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**INTERNATIONAL LAW VS. NORTH VIETNAM
TREATMENT OF PRISONERS OF WAR**

Billy G. Rippy

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3 March 1971

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INTERNATIONAL LAW VS. NORTH VIETNAM TREATMENT
OF PRISONERS OF WAR

AN INDIVIDUAL RESEARCH REPORT

by

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ABSTRACT

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The basic question is whether or not North Vietnam is bound by the Geneva Conventions of 1949 in the Vietnam Conflict. If North Vietnam, as a signatory to the Conventions, is able to deny the Convention's applicability at the very time it is needed most, the value of the international law in its present text is questionable. Data was obtained from numerous periodicals, newspapers, and government documents. North Vietnam claims that the captured Americans are "war criminals" and therefore are not entitled to the protection afforded prisoners as specified in the Geneva Conventions of 1949. The validity of this claim is completely unfounded and is purportedly made for political and propaganda reasons. Even though Hanoi has managed to evade the provisions of the Conventions, it has not been able to escape the pressures of world opinion; consequently, a recent tendency toward conforming to the Conventions may indicate a change in Hanoi's policy and a subtle admission of wrongly denying international law. The United States should propose a revision to the Geneva Conventions relative to the Treatment of Prisoners of War which would preclude any possibility of a future situation similar to the POW tragedy in Vietnam today.

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CHAPTER I

INTRODUCTION

Somewhere in North Vietnam there are more than 1,550 United States military personnel who are listed as missing, dead, or captured.¹ The exact status of these men is not known because North Vietnam is not surrendering this information as required by the Geneva Convention of 1949.

As this study is being completed the Vietnam Conflict is still raging on with almost as much furor as in the beginning; correspondingly, the number of US prisoners in North Vietnam is continuing to climb. The fate of these prisoners may not be known for years--and for some, never. If the accountability of POWs of this conflict is anything like that of the Korean Conflict, the Americans, indeed, have reason to be concerned. At the close of hostilities in Korea in 1953, 944 Americans whom were thought to be in enemy hands remained unaccounted for. Even after 17 years and much detailed grave registration work, there are still more than 300 still unheard from.²

The purpose of this research is to closely examine the POW issue in North Vietnam and ascertain why the Hanoi regime does not

¹"American Prisoners of War and Missing in Action in Southeast Asia," Commanders Digest, 16 January 1971, p. 7.

²Eric C. Ludvigsen, "Missing, Dead or Captured," Army, February 1970, p. 24.

consider its POWs subject to the protection of international law. It is hoped that the results of this study will reveal deficiencies in the existing POW Geneva Convention which can be corrected before a similar disaster in the future is afforded an opportunity to develop.

The study will first briefly trace the history of the treatment of POWs which eventually led to the development of the Geneva Conventions of 1949. Then, with the international law on treatment of prisoners established, the study will determine to what extent the signatories involved in the Vietnam Conflict consider themselves obligated to the law. Next, the question of violations of the POW Convention by North Vietnam will be covered by examining some of the major articles of the Convention allegedly violated. Finally, the study will evaluate the effect of world opinion and public pressures as an international instrument of power. From these areas of study will be drawn conclusions and recommendations.

CHAPTER II

GENEVA CONVENTION OF 1949 RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

EVOLUTION OF THE TREATMENT OF PRISONERS OF WAR

Early History (Prior 500 A.D.)

The history of man's inhumane treatment of prisoners of war is almost as old as the history of man itself. In ancient times, whether the scene was on the battlefield, in a torture chamber, or on a sacrificial alter, the prisoner's fate was inevitably the same--death.¹ According to Chinese history, the Shangs beheaded their captured enemies as sacrifices, and later during the Eastern Chou Dynasty the practice of consecrating drums by smearing them with blood of sacrificed captives was cited.² In the Old Testament, Samuel quotes the word of the Lord to Saul:

Now go and smite Amalek, and utterly destroy all they have, and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass.³

Also in the Old Testament, Moses interprets the word of the Lord to the Israelites:

¹Eugene T. Olson, Prisoner of War Policy of the Soviet Union, p. 3.

²Herlee Glessner Creel, The Birth of China, p. 207.

³I Samuel 15:3.

. . . you shall save alive nothing that
breathes: but you shall utterly destroy them;
namely, the Hittites, and the Amorites, the
Canaanites, and the Perizzites, the Hivites,
and the Jebusites⁴

Motivated by economic considerations, man later began to realize the value of using his captives as slaves. Although the right to kill prisoners during this era was never abandoned, the practice of slavery spread rapidly. Even entire nations were subjected to slavery. In fact, captivity as a result of battle is believed to have been the origin of slavery.⁵

Middle Ages (500-1500 A.D.)

During the first portion of the Middle Ages, death or slavery continued to be the rule; however, it was also during this early period that the practice of ransom developed whereby a prisoner could gain his freedom by payment of a price set by his captors.⁶ The growth of Christian doctrines of equality and brotherhood also had positive humanitarian effects. In 1179, the Lateran Council prohibited enslaving of captives who were christians. This edict is believed to have initiated the ransom system.⁷

⁴Deuteronomy 20:16-17.

⁵Henri Coursier, Course of Five Lessons on the Geneva Conventions, p. 59.

⁶William E. S. Flory, Prisoners of War, p. 11.

⁷Coursier, p. 59.

Modern Era (Since 1500)

Gradually, belligerent nations began to look upon prisoners as unfortunate victims of war, and to concede that they should not be treated as criminals. The start of this era can be traced to the Treaty of Westphalia in 1648. This was the first international instrument to establish laws governing treatment of prisoners. Its provisions allowed prisoners of both sides to be freed without payment of ransom and without other exceptions.⁸

In considering the major influences toward a more humanitarian treatment of prisoners, one cannot omit Hugo Grotius, whose great work DeJure Belli ac Pacis was published in 1625. Grotius, who is oftentimes referred to as the "father of international law," had a profound influence on the promotion of the law of nature as a moderating parameter in the conduct of war. He never denounced the right to enslave captives, but he did advocate exchange and ransom instead of the older forms of maltreatment.⁹

In 1762, the great writer Jean Jacques Rousseau advanced the concept of humanitarian treatment of prisoners by advocating the theory that war was not a person to person relationship but rather a relationship of state to state. In his works, The Social Contract, he states:

⁸Ibid.

⁹Hugo Grotius, DeJure Belli ac Pacis, p. 722.

The end of war being to subdue the hostile state, the army of one state has the right to kill the defenders of the other while they have arms in their hands; but, as soon as they lay down and surrender themselves, they cease to be enemies or the instruments of enemies; they become simply men, and the victors have no longer any right over their lives. Sometimes it may be possible for one state to destroy another state without destroying one of its members: and war does not give a right to do anything beyond what is absolutely necessary to its end. . . . If war does not give the conqueror the right to massacre the conquered, then that right does not exist and cannot serve as a basis for the right to enslave the conquered.¹⁰

Following the Middle Ages the principle of humane treatment of prisoners of war became firmly established. Between the period 1581 and 1864, there were over 290 international documents dealing with the sick, wounded, and captured.¹¹ Among these was the important Treaty of Amity and Commerce between the United States and Prussia in 1785. Concluded in peacetime with a view toward war, this treaty laid down rules for the protection of wounded prisoners. Its provisions are very close to those of the Geneva Conventions; however, it was a treaty between only two powers and not an international agreement binding on other states.¹²

DEVELOPMENT OF THE GENEVA CONVENTIONS

Humanitarian rules in the law of nations became worldwide significant in August 1864 when the International Red Cross submitted

¹⁰Jean J. Rousseau, The Social Contract, p. 12.

¹¹Olson, pp. 11-12.

¹²Coursier, p. 6.

recommendations to a Diplomatic Conference being held in Geneva. Twelve participating nations reviewed the recommendations, and from them produced ten articles, which became the first attempt to create international law by virtue of ratification or accession of all the great powers.¹³ By 1882, this first Geneva Convention had been ratified by the United States and 54 other nations.¹⁴

In 1899, the First Hague Conference was called at the invitation of Czar Nicholas II of Russia. Three conventions were produced by the 26 participating nations. Convention No. II, with Respect to the Laws and Customs of War on Land, contained a section of 17 articles which dealt with the treatment of prisoners. Twenty-four of the participating nations, including the United States, ratified convention No. II.¹⁵

In 1906, representatives of 35 nations met at Geneva to revise the Geneva Convention of 1864. The resultant Geneva Convention of 1906 for the Amelioration of the Condition of the Sick and Wounded in Armies in the Field contained 33 articles which were much more comprehensive and explicit than the earlier convention.¹⁶

In June 1907, the Second Hague Conference was held, again at the invitation of Czar Nicholas II. Participating representatives

¹³Ibid., p. 7.

¹⁴Thomas E. Holland, The Laws of War and Land, p. 76.

¹⁵Handbook of the International Red Cross, pp. 11-15.
(Hereafter noted as Red Cross.)

¹⁶Ibid., p. 18.

at this Conference produced 14 conventions covering the conduct of war, including an updating and improving of the articles pertaining to prisoners of war contained in the Hague Convention No. II of 1899 ¹⁷

A number of wars between 1864 and World War I, including the Austro-Prussian War (1866), Franco-Prussian War (1870), Russo-Turkish War (1877), Spanish American War (1898), and Russo-Japanese War (1904-1905), received the benefits of the provisions of both the Geneva and the Hague Conventions. However, it became more and more evident that the Conventions were not effective enough for adequate humane protection. Thus, the International Committee of the Red Cross (ICRC) drafted up two new conventions in 1921 which were presented to, and approved by, representatives from 47 nations at Geneva, 27 July 1929. The two new conventions were: (1) The Geneva Convention of 1929 for the Amelioration of the Condition of the Wounded and the Sick of the Armies in the Field, and (2) the Geneva Convention of 1929 Relative to the Treatment of Prisoners of War.¹⁸ A third convention was drafted in 1934 for submission to a Diplomatic Conference in 1940; however, the advent of World War II precluded such a conference.

Again, as in previous wars, the experience of World War II demonstrated the need for changes and extensions to the new Geneva

¹⁷Walton K. Richardson, "Prisoners of War as Instruments of Foreign Policy," Naval War College Review, p. 49.

¹⁸Richard C. Crane, International Law Relating to the Repatriation of Prisoners of War, p. 10.

Conventions. Accordingly, the ICRC drafted revisions at a 1948 meeting in Stockholm, and presented them to a Diplomatic Conference at Geneva in 1949.¹⁹ The resultant new Conventions emerged under the following titles:

I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

II. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea.

III. Geneva Convention Relative to the Treatment of Prisoners of War.

IV. Geneva Convention Relative to the Protection of Civilian Persons in Time of War.²⁰

As of this date, 117 nations have either ratified or acceded to the Geneva Conventions of 1949, including the United States, North Vietnam and South Vietnam.²¹

DESCRIPTION OF THE POW CONVENTION

The Geneva Convention of 1949 Relative to the Treatment of Prisoners of War is divided into the following six major parts, containing a total of 143 articles.

¹⁹Coursier, p. 8.

²⁰Red Cross, pp. 100, 127, 150, 228.

²¹G.I. A. D. Draper, The Red Cross Conventions, p. 118.

Part I, titled "General Provisions," deals with the application of the convention and the mechanics of enforcement of its provisions. Composed of eleven articles, this part is almost identical to the Part I's of the other three Conventions, i.e., they all are somewhat general in character with enunciated fundamental principles.²²

Part II, titled "General Protection of Prisoners of War," is composed of five articles which designate the responsibility for treatment of prisoners and obligate the Detaining Powers to regard prisoners with due respect for their person.²³

Part III, the largest of the six major parts, is composed of 92 articles aligned under six sections. Titled "Captivity," this part contains detailed provisions, instructions, restrictions, etc. which must be adhered to by the Detaining Powers in their handling of prisoners. The provisions cover the full spectrum of POW situations including the beginning of captivity, internment, POW labor, financial resources for POW's, POW relations with exterior authorities, penal and disciplinary sanctions, and judicial procedures.²⁴

Part IV, contains the provisions for "Termination of Captivity." Comprised of eleven articles, it is divided into three appropriate sections as follows:²⁵

I. Direct Repatriation and Accommodations in Neutral Countries.

²²Geneva Conventions of 1949, Relative to the Treatment of Prisoners of War, Art. 1-11.

²³Ibid., Art. 12-16.

²⁴Ibid., Art. 17-108.

²⁵Ibid., Art. 109-121.

II. Release and Repatriation of POW's at the close of Hostilities.

III. Death of POW's.

Part V is composed of four articles under the title of "Information Bureaux and Relief Societies for Prisoners of War." As the title implies, this section provides for the orderly transfer of information concerning POW's, and authorizes certain relief societies such as the International Red Cross to monitor POW camp operations.²⁶ Although the smallest of the six major parts, it has proven to be very controversial and much spotlighted during the Vietnam Conflict.

Part VI, labeled "Execution of the Convention," consists of 18 articles under two sections. Section I provides for the execution of the convention as well as the punishment for abuses and violations thereto. Section II specifies the legal aspects of the convention in matters concerning the language of the text, signatories, ratification, accessation and denunciation procedures.²⁷

APPLICABILITY TO THE VIETNAM CONFLICT

Article 1 of the Convention reads:

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.²⁸

The term "High Contracting Parties" includes all nations who have either ratified or acceded to the Convention. Insofar as parties

²⁶Ibid., Art. 122-125.

²⁷Ibid., Art. 125-143.

²⁸Ibid., Art. 1.

to the Vietnam Conflict is concerned, the United States ratified the Convention in 1955 while South Vietnam and North Vietnam acceded to the Convention in 1953 and 1957, respectively.²⁹

The term "in all circumstances" includes all wars, whether the war is just or unjust, or one of aggression or resistance to aggression. Consequently, regardless of how any of the High Contracting Parties look upon the Conflict, they are bound by the conditions of the POW Convention "to respect and ensure respect" for its intent.³⁰

One needs only to go one article further to substantiate the conviction that the POW Convention applies to the Vietnam Conflict. Article 2 states:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

.
Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.³¹

By its general character, the first paragraph of Article 2 precludes any of the High Contracting Parties from evading their obligations. A formal declaration of war is not needed, nor is the

²⁹Draper, p. 118.

³⁰Jean de Preux, Geneva Convention Relative to the Treatment of Prisoners of War, Commentary, p. 18.

³¹Convention, Art. 2.

recognition of the existence of a state of war, as preliminaries to the application of the convention.³² The occurrence of Armed conflict is all that is necessary; and in the case of the Vietnam Conflict, one needs only to look at the tragic casualty statistics to verify that there is an armed conflict.

As for the individual states' attitude toward the POW Convention, the United States and South Vietnam have never denied its applicability to the Conflict. On the other hand, early in the war North Vietnam advanced the extremely weak argument that the Convention was not applicable because no war had been declared.³³ In light of the wording of Article 2, paragraph 4, it is incomprehensible that North Vietnam could have possibly misinterpreted the intended meaning. Therefore, it can be assumed that its action is based on other ulterior motives, which at this time have not been clearly understood.

³²de Preaux, pp. 22-23.

³³Howard S. Levie, "Maltreatment of Prisoners of War in Vietnam," Vietnam War and International Law, ed. by Richard A. Falk, p. 368.

CHAPTER III

RECOGNITION OF THE POW CONVENTION IN THE VIETNAM CONFLICT

ATTITUDE OF NORTH VIETNAM

Almost all of the Communist countries have ratified or acceded to the POW Convention; therefore, any refusal by them to adhere to the provisions cannot be because the provisions are in any manner contrary to the Communist concept of the law of war. The only alternative is to assume that they consider it in their own self interest to deny any constraints imposed by a requirement to comply with the humanitarian aspects of the law of war.¹

The application of this Communist approach was extremely discernable in World War II when the USSR declined to exchange lists of prisoners and refused to permit inspection of POW camps located in that country. These requirements were stipulated in the 1907 Hague Regulations and again in the 1929 Geneva Convention for the Wounded-and-Sick, both to which the USSR had subscribed.²

During the Korean hostilities, the North Korean Government made the announcement that its forces would strictly abide by the principles of the POW Convention, and even relied on certain articles of the convention for arguing their views during the armistice negotiations regarding "forced repatriation." Yet, only two lists

¹Levie, p. 363.

²Ibid., p. 364.

of American POW's, totalling 110 names, were ever forwarded to the ICRC in Geneva. Additionally, death marches occurred, mail exchange was allowed only on an irregular basis, and inspection of POW camps by the ICRC was not permitted.³

And now the North Vietnam Communist regime, which is also bound by the POW Convention, is declining to comply with its provisions. The flagrant violations credited to North Vietnam will be exposed in detail in the next chapter; however, it should be noted at this time that none of the known violations of the modern Communist world have ever exceeded the inhumane treatment being administered to the American POW's by the North Vietnam Government. In the words of President Nixon:⁴

Insofar as the treatment of prisoners is concerned, it would probably be accurate to say that the record in this war is one of the most unconscionable in the history of warfare. And there have been, of course, some very bad examples in past wars, as we know.

How does North Vietnam justify its treatment of American POW's? For a while Hanoi relied on the weak argument that there was no "declared war" and therefore North Vietnam was not bound by the POW Convention. When the validity of this argument was renounced by the world, Hanoi had to find a new legal loophole to use for justifying its publicized inhumane acts against the prisoners. At the time North Vietnam acceded to the POW Convention in 1957, it

³Ibid.

⁴Richard M. Nixon, "President Reaffirms US Concern for Prisoners in North Vietnam," Department of State Bulletin, 5 January 1970, p. 3.

made a reservation to Article 85.⁵ This Article provides that prisoners prosecuted for acts committed before capture will retain benefits of the Convention even if convicted.⁶ The North Vietnamese Government holds that the POW Convention would not apply to "prisoners prosecuted and convicted under the principles laid down by the Nuernberg international court."⁷ The "Nuernberg principle," as interpreted by the North Vietnamese, consists in the idea that the victors in war are entitled to treat the vanquished in any manner they wish, including ex post facto definitions of crime and punishment.⁸

North Vietnam emphasized its reservation to Article 85 as early as 1965. In a harshly worded letter to the ICRC, it announced that American pilots captured on its territory "are war criminals liable to go before tribunals"—and perhaps firing squads. The tribunals, of course, would be Communist instead of international courts like those which tried criminals in Germany and Japan after World War II.⁹

With this type of thinking, a major concern of US authorities is that Korean War "brainwashing" tactics might result in forced "confessions" from the POW's which in turn would be used as a basis for charges as war criminals. Two of these confessions were reported in July 1966.¹⁰ Other American pilots have been portrayed as

⁵"4-Score POW's Stare at Death," New York Times, 3 October 1965, p. 4.

⁶Convention, Art. 85.

⁷"4-Score POW's Stare at Death," p. 4.

⁸Juane Thorin, "Vietnamization," Washington Report, 27 March 1970.

⁹"4-Score POW's Stare at Death."

¹⁰H. B. Shaffer, "Treatment of War Prisoners," Editorial Research Reports, p. 505.

pleading for "forgiveness" for their "crime," resulting in a demand by the North Vietnamese people for a "special tribunal" to try the captured pilots.¹¹

The cry of "war criminals" by the North Vietnamese has not died down since it was first offered as their justification for not complying with the POW Convention. A typically tragic example of this was illustrated early in 1970 when a wife of an Air Force major, who was shot down over North Vietnam, went to Paris with her seven children to find out the fate of her husband. Upon finding out that her husband was not a prisoner and presumed dead, she asked about the disposition of other prisoners. The North Vietnam Officials' reply to her was very cold and simple, "These men are not POWs. They are criminals."¹²

Since early in the war, Hanoi has made many threats to begin trials of the Americans as war criminals, but, the outcries evoked throughout the world have apparently discouraged any trial procedures.¹³ They have not, however, changed Hanoi's claim that the captives are war criminals instead of prisoners of war.

Humanitarianism, which is the guiding principle of the POW Convention, seems to be held in very low esteem by the North Vietnamese Government. This is very apparent in Hanoi's own disregard for, and denial of, the more than 8,000 North Vietnamese prisoners being

¹¹"Rusk Warns Hanoi Against Mistreating American Captives," Washington Post, 15 July 1966, p. A-8

¹²"Mrs. O'Grady is a Widow," Look, 5 May 1970, p. 67.

¹³Hearings before the US Congress, House, Committee on Foreign Affairs, Subcommittee on National Security Policy and Scientific Developments, American Prisoners of War in Vietnam (Statement of William H. Sullivan), p. 13. (Hereafter referred to as Hearings.)

held in South Vietnam prison camps.¹⁴ Numerous efforts have been made by the United States to exchange these prisoners for American prisoners in North Vietnam, but the results are always the same-- Hanoi claims that it does not have any of its Army in the south, and therefore the prisoners are not North Vietnamese.

What Hanoi's next move will be to intimidate the United States and its fighting men is hard to predict. One thing seems extremely apparent, however,--North Vietnam is not likely to recognize the POW Convention as an instrument of international law in the Vietnam Conflict unless it can be used to its advantage.

ATTITUDE OF THE UNITED STATES

Early in the Vietnam Conflict, General William C. Westmoreland, then commander of all US Forces in Vietnam, issued the following order to all American troops:

As a member of the US military forces you will comply with the Geneva Prisoner of War conventions of 1949 to which your country adheres. . . . You cannot and must not mistreat your prisoner,

¹⁴US Congress, House, Representative Olin E. Teague speaking on the facts about American POWs of war in Southeast Asia, 91st Congress, 2nd session, 10 September 1970, Congressional Record, p. E-8109.

humiliate or degrade him, take any of his personal effects which do not have significant military value, refuse him medical treatment if required and available. . . . The captive may be an intelligence; in any case he is a human being and must be treated like one. The soldier who ignores the sick and wounded [prisoner] degrades his uniform.¹⁵

No words could be clearer than these as to the attitude of the United States toward the North Vietnamese prisoners of war. But this is not a new attitude or policy which has evolved from the Vietnam Conflict. This is US Army POW Doctrine which has grown from the heritage and humanitarian principles of America. The doctrine includes, among other things, the following pertinent items:

Objective: Promotion, through example, of proper treatment of US personnel captured by the enemy.

Principles:

1. Humane treatment.
2. Instruction of troops in the provisions of international agreements and regulations relating to PW's and civilian internee's.¹⁶

At the outset of the Vietnam Conflict, the United States declared its intentions to comply with the Geneva Conventions, and additionally stated that the other parties to the conflict were expected to do likewise.¹⁷ Since then Americans have

¹⁵ "Obey POW Code, US Soldiers Told," New York Times, 1 December 1965, p. 1.

¹⁶ John A. Hemphill, "PW and Captured Document Doctrine," Military Review, November 1969, pp. 65-71.

¹⁷ Levie, p. 362.

illustrated constantly that it will not condone brutality by its own people. Unfortunately, not in this war nor any other war will the United States ever be able to claim that brutal war crimes have not been committed by Americans. This is bound to happen when thousands of men are put on the field of battle with the objective of killing the enemy.¹⁸ Surprisingly, however, there has been only one charge involving the United States in the improper treatment of North Vietnamese prisoners. Oddly enough, and again illustrating the American abhorrence of brutality, the charge was not by North Vietnam or the Vietcong, but by alarmed Americans. Events leading to the charge were exposed in 1964 and 1965, when American pressmen released pictures and articles on the mistreatment of prisoners by South Vietnamese soldiers while American military advisors looked on. Humanitarian reaction to these indications of violation to the POW Convention began to spring up. Investigations revealed that legally the United States had no obligation to halt the maltreatment by the South Vietnamese since the Americans were only military advisors. But morally, the Americans saw an obligation and proceeded to persuade South Vietnam to accept the American position against the torture of prisoners.¹⁹

No matter how extensive the efforts, these types of isolated war crimes can never completely be eliminated. The important thing is that the United States has continued to acknowledge their

¹⁸Ibid., p. 375

¹⁹Ibid., pp 376-377.

existence, publicly denounces them, and does everything in its power to prevent their reoccurrence. As long as this attitude is displayed, the United States should have little trouble convincing the rest of the world of its sincerity in complying with the Geneva Conventions.

CHAPTER IV

VIOLATIONS OF THE POW CONVENTION BY NORTH VIETNAM

In the previous discussion it has been shown that North Vietnam, as a signatory to the Geneva Conventions of 1949, is bound by its contents, and is obligated to recognize and adhere to all articles except Article 85 which it made reservations to at the time of signing. One thing more remains to be accomplished prior to enumerating North Vietnam's violations of the POW Convention--and that is to review the definition of prisoners of war and its application to the Americans held in North Vietnam.

Article 4 of the POW Convention sets forth the categories of persons who are entitled to treatment as prisoners of war and to the protection of the Convention. Pertinent parts of the text read:

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces. . . .¹

Under this precept every American listed as missing or a prisoner of war in North Vietnam is a member of the armed forces of the United States.² Correspondingly, all the American prisoners fall under the POW category as stated above, and are entitled to be treated as such in accordance with the POW Convention.

¹Convention, Art. 4.

²Maurice L. Lien, "The Plight of the Prisoners We Have Not Forgotten," Air Force and Space Digest, June 1970, p. 37.

VIOLATIONS

It has been stated by at least one high official that North Vietnam has violated every single article of the POW Convention.³ Whether this is a completely valid statement or not is not yet known; however, it is known that some of the most important articles of the Convention have been flagrantly violated, and it is the intention of this chapter to point out the most pertinent and barbarious of the infractions.

Listed in chronological order, the substance of each article will be given, followed by a discussion of its violations. The validity or adequacy of the article, if questionable, will be discussed at a later time.

Article 13: Requires that prisoners of war be humanely treated at all times, forbids reprisals, and requires protection against insults, intimidation, acts of violence and public curiosity.⁴

Comment: American prisoners have not been treated humanely. Intelligence reports indicate that many of them are cooped in bamboo cages; others are handcuffed day and night. All are kept in partial or total solitary confinement. At least six Americans are reported to have been executed, some of them with their hands bound.⁵

³Teague, p. E-109.

⁴Convention, Art. 13.

⁵"Untold Story of the War. GIs Who Have Vanished," US News and World Report, 15 July 1968, pp. 34-35.

In his statement to the hearings before the House Committee on Foreign Affairs, Representative Ben Reifel, South Dakota, quoted former North Vietnam POW Seaman Douglas Hegdahl as stating he had "known people who have been burned with cigarettes, who have had broken arms tied and then were dropped into bomb shelters, and people spending months or years in solitary."⁶

In a public statement by Navy Lieutenant Robert Frishman, after almost two years in captivity in North Vietnam, he describes Americans POW treatment as follows:

. . . solitary confinement, forced statements, living in a cage for three years, being put in straps, not being allowed to sleep or eat, removal of finger nails, being hung from a ceiling, having an infected arm which was almost lost, not receiving medical care, being dragged along the ground with a broken leg, . . .⁷

On May 6, 1969 the Soviet press agency TASS reported that three downed American pilots were paraded through angry mobs and displayed under floodlights before newsmen at the International Press Club. One or more of the airmen were reported wounded and in shock by a French news agency (Agence France-Presse). The State Department protested the violation of Article 13 of the POW Convention, but, as for the many other protests, to no avail.⁸

Most of the accurate and reliable information on the maltreatment of American POW's comes from the testimony of released

⁶Hearings (statement by Rep. Ben Reifel), p. 82.

⁷Ibid. (statement by Dennis J. Doolin), p. 17.

⁸Shaffer, pp. 504-505.

prisoners themselves. Periodically, however, news releases from the Communist press or especially arranged Hanoi press conferences produce helpful data in evaluating POW treatment. A good example of this was illustrated in March 1967 when free lance photographer Lee Lockwood did a story on his four week visit to Hanoi. During his stay he attended a diplomat/newsman gathering in which an American navy pilot was displayed and his alleged 2,000 word recorded statement was exposed. Excerpts from the statement such as "anti-personnel weapons were chosen to inflict maximum damage on the population" and "the busiest part of the day was chosen (for the raid) Privately, most of the pilots were appalled at the pacific nature of the target" indicate the type confession Hanoi strives for. The navy flier himself was described as a robot who looked straight ahead, never focusing on anything. When commanded to do something, such as bow, his actions were slow and mechanical. A French observer described the scene as "a frightening experience."⁹

Brainwashing techniques which were developed by the Communists during the Korean War are also being used commonly in Vietnam. Although the brainwashing efforts in Vietnam do not follow the hardline tactics employed by the North Koreans, the POW's nevertheless are subjected to constant lower-key indoctrination. This comes in the form of long hours of Radio Hanoi with slanted news and propaganda each day, Communist propaganda periodicals, and lectures

⁹Lee Lockwood, "US Prisoners and an Eerie Puppet Show," Life, 7 April 1967, pp. 44-44a.

on the "history" of Vietnam. There have even been reports that some prisoners were taken to visit state institutions in order to learn more about the Vietnamese "culture."¹⁰

Article 26: Requires that the basic daily food rations shall be sufficient for good health, and that account be taken of the habitual diet of the prisoners.¹¹

Comment: Most prisoners are fed only twice daily on food consisting of pig fat, pumpkin or squash soup and bread.¹² On occasion, for propaganda purposes, some have been given fruits. For example, one East German film pictured Americans entering the prison dining hall before tables loaded with fruit, bread and stew. Yet, in a camp of supposedly 50 Americans, there were only four trays and no utensils.¹³ The fact that the few prisoners being released have suffered weight losses of up to 82 pounds verifies an extremely deficient diet and further illustrates the North Vietnam disregard for the health of the prisoners.¹⁴

Article 30: Provides for adequate medical care including an infirmary where prisoners of war may have the attention they

¹⁰Louis R. Stockstill, "The Forgotten Americans of the Vietnam War," Air Force and Space Digest, October 1969, pp. 41-42.

¹¹Convention.

¹²Stockstill, p. 41.

¹³Craig Powell, "Can World Pressures Open Hanoi's Eyes?" Armed Forces Management, February 1968, p. 46.

¹⁴Stockstill, pp. 41,44.

require, or whose condition necessitates special treatment, operation, or hospital care.¹⁵

Comment: The propaganda photos and films spread throughout the world by Hanoi leave little doubt that the American POW's are not getting proper medical treatment. In some of them, the men were badly burned from what were apparently injuries sustained in the air battle prior to their capture. Many were barefooted and in shock as they were paraded before Communist crowds.¹⁶ Detainment of many of the badly injured over the years may render corrective surgery almost impossible.

If one is not convinced by pictures alone, the story told by Navy Lieutenant Robert Frishman upon his release from the North Vietnamese should nullify any doubts. Lieutenant Frishman was shot down by a SAM missile, fragments of which were left in his arm by the North Vietnam doctors. It took six months just to heal the incision made by the doctors. Lieutenant Frishman conceded that he thought the doctors were medically competent but would do only what was necessary to keep him alive. As a result, he has lost his left elbow and use of his arm. According to him, there are many other cases similar to his which will require extensive treatment after repatriation.¹⁷

¹⁵Convention.

¹⁶Heather David, "Ill-treated POWs Ignored at Home," Navy, June 1970, pp. 22, 25, 26.

¹⁷Hearings (press interview of Lieutenant Robert Frishman and Seaman Douglas Hegdahl), p. 93.

Article 70: Requires that a prisoner be permitted, within not more than one week after arrival at a camp, to write his family, informing them of his capture, address and state of health.¹⁸

Comments: Of the more than 1,550 men listed as POW or MIA, the United States sources have confirmed 452 interned while the North Vietnamese will admit to only 349.¹⁹ Regardless of which number is the more correct, the fact is that not one POW was allowed to correspond within the specified time. In fact, it wasn't until 1969 that any appreciable amount of letters was received from any of the prisoners.²⁰ Knowledge of their capture was obtained through propaganda photographs and broadcasts; some of these prisoners have been captive for five years without being allowed to write home.²¹

Articles 71-76: Guarantees the right of prisoners to send and receive mail. Permits a minimum of two letters and six cards monthly for each prisoner.²²

Comment: As previously mentioned, North Vietnam has not complied with the minimum requirements of allowing American POW's to send and receive letters. It is encouraging to note however, that there has been a sharp increase in number of letters received from POWs since 1968. By the end of 1968 there was only a total of 256 letters received. In 1969 when Americans began appealing to world opinion, the figure rose to 699. As of September 1, 1970, the Department of Defense reported

¹⁸Convention.

¹⁹"American Prisoners of War and Missing . . ." p. 7.

²⁰"PW/MIA Servicemen Status Highlights Meeting," Commanders Digest, 17 October 1970, p. 4.

²¹Stockstill, pp. 46-47.

²²Convention.

a total of 2,148 letters.²³ Comparing these figures with the number of MIA/POWs reported in the same years, the encouraging upward trend can better be seen.²⁴

	<u>1968</u>	<u>1969</u>	<u>1970(thru 1 Sep)</u>
MIA/POWs	1,243	1,428	1,506
Letters received from	256	699	2,148

The situation has also improved with respect to sending packages. In 1966, 22 packages were sent, but all were returned. During Christmas 1967, the same thing happened with 465 packages. In 1968, Hanoi announced that packages would be accepted--over 700 were sent, however, none returned, and a few prisoners acknowledged receipt. In 1969, 800 packages were sent, none returned, and several prisoners acknowledged receipt.²⁵ Families are continuing to send packages but there is no indication as to how many are being received.

Even with the noted improvements, the fact is that Hanoi is still allowing only a fraction of the minimum mail requirements to go through. For example, using Hanoi's own figure of 349 captured Americans, a total of 16,752 letters and cards were authorized from POWs during the first eight months of 1970--yet only 2,148 were received. There is no question that the POWs would write if allowed to; therefore, one can only assume that Hanoi will not permit it.

Article 85: Provides that prisoners prosecuted for acts committed before capture retain benefits of Convention even if convicted.²⁶

Comments: As of the date of this writing, there are no known violations of this article; however, the article is being discussed because of Hanoi's continued threats to try American POWs as war criminals. There is also the possibility that some POWs have already

²³Maurice L. Lien, "The MIA/POW Campaign: We Have Not Reached Our Goal," Air Force and Space Digest, November 1970, p. 92.

²⁴Lien, "The Plight . . .," p. 35.

²⁵"Prisoner of War and Missing in Action," Fact Sheet (published by Air Force Office of Information), n.d., p. 4.

²⁶Convention.

been tried, convicted and executed or otherwise punished but that such cases will not be known after hostilities cease.

As stated in an earlier chapter, North Vietnam made a reservation to Article 85 and declared that POWs would be prosecuted and convicted under the Nuernberg principles. Accordingly, it has sought to justify this position by declaring the American captives guilty of one of the crimes defined in the Nuernberg Charter. The Charter basically defines classes of war crimes as follows:²⁷

1. Crimes against peace: Wars of aggression or wars in violation of international treaties.
2. War Crimes: Violations of laws or customs of war, i.e., murder, mistreatment of POW's, etc.
3. Crimes against Humanity: Murder, extermination, and other inhumane acts against any civilian population.

In citing its case against the American pilots within these categories, North Vietnam has stressed crimes against peace. As one North Vietnamese lawyer puts it:²⁸

By betraying the 1954 Geneva agreements [on the status of Vietnam] solemnly recognized by their own government and by conducting an aggressive war in South Vietnam and expanding the air war of destruction in North Vietnam, the US imperialists have been committing crime after crime against peace.

²⁷"The Geneva Convention and Treatment of Prisoners of War in Vietnam," Harvard Law Review, edited by Richard A. Falk in The Vietnam War and International Law, p. 407.

²⁸Ibid., [Do Xuan Sang, quoted from official newspaper of the North Vietnamese Government, 10 July 1966].

The United States made a statement rejecting reservations to the Conventions two years before North Vietnam acceded to them. Since then, there has been wide disagreement among international lawyers as to the obligations and legalities of reserving and rejecting States in such a situation.²⁹ The legal procedures, ramifications, and arguments surrounding this facet of international law are much too involved and complicated for the layman to evaluate. For the purpose of this paper it will suffice to say that the problem is unresolved and definitely indicates a weakness in Article 85. However, the fact that, to date, no American prisoners are known to have been prosecuted may reflect North Vietnam's respect for its principles.

Article 109: Requires the parties of the conflict to repatriate all prisoners who are seriously sick or wounded.³⁰

Comment: The old adage "one picture is worth a million words" has a very fitting application to the POW situation in North Vietnam-- in fact, pictures are a major source of information on the POWs. It is through this media that prisoners have been noted to be very seriously ill or injured. For example, pictures have been obtained of Navy Lieutenant Commander John McCain, son of the top US Commander in the Pacific, Admiral J. S. McCain, in bed with obvious broken bones and serious injuries.³¹ His status as having multiple broken bones was confirmed by previously quoted Lieutenant Frishman during a press

²⁹Ibid., p. 414.

³⁰Convention.

³¹David, p. 25.

interview. According to Frishman, McCain "has many broken bones but he can walk with a very pronounced limp and a stiff arm."³² Another photograph shows a Navy lieutenant with serious burns all over the face and a poorly made splint on his bleeding right arm--being paraded before crowds.³³ These pictured proofs of inhumane acts against the sick and wounded represent some of the most serious infractions of the Geneva Conventions.

Article 126: Defines the rights of representatives of the Protecting Powers and the International Committee of the Red Cross. Included in this article is the authority of representatives to go to all places where prisoners are held and to interview prisoners.³⁴

Comment: North Vietnam has never allowed impartial inspections of prison camps. On a carefully selected basis, and for propaganda purposes, Hanoi has permitted hand-picked newsmen to film and photograph US prisoners. But even this is limited to only one of a reported nine prison camps in the North.³⁵

The ICRC has continually called the attention of North Vietnam to its obligations under the POW Convention, only to be rebuffed or ignored.³⁶ The American Red Cross has made contacts with Hanoi on 11 occasions since 1966 in an effort to deal on the POW matter. Only

³²Hearings (Lieutenant Frishman interview), p. 93.

³³David, p. 25.

³⁴Convention.

³⁵Powell, p. 47.

³⁶Paul C. Warnke, Address to American Bar Association, Philadelphia, Pennsylvania, 5 August 1968, quoted in Supplement to the Air Force Policy Letter for Commanders, October 1968, p. 15.

on two occasions did Hanoi bother to reply. In one instance, they indicated that the continuing war, the aggression, etc. prevented a worthwhile negotiation. On the second, they used the legalistic approach, again referring to the American POWs as war criminals and refused to negotiate on that basis.³⁷ These constant refusals to cooperate with The ICRC led to the International Red Cross Conference at Istanbul, Turkey in September 1969. After detailed discussion by Red Cross leaders from all over the world, the famed Istanbul Resolution was adopted. The main purpose of the Resolution was to reemphasize the obligations of all parties to provide free access to POWs and their place of detention by either a protecting power or the ICRC.³⁸

Summary

The above selected articles of the POW Convention are only a few that North Vietnam is violating on a daily basis. The United States has pleaded constantly for more humane treatment of American prisoners, but to no avail. The ICRC has requested its right to inspect the North Vietnam prisons, but has been refused. The world is rapidly recognizing Hanoi's disregard for the humanitarian principle and is expressing its concern through such instruments as the Istanbul Resolution.

All of these things seem to have only little effect on Hanoi. Some of the more optimistic thinkers have hopes that world opinion

³⁷Hearings (statement by Ramone S. Eaton), p. 44.

³⁸Graham Martin, US Ambassador's Statement made before the 21st International Conference of the Red Cross at Istanbul on 10 September 1969, Department of State Bulletin, 13 October 1969, p. 325.

may gain successful results. The pessimists consider the North Vietnamese unrelenting and impossible to deal with on a humane basis. In this writer's opinion, North Vietnam has shown no inclination to react to purely an emotional plea. It does appear, however, that the Communists' sensitivity to world opinion is proving greater than expected, and it is this aspect which will be explored in the next chapter.

CHAPTER V

WORLD OPINION AND REACTION TO NORTH VIETNAM'S TREATMENT OF US PRISONERS

This (POW question) is not a political or military issue, but a matter of basic humanity. There may be disagreement about other aspects of this conflict, but there can be no disagreement on humane treatment for prisoners of war.

President Richard M. Nixon¹

This simple expression of the President reflects the feelings of most people in the world. The subject of prisoners of war in Vietnam has brought sympathy and support from a wide range of nations and organizations, including neutrals and ones who on other aspects of the Vietnam Conflict disagree with US policies. And rightly so--for this is the first time in modern history that the ICRC, which ties all nations together with its humanitarian cause, has been denied all contact with prisoners of war in North Vietnam. Not only is the Hanoi Government displaying the most barbarious disregard for humanitarianism, but it is also posing the question as to its reliability in any agreement it may sign with other nations.²

EARLY-WAR REACTION

World reaction against North Vietnam treatment of American prisoners began to build in 1965 when Hanoi first announced that

¹Richard M. Nixon, US Foreign Policy for the 1970's, A Report to Congress, 18 February 1970, p. 73.

²David Lawrence, "Does Hanoi Have a Heart?" US News and World Report, 23 February 1970, p. 100.

the Americans would be regarded as "war criminals and liable to go before tribunals." The initial United States acknowledgement of this bold announcement was only a mild response that such trials would be "smoke screens for reprisals" against US airstrikes.³ However, as the threat became more of a reality, pressures began to mount rapidly against the Hanoi POW stand. Even the "doves" of the war became alarmed, as indicated by the statement in July 1966 to Hanoi by eighteen anti-war senators, including Frank Church and J. W. Fulbright, emphasizing that any act of vengeance against American airmen would encourage public demand for strong and swift retaliation which would escalate the war's suffering even more. Other anti-war groups and organizations, such as SANE (National Committee for Sane Nuclear Policy), also made similar personal appeals to Ho Chi Minh.⁴

Among the first internationally known figures to respond against the North Vietnam treatment of POWs during the early part of the war were United Nations Secretary General U Thant and Pope Paul VI. U Thant pleaded with North Vietnam in a written statement on 16 July 1966 to "exercise restraint in its treatment of American prisoners," while warning of provoking intense escalation of the war. Four days later, Pope Paul VI bolstered U Thant's plea with an appeal to North Vietnam to treat US POWs according to international law, and warned of "grave consequences" if prisoners were harmed.⁵

³Shaffer, p. 506.

⁴Ibid.

⁵Ibid., 507.

Warnings of this nature did not seem to influence the Hanoi regime during the early years of the war. Certain evidence indicates that one reason for this might be that the warnings were not strong enough. For example, in August 1965 Hanoi radio announced the beheading of two American airmen, "By order of Communist High Command." The United States reaction was only a note "deploring" the action. Again in July 1966, flagrant abuses were publicized by North Vietnam via movie films in which captives, bound and chained, were paraded through the streets of Hanoi and "harassed by violent mobs" along the curbs. The reaction of the American public to these events was hardly noticeable--probably because it was given minimum coverage by the news media.⁶ It almost appears as if abuse of American captives continued during this early era because the Communists knew they could get by with it.

At a news conference on 20 July 1966, President Johnson finally declared to the world that US POW's could not be considered as, or treated as, war criminals, and proposed a meeting with the North Vietnamese and the ICRC to assure fair treatment to the American captives. Hanoi declined the conference, but President Johnson's message, along with other world pleas, appeared to have had some impact because the war crime trials were deferred.⁷

⁶Thorin.

⁷Shaffer, p. 507.

POW FLIGHT PUBLICIZED

From late 1966 until early 1969 the US Government elected to handle POW affairs on a minimum publicity basis. The officially stated reason for this approach was that it was feared public efforts might cause retributions against the prisoners. However, unofficially expressed views indicated that there were fears the POW policy might "rock the boat" during negotiations for a peace settlement. In any case Secretary of Defense Melvin R. Laird decided to publicize the POW issue in May 1969 on the basis that Hanoi had not responded to previous governmental efforts.⁸

Up until this time, world reaction seems to have followed the pattern of US reaction--when the US cried out against Hanoi's breach of the POW Convention in 1965-1966, so did the world; when the US remained silent for almost three years, so did the world. It was now hoped that, as the US again began to publicize the POW issue, the world would renew its effort to gain conformity to international law.

The first major show of popular support for the American cause was the overwhelming 114-0 vote for adoption in September 1969 of the previously mentioned Istanbul Resolution. Drafted by the American Red Cross, the Resolution was signed by 77 governments and 91 national Red Cross societies, including the USSR and other Communist bloc countries.⁹

⁸David, p. 23.

⁹Hearings (statement by E. Ross Adair), p. 4.

Even nations such as Sweden, the popular haven for American military deserters and one of the few non-Communist bloc nations to have diplomatic ties with North Vietnam, have expressed their willingness to help. Swedish Premiere Olof Palme, in June 1970, stated that Sweden would continue to try to help American POW's. This pledge, as Palme puts it, is a matter of humanitarianism, and not a political move.¹⁰

HANOI STILL UNMOVED

With the entire non-Communist world and much of the Communist world being sympathetic to the US POW position, it would appear that Hanoi might yield to other individual and collective government influence; however, this was not the case. There have been countless behind the scene overtures made to the North Vietnamese in hopes that a rational solution to the prisoner dilemma could be achieved. Instead of being moved by these emotional approaches, the Hanoi regime only expressed their rather unaroused opinion that the lives of the American prisoners are unimportant--that a country of 200 million people cannot be concerned about "just 1500 men."¹¹

A continued display of the present Hanoi attitude will only permeate the belief that the North Vietnamese have little value for the human life. The fact that no concern is being shown for the 8,000 North Vietnamese being held as prisoners in South Vietnam

¹⁰"Swedish Premier Pledges Continued POW Effort" New York Times, 6 Jun 70, p. 2.

¹¹Teague, p. E8109.

would also bear this out. Many attempts have been made toward negotiating for a prisoner exchange, but the Hanoi regime has always been reluctant to recognize that it has prisoners in South Vietnam.¹²

Mr. H. Ross Perot, a multi-millionaire Texan who has devoted as much individual time and fortune (\$2 million) toward the POW effort as anyone in the United States, has dealt directly with North Vietnamese delegates in both Vienna and Paris.¹³ Having been rebuffed both times, Perot has stated that Hanoi "will not be moved by sentiment" or by "human emotion," but only by the pressure of 200 million Americans.¹⁴ Astronaut Frank Borman, a presidentially appointed representative for the US prisoner cause, also experienced disappointing results on his 25 nation crusade to gain outside support. Referring to the different nations' inability to influence Hanoi, Borman reported to Congress that "I can only report American anguish and human tragedy."¹⁵ Both Perot's and Borman's experiences confirm that outside political pressure will not influence North Vietnam's treatment of prisoners.

PUBLIC OPINION ONLY HOPE?

At the time of this writing, American troops are being withdrawn from Vietnam. The United States, for the first time in its history, is disengaging from a war without first obtaining a settlement for the prisoners of war. And speculation is that neither political nor

¹²Ibid.

¹³David, p. 26.

¹⁴Lien, p. 33.

¹⁵"Borman Gives Grim Report on POW's," New York Times, 23 September 1970, p. 3.

military pressures will result in a settlement.¹⁶ However, history has shown that one of the pertinent characteristics of Communist regimes and doctrines is sensitivity to massive response. Communists are vulnerable in this area because a favorable world image is essential to their long term aim of subjugating the world to Communism.

As part of the Communist world, North Vietnam is proving to be both sensitive and responsive to world opinion. This was indicated by Hanoi's decision early in the war to defer the war criminal trials, and again, recently, with a large increase in POW letter and package exchanges, both believed to be the result of public opinion. In fact there is evidence that the North Vietnamese government is so sensitive to national and international opinion that they utilize news clipping services in various parts of the United States and the world to sample public opinion. The previously quoted Navy Lieutenant Robert Frishman attributes his release from prison as a reaction to the pressure of public opinion. It is also known that mail which had been held for six months in Hanoi was delivered after 200 telegrams of complaint were sent by wives to the North Vietnamese peace delegation in Paris.¹⁷

US EXPLOITING PUBLIC OPINION

With the advent of this new "public pressure" approach, a number of interrelated moves have occurred on the American scene. For example,

¹⁶Teague, p. E-8109

¹⁷"Lest We Forget," Citizens POW/MIA Assistance Program Brochure, June 1970, p. 3.

wives and relatives of the POWs have organized and lobbied under the name of the League of Families of American Prisoners of War in Southeast Asia.¹⁸ This organization has sent delegations around the world to solicit support for its cause. Some of its representatives have even had audience with such dignitaries as US congressmen and senators, the Pope, and Paris peacetalk delegates.¹⁹

In the past few months, virtually all of the mass media has joined with the POW's families in their crusade for humane treatment of their loved ones. Radio and television networks saturated broadcasts with public interest commercials during the Christmas season. Bumper stickers and slogans along the highways are pleading "have a Heart, Hanoi." Just before last Thanksgiving, the US Postal Service came out with POW/MIA stamps. Civic Fraternal and Veterans Organizations have begun their own efforts; the Disabled Veterans Association, to name one, is mailing 50 million letters to Americans, telling them where to send letters to other nations for assistance. Also, the Teamsters and Longshoremen Unions provided immeasurable assistance in "Operation 100 Tons," a program devoted to presenting 100 tons of mail to the North Vietnam delegation in Paris at Christmas.²⁰

These are just a few of the many ways that the American people are beginning to show their frustrations to the North Vietnamese.

¹⁸Lien, pp. 32-37.

¹⁹Haynes Johnson, "POW Publicity a Calculated Campaign," Washington Post, 29 November 1970, p. B-1.

²⁰Ibid.

Hardly a day goes by without a major POW issue brought forward for world consumption through one of the US international news media releases. The one distinct lesson which much of the world is learning from the POW issue is that regardless of how the US citizens feel about the war individually, they are strongly united against any maltreatment of American POWs. In fact there are some who believe that this one issue may be the unifying factor which the present national leaders are desperately in need of to unite the "hawks" and the "doves."²¹

On 21 November 1970 one of the most daring feats of the Vietnam Conflict took place. It was on this day that an American special forces team was flown deep into North Vietnam territory to attempt a rescue of US prisoners from a known POW camp. Landing only 23 miles from Hanoi itself, the group disappointingly found that the POWs had been moved to another camp. However, the mission was still considered a success even though no prisoners were recovered. It proved to the American POW families that something is being done; it showed Hanoi that America does care for "just 1500 men"; and it indicated to the world that the US government was not remiss in its obligation to the POWs.²²

The most recent United States effort to gain support against North Vietnam's POW maltreatment was the introduction of a resolution to the United Nations on 1 December 1970 which urged prompt repatriation

²¹Carlyle Morgan, "PWs: Unifying Issue for US?" Christian Science Monitor, 5 December 1970, p. 33.

²²Max Frankel, "Nixon and the Rescue Mission," New York Times, 24 November 1970, p. 14.

of wounded and ill prisoners of war and called for regular inspections of prisons by the ICRC. The Resolution was adopted by a 60-16 vote, with the few dissenters being Communist and militant Arab countries.²³ It is too early at this time to speculate on the effects of the resolution, but it is gratifying to note that this most prominent international body of government has recognized Hanoi's violation of international law.

ADVERSE REACTION AND OPINION

Unfortunately, there are a few organizations and/or individuals in the United States who are using the plight of the American POWs as a tool to better their own selfish aspirations. Groups of this sort are not only causing hardships and pain to the many families of the POWs, but they are also proving to be extremely embarrassing to the US Government. One such organization is the Committee of Liaison with Families of Servicemen Detained in North Vietnam. Chaired by a Mrs. Cora Weiss, and sympathetic to the North Vietnam cause, this organization has a direct contact with Hanoi. Through this contact, Mrs. Weiss personally receives information on US prisoners, including updated POW lists, condition of POWs, and other data which normally the ICRC should be given.²⁴

²³Robert H. Estabrook, "UN Panel Urges POW Repatriation," Washington Post, 2 December 1970, p. A-33.

²⁴Neil Sheehan, "Laird Challenged on Dead POWs," New York Times, 26 November 1970, p. 19.

The method used by members of this organization to relay information to POW families is almost as brutal as the treatment of the POWs itself. For example, one wife was called just before Christmas by a member of Mrs. Weiss' group and told that her husband was dead--that was all, no details or proof, and to this day she has heard nothing more.²⁵ This type of transaction only further bears out the quality of the organization's membership.

David Dellinger, chairman of another militant anti-war group called the National Mobilization Committee to End the War in Vietnam, has been designated by Hanoi as the principal contact for all of the US prisoner releases to date. Dellinger, a 54 year old pacifist who was one of the "Chicago Seven" indicted in 1968 for inciting a riot at the Democratic National Convention, is the typical type of individual Hanoi demands to deal with.²⁶ The US government does not recognize nor solicit the support of these individuals or groups, but for the sake of the POW families, has not interfered with any of their transactions relative to the prisoner issue.

Upon receiving word from Hanoi that prisoners are to be released, Dellinger's procedure has been to appoint representatives who are sympathetic to the North Vietnam cause to act as escorts for the prisoners. For example, the last three prisoners released (August 1969) were escorted by Rennie C. Davis, member of the Students for Democratic Society (SDS), Linda Sue Evans, also member of the SDS, Grace Paley, member of various anti-war and anti-draft organizations,

²⁵David, p. 28.

²⁶Stockstill, p. 43.

and James Johnson, noted former G.I. who served a stockade term for refusing to fight in Vietnam. Upon their return from Hanoi with the prisoners, the group was interviewed in New York. Typical of the comments by all was Linda Sue Evans' statement that "We believe that North Vietnam Should win." Johnson is said to have also expressed with pleasure that the North Vietnamese "feel they have defeated the United States."²⁷

Mr. Harrison E. Salisbury, a New York Times assistant managing editor, and also a known critic of US policy in the Vietnam Conflict, was the first American journalist admitted to North Vietnam. He undoubtedly was carefully selected by Hanoi as an excellent channel of favorable North Vietnam communications, and has lived up to their expectations very well. His articles have constantly presented the US bombing of North Vietnam in a manner which portrays the US as a war monger. For example, the following is an excerpt from one of Salisbury's articles concerning an alleged raid on buildings on Silk Street in Namdinh, a city of approximately 90,000:²⁸

Almost every house on the street was blasted down on April 14 at about 6:30 AM, just as the factory shifts were changing. Forty-nine people were killed, 135 were wounded on Hang Thao (Silk Street), and 240 houses collapsed. Eight bombs--MK-84's--accomplished this.

What Salisbury did not mention was the fact that the US had announced six months earlier that Namdinh was a military target,

²⁷Ibid., p. 45.

²⁸"Hanoi Manages Our News," Air Force and Space Digest, February 1967, p. 12.

and that the buildings mentioned in the article were ground zero. Salisbury's partial approach only promoted ill feeling against the US pilots and assisted in attempting to convince the world that the pilots were war criminals.²⁹

Probably the most pitiful case of insult and heartbreak relative to the POW cause is the one cited by the four POW wives who made a global trip in quest of finding out whether they were widows or not. On one leg of the trip, and after being snubbed by Russian officials in Moscow for three days, the wives approached Senator Eugene McCarthy (D-Minn.) for help in getting to see the Soviet bureaucrats. He not only insultingly brushed them off, but allegedly categorized their husbands with draft dodgers and deserters.³⁰ Even though his office later denied his having made this categorization, the fact is that one US Senator Eugene McCarthy did not try to help these POW wives.

What is almost as disheartening is the fact that the American news media, particularly television, failed to give the POW issue any appreciable coverage until mid 1970. The results of a Gallup poll bears this point out in that only 68% of the people polled had heard or read about the treatment of US prisoners by the North Vietnamese.³¹ Typically illustrating the unconcerned attitude of the news media was the lack of coverage given a peaceful demonstration organized in Washington, D.C., on 1 May 1969, to protest the maltreatment of US

²⁹Ibid.

³⁰Bruce Cossaboom, "No One of Greater Courage," Armed Forces Journal, 14 March 1970, p. 7.

³¹David, p. 26.

prisoners. The demonstration drew a crowd of 4,000 sympathizers and was considered an outstanding success--except that the television and press correspondents, who were reportedly standing by, failed to record any of the event for further conveyance to the public. A spokesman for Senator Robert Dole (R-Kansas), who organized the demonstration, said that "unfortunately people are just shying away from the prisoner of war issue. I don't know, maybe it just doesn't affect them."³² This statement was probably a fair evaluation of the average American's interest during the first few years of the Vietnam Conflict.

SUMMARY

At the beginning of the Vietnam War, the United States tried political pressures as well as military threats to induce North Vietnam to treat US prisoners in accordance with the Geneva Conventions of 1949. Hanoi only responded with additional threats to the prisoners. For fear these threats might be carried out, the Department of Defense decided to handle the POW issue with a white glove, minimum publicity approach. Reports of inhumane treatment to the POWs and continued refusal to cooperate with the ICRC was the dominant response to this approach. In 1969 Secretary of Defense Melvin Laird decided to try maximum publicity with the issue, if for no other reason, because nothing else had worked. Almost immediately both national and international interest began to grow and soon Hanoi began to show signs of sensitivity to public pressures. It has taken more

³²Ibid. p. 23.

than a year to build the enthusiasm behind the programs which are actively supporting the POW issue, but all indications are that it is beginning to pay off. Should public opinion prove to be the deciding factor in the plight of these prisoners, not only the United States, but the whole world will have gained a lesson.

CHAPTER VI

CONCLUSIONS

As the final chapters of this study are being completed, the prospect for an early end to the Vietnam Conflict is not yet in sight. The Paris Peace Talks have had no appreciable progress since their beginning, and the battlegrounds of the Conflict, if anything, have spread to a wider area. It is also reasonable to believe that the US prisoners of war are still receiving inhumane treatment, even though recent Hanoi film releases depict a rosy prison atmosphere.

An accurate assessment of the POW issue will not be possible until after hostilities have ceased. Yet, certain general conclusions can be drawn from experiences and information collected to date which will probably remain valid regardless of the Conflict's outcome. Based on the results of the foregoing study, these conclusions are submitted as follows:

1. The numerous pictures, films, eyewitness reports, testimonies of released prisoners, and other valid sources of evidence have adequately verified the inhumane and improper treatment being administered to the US POWs by the North Vietnamese. This is in direct violation of the humanitarian principles of the Geneva Conventions of 1949.

2. Although the existing 1949 Geneva Convention Relative to the Treatment of Prisoners of War is a comprehensive and realistic document, it is becoming antiquated and in urgent need of revision. The very fact that one of the nations involved in the Vietnam Conflict

considers the Conventions binding while another denies its applicability ~~to the conflict~~ is sufficient evidence that there is much room for misinterpretation--and much need for revision.

3. North Vietnam is capitalizing on the humanitarian characteristics of the American people by using US prisoners as "bartering" items or "political hostages." This revolutionary use of POWs in modern warfare was confirmed at the Paris Peace Talks in May 1969 when Hanoi's Xuan Thuy stated that the United States would "never" get the names of the American prisoners unless the war ended and US troops were removed from Vietnam.¹

4. As an international law, the Geneva Conventions of 1949 Relative to the Treatment of POWs has partially failed in its purpose. The major reason is very fundamental--one of the involved signatories is bound by the Convention in its entirety while another is not. North Vietnam's reservation to Article 85 has become a legal excuse for evading the Convention's obligations. This should be a lesson for any future international lawmaking body; do not accept reservations.

5. Communist ideology is proving to be surprisingly vulnerable to world opinion. When all else failed, it was North Vietnam's sensitivity to public pressures that produced the first encouraging response to the POW issue. Recognizing the fact that propaganda is one of the by-products of Hanoi's recent move of leniency, it is still gratifying to know that it is really world opinion that is forcing Hanoi to act.

¹Hearings (statement by William Sullivan), pp. 10-11.

6. North Vietnam's relatively little concern for its own 8,000 prisoners of war in South Vietnam reinforces the belief that little value is placed on the human life in the North Vietnamese Society.

7. At the conclusion of hostilities regardless of the outcome, it appears fairly certain that North Vietnam will escape any form of punishment for its barbarious infractions of the POW Convention. There is no provision in the Convention for punishment of violators, and it is extremely doubtful at this stage of the Conflict that the United Nations or any other international law body will levy a penal judgment against North Vietnam.

CHAPTER VII

RECOMMENDATIONS

Based on the preceding generalized conclusions, it is recommended that:

1. The Department of Defense prepare, for promulgation by the State Department, a revision to the 1949 Convention Relative to the Treatment of Prisoners of War. Special attention should be given to the following areas:

a. Close examination and rewrite of all those articles of the Convention which have been controversial and multi-interpreted throughout the Vietnam Conflict.

b. The addition of a clause which would prohibit reservations to any of the provisions of the Convention by its signatories.

c. The addition of a system of punishment for nations and individuals who violate the Conventions. This program could possibly be delegated to the World Court, but would need backing by the United Nations.

d. Incorporating into the Convention such new terms as "brainwashing," "bartering," and "political hostages" which are considered revolutionary methods of dealing with prisoners but are still techniques of intimidation and torture.

2. The United States, as an interim measure, exploit the power of world opinion to its maximum against the North Vietnamese maltreatment of American prisoners. The news media should continue to increase

its coverage of the POW issue; the federal government should support more worldwide crusades such as those attempted by H. Ross Perot and Frank Borman; federal state and local organizations should continue to publicize the plight of the POWs and encourage people to express their anguish through floods of letters to US Senators and Congressmen, and Hanoi government, and all other world governments; and, above all, a concerted effort must be expended to enlighten the unknowing people of the world as to the flagrant violations of the POW Convention by North Vietnam.

3. The United Nations, ICRC, and government representatives of all nations be invited to the prisoner of war camps of South Vietnam to verify that there are some 8,000 North Vietnamese Army captives. The results of such a visit should be threefold:

a. The representatives will be witness to the fact that the United States and South Vietnam are complying with the POW Convention.

b. The North Vietnamese denial of sending any of its military into South Vietnam will have been disclaimed.

c. Such a visit will expose North Vietnam's small regard for the value of human life in that North Vietnam has chosen to sacrifice 8,000 soldiers in favor of a political maneuver.


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