

Books of The Times

Just Who Is a War Criminal?

By JOHN LEONARD

NUREMBERG AND VIETNAM: An American Tragedy. By Telford Taylor. 224 pages. A New York Times Book: Quadrangle. \$5.95. Paperbound, \$1.95.

CONVERSATIONS WITH AMERICANS. By Mark Lane. 247 pages. Simon & Schuster. \$6.95.

Telford Taylor, who was chief counsel for the prosecution at the Nuremberg trials 25 years ago and who is today a professor of law at Columbia University, undertakes the elucidation of a dark paradox: "It has come to this: that the anti-aggression spirit of Nuremberg and the United Nations Charter is invoked to justify our venture in Vietnam, where we have smashed the country to bits, and will not even take the trouble to clean up the blood and rubble. None there will ever thank us; few elsewhere that do not see our America as a sort of Steinbeckian 'Lennie,' gigantic and powerful, but prone to shatter what we try to save."

Mr. Taylor is painstaking. He begins with a survey of historical precedents in defining "war crimes" and establishing tribunals to judge the accused. He considers such notions as "just," "unjust" and "aggressive" wars; "the principle of chivalry"; "superior orders" and "reprisals." He examines the Hague and Geneva Conventions, the United States Army Field Manual of 1956 and the 1863 Lieber regulations on treatment of prisoners during the American Civil War. He tells what actually happened at the Nuremberg and Tokyo trials of Germans and Japanese. (The Japanese fared worse than the Germans. Gen. Tomayuki Yamashita was condemned to death by hanging "for failure properly to control the conduct of Japanese troops under his command in the Philippines.")

Lawyer, Not Polemicist

It's a messy business, trying to decide what's permissible on a battlefield. "No rules to restrain the conduct of war will ever be observed if victory seems to depend upon the breach of them," warned Lowes Dickinson. Guerrilla insurgencies complicate the picture; the Vietcong do not subscribe to the Geneva Convention. And yet, as Mr. Taylor insists, literally millions of lives have been saved because most nations observe at least a few of the "rules" we have agreed on to protect ourselves from what we are capable of doing. By exploring the thinking behind those rules, Mr. Taylor qualifies himself to look at what Americans are up to in Vietnam—not as a polemicist but as a lawyer.

He doesn't like what he sees. He doesn't like "reprisal" attacks by mortar and aerial bombardment, the Sonmy massacre and our treatment of prisoners, which he calls "war crimes" by any definition. The case of Lieut. James Duffy, who executed a Vietnamese prisoner, is instructive. Lieutenant Duffy's defense was that his action was consistent with official policy, consid-

ering the Army's emphasis on a "high body count." The court was sufficiently impressed by this argument to revoke its own verdict of premeditated murder (mandatory life sentence) and convict him of involuntary manslaughter (six months), which is ridiculous. "The crime," says Mr. Taylor, "was made to fit the punishment."

But if the Duffy defense has any logic whatsoever, it leads upward—to the policy-makers. "The ultimate question of 'guilt' in the trials of the Sonmy troops is how far what they did departed from general American military practice in Vietnam as they had witnessed it," says Mr. Taylor. In this respect, it is not only instructive but appalling to read Mark Lane's "Conversations with Americans," edited transcripts of his interviews with American servicemen, some of them deserters, some of them honorably discharged, some of them still in our armed services. Mark Lane is his own credibility gap, but editors at Simon & Schuster have listened to the tapes, many of the veterans use their real names and the weight of specific detail is enormous.

Livid Side of Legal Brief

According to the 32 servicemen Mr. Lane talked to, the following were common practices in Vietnam: American soldiers and Marines snipping off enemy ears and wearing them in their hats or preserving them in jars of alcohol . . . torture of suspected Vietcong by bamboo splints under the fingernails, amputation of fingers, electrical wiring from field telephones attached to the genitals . . . prisoners dropped from helicopters . . . the gang-raping of Vietnamese nurses, followed by G.I.'s shoving hand flares into the women's vaginas, which exploded their stomachs. In its attention to the details of sadism and murder, "Conversations with Americans" is a sickening book, almost pornographic, the livid side of Mr. Taylor's legal brief. But the cross-references and eyewitness testimony and, in many instances, personal confession make it horrifyingly convincing.

General American military practice in Vietnam—then who is to blame? Mr. Taylor cites the Yamashita precedent, which we as a nation established. He stops just short of calling for a "war crimes" trial of American policy-makers. He does not believe the courts can declare this war illegal—treaties like the Geneva Convention have no more binding legal effect than statutes; the latest statute supersedes the previous ones; Congress determines the national "acceptance" of a policy—nor that any policy-maker will in fact be tried. But he throws some names into the hopper to help us think about Sonmy: Lieut. Gen. Robert E. Cushman, Gen. William C. Westmoreland, Gen. Creighton Abrams, Lieut. Gen. William B. Rossen, Adm. Ulysses Grant Sharp Jr., the Chiefs of Staff in Washington. "It is on these officers that command responsibility for the conduct of operations has lain."