of the International Armistice Commission has been generally reported to have told the press that when the control teams of the Commission visit these various areas, all who make known their desire to leave will be given the opportunity to do so. The United States has information from its own representatives in free Viet Nam that there is a continued flow of refugees into that area from the North, and the United States Navy is still transporting a considerable number of them.

Position of the United States

On Tuesday, November 16, at a press conference Secretary Dulles, in reply to queries concerning reported Communist violations of the Geneva Agreements, said:

"The United States, as you know, is not a party to those Agreements and therefore is not legally in a position to object or protest to violations of those agreements. We naturally view with concern any violation of those Agreements, but we are not, as I say, ourselves in a position to claim any rights under the Agreements or to protest violations of them. We did not associate ourselves with them at Geneva. The information which we get on those matters inevitably comes through indirect channels and is not easy to verify. We are trying to get together all the information we can on that subject, and at the hearing before the Foreign Relations Committee last week Senator Knowland asked that we should try to put together and present to the Committee in Executive Session such information as we had on that subject. We have a good deal of information but the question of sorting out what is really dependable information and what is possibly hearsay is not an easy task."

The United States Government is using every means and channel at its disposal to encourage the free movement of refugees and to facilitate their transportation to the South and their resettlement and rehabilitation after arrival. With other free world countries it is watching with serious concern to see what effects the spotlight of attention recently focussed on this issue by the International Control Commission will have and whether the promised circulation of the control teams throughout the areas where there are reported to be a considerable number of remaining refugees will result in the evacuation of all who desire to go south. The gradual evacuation of refugees now going on at Phat Dien, one of the principal remaining areas of refugee concentration, is an encouraging development which the International Control Commission has now publicly committed itself to extend to other areas where refugees are concentrated.