U.S. ARMY

COMMAND INFORMATION FACT SHEET

PUBLISHED FOR USE IN COMMAND INFORMATION PROGRAMS.

"An informed soldier is a better soldier"

REPRODUCE AND DISSEMINATE FOR LOCAL REQUIREMENTS

Issue No 180 2 April 1971

[INCIDENT AT SON MY] Cover up per Westmoreland's request.

Over the course of centuries of warfare, combatant and noncombatant nations alike have developed customary and treaty law, which governs the conduct of armed hostilities on land. This law, which long remained unwritten, has been codified in the Hague and Geneva Conventions. The most recent Geneva Conventions were added in 1949, as the result of the signatory nations' experience and observations during World War II. In accordance with the Conventions, U.S. field commanders have issued rules of engagement and careful measures to protect noncombatants from injury and loss of life and property. These regulations clearly govern a soldier's conduct toward the enemy and noncombatants during ground combat operations.

The United States has historically led the way in adopting humane rules, which recognize that an enemy who has laid down his arms and his wife, children, and elders are human beings, entitled to humanitarian concern and mercy while taking no active part in hostilities. These rules, as part of the law of land warfare, stipulate that unnecessary destruction or suffering must not occur, and that captured or detained persons are entitled to freedom from violence to life and person and outrages upon their personal dignity, regardless of prior conduct or beliefs. In adopting these rules, our Government also has recognized their potential value to our own fighting men who may become prisoners in time of war.

Our national tradition in the law of land warfare achieved a milestone during the Civil War, when President Lincoln issued General Order 100, providing for the humane treatment of captured Confederate soldiers.

Throughout the Vietnam War the Geneva Conventions have had far more importance and weight than mere guides of conduct or courtesy on the battlefield. They cannot be abandoned and adopted again at will by United States Armed Forces, depending upon the character of the conflict or the non-observance of the Conventions by the enemy. The Conventions

/MORE/

Prepared for the OFFICE OF THE CHIEF OF INFORMATION, DEPARTMENT OF THE ARMY

by the U.S. ARMY COMMAND INFORMATION UNIT • WASHINGTON, D.C. 20315

have been ratified by the United States, and as formal treaties, they are binding on both American civilians and their Armed Forces. Under the Constitution, these treaties constitute part of the "supreme Law of the Land." Hence, in effect, the Conventions are equal to the force of laws enacted by the Congress.

Acknowledging this responsibility to the Nation and the Congress, the Department of the Army has had a moral and legal obligation to adopt a continuing policy of investigating fully all substantive allegations of violations of the laws of war involving American personnel. Every allegation of misconduct on the battlefield--regardless of the rank or position of the person purportedly responsible--must be thoroughly explored. This policy derives from the following provision of the Geneva Conventions:

> "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed or to have ordered to be committed, . . . grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."

Directly stated, this provision means that once information has come to the attention of the United States Government that serious offenses might have been committed, failure to take prompt action to investigate the allegations would be in violation of these Conventions. If the person accused of breaches of the Conventions is brought to trial, he is afforded all the rights and safeguards afforded by the Constitution and the Uniform Code of Military Justice.

The Son My incident, as tragic as its consequences have been for the victims, their survivors, and the Army units and men implicated in the allegations, fits clearly under the provision cited above. When the allegations became known, the Army had only one legal course of action--to investigate the allegations and prosecute the accused, if the evidence so warranted. Even though the legal action was painful and difficult, the Army would have failed to meet its obligation to the laws of our Nation had it not acted.

The Son My incident first came to the attention of the Department of the Army in April 1969 in a letter received from Mr. Ronald L. Ridenhour, a former soldier. Mr. Ridenhour alleged, in some detail, information of misconduct of soldiers in Vietnam in March 1968. Based on the information contained in this letter, an investigation was initiated by Department of the Army. The evidence gathered during this investigation was used as a basis for the charges against 13 officers and enlisted men.

On 5 September 1969, First Lieutenant William L. Calley, Jr. was charged with the premeditated murder of more than 100 Vietnamese noncombatant men, women, and children in the village of My Lai (4). During

the next six months, various court-martial charges were preferred against the remaining 12, including murder and assault with intent to commit murder.

On 24 November 1969, having determined that there was sufficient evidence to warrant a trial, MG Orwin Talbott, CG, Fort Benning, Georgia referred the charges against Lieutenant Calley for trial by general court-martial. Impanelling of the court began on 12 November 1970, and the prosecution began the presentation of its case on 17 November 1970. On 29 March 1971, the court found Lieutenant Calley guilty of the premeditated murder of not less than 22 Vietnamese noncombatant civilians and of assault with intent to murder one Vietnamese noncombatant civilian. On 31 March 1971, he was sentenced to confinement at hard labor for life, total forfeiture of all pay allowances, and dismissal from the service.

Lieutenant Calley's case will now be subject to review by general court-martial convening authority, the U.S. Army Court of Military Review, and the U.S. Court of Military Appeals. Throughout this review and appellate process, Lieutenant Calley will be provided military counsel without fee. He may, of course, continue to retain civilian counsel at his own expense. This review process may not increase either the charges or the punishment; it may confirm or reduce them.

In the cases of the remaining 12 accused, charges were dismissed against eight; two were acquitted; and the cases of two are awaiting trial.

As the criminal investigation was proceeding in 1969, the Army became concerned over the fact that the incident at Son My had not been reported earlier and investigated adequately. Accordingly, on 26 November 1969, the Secretary of the Army and the Army Chief of Staff directed that Lieutenant General William R. Peers explore the nature and scope of the original Army investigations of what occurred on 16 March 1968 in Son My. General Peers was directed 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.

General Peers, on 30 November 1969, recommended that distinguished civilian legal counsel be made available to the investigative team to enhance its effectiveness and gain public recognition and acceptance of the objectivity of the Inquiry. In response to this request, the services of Attorneys Robert MacCrate and Jerome K. Walsh, Jr. of New York City were obtained.

The Peers-MacCrate Inquiry was concluded in March 1970. As a result of evidence developed during this Inquiry, 12 officers were charged with violations of the UCMJ primarily involving alleged dereliction of duty and failure to obey regulations in connection with suppression of information of the Son My Incident. Criminal charges have been subsequently dismissed against 11 of these officers. Colonel Oran K. Henderson, former commanding officer of the 11th Infantry Brigade, has been ordered to stand trial for alleged dereliction of duty and false swearing.

The conduct of all officers with regard to whom charges relating to the Son My incident have been dismissed for lack of sufficient evidence to warrant trial is currently under administrative review. Such a review is rendered appropriate by the fact that an officer's performance of duty is required to conform not only to the criminal law, but also to the established standards of his profession. The dismissal of charges against an officer means that further prosecution under the criminal law was deemed unwarranted; it does not necessarily mean that the individual's performance was found to be adequate by professional standards.

Accordingly, the purpose of the current review is to determine in each case whether the officer's conduct in connection with the investigation and reporting of the Son My incident met the standards expected of an officer of his position, grade and experience. Should an officer's performance be deemed to have fallen short of the minimum professional standards, adverse administrative action will be considered. Before any decision is made in this regard, however, the officer will be personally informed of the action contemplated and afforded an opportunity to present a rebuttal. His record of prior service will, of course, be considered in reaching a final determination.

END