

Michigan Law Review

Volume 68 | Issue 1

1969

Pfeffer: No More Vietnams?: The War and the Future of American Foreign Policy; Falk: The Vietnam War and International Law; McGee: The Responsibilities of World Power; Reischauer: Beyond Vietnam: The United States and Asia

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Recommended Citation

Ved P. Nanda, *Pfeffer: No More Vietnams?: The War and the Future of American Foreign Policy; Falk: The Vietnam War and International Law; McGee: The Responsibilities of World Power; Reischauer: Beyond Vietnam: The United States and Asia*, 68 MICH. L. REV. 161 (1969).

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NO MORE VIETNAM?: THE WAR AND THE FUTURE OF AMERICAN FOREIGN POLICY. Edited by *Richard M. Pfeffer*. New York: Harper & Row. 1968. Pp. x, 299. \$5.95.

THE VIETNAM WAR AND INTERNATIONAL LAW. Sponsored by the American Society of International Law. Edited by *Richard A. Falk*. Princeton, N.J.: Princeton University Press. 1968. Pp. ix, 633. Cloth, \$15; Paper, \$3.95.

THE RESPONSIBILITIES OF WORLD POWER. By *Gale W. McGee*. Washington, D.C.: The National Press. 1968. Pp. ix, 274. \$6.95.

BEYOND VIETNAM: THE UNITED STATES AND ASIA. By *Edwin O. Reischauer*. New York: Knopf. 1967. Pp. 242. Cloth, \$4.95; Paper, \$1.65.

A review of the current Vietnam literature¹ indicates a striking lack of agreement about the pertinent facts of the conflict. There are a variety of divergent views, for example, on the nature and

1. For a selected bibliography, see THE CENTER FOR THE STUDY OF DEMOCRATIC INSTITUTIONS, VIETNAM: MATTERS FOR THE AGENDA 62-64 (Center Occasional Paper No. 4, June 1968); D. DUNCANSON, GOVERNMENT AND REVOLUTION IN VIETNAM 421-32 (1968); G. KAHIN & J. LEWIS, THE UNITED STATES IN VIETNAM 446-54 (1967). THE VIETNAM WAR AND INTERNATIONAL LAW (R. Falk ed. 1968) contains representative writing on the international law aspects of the conflict. In addition, see R. BARNET, INTERVENTION AND REVOLUTION: THE UNITED STATES IN THE THIRD WORLD (1968); W. BURCHETT, VIETNAM WILL WIN (1969); N. CHOMSKY, AMERICAN POWER AND THE NEW MANDARINS (1969); R. CRITCHFIELD, THE LONG CHARADE (1968); V. GIAP, BIG VICTORY, GREAT TASK (1968); E. GRUENING & H. BEASER, VIETNAM FOLLY (1968); W. JUST, TO WHAT END (1968); D. KRASLOW & S. LOORY, THE SECRET SEARCH FOR PEACE IN VIETNAM (1968); W. LEDERER, OUR OWN WORST ENEMY (1968); THE REALITIES OF VIETNAM (C. Beal ed. 1968); D. SCHOENBRUN, VIETNAM (1968); R. SHAPLEN, TIME OUT OF HAND (1969); SENATE COMM. ON FOREIGN RELATIONS, 90TH CONG., 2D SESS., REPORT BY SENATOR JOSEPH S. CLARK ON A STUDY MISSION TO SOUTH VIETNAM (Comm. Print 1968); VIETNAM: ISSUES AND ALTERNATIVES (W. Isard ed. 1969); R. WHITE, NOBODY WANTED WAR (1968); Fleming, *Vietnam and After*, 21 W. POL. Q. 141 (1968); Hannan, *A Political Settlement for Vietnam: The 1954 Geneva Conference and Its Current Implications*, 8 VA. J. INTL. L. 4 (1967); Kissinger, *The Viet Nam Negotiations*, 47 FOREIGN AFFAIRS 211 (1969); Murphy, *Vietnam: A Study of Law and Politics*, 36 FORDHAM L. REV. 453 (1968); Robertson, *The Debate Among American International Lawyers About the Vietnam War*, 46 TEXAS L. REV. 898 (1968); Schick, *Some Reflections on the Legal Controversies Concerning America's Involvement in Vietnam*, 17 INTL. & COMP. L.Q. 953 (1968).

magnitude of the insurgency in South Vietnam; the nature, scope, and timing of Communist aggression from the North; and the extent of the representative character of the Saigon regimes. Perhaps equally significant is the widespread and indiscriminate use of rhetoric such as the "U.S. commitment in South Vietnam" and the "U.S. stake in Southeast Asia"—terms which comprise a hodge-podge of goals, policies, and prescriptions. Other concepts, such as self-defense, aggression, and self-determination, are highly ambiguous, and have successfully defied any universally accepted definition as to their content.² Moreover, this vague terminology tends to obscure important facts. A combination of divergent views of the facts and excessive use of rhetoric is likely to result in conflicting and perhaps misleading interpretations and conclusions. Since the Vietnam conflict has evoked strong emotional responses in the United States, there is an immense risk that a writer's normative perspectives will inadvertently, or perhaps even knowingly, so influence his selection and interpretation of the facts and of the applicable legal principles as not only to hamper objective reporting, but also to stifle scholarly criticism and evaluation.³ Meanwhile, the growing mass of Vietnam literature has already reached the point at which the average person is inundated with divergent analyses of the war. He follows events, if at all, by merely glancing through the labyrinth of daily news reports; indeed, he does that only as a result of a well-developed sense of duty. One of the first casualties of war is said to be truth, and the Vietnam situation is hardly an exception.⁴

Nevertheless, several books and articles seem to stand out from the fog surrounding the Vietnam literature. Selected for review here are four such studies. They present the main political and legal argu-

2. See, e.g., D. BOWETT, *SELF-DEFENSE IN INTERNATIONAL LAW* (1958); I. BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* (1963); R. EMERSON, *SELF-DETERMINATION REVISITED IN THE ERA OF DECOLONIZATION* (Harv. Univ. Center for Intl. Affairs, Occasional Papers in Intl. Affairs No. 9, Dec. 1964); H. JOHNSON, *SELF-DETERMINATION WITHIN THE COMMUNITY OF NATIONS* (1967); M. MCDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* (1961); S. POSSONY, *AGGRESSION AND SELF-DEFENSE: THE LEGALITY OF U.S. ACTION IN SOUTH VIETNAM* (Univ. of Pa. Foreign Policy Research Institute, Monograph Series No. 6, 1966); J. STONE, *AGGRESSION AND WORLD ORDER* (1958); Report of the Special Committee on the Question of Defining Aggression, 23 U.N. GAOR, Agenda Item No. 86, U.N. Doc. A/7185/Rev. 1 (1968); Hazard, *Why Try Again To Define Aggression?*, 62 AM. J. INTL. L. 701 (1968); Panel: *Problems of Self-Determination and Political Rights in the Developing Countries*, 60 PROC. AM. SOC'Y. INTL. L. 129-50 (1966).

3. See, e.g., notes 56-60, 66-67 *infra* and accompanying text.

4. U.N. Secretary General U Thant remarked at a press conference on February 24, 1965: "I am sure the great American people, if only they knew the true facts and the background towards the development in South Vietnam, will agree with me that further bloodshed is . . . unnecessary . . .," reprinted in *LAWYERS COMM. ON AMERICAN POLICY TOWARDS VIETNAM, VIETNAM AND INTERNATIONAL LAW* 21 (1967). See generally D. KRASLOW & S. LOORY, *THE SECRET SEARCH FOR PEACE IN VIETNAM* (1968); J. GOULDEN, *TRUTH IS THE FIRST CASUALTY* (1969).

ments that have been made with regard to the Vietnam conflict and they elucidate the various approaches which have been taken in the continuing debate on Vietnam.⁵ *No More Vietnams?*,⁶ edited by Richard Pfeffer,⁷ is the product of a conference which took place in Chicago in the summer of 1968 under the auspices of the Adlai Stevenson Institute of International Affairs. The twenty-six conferees included eminent scholars, current and former government officials, and journalists.⁸ In their dialogue, they present a candid evaluation of the causes that led to American involvement in Vietnam⁹—the national traits of the United States, the bureaucratic inertia, and the misconceptions about Asia in general and about Vietnam in particular. In addition, they frankly inquire into the nature and suitability of the strategies used by the United States in the prosecution of the war,¹⁰ and they appraise American foreign policy in view of the Vietnam "fiasco."¹¹

The *Vietnam War and International Law*¹² is a collection of articles and documents discussing legal aspects of the Vietnam conflict; it was sponsored by the American Society of International Law, and was edited by Richard Falk,¹³ a distinguished international lawyer. The expressed views range from an unqualified defense of the legality of the United States role in Vietnam,¹⁴ to an equally vehement denunciation of the American position as illegal.¹⁵

*The Responsibilities of World Power*¹⁶ and *Beyond Vietnam*¹⁷ are two representative works by persons closely associated with the Washington scene. In the first, Senator Gale McGee¹⁸ presents an

5. These studies were selected for review from scores of books the reviewer used in teaching a recent law school course at the University of Denver entitled, "Legal and Political Issues in the Vietnam War."

6. *NO MORE VIETNAMS?* (R. Pfeffer ed. 1968) [hereinafter *NO MORE VIETNAMS?*].

7. Fellow of the Adlai Stevenson Institute and Research Fellow in Comparative Law at the University of Chicago Law School.

8. Among the conferees were Henry Kissinger, Arthur Schlesinger, Jr., Hans Morgenthau, Stanley Hoffman, John McDermott, John King Fairbank, Theodore Draper, Edwin O. Reischauer, Samuel P. Huntington, James C. Thomson, Richard J. Barnet, Adam Yarmolinsky, and Sir Robert Thompson.

9. *NO MORE VIETNAMS?* 1-114.

10. *Id.* at 115-88.

11. *Id.* at 189-288. Stanley Hoffman and Edwin Reischauer both use the term "fiasco." *Id.* at 5 and 269 respectively.

12. *THE VIETNAM WAR AND INTERNATIONAL LAW* (R. Falk ed. 1968) [hereinafter *VIETNAM WAR*].

13. Milbank Professor of International Law and Practices, Princeton University.

14. See articles by John Moore, in *VIETNAM WAR* 237, 303, 401; Leonard Meeker, *id.* at 318; statement by Dean Rusk, *id.* at 335.

15. See articles by Quincy Wright, *id.* at 271; Wolfgang Friedmann, *id.* at 292; Richard Falk, *id.* at 362, 445.

16. G. MCGEE, *THE RESPONSIBILITIES OF WORLD POWER* (1968) [hereinafter *MCGEE*].

17. E. REISCHAUER, *BEYOND VIETNAM* (1967) [hereinafter *REISCHAUER*].

18. United States Senator from Wyoming.

articulate, although occasionally polemical, defense of the Johnson administration's policies in Vietnam. In the second, Professor Edwin Reischauer,¹⁹ an Asia specialist and a former United States Ambassador to Japan, clarifies the issues by presenting the Vietnam conflict in its broader Asian context. His contribution is particularly significant because he has been concerned with the problems exemplified by Vietnam for a longer period of time than have most commentators. As early as 1955, he had warned of the danger in his book, *Wanted: An Asian Policy*:

. . . Korea and China both reveal not simply distressing failures of American foreign policy, but frightening inadequacies in our whole approach. The United States has been less directly involved in Indochina, but the story has been essentially the same. . . . We have already tasted in these three countries the bitter fruits of ignorance and indifference, but Asia contains other potential Chinas, Koreas, and Indochinas, for which we are today no better prepared than we were for these earlier disasters . . .²⁰

Unfortunately, that warning was not heeded; and the book, unread, "sank quietly into the sea of library volumes without raising a ripple."²¹

These four works focus upon five major issues of the Vietnam debate: (1) why and how the United States got involved in Vietnam; (2) what went wrong with American efforts there; (3) the legality of the United States role in the Vietnam conflict; (4) the lessons the United States can learn from the conflict—specifically, the effect it will have upon the American foreign policy of the future; and (5) the impact of the conflict on world order.²² These issues are clearly of major importance to the present and future foreign policy of the United States; each will be briefly examined in this Review, with emphasis on the views presented in the selected studies.

19. Professor, Harvard University. United States Ambassador to Japan, 1961-1966.

20. Cited in REISCHAUER 36-37.

21. *Id.* at 37.

22. Major issues not discussed in these works pertain to the legality of the war under the United States Constitution, the limits of dissent to the war, the conduct of hostilities, and moral aspects. See, e.g., CLERGY AND LAYMEN CONCERNED ABOUT VIETNAM, IN THE NAME OF AMERICA (1968); F. WORMUTH, THE VIETNAM WAR: THE PRESIDENT VERSUS THE CONSTITUTION (Center for the Study of Democratic Institutions, Center Occasional Paper No. 3, April 1968); Faulkner, *The War in Vietnam: Is It Constitutional?*, 56 GEO. L.J. 1132 (1968); Ferencz, *War Crimes Law and the Vietnam War*, 17 AM. U. L. REV. 403 (1968); Finman & Macaulay, *Freedom To Dissent: The Vietnam Protests and the Words of Public Officials*, 1966 WIS. L. REV. 632; Guttman, *Protest Against the Vietnam War*, 382 ANNALS 56 (March 1969); Schwartz & McCormack, *The Justiciability of Legal Objections to the American Military Effort in Vietnam*, 46 TEXAS L. REV. 1033 (1968); Velvel, *The War in Vietnam: Unconstitutional, Justiciable, and Jurisdictionally Attackable*, 16 KAN. L. REV. 449 (1968).

I. THE UNITED STATES INVOLVEMENT IN THE VIETNAM CONFLICT

There is a wide consensus in the Vietnam literature that the United States initial military involvement in Vietnam can be traced to Washington's overriding concern with containing an "aggressive" China, with saving Vietnam and adjoining states from falling as unwilling prey to "wars of national liberation," and with preventing the development of a situation in Asia which, according to the United States perception, might threaten its vital national interests. A clear example of this concern can be found in *The Responsibilities of World Power*, in which Senator McGee stresses the need to contain the threat of Communist China. McGee, a former history professor, relies heavily on the history of Europe to supply guidelines "for American policy in shaping the new history of Asia."²³ With analogies to the Nazi experience, he argues: "Little Vietnam and Thailand are just as important [to us] as were Austria and Poland in the 1930's. To abandon them would hold as grave a portent for the future as that of the 1930's."²⁴ McGee holds the United States partly responsible for the devastation of Asia during World War II and for the subsequent "massive political vacuum" there,²⁵ and he finds that American participation in the process of rebuilding Asia has been dictated by two factors—the continuing national interest of the United States, and a sense of moral obligation.²⁶ He views the United States involvement in Vietnam as a logical corollary of the policy of containing China and depriving it of "the raw materials of Southeast Asia."²⁷ That policy, he says, is based on the successful program of containing the Soviet Union in the post-World War II period.²⁸ McGee contends that the reasons for American involvement in Vietnam can be found in the goal of "restoring a favorable balance of forces around the world."²⁹

Reischauer agrees that perhaps the dominant reason for the United States response was a perception in Washington of a Communist threat in Southeast Asia. He disagrees, however, with the accuracy of that perception and consequently with the propriety

23. MCGEE 20. Although he cautions "against applying the experiences of Europe to the problems of Asia without careful reservations," he finds "common ingredients in the politics of both East and West." *Id.* at 19-20.

24. *Id.* at 21.

25. *Id.* at 17.

26. *Id.* at 16-19, 49, 51.

27. *Id.* at 23. *See also id.* at 22, 49, 226.

28. *Id.* at 11, 12, 21, 22.

29. *Id.* at 25. *See also id.* at 19.

of the United States response. American policy in Asia, he believes, was based on "hasty analogies drawn from other times and other places . . . in the confused early postwar years, or under the psychological stresses of the cold war."³⁰ In his opinion, such analogies between Asia and Europe, especially those which dictate an attempt to contain communism by entering into bilateral defense treaties, are fundamentally false.³¹ Thus, he strongly challenges McGee's contention that the United States presence in Vietnam reflects an appropriate response based on considerations of the balance of power in Asia. Indeed, Reischauer considers it "perhaps our greatest mistake" to assume that the power balance in Asia was comparable to that which existed in Europe.³² As distinguishing features, he recounts the Sino-Soviet rift, the costs to China or Russia of military conquest or political domination of the Asian lands, especially the burdens which would be placed on their economies if communism were to spread in Asia, and the forces of nationalism on that continent.³³

The remarks by a large majority of the conferees in *No More Vietnams?* are generally in agreement with Reischauer's position. They seek to expose the misconceptions underlying the United States Vietnam involvement. Arthur Schlesinger, Jr., for example, explains the United States readiness to undertake intervention in Vietnam in terms of an historical framework comprised of two strains in American thinking about the United States role in the world—the idea of collective security, and the concept of "liberal evangelism" expressed through "a kind of global New Dealism." He concludes that that intervention "in the end, bore no relationship to any rational assessment of our interest."³⁴ Adam Yarmolinsky holds three factors responsible for the United States decision to give assistance to the Diem regime: anti-communist solidarity; concern about the Chinese domination of Southeast Asia; and fear that a shift in the loci of the iron and bamboo curtains would result if Communist military force were not met.³⁵ James C. Thomson attributes the early decisions about Vietnam to the legacy of the 1950's—the "loss of China," the Korean War, and the Far East policy of Secretary Dulles which gave rise to the domino theory about Asia.³⁶ Henry Kissinger focuses on "lack of historical knowl-

30. REISCHAUER 98. See also Reischauer in *NO MORE VIETNAMS?* 114.

31. REISCHAUER 57-60. He admits, however, that "our efforts to give security to weak Asian states through SEATO and other alliances was [sic] well motivated and may have had some efficacy." *Id.* at 97.

32. *Id.* at 92.

33. *Id.* at 92-96.

34. *NO MORE VIETNAMS?* 7-8.

35. *Id.* at 23.

36. *Id.* at 20.

The new Administration inherited and to some extent shared the "domino

edge": "[I]t is amazing that no one seems to have systematically studied, before we went there, what the French experience was in Vietnam. . . . [and] why we thought we could achieve with sixteen thousand men what the French could not do with two hundred thousand men."³⁷ Theodore Draper places partial responsibility for intervention on "the doctrine of 'limited war' as it was worked out in the latter half of the 1950's outside the government and taken over by the government in the 1960's."³⁸ Several others, including Richard J. Barnet, discuss the impact of the failure of the American political and bureaucratic decision-making processes upon the United States initial involvement in Vietnam.³⁹

The thesis that concern with China led the United States to Vietnam is also supported by Quentin L. Quade, in *The Vietnam War and International Law*.⁴⁰ Quade attempts a thorough analysis of American response to wars of national liberation, and finds that responsibility for the involvement in Vietnam lies in the United States perception of a future continuing struggle with China.⁴¹

Thus, there is an apparent agreement among the political analysts that the United States foresaw a direct threat from China or an indirect threat from the Southeast Asian activities of a worldwide Communist conspiracy. That consensus, however, should not obscure the marked divergence of views as to the accuracy of that perception and as to the fitness of the United States response.

II. THE UNITED STATES EFFORTS IN VIETNAM

No More Vietnams? offers a brilliant analysis of the United States problems in Vietnam.⁴² Leading the discussion, Stanley Hoffman identifies as the United States hubris, its "old 'illusion of omnipotence.'"⁴³ He believes that this illusion, coupled with the United States misreading of reality and its ignorance of the context, has resulted in the present morass. It has led, for example, to the

theory" about Asia. This theory resulted from profound ignorance of Asian history and hence ignorance of the radical differences among Asian nations and societies. It resulted from a blindness to the power and resilience of Asian nationalisms. (It may also have resulted from a subconscious sense that since "all Asians look alike," all Asian nations will act alike.) As a theory, the domino fallacy was not merely inaccurate but also insulting to Asian nations; yet it has continued to this day to beguile men who should know better.

Id. at 21.

37. *Id.* at 13.

38. *Id.* at 26.

39. See Barnet, *id.* at 50-74, 90-96; Thomson, *id.* at 44-50; Wohlstetter, *id.* at 74-83; Yarmolinsky, *id.* at 102-08.

40. VIETNAM WAR 102.

41. *Id.* at 110.

42. NO MORE VIETNAMS? 115-88.

43. *Id.* at 121.

deployment of massive conventional war machinery to cope with an insurgency situation, and it has encouraged efforts to build "someone else's nation, to [create] a stable society and polity elsewhere, in the midst of a large-scale war."⁴⁴ That same hubris, moreover, has caused an Americanization of the war, thereby providing the insurgents with a cause, and has "brought not merely physical but social destruction to the people we came to protect."⁴⁵ Sir Robert Thompson, who guided the successful campaign against guerrillas in Malaya, concurs in part: "The wrong definition of the original threat (the Korea complex) and the building of too large and conventional an army to meet it, were the beginning of the tragedy."⁴⁶ But Thompson offers a remedy for similar situations in the future. His over-all strategy for a Vietnam-type intervention would be to assign a top priority to the task of nation building and then to follow that with pacification and, finally, with destruction of the enemy forces. He considers the major weakness of the United States strategy to be a reversal of priorities.⁴⁷ In addition, he finds that the current situation lacks the basic prerequisites for a successful prosecution of the intervention strategy—effective organizational machinery and the control necessary to implement the strategy. Thus, he places a large part of the blame for the failure of the United States policy on administrative problems—specifically, on the lack of a good working relationship between the United States and the government of South Vietnam, and on the latter's incompetence in governing.⁴⁸ As a solution to the latter problem, he recommends an effort by the United States to strengthen the administrative capabilities of the host country's government by training, policing, improving communications and intelligence systems, introducing an equitable taxation system, and developing an economic assistance program.

Taking issue with Thompson, John McDermott argues that the existing social and political conditions in Vietnam were such that success was not possible for the American strategy under any circumstances. It is McDermott's position that even if Thompson's prescription for strengthening the governing capacity in the host country had been faithfully implemented in South Vietnam, the United States aim of nation-building in that country would still have failed.⁴⁹

44. *Id.* at 130.

45. *Id.* at 134. See also S. HOFFMAN, *GULLIVER'S TROUBLES* 176-213 (1965).

46. NO MORE VIETNAMS? 156. See *id.* at 154-71 for all of Thompson's arguments.

47. *Id.* at 157-58.

48. *Id.* at 158-62.

49. *Id.* at 171-79. See also *id.* at 244-45.

In *The Responsibilities of World Power*, Senator McGee blames the setbacks to the Vietnam policy on the United States failure to react quickly to meet Hanoi's military escalation in 1963 and 1964. In his opinion, the United States miscalculations, "mistakes, if you prefer,"⁵⁰ were errors in timing and in shifting tactics. Such errors, he feels, were made by responding directly to the guerrilla warfare, by failing to recognize the importance of local security forces, and by asking in 1965, "How many troops will it take not to lose in the south?" when the question should have been, "How many troops will be needed to win?"⁵¹ Thus, he identifies the United States mistakes in tactical terms.⁵² To that kind of analysis, William R. Polk responds in *No More Vietnams?*:

It seems to me that as a rough rule of thumb one can say that something like 80 per cent of the process of guerrilla warfare is political, 15 per cent administrative, and only 5 per cent military. Applying this scale to the Vietnamese conflict, one can say that the political issue was largely decided as early as 1946, and the administrative issue by about 1957, and that we are talking today only about the residual 5 per cent.⁵³

This dialogue enhances one's awareness and appreciation of the complicated nature of the problem, and is likely to stimulate further inquiry into important questions concerning the order of priorities for an intervening nation, the proper role of a foreign power in "nation-building," and the purpose of foreign aid. In addition, it raises the problem whether the policy of incrementalism is as unfit to meet guerrilla warfare as is the policy of massive retaliation, especially when the insurgency is substantially indigenous. Finally, the difference of opinion over the United States strategy in Vietnam demonstrates the vital need that the total strategy and tactics of the intervening state be coordinated to conform to its overriding policy objective. To do this, the intervening nation must insure itself built-in flexibility, so that it has several options available at any given stage of the conflict, thus avoiding the situation in which strategy begins to dictate policy and to drag policy-makers into unforeseen traps. The method for creating this necessary flexibility, however, is not readily apparent.

III. LEGAL ASPECTS OF THE CONFLICT

What greets a reader at the threshold of examining the legality of the United States activities in Vietnam is a state of utter con-

50. MCGEE 251.

51. *Id.* at 249 (emphasis deleted).

52. *Id.* at 239-55.

53. *NO MORE VIETNAMS?* 184.

fusion. This derives, at least in part, from the inability of the traditional concepts of international law⁵⁴ to provide a framework within which a Vietnam-like situation can be identified, discussed, and resolved. Another, and equally formidable, handicap which is partially responsible for this undesirable situation is the lack of an impartial fact-finding apparatus in the international arena. Moreover, the United Nations Charter and various other international agreements, including the 1954 Geneva Accords, are susceptible of varying interpretations. That factor, combined with the decentralized nature of the world community and the weaknesses which attend its ideological orientation, relegates juridical considerations to a secondary position. Law is still relevant, it can be argued; but in view of the power-oriented, ideological structure of the international society, other considerations, mainly political and economic, must dictate policies.⁵⁵ Thus, it should come as no surprise that the ranks of international lawyers are deeply split on the issue of the legality of the United States actions in Vietnam. Their writings show that they are polarized into clashing positions—either as staunch defenders or as equally staunch critics of the United States role in Vietnam.

This polarization can easily be seen by comparing *The Legality of United States Participation in the Defense of Vietnam*,⁵⁶ a memorandum from the Legal Advisor of the United States Department of State, with the major criticism of that work. The memorandum altogether ignores the legal arguments that might weaken the assertion that the United States is lawfully in Vietnam and confines its discussion to the selection and interpretation of facts and law most favorable to the American position. Thus, it seems to have invited the comment that it is merely an exercise in rationalizing and justifying an existing government position, and therefore does not qualify as an objective legal assessment of the situation.⁵⁷ However, the major study criticising the memorandum on that score, *Vietnam and International Law*,⁵⁸ itself suffers from a similar ad-

54. See, e.g., W. BISHOP, INTERNATIONAL LAW 745-51 (reprisals), 751-54 (intervention), 776-79 (self-defense), 274 (self-determination) (2d ed. 1962).

55. See, e.g., Wright, *Legal Aspects of the Viet-Nam Situation*, 60 AM. J. INTL. L. 750, 769 (1966), in VIETNAM WAR 271, 290.

56. The Memorandum of March 4, 1966, is reprinted in 112 CONG. REC. 5504 (1966), 60 AM. J. INTL. L. 565 (1966), and VIETNAM WAR 583. An earlier U.S. Department of State Memorandum of March 8, 1965, *Legal Basis for United States Actions Against North Viet-Nam*, was reprinted in STAFF OF SENATE COMM. ON FOREIGN RELATIONS, 89TH CONG., 2D SESS., BACKGROUND INFORMATION RELATING TO SOUTHEAST ASIA AND VIETNAM 199 (Comm. Print 2d rev. ed. 1966).

57. See Falk, *Preface* to LAWYERS COMM. ON AMERICAN POLICY TOWARDS VIETNAM, VIETNAM AND INTERNATIONAL LAW 13 (1967).

58. LAWYERS COMM. ON AMERICAN POLICY TOWARDS VIETNAM, VIETNAM AND INTERNATIONAL LAW (1967). See also LAWYERS COMM. ON AMERICAN POLICY TOWARDS VIETNAM, AMERICAN POLICY VIS-A-VIS VIETNAM, MEMORANDUM OF LAW, reproduced in

versary perspective. Indeed, its fact selection process and its arguments give it the appearance of a prosecutor's brief. But those are not the only one-sided works. Other studies, notably *Law and Vietnam*,⁵⁹ and *The Lawfulness of United States Assistance to the Republic of Viet Nam*,⁶⁰ also appear to be stout efforts at providing an all-out defense for the United States position, and are therefore unreliable appraisals.

The Vietnam War and International Law offers a stimulating discussion among American international lawyers, even though the conceptual framework is mainly based on untrustworthy⁶¹ traditional doctrines. In Part I,⁶² articles by numerous professors⁶³ and excerpts from Emmerich de Vattel and John Stuart Mill deal with the broad issues of internal conflict and intervention, thus providing an ideal setting for Parts II and III, which contain inquiries into the legal issues of the Vietnam War.⁶⁴ Those inquiries are then made in selections from Eliot Hawkins, from Leonard Meeker, formerly the Legal Advisor to the United States Department of State, and from many noted professors of international law.⁶⁵

The legal arguments which appear in these studies have a wide range, but all are based on the same set of customary international law norms. Those norms pertain to aggression, self-defense, the general treaty law respecting the breach of agreements, the requirements of necessity and proportionality in the use of force, and the requirements for statehood. Also invoked occasionally are the United Nations Charter, the 1954 Geneva Accords, and the SEATO Treaty. Despite their reliance on the same general principles, however, the international lawyers come to conflicting conclusions. That conflict may be traced to their disagreement on issues of mixed fact and

112 CONG. REC. 2666 (1966); Declaration of World Conference of Lawyers for Vietnam, Grenoble, July 6-10, 1968.

59. R. HULL & J. NOVograd, *LAW AND VIETNAM* (1968).

60. Moore & Underwood, *The Lawfulness of United States Assistance to the Republic of Viet Nam*, 5 *Duquesne U. L. Rev.* 235 (1967) (in collaboration with Myres McDougal), reprinted in 112 CONG. REC. 15,519 (1966). See also Deutsch, *Legality of the War in Vietnam*, 7 *Washburn L.J.* 153 (1968).

61. See note 54 *supra* and accompanying text.

62. *VIETNAM WAR* 17-159.

63. Those professors are Manfred Halpern, Professor of Politics, Princeton University; William T. Burke, Professor of Law, Ohio State University; Quentin L. Quade, Professor of Political Science, Marquette University; Walt W. Rostow, Professor of Economics and History, University of Texas, former Special Assistant to the President; and Wolfgang Friedmann, Professor of Law, Columbia University.

64. See *VIETNAM WAR* 163-522.

65. These are Quincy Wright, Professor of Law Emeritus, University of Chicago; Wolfgang Friedmann; Richard A. Falk; John N. Moore, Associate Professor of Law, University of Virginia; Daniel G. Parton, Professor of Law, Boston University; Neill H. Alford, Jr., Professor of Law, University of Virginia; and Tom J. Farer, Assistant Professor of Law, Columbia University.

law. The most important of these issues is whether Vietnam is a political entity; that is, whether it qualifies as a separate state, and if it does, on what date it achieved that status. One's feeling about this matter has some effect on his position as to whether the conflict is a civil war, an international conflict, or both. If it is thought to combine elements of both, there is further disagreement about whether the conflict was originally indigenous, or whether it was of extraneous instigation, assistance, and control; and about the time and source of the military assistance received by both the incumbents and the insurgents. The lawyers also differ about the kind of reprisals still permissible under international law. Since the United States collective self-defense measures are claimed to have been undertaken in response to the alleged armed attack from the North, one's stand on the validity of those measures depends upon whether, in his belief, the North Vietnamese actions of infiltration and subversion constituted armed attack as defined in the United Nations Charter. A final area of disagreement concerns the basis of the 1954 Geneva Accords, who is bound by them, and how they should be interpreted, particularly with respect to the election provision. A determination of those factors is important, for one's opinion as to who has violated the Geneva Accords—North Vietnam, South Vietnam, or the United States—has a significant impact upon his position as to the legality of the subsequent conduct of each participant.

Perhaps, as Professor Friedmann contends in *The Vietnam War and International Law*, disagreement stems in part from the tendency to use international law "as part of the armory of national policy,"⁶⁶ and to interpret its norms "so as to conform, in all cases, with national policy."⁶⁷ But it may also reflect a genuine difference of opinion among reasonable men, based upon scholarly analyses of the legal issues.⁶⁸

In view of the imperfect nature of international law, an impartial determination of these issues is, at present, neither feasible nor practicable. Nevertheless, there are four major subjects in urgent need of further inquiry: (1) the problem of fact-finding in a Vietnam-type conflict;⁶⁹ (2) the determination of statehood under international law;⁷⁰ (3) the interpretation of international agreements;⁷¹ and (4)

66. VIETNAM WAR 294.

67. *Id.*

68. See Moore, *id.* at 315.

69. See G.A. Res. 2104, U.N. GAOR Supp. 14, at 92, 20 U.N. Doc. A/6014 (1966). For a recent article discussing this problem, see Franck & Cherkis, *The Problem of Fact-Finding in International Disputes*, 18 W. RES. L. REV. 1483 (1967).

70. For a recent inquiry, see Comment, *Recognition in International Law: A Functional Reappraisal*, 34 U. CHI. L. REV. 857 (1967).

71. M. McDUGAL, H. LASSWELL & J. MILLER, *INTERPRETATION OF AGREEMENTS AND WORLD PUBLIC ORDER* (1967) raises and discusses major issues in interpreting agreements.

the problem of establishing a set of operative norms, or at least some policy guidelines, to deal with insurgency situations in which external participation of varying degrees has already taken place.⁷² The last of these problems is in particular need of examination and, if possible, resolution. The customary international law doctrines of intervention and nonintervention are so vague and so susceptible of subjective invocation and interpretation that they offer no useful guidelines in the present context.⁷³ Thus, other standards and solutions must be sought. A distinction might be made, for example, between the prohibition of military tactical support on the one hand, and the legitimation of diplomatic, ideological, and economic strategies on the other.⁷⁴ In addition, it might be useful to create typologies of internal conflict, using external involvement and the indigenous nature of the conflict to determine legal rights and duties of other parties.⁷⁵

IV. THE LESSONS OF THE VIETNAM CONFLICT

No matter what the eventual outcome of the Paris peace talks, it is hoped that one salutary effect of the Vietnam conflict will be a reassessment of the United States foreign policy in general, and of its policy toward Asia in particular. A re-evaluation of the United States capabilities and weaknesses in the context of insurgencies should be another natural consequence of the protracted Vietnam conflict. Through this reappraisal, the country should examine means of avoiding future actions leading to undesirable military interventions, while resisting the temptation to lapse into neo-isolationism as a reaction to a revulsion against the Vietnam experience.⁷⁶ Assuming that it is possible to achieve both goals, the government should then determine what guidelines American policymakers must follow

72. The literature on internal conflicts is growing rapidly. For selected recent writing, see R. BARNET, *supra* note 1; A. CAMPBELL, *GUERRILLAS* (1968); R. COTTAM, *COMPETITIVE INTERFERENCE AND TWENTIETH CENTURY DIPLOMACY* (1967); *THE DIRTY WARS* (D. Robinson & S. Marshall eds. 1968); *INTERNATIONAL ASPECTS OF CIVIL STRIFE* (J. Rosenau ed. 1964); R. McCLINTOCK, *THE MEANING OF LIMITED WAR* (1967); L. MILLER, *WORLD ORDER AND LOCAL DISORDER* (1967); C. MYDANS & S. MYDANS, *THE VIOLENT PEACE* (1968); J. PAGET, *COUNTER-INSURGENCY OPERATIONS* (1967); *POLITICS OF VIOLENCE* (C. Leiden & K. Schmitt eds. 1968); R. THOMPSON, *DEFEATING COMMUNIST INSURGENCY*, *STUDIES IN INTERNATIONAL SECURITY* No. 10 (1966).

73. See Burke, *VIETNAM WAR* 79; Falk, *id.* at 362, 445; Farer, *id.* at 509.

74. For elaborate discussion on such a proposal, see Farer, *Harnessing Rogue Elephants: A Short Discourse on Foreign Intervention in Civil Strife*, 82 *HARV. L. REV.* 511 (1969).

75. *VIETNAM WAR* 6-7 suggests this and other possibilities.

76. For expressions of serious concern on this point, see *NO MORE VIETNAMS?* 207 (Pool); *id.* at 216 (Hoffman); *id.* at 218 (Huntington); *id.* at 260-61 (Thomson); *id.* at 268-70, 283 (Reischauer); *id.* at 273 (Thompson); *McGEE* ix; *REISCHAUER* 14-15, 41-42, 99.

in directing the United States toward a restrained but effective role of leadership and responsibility in world affairs.⁷⁷

The studies under review offer a wide range of prescriptions. Samuel P. Huntington, for instance, recommends a program of preventive political involvement.⁷⁸ Under that program, the purpose of the United States involvement in a nation displaying a potentially explosive situation would be to promote political development by helping the nation to build institutions which are broadly based, tightly structured, and therefore "capable of channelling discontent into peaceful paths."⁷⁹ He prefers political involvement both to socio-economic development and to ultimate military intervention, because political involvement, by its very nature, could "well be more discreet, less expensive, and more productive of political stability."⁸⁰ Huntington also presents practical suggestions as to policies which the United States could follow to foster political development.⁸¹ His basic assumption is that the overriding benefits of the United States involvement should be the deterrence of overt aggressions and the prevention of domestic insurrections which would otherwise threaten vital American interests.

Others take issue with Huntington's "essentially technical view of political development,"⁸² "welfare imperialism,"⁸³ "culture-centered optimism,"⁸⁴ and "social [and] political engineering,"⁸⁵ and they view with skepticism the feasibility or desirability of the United States assuming such a role. But a wide consensus seems to emerge on several points: the United States should critically re-examine the limits of its power to shape the world according to its wishes;⁸⁶ it should more carefully establish the meaning and priorities of its national interest;⁸⁷ it should distinguish between different types of intervention;⁸⁸ and it should rigorously study any situation before becoming involved in it.⁸⁹ There is also general agreement that the United States should adopt a "lower posture in world affairs."⁹⁰

77. See NO MORE VIETNAMS? 207-08, 214 (Pool); *id.* at 262-65 (Thomson); *id.* at 270-71 (Reischauer). See also Reston, *Washington: The Turning of the Tide*, N.Y. Times, Aug. 6, 1969, at 32, col. 3.

78. See NO MORE VIETNAMS? 217-32.

79. *Id.* at 225. See also *id.* at 278-80, 284.

80. *Id.* at 232.

81. *Id.* at 231.

82. *Id.* at 237. See *id.* at 232-58.

83. *Id.* at 232. See also *id.* at 256-57.

84. *Id.* at 237.

85. *Id.* at 247, 251.

86. See, e.g., *id.* at 197-98 (Hoffman), 268 (Reischauer).

87. See, e.g., *id.* at 198 (Hoffman), 263 (Thomson), 278 (Cooper).

88. See, e.g., *id.* at 196 (Hoffman), 264 (Thomson).

89. See, e.g., *id.* at 193-94 (Hoffman), 263-64 (Thomson), 278 (Cooper).

90. *Id.* at 261 (Thomson).

Such a posture would not negate concern with the rest of the world but would indicate a cautious approach to crises, a policy of disengagement and deactivism,⁹¹ and a preference for exploring alternative multilateral measures to meet crises.⁹²

On the other hand, there is a great divergence of views among the commentators as to the United States role in the specific Asian context. Senator McGee urges that the country persist in "holding a firm line" and "'staying the course' in [Southeast] Asia,"⁹³ while Edwin Reischauer prescribes a gradual withdrawal as the most desirable course of action,⁹⁴ and Hans Morgenthau recommends that the United States policy "ought to be neither piecemeal military intervention on the mainland nor disengagement altogether."⁹⁵ Reischauer provides the most thorough analysis of the Asian political and economic situation,⁹⁶ and offers a diagnosis that in Asia "nationalism is the basic driving force and Communism the technique sometimes adopted to fulfill it."⁹⁷ Thus, in his opinion, communism is but one of nationalism's vehicles. Reischauer does not consider it likely that communism in any form—whether as a global movement, as Chinese neo-imperialism, or as a series of independent Communist movements—could establish even a temporary hold over the greater part of non-Communist Asia.⁹⁸ But even if all of Asia were to become Communist-dominated, he feels, there would be no threat to the United States security.⁹⁹ He finds that the Communist movements in Asia have thrived primarily on local discontent and that the proper response is as much economic and political as military. His analysis of the Asian situation leads him to observe that "our great military power is relatively ineffective in the area."¹⁰⁰

Reischauer suggests a long-range, constructive approach to Asia's problems instead of a short-range, defensive one. As a first step in his approach, the United States should come to know and understand Asia better: "In approaching Asia, we are like the proverbial blind men examining the elephant."¹⁰¹ He feels that if the country

91. *See id.* at 261-67 (Thomson), 268-70, 283 (Reischauer), 273 (Thompson). *See also id.* at 232-43 (Ahmad).

92. *See, e.g., id.* at 262-66 (Thomson), 271 (Reischauer). *But see id.* at 285-87 (Wohlstetter).

93. MCGEE 269. *See id.* at 256-69. For his eight concrete suggestions, *see id.* at 260-67. McGee's analysis of the Asian political scene and his perception of the American national interest in Asia seem to suffer from over-generalizations.

94. *See* REISCHAUER 208-12.

95. NO MORE VIETNAM? 277. *See also* H. MORGENTHAU, A NEW FOREIGN POLICY FOR THE UNITED STATES 129-56, 189-206 (1969).

96. REISCHAUER 45-99.

97. *Id.* at 64.

98. *Id.* at 92-95.

99. *Id.* at 95-96.

100. *Id.* at 84.

101. *Id.* at 45.

is to avoid future Vietnam quagmires, and if it is to develop the capability to respond adequately to similar situations if they do occur, it must identify the basic problems in Asia and must rethink broader Asian policy;¹⁰² only then, in his opinion, can the United States make wiser choices. Reischauer then offers many concrete proposals for improving the United States relations, particularly with Japan¹⁰³ and China,¹⁰⁴ but also for its dealings with the rest of Asia.¹⁰⁵

V. IMPACT ON WORLD ORDER

The already fragile world order is likely to be further weakened if no viable means can be found to regulate the use of force in the international arena. Promoting and strengthening modalities which are nonviolent and primarily diplomatic, and encouraging states to employ those modalities in the pursuit of their national interests is an imperative of first priority. Yet when a scene of internal conflict becomes a focal point of conflicting ideologies and the conflict assumes the nature of a holy war,¹⁰⁶ the use of force is often justified—or rationalized—as a commitment to human dignity,¹⁰⁷ a necessary evil to ensure genuine self-determination of peoples,¹⁰⁸ a fight

102. *See id.* at 32-42.

103. *See id.* at 105-39.

104. *See id.* at 140-80.

105. *See id.* at 181-212.

106. *See* U Thant's statement in *VIETNAM WAR* 344.

107. Murphy, *Vietnam: A Study of Law and Politics*, 36 *FORDHAM L. REV.* 453 (1968).

Professor Falk makes much of the belief that if national elections were held in the fifties, Ho Chi Minh probably would have been victorious. Yet if victorious, . . . widespread terror and executions in the North during 1955-1956 would very probably have been repeated throughout the country. Could such actions pass muster before the conscience of mankind? Surely, at some point, the exigencies of Marxist history must come under some objective evaluation. Wherein lies the essential relationship between the person and the state? Does existence have meaning outside the demands of collective life? What judicial protection against the state does a commitment to human dignity require? These are not academic considerations, they bear directly upon the truly human dimensions of the Vietnam tragedy. [Footnotes omitted.]

Id. at 459.

108. *See, e.g.*, Ambassador Goldberg's statement made at the Plenary Session of the United Nations General Assembly on September 22, 1966: "We seek to assure for the people of South Vietnam the same right of self-determination—to decide its own political destiny, free of force—that the United Nations Charter affirms for all." Cited in Deutsch, *Legality of the War in Viet Nam*, 7 *WASHBURN L.J.* 153, 160 (1968). President Johnson's statement, cited by Dean Rusk in *VIETNAM WAR* 340, is to the same effect: "[I]f [the North Vietnamese] aggression is stopped, the people and government of South Vietnam will be free to settle their own future, and the need for supporting American military action there will end." Addressing the twentieth anniversary of the International Association of Democratic Lawyers in Paris on Jan. 20, 1967, I.I. Karpets, Director of the Moscow Institute of Criminology said: "The first [important task of the association] is to rally all progressive forces to the defense of the Vietnamese people, who alone are entitled to decide the fate of their country."

for democracy¹⁰⁹ and freedom,¹¹⁰ or a war of national liberation.¹¹¹ The following remarks by former Secretary of State Dean Acheson, intended to scold international lawyers for their "arrogance" in trying to analyze in legal terms the 1962 Cuban Quarantine, illustrate that kind of attitude:

I must conclude that the propriety of the Cuban quarantine is not a legal issue. The power, position and prestige of the United States had been challenged by another state; and law simply does not deal with such questions of ultimate power—power that comes close to the sources of sovereignty. . . . The survival of states is not a matter of law.¹¹²

Highlighted by this line of reasoning is the crucial issue of the Vietnam conflict: how can and should the use of force be controlled in international relations, especially in a situation involving insurgency? When that issue is particularized in the context of the United States role in Vietnam, the significant question is whether the United States actions violate international law, or whether they are justified and thereby create a precedent for intervention by a major power in a small nation torn by internal conflict, especially if the conflict is aided and inspired by external sources.

VI. CONCLUSIONS

Sometime in the future, military historians, political analysts, and international lawyers might answer a crucial question about the present conflict: even assuming that the United States aim was to establish a free and independent Vietnam and thereby to make possible a stable Vietnamese society capable of resisting attempted subversion and aggression,¹¹³ was that goal attainable at its outset? In other words, was victory impossible because of the very nature of the

INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS, XXTH ANNIVERSARY OF THE I.A.D.L.: A REPORT ABOUT THE COMMEMORATIVE MEETING AT UNESCO HOUSE 24 (Paris: Jan. 20, 1967).

109. But U Thant stated: "In Vietnam there is growing evidence that the so-called 'fight for democracy' is no longer relevant to the realities of the situation." U Thant's statement in *VIETNAM WAR* 247.

110. "The American policy of assisting South Viet-Nam to maintain its freedom was inaugurated under President Eisenhower and continued under Presidents Kennedy and Johnson." Dean Rusk's statement in *id.* at 340.

111. *See, e.g., id.* at 339 for the following statement by Dean Rusk: "Viet-Nam presents a clear current case of the lawful versus the unlawful use of force. I would agree with General Giap and other Communists that it is a test case for 'wars of national liberation.' We intend to meet that test."

112. *Remarks by the Honorable Dean Acheson*, 57 *PROC. AM. SOCY. INTL. L.* 13, 14 (1963). *See also Remarks by the Honorable Dean Acheson, The Arrogance of International Lawyers*, 2 *INTL. LAW.* 591 (1968).

113. *See* Sir Robert Thompson's remarks in *NO MORE VIETNAMS?* 156-57.

conflict,¹¹⁴ or did the United States fail as a result of faulty strategy, ill timing, the adoption of "a mini-brute force policy,"¹¹⁵ or administrative and bureaucratic weaknesses?¹¹⁶ The proximity of events might preclude an authoritative, conclusive determination of this question at the present time. However, one can gain from the current debate a recognition of the complexity of this multi-faceted problem, and an appreciation of the genuine difference of opinion as to the reasons for, and priorities of, such interventions. It is encouraging that one can discern in the midst of this morass a willingness to examine the reasons for the attitudes and events that have shaped the United States Vietnam policy, and the open-mindedness which is imperative for pursuing further inquiry into such muddled areas of law and policy.

Nevertheless, although the inquisitive, scholarly approach in analyzing such a highly emotional issue as the Vietnam war is noticeable in the works of several contemporary writers, a critical appraisal of the Vietnam literature still shows that there are two urgent needs. The first is to intensify scholarly efforts toward promoting the regulation of force in international relations, and, at the same time, to explore mechanisms—both old and new—for providing substitutes for the use of force which do not sacrifice effectiveness in the pursuit of national interests. The second need is to continue the search for clarifying and refining the international law norms pertaining to the rights and duties of third parties in internal-conflict situations.

A look at the Vietnam literature also identifies a glaring gap in present thinking. That gap is the lack of any significant dialogue among international lawyers, scholars in political science and international relations, and policymakers in Washington. The indifference toward international legal norms—"the niceties of international law"—often demonstrated by political scientists who rely mainly, if not exclusively, upon naked concepts of power and vital state interests in formulating and prescribing national policies,¹¹⁷ works only to frustrate their efforts to build a viable world order. Equally tenuous are the pretensions of some international lawyers who surround themselves with a self-created halo of purely juridical norms. If they pursue their laudable objectives of resolving interstate or intrastate confrontations—which are often highly explosive, mainly political, and ideologically oriented—without regard to other

114. See F. ARMBRUSTER, R. GASTIL, H. KAHN, W. PFAFF & E. STILLMAN, *CAN WE WIN IN VIETNAM?* (Hudson Institute Series on National Security and International Order No. 2, 1968).

115. *NO MORE VIETNAMS?* 140. See *id.* at 138-41, 201-02.

116. See note 39 *supra* and accompanying text.

117. For a recent formulation by a leading exponent of this thought, see H. MORGENTHAU, *A NEW FOREIGN POLICY FOR THE UNITED STATES* 111-56, 241-44 (1969).

disciplines or to pertinent conditioning factors and interactions, they are doomed to failure.

International law does not operate in a vacuum, and it is not, at least at present, a panacea for all the ills of the international community. Nonetheless, it has a proper role in providing a framework of inquiry to clarify goals, policies, strategies, outcomes, and long-range effects.¹¹⁸ Without the interaction between international law and political science,¹¹⁹ the analysis of a Vietnam-type situation tends to be sketchy, lopsided, and inadequate.

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118. For a thought-provoking statement on the role of international law in the contemporary world, see McDougal, *Perspectives for an International Law of Human Dignity*, 53 *PROC. AM. SOC'Y. INTL. L.* 107 (1959).

119. For expressions of this concern, see Deutsch, *Neutrality, Legitimacy, and the Supreme Court: Some Intersections Between Law and Political Science*, 20 *STAN. L. REV.* 169 (1968); Polsby, *On Intersections Between Law and Political Science*, 21 *STAN. L. REV.* 142 (1968).