

LEGAL OPINION ON VIOLATION OF THE AGREEMENT

1. Article 26 of the Agreement on the Operation of Hostilities in Viet-Nam provides:

4) 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.⁹

2. 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.⁹

3. 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 the party wishing 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.

4. The Agreement on the Cessation of Hostilities provides a clear remedy for violations of the agreement. Although under Article 26 of the Agreement, responsibility for the cessation rests with the parties, under Article 28 the control and supervision of this cessation is reserved by an International Commission. This Commission, under Article 29, sets up a fact finding and inquiry team. Under Article 30 if any investigation 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 investigation 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 31, may be by majority vote (subject to certain exceptions not here material). If one of the parties (Article 32) 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.⁹

5. Accordingly if the French authorities claim that the Viet Nam have violated the terms of the Agreement, they should call the incident to the attention of an inquiry team, which should investigate the

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report to the International Commission, which in turn should make 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.

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