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10/86

ADDRESS BEFORE THE AMERICAN BAR ASSOCIATION  
CONFERENCE TO REVIEW THE VIETNAM DEBATE

MAKING WAR WITHOUT WILL:  
VIETNAM RULES OF ENGAGEMENT

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Charlottesville, Virginia

October 17, 1986

## Introduction

Neither a dovish Congress, nor an ineffective military, lost the war in Vietnam. Rules of Engagement, imposed by civilian officials, did.

Although Congress and Watergate share blame for thwarting Presidential ability to enforce the peace agreement with Hanoi after January 1973, civilian managers in the Executive Branch had long before prevented a military victory by dictating Rules of Engagement which were overly specific, inconsistent and unresponsive to the best professional military judgment.<sup>1</sup>

This is the conclusion of Senator Barry Goldwater and of other critics based on newly declassified documents revealing the incredibly complex and comprehensive set of self-imposed restrictions that governed the conduct of the war.

### Three Categories of Rules

The controls fell into three categories, with those formally termed Rules of Engagement being promulgated by the Joint Chiefs of Staff pursuant to political policies imposed by the President and Secretary of Defense.<sup>2</sup> These Rules were designed to keep the war limited and avoid international incidents, in particular the possibility of direct confrontation with Communist China or the Soviet Union. The Rules dealt with operations in border areas and countries, with the Demilitarized Zone and with air operations conducted over North Vietnam. An unusual situation

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1. In May of 1984, before an earlier ABA Conference on Vietnam, I documented the numerous statutes in which Congress had collaborated with the Executive in making national policy for Indochina, beginning with 1949 when Congress literally shoved funds on President Truman to support anti-Communist forces in the region.

2. See discussion of three types of ROE in foreward to USAF Project CHECO 1966-69, reprinted in 131 Cong. Rec. (daily ed. Mar. 14, 1985), S 2982.

existed in Laos where, by Presidential directive, theater responsibility for all U.S. military operations was vested in the American Embassy, Vientiane, which validated all targets and areas of operation.<sup>3</sup>

A second set of restrictions, known as Operating Rules, were the responsibility of COMUSMACV (Commander, United States Military Assistance Command, Vietnam), who delegated most of the authority to the Commander, Seventh Air Force. These limitations governed the conduct of the ground war, tactical air operations and Naval gun fire missions.<sup>4</sup>

A third set of rules were designated Operating Restrictions. They were contained in the CINCPAC (Commander-in-Chief, Pacific Command) Basic Operations Orders and included prohibitions against striking locks, dams, dikes, hydro-electric plants and fishing boats.

#### Policies Represented by Rules

Many of the Rules were designed to safeguard the lives and property of non-combatants. For example, the requirement to validate and approve potential targets for air strikes in South Vietnam permeated the entire system for command and control of United States air power used in a ground support role. Fire missions against villages and hamlets were required to be preceded by warnings made by leaflets or loud speakers, controlled by an airborne or ground observer, and executed only after approval by the Province Chief directly, even when hostile fire was received from the area.<sup>5</sup>

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3. Project CHECO 1966-69, id., at S 2985.

4. In an attempt to make target validation and clearance procedures for all Allied Forces consistent, American advisors were directed to insure that their Vietnamese counterparts adhered to all Rules of Engagement, American fire missions in support of South Vietnamese operations were restricted to those falling within the guidelines, and the Rules were applied to cross support missions for all forces. Hq., USMACV, Directive 525-13(C).

5. Hq., USMACV, Directive 525-13(C); 7AF Regulation 55-49.

In addition to humanitarian interests and the goal of keeping or winning the loyalty of the population, the Rules were cognizant of the law of war. Directives were published "to reaffirm the prohibition against commission of war crimes and related acts" and to establish a system for reporting suspected serious crimes or incidents, whether inflicted upon U.S. military or civilian personnel "or by U.S. military personnel upon hostile military or civilian personnel." <sup>6</sup>

It is not my purpose to focus on the law of war or command criminal responsibility, although it should be pointed out that in 1955 the United States ratified four Geneva Conventions relating to international conflicts and in 1977 signed two Protocols governing the conduct of war, which remain unratified.<sup>7</sup> Rather, I will look at the practical consequences of implementing a rigid code of self-imposed, and some would say, self-defeating restrictions, such as those which bound the U.S. military force in Vietnam.

#### Declassification of Rules

The Rules evolved into an extensive, detailed set of restrictions, not easily committed to memory or to being implemented under moments of extreme stress. Even so, Seventh Air Force required all strike air crews and Forward Air Controllers to demonstrate a thorough knowledge of the Rules before assuming operational duties and to complete a written examination. <sup>8</sup>

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6. Hq., USMACV, Directive 20-4, "Inspections and Investigations: War Crimes and Similar Prohibitive Acts."

7. Geneva Conventions of Aug. 12, 1949, 6 U.S.T. 3114, 3217, 3316, 3516; 1977 Geneva Protocols I and II, 72 Am.J. Int'l. L. 457, 502.

8. Project CHECO 1969-72, reprinted in 131 Cong. Rec. (daily ed., Mar. 18, 1985) S 3012.

For years the details of these Rules were classified "top secret." It is only in 1985, after the repeated and persistent efforts of Senator Goldwater and with the personal involvement of Secretary Weinberger, that the actual text of the Rules and certain related official studies were declassified. Of particular interest is Project CHECO (Contemporary Historical Examination of Current Operations), a scholarly historical documentation and examination of United States Air Force combat operations in Southeast Asia covering the period from 1960 to September 1972. The activity was managed by Headquarters, Pacific Air Forces, and provides an ongoing report on USAF policies and experiences prepared on a contemporary basis during the Vietnam War.

The actual Rules for operations in North Vietnam, Laos and Cambodia were issued in the form of daily message traffic and were not retained. They are described, however, in the three volume CHECO report. The detailed Rules for South Vietnam were issued as official directives and were preserved. These materials were placed in the Congressional Record by Senator Goldwater as a series of publications on March 6, 14, 18 and 26, 1985.<sup>9</sup>

#### Detailed Restrictions

These documents reveal just how comprehensive the restrictions were that bound our forces in Vietnam. For example, one rule told American pilots they were not permitted to attack a North Vietnam Mig sitting on the runway. The only time it could be attacked was after it was in flight, was

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9. 131 Cong. Rec. (daily ed.) S 2632-2641 (Mar. 6, 1985, Project CHECO 1960-65), S 2982-2990 (Mar. 14, 1985, Project CHECO 1966-69), S 3011-3018 (Mar. 18, 1985, Project CHECO 1969-72), S 3511-3520 (Mar. 26, 1985, ROE, Republic of Vietnam). Also see substantial portions of ROE declassified in 1975 at request of Senator Goldwater, 121 Cong. Rec. 17551-17558. Although the actual Rules have been downgraded, many pertinent studies on deposit in the military services' schools are still classified.

clearly identified and showed hostile intentions. For most of the war, our pilots were not authorized to attack North Vietnam military air bases even when engaged in immediate hot pursuit of hostile enemy aircraft. As late as May 1971, no North Vietnam airfield on which third nation aircraft were present could be attacked. A "hostile intention" rule applied to truck convoys driving on highways in Laos and North Vietnam. In some areas, enemy trucks could escape attack under the Rules simply by driving off the road. Military truck parks located more than 200 meters from a road were not destroyed under this Rule.

Another Rule provided that SAM missile sites and supporting radar systems could not be struck while they were under construction, but only after they became operational and actually fired at Allied aircraft. Moreover, targets were to be attacked only when weather conditions permitted their positive identification. Until the end of 1971, aircrews in South Vietnam had to refer to at least four basic sources of operation orders to find the applicable Rules. In Laos, photographic reconnaissance was prohibited on weather flights. According to Seventh Air Force records, the average time consumed between identification of a target area in Laos and the clearance to strike was 15.5 days. In order to get validation for restrike, another five or eight days were required. Since success of the missions required timely strikes in response to the most recent intelligence, the effectiveness of the bombing was lost.<sup>10</sup>

When the Rules were relaxed, the changes were gradual and not strong enough to serve strategic ends. Many times, limited extensions of target areas were granted, only to be withdrawn soon afterwards. Numerous bombing halts interrupted the effectiveness of earlier air operations.

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10. All restrictions highlighted in the text at pages 4 and 5 are discussed and documented in the three Project CHECO reports or text of ROE cited in note 9, id.

## Preparedness Investigating Subcommittee Report

In 1967, the Preparedness Investigating Subcommittee of the Senate Armed Services Committee conducted extensive hearings relative to the conduct of the air war against North Vietnam. After gathering the facts, the Subcommittee issued a report on August 31 which was strongly critical of the Rules of Engagement.

The Subcommittee concluded:

That the air campaign has not achieved its objectives to a greater extent cannot be attributed to inability or impotence of air power. It attests, rather, to the fragmentation of our air might by overly restrictive controls, limitations, and the doctrine of "gradualism" placed on our aviation forces which prevented them from waging the air campaign in the manner and according to the timetable which was best calculated to achieve maximum results.<sup>11</sup>

The same report observed that Secretary of Defense McNamara and the Johnson Administration had discounted the unanimous professional judgment of our military commanders and the Joint Chiefs and substituted civilian judgment in the details of target selection and the timing of strikes. The Subcommittee charged these civilian managers with having "shackled the true potential of air power and permitted the buildup of what has become the world's most formidable antiaircraft defenses."<sup>12</sup> An important source of disagreement between the Subcommittee and Secretary McNamara arose out of its discovery that the Rules of Engagement were directly attributable for the fact that "during the entire year of 1966 less than 1 percent of the total sorties flown against North Vietnam were against fixed targets on the JCS target list."<sup>13</sup> Here the Subcommittee was referring to the fact that none of the targets could be hit without specific approval of the Secretary of Defense or other high civilian authority.

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11. Preparedness Investigating Subcomm. of the U.S. Senate Comm. on Armed Services, Report on Air War Against North Vietnam, p.2, 90th Cong., 1st Sess. (1967).

12. Id., at 9.

13. Id., at 4. (Emphasis in original.)

### Impact on Military Operations

In military eyes, the concentration of the air war to areas well south of the vital Hanoi-Haiphong regions left the important targets untouched and created a large haven into which the enemy could with impunity import war materials, construct sanctuaries for his aircraft and install anti-aircraft defenses. By failing to close the major ports, prohibiting aerial mining of coastal water lines of communication and forbidding a bombing attack cutting off rail and road lines to China, air operations were piecemealed.<sup>14</sup> The result was to allow North Vietnam to adjust to the air campaign by importing war materials from Communist countries through routes immune from attack and then disbursing and storing this material in sanctuaries. From these safe areas North Vietnam infiltrated the material to South Vietnam and Laos. Thus, the Rules permitted the enemy to protect its forces and material, provided it with secure military training and staging areas and placed outside the reach of American air power precisely those areas which military judgment considered most essential to strike.<sup>15</sup>

One of the tragic consequences of the Rules of Engagement was the impact on American aircraft and pilot losses by giving North Vietnam time to build up its sophisticated air defense system and to disburse its stocks of war supplies. The point on which military experts disagreed most

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14. The ineffectiveness of piecemeal bombing has been graphically revealed by Albert Speer, director of Nazi Germany's wartime economy, who insists that the allies could have brought armaments production "completely to a standstill" in 1943 by making concerted attacks on the ball-bearing industry. Instead, Speer writes, the attacks on that industry ceased abruptly and "the allies threw away success when it was already in their hand." A. Speer, Inside The Third Reich, at 285-286, The MacMillan Co., N.Y. (1970).

15. Project CHECO 1966-69, supra note 9, at S 2983-2985.

vehemently with civilian managers was the certainty among professional military men that these self-imposed restrictions greatly increased U.S. casualties.<sup>16</sup>

#### Joint Chiefs Argue For Stronger Action

Some writers have editorialized that military leaders did not convey to civilian officials the depth of their concern with the Rules. However, both the Pentagon Papers and the newly declassified documents reveal that the Joint Chiefs repeatedly argued against the artificial limitations impeding the military mission in Indochina. A handful of civilian advisors, such as Walt Rostow, agreed with military professionals that systematic and continued bombing of war making resources in North Vietnam would have decisive results, but Secretaries of Defense McNamara and Clifford refused to relax the Rules.

The Joint Chiefs and commanders in the field pressed time after time for changes. For example, a message from CINCPACAF on March 28, 1968, challenged the restrictions in the North as being inconsistent with the build up and reenforcement of U.S. forces in South Vietnam.<sup>17</sup> Also in early 1968, this view was pressed on Secretary of Defense Clark Clifford, who had convened a senior group of advisors on the war from the State and Defense Departments, CIA and White House. General Wheeler submitted a paper to this group on behalf of the Joint Chiefs.

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16. These concerns echoed the admonition given by President Eisenhower, who a decade earlier had instructed a National Security Council meeting on United States policy toward the Far East, that "he wanted no more sanctuaries as had existed for the Communists in Manchuria during the Korean War." NSC Meeting of December 1, 1954, Foreign Relations of the United States 1952-1954, Vol. XII, Part 1, at 1006, U.S. Government Printing Office, Wash. D. C. (1984).

17. Project CHECO 1966-69, supra note 9, at S 2984-2985.

The cover memo for his paper noted that "General Wheeler would favor action to close the Port of Haiphong through mining or otherwise." But he did not present a specific paper on that item because President Johnson had already indicated that closing the ports was not an action he was going to consider, even as part of a new, comprehensive review.<sup>18</sup>

#### JCS Bombing Paper

What remained in the Joint Chiefs' paper was clear enough. It recommended:

An integrated interdiction campaign should be undertaken against the road, rail and waterway lines of communication with the objective of isolating the logistics base of Hanoi and Haiphong from each other and the rest of North Vietnam.<sup>19</sup>

To achieve this objective, the Chiefs advised it was necessary to reduce the restricted and prohibited areas around Hanoi and Haiphong and to delete the Special Northeast Coastal Armed Reconnaissance area which limited attacks on North Vietnamese craft to those within three nautical miles of the coast.

The Joint Chiefs explained how North Vietnam had taken advantage of the sanctuaries given them in the cities. The JCS paper stated:

There have been repeated and reliable intelligence reports that indicate civilians not engaged in essential war supporting activities have been evacuated from the cities of Hanoi and Haiphong. Photographic intelligence, particularly of Haiphong, clearly shows that materials of war are stockpiled in all open

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18. U.S. House Comm. on Armed Services, United States - Vietnam Relations 1945-1967 (Pentagon Papers), Book 6 of 12, The Air War in North Vietnam, Vol. II, p. 174, 92nd Cong., 1st Sess., U.S. Gov. Printing Office (1971).

19. Id., at 174.

storage areas and along the streets throughout almost one-half of the city. Rather than an area for urban living, the city has become an armed camp and a large logistics storage base.<sup>20</sup>

#### Christmas Bombing and Peace Agreement

But the Joint Chiefs' paper fell on deaf ears. On March 31, 1968, President Johnson announced he would not seek reelection and, at the same time, he restricted air strikes on North Vietnam to a line south of the 19th parallel. On December 1, he ordered the total halt of bombing and of B-52 overflights of North Vietnam, even during the conduct of authorized strikes within the Demilitarized Zone. From then until May of 1972, not even preemptive strikes against the maturing North Vietnamese Air Defense System south of the 20th parallel were authorized. This permitted the system to reach a high level of sophistication in which the North Vietnamese linked GCI (Ground Controlled Intercept) radars with the lock-on radar capability of SAM sites, allowing the enemy to aim SAMs undetected by our aircrews until the instant of firing.<sup>21</sup>

During the last week of March 1972, General Lavelle, Commander of the Seventh Air Force, was recalled for allegedly violating these restrictions. The same week North Vietnam launched a major offensive against South Vietnam and the Rules he was charged with offending were soon obsolete. Air operating authorities were steadily broadened through April until May 9, when President Nixon announced the mining of Haiphong Harbor

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20. Id., at 176. Also see the Joint Chief's major memorandum for the Secretary of Defense calling for increased pressures on North Vietnam, dated 17 Oct. 1967, id., at 108-112, and the JCS air interdiction plan forwarded to Secretary McNamara on April 14, 1966, id., Vol. I, at 78-79.

21. Project CHECO 1969-72, supra note 9, at S 3015-3016.

and permitted interdiction bombing throughout North Vietnam below the Communist China buffer zone.<sup>22</sup> These attacks culminated with twelve consecutive days of B-52 strikes starting on December 18, 1972, and the rapid settlement of peace talks with Hanoi.<sup>23</sup>

#### Conclusion

Were the political considerations which initiated the Rules of Engagement well founded? Or might the architects of these restrictions be fairly criticized for lacking sufficient confidence and will?

In Years of Upheaval, Henry Kissinger writes:

The Kennedy and Johnson administrations trapped themselves between their convictions and their inhibitions, making a commitment large enough to hazard our global position but then executing it with so much hesitation as to defeat their purpose. They engaged us in Indochina for the objective of defeating a global conspiracy and then failed to press a military solution for fear of sparking a global conflict - a fear that was probably as exaggerated as the original assessment.<sup>24</sup>

Without derogating the principle of civilian control of the military, it should be recognized that once diplomacy has failed and civilian policy makers have decided on war, the result of placing military strategy and tactical operations under the day-to-day direction of unskilled amateurs may be a greater sacrifice in blood and the denial of a military victory. The lesson of Vietnam is that once American forces are committed, there is no logical goal except to prevail.

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22. Id., at S 3017.

23. Hanoi rushed back to the negotiating table even with the certainty of a Congressional cut off of aid soon after the new legislative session began January 3, 1973. The bombing ended on December 30, 1972, and the Peace Agreement was initialled on January 23, 1973. H. Kissinger, White House Years, at 1446-1461, Little, Brown and Co., Boston (1979).

24. H. Kissinger, Years of Upheaval, at 82, Little, Brown and Co., Boston (1982).