# Detainee Operations and Combat Power: Challenges and Responsibilities

A Monograph

by

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This monograph discusses the moral, legal, and operational requirements related to the successful conduct of detention operations. It uses the Rule of Law as a framework to test four hypotheses across three conflicts; the Korean War 1950-1953, Vietnam 1965-1975, and Operation Iraqi Freedom 2003-1010. The first hypothesis asserts that US forces detain individuals for shorter periods of time in environments consisting of the Rule of Law. The second proposes that animosity decreases between the local population and US forces in environments consisting of the Rule of Law. The third argues that US forces maintain legal and ethical safeguards in environments consisting of the Rule of Law. The fourth contends that operations have a greater chance of success in environments consisting of the Rule of Law. Failing to incorporate Rule of Law considerations results in a need to react to a volatile political and operational environment and the reallocation of critical resources and combat power away from desired objectives. Planners must account for detention operations when planning and adjust as the operational environment changes.

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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the US Army Command and General Staff College or any other government agency. (References to this study should include the foregoing statement.)

# Abstract

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This monograph discusses the moral, legal, and operational requirements related to the successful conduct of detention operations. It uses the Rule of Law as a framework to test four hypotheses across three conflicts. The Korean War 1950-1953, Vietnam 1965-1975, and Operation Iraqi Freedom 2003-1010 are the conflict case studies. The first hypothesis asserts that US forces detain individuals for shorter periods of time in environments consisting of the Rule of Law. The second proposes that animosity decreases between the local population and US forces in environments consisting of the Rule of Law. The third argues that US forces maintain legal and ethical safeguards in environments consisting of the Rule of Law. The fourth contends that operations have a greater chance of success in environments consisting of the Rule of Law. This monograph discusses how failing to incorporate Rule of Law considerations forces commanders to react to volatile political and operational environments and the reallocate critical resources and combat power away from desired objectives. Planners must account for detention operations when planning and adjust as the operational environment changes.

# Contents

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# Acronyms

| | |
|---|---|
| ARVN | Army of the Republic of Vietnam |
| CENTCOM | United States Central Command |
| CPA | Coalition Provisional Authority |
| DOD | Department of Defense |
| DPRK | Democratic People's Republic of Korea |
| EPW | Enemy Prisoner of War |
| GPW | *Geneva Convention Relative to the Treatment of Prisoners of War* |
| ICRC | International Committee of the Red Cross |
| MACV | Military Assistance Command, Vietnam |
| MP | Military Police |
| MI | Military Intelligence |
| MNC-I | Multi-National Corps-Iraq |
| MNF-I | Multi-National Force-Iraq |
| NVA | North Vietnamese Army |
| OIF | Operation Iraqi Freedom |
| POW | Prisoner of War |
| PRC | People's Republic of China |
| RoK | Republic of Korea |
| UN | United Nations |
| UNC | United Nations Command |
| UNSC | United Nations Security Council |

# Illustrations

# Introduction

> What is a prisoner of war? He is a man who has tried to kill you and, having failed to kill you, asks you not to kill him.
>
> —Winston Churchill, House of Commons, July 1, 1952

All armed conflict involves the possibility of detainment or capture of individuals and groups, with the detaining party maintaining legal and moral obligations to the captured persons. Large-scale detention operations are not an anomaly in war nor are they something from decades past, the US led coalition capturing over 80,000 Iraqi prisoners during Operation Desert Storm in 1991 being the largest most recent example.[1] Contemporary conflicts do bring a new complexity to detention operations with the presence of regular and irregular forces, demonstrated by the 600 unlawful combatants flown from Afghanistan to Guantanamo Bay, Cuba during the first three months of Operation Enduring Freedom in 2001.[2] Conventional and irregular detention operations can collide to form new challenges, as they did during the 2003 US led invasion of Iraq when coalition forces captured over 80,000 Iraqi troops within a month of invasion.[3] In addition to uniformed prisoners, the coalition guarded thousands of nonuniformed insurgents throughout the country, including 8,000 at the infamous Abu Ghraib prison.[4]

If the detaining party is not prepared to fulfill these obligations then they risk reacting to circumstances beyond their control and reallocating resources and combat power from their desired objectives. One of many uprisings by Korean and Chinese prisoners in

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[1] J.F. Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, Global war on terrorism occasional paper (Fort Leavenworth, KS: Combat Studies Institute Press, 2005), 121.

[2] Paul J. Springer, *America's Captives: Treatment of POWs from the Revolutionary War to the War on Terror*, Modern war studies (Lawrence: University Press of Kansas, 2010), 196.

[3] Ibid., 197.

[4] Ibid., 199.

the US ran Prisoner of War (POW) camp during the Korean War resulted in the deployment of multiple infantry regiments from throughout Korea and Japan to restore order.[5] Additionally, the detention, treatment, and final disposition of captured persons has reciprocal effects on the battlefield and can delay or even prevent the termination of hostilities. The United States put considerable pressure on South Vietnam to improve their treatment of captured Viet Cong and North Vietnamese Army soldiers not only to increase support among the populace for the South Vietnamese government but also to limit opportunities for the North Vietnamese to exploit captured US soldiers.[6]

Detention operations have been a part of the US military's operations since the 1800s. However, military planners seldom consider or plan for detention operations prior to the outbreak of hostilities. The resulting operations are often ad hoc measures without a clear endstate. The purpose of this study is to provide US operational planners with a firm understanding of the requirements and considerations related to detention operations in the contemporary environment. This understanding will allow US forces to minimize the burden placed on its forces while preserving combat power and setting conditions for the termination of hostilities.[7]

This study is significant in that is takes a holistic view of detention operations in multiple types of warfare instead of focusing solely on large-scale conventional operations or conflicts fought against insurgencies. It identifies commonalities and continuities that are applicable throughout the range of military operations.

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[5] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 23.

[6] Ibid., 46.

[7] US Department of the Army, Field Manual (FM) 3-39, Military Police Operations (Washington, DC: Government Printing Office, 2013), 3–11.

Literature on this topic often uses the words detainee, POW, Enemy Prisoners of War (EPW) interchangeably. This paper uses the term detainee when discussing individuals or groups but may use POW when referring to camps or locations. The doctrinal definition of Detention Operations from FM 3-39, *Military Police Operations*, "the detainment of a population or group that poses some level of threat to military operations," is used for this study.[8] FM 3-39 goes on to describe detention operations as those "conducted by military police to shelter, sustain, guard, protect, and account for populations (detainees or US military prisoners) as a result of military or civil conflict or to facilitate criminal prosecution."[9] The definition of Rule of Law comes from the *Handbook for Military Support to Rule of Law and Security Sector Reform*, which describes the Rule of Law as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable, . . . consistent with international human rights norms and standards."[10] Although these and other definitions apply to both civil and military detainment and norms this study is solely focused on the military aspect of detention operations.

Four hypotheses guide this study. The first hypothesis asserts that US forces detain individuals for shorter periods of time in environments consisting of the Rule of Law. The second hypothesis proposes that animosity decreases between the local population and US forces in environments consisting of the Rule of Law. The third hypothesis argues that US forces maintain legal and ethical safeguards in environments consisting of the Rule of Law.

[8] US Army, FM 3-39, 3–10.

[9] Ibid., 3–10.

[10] United States Joint Forces Command, *Handbook for Military Support to Rule of Law and Security Sector Reform* (Washington, DC: Government Printing Office, 2011), I-3.

The fourth hypothesis contends that operations have a greater chance of success in environments consisting of the Rule of Law.

Several limitations frame this study. The author's language requirements limit the study to English only sources, a noted impediment in a study involving coalition warfare. Additionally, this study focuses on three case studies from the twentieth century that all occurred after 1949, the year of the fourth and final Geneva Conventions, which revised the 1929 Convention relative to the Treatment of Prisoners of War. The scope of this study is limited to those case studies listed below and does not address the many other instances of US forces conducting detention operations in the twentieth century.

This study assumes that the reader is familiar enough with the strategic context and major operations of the chosen case studies; they will not be discussed in detail so that the focus remains on detention operations. It is also assumed that the reader is familiar with detention operations at the tactical level of war, allowing the study to focus on the operational level.

This study consists of six sections. Following this introduction, section two consists of a review of scholarly work related to US forces detention operations. Section three discusses the methodology of analysis and provides a brief background of the three case studies. Section four consists of subsections for each case study — the Korean War, Vietnam, and Operation Iraqi Freedom (OIF) — to provide separate types of warfare under differing planning variables to study and analyze detention operations. Section five provides findings and analysis from the case studies. Section six is the conclusion.

## Literature Review

This section reviews current theory and writing on detention operations in conflict. A literature review of related works shows that the theory of an international Rule of Law based on reciprocity and acceptance of universal norms and customs provided the

framework for detention operations in modern history. The Geneva Conventions and military doctrine codified these norms for military application. The conduct of detention operations in American conflicts varied from conflict to conflict but remained grounded in the underpinnings of moral considerations and reciprocal treatment of detained persons.

The theory of an international Rule of Law, where states and actors are accountable to international norms, customs, and agreements, helps guide US policy towards detention operations. Hugo Grotius, the seventeenth-century Just War philosopher, wrote about the international norms of legitimacy and reciprocity and their importance to the conduct of war when he advised that a state "which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace."[11] This adherence to an international Rule of Law as applied to detention operations is grounded on the belief that all states and parties involved in a conflict are equally accountable to international norms, customs, and agreements. Emer de Vattel, following Grotius and reinforcing his positions, further strengthened the theory of Rule of Law and reciprocity in his eighteenth-century writings proposing that all states are equal, regardless of their size. He went on to describe how restrictions or freedoms in actions applied to one state must be equal to what is applied to other states. Essentially, what conduct one takes against the enemy or detainees the other may do as well.[12]

The continuation of the study of the theory of international Rule of Law and reciprocity leads to Georg Wilhelm Friedrich Hegel's writings in the nineteenth century. Hegel identifies that because states are not subject to any enforcement mechanism for an

[11] Gregory M. Reichberg, Henrik Syse, and Endre Begby, eds., "Hugo Grotius: The Theory of Just War Systematized," in *The Ethics of War: Classic and Contemporary Readings* (Malden, MA: Blackwell Pub, 2006), 389.

[12] Gregory M. Reichberg, Henrik Syse, and Endre Begby, eds., "Emer de Vattel: War in Due Form," in *The Ethics of War: Classic and Contemporary Readings* (Malden, MA: Blackwell Pub, 2006), 506–507.

international Rule of Law during war, the entire concept is based on what "ought" to be.[13] In Hegel's terms, states ought to recognize international norms and each other's legitimacy; something they can only do if they with act with reciprocal actions. Hegel saying that "war itself is characterized as something which ought to pass away" is not a belief or call for eternal peace but rather a call for a return to international order until the next war.[14]

The American military adopted the theory and principle of moral treatment and responsibility of care for detainees at its conception, knowing that ill-treatment would have reciprocal effects. George Washington was known to advocate for the proper treatment of prisoners and correspond with William Howe to improve treatment of American POWs. Early in the American Revolution, Washington lobbied the Continental Congress to establish commissaries of prisoners to ensure proper treatment of prisoners on both sides of the conflict and to improve conditions and while facilitating repatriation and exchanges.[15] The American military first began to codify the theories of moral treatment and responsible care during the Civil War when President Abraham Lincoln issued General Orders No. 100, commonly known as Lieber's Code, which provided a set of rights and responsibilities for POWs and detaining parties.[16] Lieber's Code would go on to serve as an example for European conflicts, as well as for The Hague and Geneva Conventions, moving the theory of Rule of Law from international custom and norm to formal agreement.[17]

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[13] Gregory M. Reichberg, Henrik Syse, and Endre Begby, eds., "G. W. F. Hegel: War the the Spirit of the Nation-State," in *The Ethics of War: Classic and Contemporary Readings* (Malden, MA: Blackwell Pub, 2006), 548.

[14] Ibid., 550.

[15] John C. Fitzpatrick, *The Writings of George Washington: From the Original Manuscript Sources, 1745-1799*, vol. 6 (Washington, DC: Government Printing Office, n.d.), 101.

[16] John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (New York: Free Press, 2012), 232.

[17] Arnold Krammer, *Prisoners of War: A Reference Handbook*, Contemporary military, strategic, and security issues (Westport, CT: Praeger Security International, 2008), 88.

Detention operations as it is now understood is a broad category of military operations and spans across military, civil, and criminal elements in conflicts. Article 4 of the *Geneva Convention Relative to the Treatment of Prisoners of War* (GPW), adopted in 1949, provides the foundational definitions for prisoners of war used in this study and US doctrine.[18] It prescribes six categories for POWs broadly broken into three larger categories. Members of a regular or conventional military unit that represents a party or government, recognized or not recognized by the other party, make up the more traditional view of POWs and one category. A second category contains nonmilitary members who accompany regular forces to provide support or services. The third defined category consists of militia, volunteer units, or resistance movements who meet a set of four additional criteria: someone with a designated commander who is responsible for their actions; a distinctive sign identifies them from a distance; they openly carry their arms; they conduct their operations in accordance with the laws and customs of war. A captured person must meet all four of the additional criteria to be categorized as a POW according to the GPW.[19] Persons on the battlefield who do not fall into one of the six categories described above are commonly referred to as unlawful combatants, an absent term from the Geneva Conventions but used since their adoption.[20]

Joint Publication 3-63, *Detainee Operations* defines a detainee as "any person captured, detained, or otherwise under control of Department of Defense (DOD) personnel" with the exclusion of DOD personnel held for law enforcement purposes.[21] JP 3-63 further

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[18] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 3.

[19] International Committee of the Red Cross, *The Geneva Conventions of 12 August 1949*, 82, accessed September 15, 2017, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380?OpenDocument.

[20] Krammer, *Prisoners of War*, 146.

[21] US Department of Defense, Joint Staff, Joint Publication (JP) 3-63 Detainee Operations (Washington, DC: Government Printing Office, 2014), I-3.

defines detainees as either a belligerent, retained personnel, or civilian internees. Belligerents are further defined as captured persons engaged in hostilities against the United States or its partners and categorized as either privileged or unprivileged belligerent. Privileged belligerents are those belligerents who meet the GPW definition of POW while unprivileged enemy belligerents do not. Retained personnel are individuals involved in the search, collection, transport, or care of wounded or sick, such as medical personnel or chaplains. Civilian Internees are civilians in the custody of the DOD for reasons of security or protection.[22]

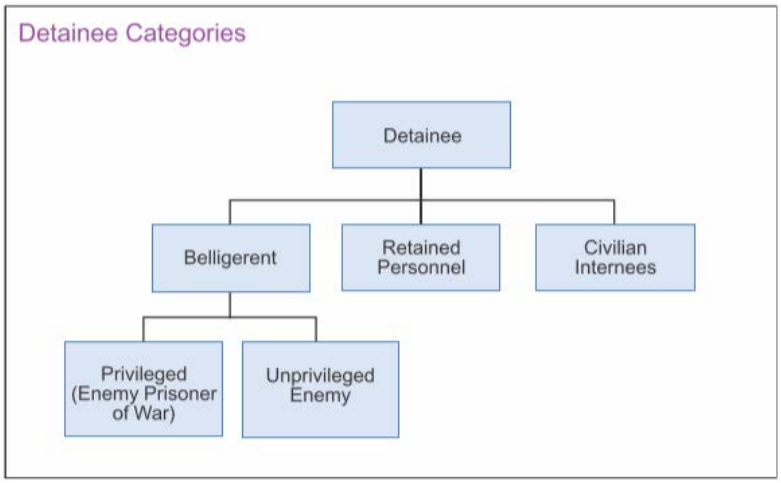


Figure 1. Detainee Categories. Joint Publication 3-63 Detainee Operations (Washington, DC: Government Printing Office, 2014), I-4.

The distinctions between POW and unlawful combatant or privileged and unprivileged belligerent are used to classify detainees for reporting, care and custody, and repatriation or release. Nuanced legal definitions of various classes of detainees can be subject to interpretation or influenced by politics.[23] This study uses the US military joint definition of a detainee that includes the GPW definitions as described above.

[22] US Joint Staff, JP 3-63, Detainee Operations 2014, I-4.

[23] Robert C. Doyle, *The Enemy in Our Hands: America's Treatment of Enemy Prisoners of War, From the Revolution to the War on Terror* (Lexington, KY: University Press of Kentucky, 2010), 4.

The Combat Studies Institute Press publication *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience* by James Gebhardt studies the relationship between US Military Police (MP) and Military Intelligence (MI) doctrine from the 1949 Geneva Conventions to the late 1990s. Gebhardt's thesis is that the Geneva Conventions provide a constant foundation for MP doctrine and US policy towards detainees. Gebhardt provides a detailed analysis of doctrinal changes during and after each major US conflict since 1949 by showing evolving relationships between different military branch doctrines and their varied incorporation of the Geneva Conventions. Gebhardt states the hypothesis that the Geneva Conventions remained a consistent foundation for the care of detainees throughout doctrinal publications since the adoption of the conventions.[24] Gebhardt's study concludes with the hypothesis that the abuses at Abu Ghraib during OIF occurred partly because of a breakdown in command and support relationships between MP and MI units involved in the care and interrogation of detainees. Gebhardt traces the beginning of this breakdown to the conclusion of the Vietnam War when MP doctrinal publications changed mission priorities from facilitating intelligence gathering to enforcement of Geneva Convention standards.[25]

Paul Springer asserts in *American's Captives: Treatment of POWs from the Revolutionary War to the War on Terror* that the "underlying principles of POW treatment remain unaltered" but the United States continuously fails to learn from mistakes and past conflicts.[26] These principles remain constant throughout different types of conflict and stem from three overarching US policy objectives related to POWs. First, an attempt to encourage reciprocal treatment of captured American POWs; second, a respect for international norms

[24] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 125.

[25] Ibid., 129.

[26] Paul J. Springer, *America's Captives: Treatment of POWs from the Revolutionary War to the War on Terror*, Modern war studies (Lawrence: University Press of Kansas, 2010), 3.

and laws; third, a desire to devote the minimal amount of resources required to support the first two objectives.[27]

Springer demonstrates his thesis with short case studies of each major American conflict since the American Revolution to OIF. He hypothesizes that although the United States recognizes that detainee operations continue to be a part of every military operation, the United States fails to garner any lessons learned or adequately prepare for in subsequent conflicts. He continuous to hypothesize that the United States failed to adequately plan for detainee operations in each case study due to an underestimation of the number of expected detainees, with operational planners focusing solely on major combat operations to the detriment of detention operations.[28]

Robert Doyle contrasts Springer in a similarly styled book titled *The Enemy in Our Hands: America's Treatment of Prisoners of War from The Revolution to the War on Terror*. Doyle's assertion is that US detainee operations and the treatment of detainees changes based on how the American military and leaders view the enemy.[29] He hypothesizes that how national leaders and the American people view the enemy influences military operations as military planners translate higher policies into tactical actions.[30] He attempts to demonstrate that rules and operations directed towards detainees can change as the conflict evolves and multiple sets of rules for various classes of enemy (i.e. conventional and partisan) can exist.[31]

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[27] Springer, *America's Captives*, 3–6.

[28] Ibid., 2.

[29] Doyle, *The Enemy in Our Hands*, ix–x.

[30] Ibid., x.

[31] Doyle, *The Enemy in Our Hands*, 3.

The idea of reciprocity, or treating detainees humanely so that the enemy will do likewise, is central to Arnold Krammer's *Prisoners of War: A Reference Handbook.* Krammer's thesis is that international law, such as the Geneva Conventions, steadily shapes policy towards detainees but either one or both parties to the conflict continuously discarded these laws in war. Krammer hypothesizes that the type of war determines a detainee's level of care and survival rate.[32] The final hypothesis Kramer presents is that contemporary conflicts with nonstate actors, such as terrorists, and their denial of Geneva Convention protections by the United States presents a paradigm shift in detention operations which is removing international safeguards and guarantees of reciprocity between parties.[33]

Gebhardt's hypothesis that doctrinal and procedural deficiencies in command support relationships contributed to ethical and moral failings during OIF is consistent with the hypothesizes introduced in the introductory section of this study. The deficiencies identified by Gebhardt during OIF contributed to a lack of Rule of Law internationally and internal to military operations, which in turn increased animosity between local populations and US forces, removed legal and ethical safeguards for US forces, and decreased US forces chances for success.

The hypothesis proposed by Springer in *America's Captives* closely matches those in this study. Inadequate preparation for detention operations by US forces contributes to an environment lacking Rule of Law. As a result, detainees are held for longer periods of time, animosity between parties increases, legal and ethical safeguards are challenged, and operations become more difficult. However, his hypothesis on the US failure to plan for detention operations due to a failure to learn universal principles and constants is not

[32] Krammer, *Prisoners of War*, 24.

[33] Ibid., 76.

consistent with this study, which demonstrates that each type of conflict requires a unique and individual approach that does not rely on prescribed constants.

The hypothesis that national policies and the level of the enmity of the people affect detention operations, as presented by Doyle, agrees with the hypothesis that decreased animosity is consistent with the Rule of Law. Doyle's hypothesis also relates to the discussion of the relationship between legal and ethical safeguards and the Rule of Law presented in this study.

The level of care and survival rate of detainees being determined by the type of war and the idea that contemporary warfare is greatly changing detention operations, as hypothesized by Kramer, is not consistent with this study. This study shows that the type of war influences detention operations it does not influence the level of care. Additionally, contemporary warfare does not change the Rule of Law, which is the basis of the hypotheses presented in the introduction of this study.

Nearly every reviewed author followed the familiar template of using historical case studies to identify consistencies and contingencies throughout each conflict. They ground their writing in a discussion of international customs and norms centered on legal and moral factors related to detention operations.

## Methodology

After reviewing relevant literature, this study now moves to a discussion of the methodology of research and analysis. This study uses a focus structured comparison methodology using three separate US conflicts as case studies. This section describes the selected cases and the focused research questions applied to each. The anticipated findings follow each question. The method of data collection concludes this section.

Detention operations in conflict serve as the subclass of events researched for this study. Three separate case studies, each representing a different type of warfare, are used for

structural comparison of the conflicts. The focus structured comparison method has the advantage of standardized data collection across all case studies which facilitates systematic comparison. Asking the same general questions for each case ensures the collection of comparable data.[34] Focusing on specific aspects of the cases provides clear and straightforward analysis for this study.[35]

The first case study is the United Nations Command (UNC) peacekeeping mission on the Korean peninsula in 1950-1953. This conflict serves as an example of a rapid response to a major crisis with the United States in a peacekeeping role against a large conventional army. The United States partnered with Republic of Korea (RoK) forces to hold Chinese and Korean detainees during the conflict while balancing international pressure from the International Committee of the Red Cross (ICRC) and world opinion to improve care for its detainees.[36] The United States faced several new challenges during this conflict. Communist hardliners and detained Chinese agitators overwhelmed guard forces multiple times forcing the reallocation of US combat power to quell disturbances and regain order.[37] Additionally, detainees now required screening and segregation by ideology and repatriation concerns which would affect conflict termination.[38]

The Vietnam War case study demonstrates detention operations in a multinational conflict in support of a willing host nation. This conflict also brings questions of legitimacy of belligerents under international, host nation, and US law; as each side was unwilling to

[34] Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences*, BCSIA studies in international security (Cambridge, MA: MIT Press, 2005), 69.

[35] Ibid., 67.

[36] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 15.

[37] Ibid., 23.

[38] Ibid., 19.

recognize the other as legitimate.[39] The United States again partnered with the host nation for detention operations but faced increased pressure to enforce the principle of reciprocity due to the treatment of its own captured soldiers.[40] This case study also shows the change in US doctrine and policy to account for the large-scale capture of not only POWs as described in the GPW but of insurgents and others not covered by the GPW.[41]

Operation Iraqi Freedom in 2003 is the final case study. This case study shows detention operations after a regime change and while building a new host nation government apparatus. This conflict also demonstrates the challenges faced when detaining uniformed fighters, nonuniformed insurgents, and foreign fighters.[42] It also shows how the theory of reciprocity changed when the GPW no longer served as the foundation of US detention policy.[43]

This study uses seven questions to provide comparable data across all case studies. The first question is what was the political context of the examined conflict? All three conflicts differ in international and domestic support for the conflict. The political context of the Korean War includes multiple recognized legitimate states, belligerents involved in a civil war, and international peacekeeping forces. The United States conducted detention operations during the Vietnam War under a vocal domestic political background and a tumultuous political background in Vietnam. Operation Iraqi Freedom faced a similar political background as the war progressed.

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[39] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 41.

[40] Ibid., 43.

[41] Ibid., 53.

[42] Doyle, *The Enemy in Our Hands*, 314.

[43] Krammer, *Prisoners of War*, 76.

The second question is what type of war was the conflict? The Korean War was a peacekeeping action fought with little preparation by the United States. The Vietnam War, fought to support a host nation, began with minimal involvement by the United States but grew to a sizable commitment. The United States conducted a planned regime change in OIF against an enemy they fought ten years earlier but quickly found themselves fighting an unexpected counterinsurgency fight. All three conflicts involved the United States leading coalition warfare.

Determining the operational approach is the third question in this study. The United States relied on the host nations in the Korean and Vietnam Wars to provide support to detention operations to preserve combat power and provide legitimacy to cause. The United States did not have this option in OIF since it overthrew the host nation and disbanded its bureaucracies and institutions.

The answer to the fourth question, what was the plan for detention operations at the onset of hostilities, is similar across all three conflicts. Preceding each conflict, the plan for detention operations was not thorough enough due to US military planners underestimating the number of detainees they would capture and the length of time they would be detained. Planners focused US efforts on major combat operations and put the onus for detention operations on the host nation to preserve combat power.

What were the planning variables for affecting detention operations during the conflict is the fifth question. In Korea, the United States lacked planning time and faced a large conventional threat with overwhelming numbers. It also faced the challenge of ideological differences among detainees for the first time. Major planning variables in Vietnam included the close partnership with the host nation in the detention of both privileged and unprivileged enemy belligerents. During OIF, the variables included the absence of any host nation apparatus capable of providing any form of Rule of Law and the impossibility of the United States to use a host nation in the support of detention operations.

The entrance of the information age and media on the battlefield also created additional public affairs and legitimacy planning variables for the United States in that conflict. Culture and language differences hampered detention operations and cooperation with the host nation in all three conflicts.

The sixth question looks at how detainees were handled at the end of the conflict. The question of repatriation during the Korean War extended the conflict and created additional foreign policy challenges for the United States. In Vietnam, the United States left its detainees in the care of the South Vietnamese during and after the conflict under questionable circumstances, as it relates to the Rule of Law. During OIF, the United States lacked a stable host or partner nation to transfer its detainees to until it spent time and energy to create an acceptable security apparatus that also operated under questionable circumstances.

The last question determines how detention operations affected domestic and international views. During the Korean and Vietnam Wars, detention operations conducted in accordance with international rules and norms positively influenced domestic and international views towards the United States but propaganda and enemy narratives reversed this view at times. In contrast, detention operations in OIF had a negative effect on domestic and international views due to high-profile detainee abuses and government changes to policy that identified who and who was not a POW under GPW protections.

This study uses terms and procedures from current doctrinal publications from the Department of the Army and Joint Staffs to describe and understand planning considerations for contemporary detention operations. Previous and outdated doctrine references help to analyze US military detention operations in past conflicts. Official reports and inquiries are used to identify decisions and mistakes made at the time of the conflict. International agreements and US policy documents from official websites are used to understand the

planning variables in each conflict. Historical analysis from various research books, journals, and articles provide information for each case study.

The focus structured comparison approach of the three case studies provides a solid framework and method to conduct an analysis of detention operations across various types of conflict. Each case study represents a different type of conflict and a change in US policy or the operating environment. The research questions orient towards a focused research objective to identify how the US military can plan and prepare for detention operations against both a conventional and an irregular enemy in a way that meets all legal and moral obligations while preserving combat power.

## Case Studies

This section consists of three case studies of US detention operations. Each case study begins with a strategic overview of the conflict which is then discussed in broad terms. It ends by addressing the focused case study questions outlined above which remain consistent across each case study.

### Korean War, 1950-1953

In 1896, Russia and Japan divided Korea into spheres of influence along the 38th parallel. After the Russo-Japanese War in 1905, Japan took control of the entire peninsula and formally annexed Korea in 1910, occupying it through the second Sino-Japanese War and World War II.[44] Japan unconditionally surrendered to the United States on September 2, 1945, shortly after the dropping of two atomic bombs on Japanese cities and the Soviet declaration of war against Japan.[45] The Allies dismantled the Japanese Empire, returning territory lost to China since the first Sino-Japanese War of 1895 and giving special rights to

[44] Norman Rich, *Great Power Diplomacy Since 1914* (Boston: McGraw-Hill, 2003), 357.

[45] Ibid., 303.

Mongolia and Manchuria to the Soviet Union.[46] The Allies intended that the Korean peninsula eventually be granted full independence, but a date for such an event was never determined.[47]

The Allies agreed to General Order No. 1 on August 15, 1945, which set conditions and agreements for who among the Allies should accept the Japanese surrender in each occupied territory.[48] The dividing line for responsibility for surrendering Japanese troops in Korea was set at the 38th parallel, with all Japanese north of the line surrendering to the Soviets and all Japanese south of line surrendering to the United States.[49] The dividing line was meant to be temporary and created political and economic disparities between the north and south Korean populations. The less populous north contained industrial development begun by the Japanese whereas the more populous south remained more agrarian and a major source of the country's food supply.[50]

The Soviet Army brought with them Kim Il Sung, a Moscow trained communist, to lead North Korea. Kim won the election as chairman of the North Korean Provisional People's Committee and began efforts to unify the peninsula.[51] The Soviets also began to shape North Korea militarily and by 1948 North Korea maintained over 200,000 well-equipped soldiers, reinforced by Soviet military advisors and returning Korean veterans who fought in the Chinese Civil War against the Japanese and Nationalist Chinese.[52]

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[46] Rich, *Great Power Diplomacy Since 1914*, 334.

[47] Ibid., 335.

[48] Ibid.

[49] Ibid., 356.

[50] Ibid., 357.

[51] Ibid., 358.

[52] Ibid., 357

The United States supported Syngman Rhee as the political leader of South Korea. Rhee led an exiled Korean government during Japanese occupation, held anti-communist views, and came with the recommendation of Chinese Nationalist leader Chiang Kai-shek.[53] In 1947, the United States called on the United Nations (UN) to hold national elections in Korea after failing to agree to election terms and candidates with the Soviet Union. The Soviets and North Korea boycotted the elections, questioning their legitimacy because of Korea not being a member of the UN. This resulted in only South Koreans voting in the elections and a South Korean assembly electing Rhee as President of the new Republic of Korea in July 1948.[54] North Korea then hold its own election in August 1948 and elected Kim as leader of the Democratic People's Republic of Korea (DPRK).[55]

The Soviet Army withdrew from North Korea in 1948 but left an estimated 3,000 military advisers.[56] The United States withdrew from South Korea in 1949 but did not leave a South Korean Army equal to the North Korean Army. Rhee proved to be a poor and unpopular leader, due to corruption, political repression, and use of martial law. The South Korean Army, reinforced by 500 American advisors, remained only capable of suppressing North Korean agents and guerrillas operating in the south but incapable of defending its borders from outside aggression.[57] The United States withdrew diplomatically as well by declaring in major policy speeches that Korea was outside its defensive perimeter and not a vital interest.[58] These statements and troop withdrawals, coupled with the recent loss of the

[53] Rich, *Great Power Diplomacy Since 1914*, 359.

[54] Ibid., 359–360.

[55] Ibid., 360.

[56] Ibid.

[57] Ibid., 361.

[58] Ibid.

Chinese Nationalists in the Chinese Civil War in 1950, encouraged Kim to seek the approval from Mae Zedong and Stalin to launch an invasion into South Korea to unify the country.[59]

The North Korean Army crossed the 38th parallel on June 25, 1950.[60] The United States led the UN in condemning the invasion and creating the UNC to repeal the invasion. The Soviets did not veto the resolution because of their boycott of the United Nations Security Council (UNSC) over the question of Chinese representation at the UNSC.[61] The United States hastily deployed Japanese occupation forces to Korea who were rapidly defeated and driven to the Port of Pusan.[62] This front stabilized while US firepower attrited North Korean forces and interdicted their lines of communication.[63]

In September of 1950 General MacArthur, Commander of UNC and US forces, lead a combined marine and army amphibious landing at Inchon. This audacious landing severed North Korean lines of communication and collapsed their position around Pusan.[64] The victory encouraged MacArthur and President Truman to change their war aims from restoring the border to the reunification of Korea under UN supervision.[65] The UNC pursued North Korean forces towards the Chinese border, ignoring warnings that the People's

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[59] George C. Herring, *From Colony to Superpower: US Foreign Relations Since 1776*, The Oxford History of the United States (New York: Oxford University Press, 2008), 640.

[60] Geoffrey Parker, ed., *The Cambridge History of Warfare* (New York: Cambridge University Press, 2005), 366.

[61] Ibid.

[62] Herring, *From Colony to Superpower*, 641.

[63] Parker, *The Cambridge History of Warfare*, 366.

[64] Ibid., 367.

[65] Allan Reed Millett and Peter Maslowski, *For the Common Defense: A Military History of the United States of America from the Revolutionary War through Today*, Rev. and updated. (New York: Free Press, 2012), 459.

Republic of China (PRC) would invade if the United States approached the Yalu River border.[66] In November 1950, over 260,000 soldiers from the PRC crossed the border and pushed the UNC back to the 38th parallel.[67] The war aims changed back to the establishment of status quo at the 38th parallel, despite MacArthur's attempts to bring the war to mainland China through nuclear strikes and invasion by Chiang Kai-shek's Nationalist Chinese.[68]

General Ridgeway replaced MacArthur in January 1951 and fought a war of attrition to stabilize the front while inflicting massive casualties on the PRC.[69] The UNC drove the PRC back across the 38th parallel and transitioned to a strategic and tactical defense in November of 1951.[70] The question of repatriation of detainees became a major point of contention between the United States and communist forces, delaying any armistice agreements.[71] Armistice negotiations first began in November 1951 but went on for nearly two years.[72]

*What was the political context of the examined conflict?* The United States desired to maintain a limited war with the limited aim of containing communist expansion. This manifested itself in the "Truman Doctrine" and the US commitment to contain communist expansion anywhere in the world.[73] The end of World War II left the United States and the Soviet Union as dual hegemons in an international system where war was costlier than ever.

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[66] Parker, *The Cambridge History of Warfare*, 368.

[67] Millett and Maslowski, *For the Common Defense*, 459.

[68] Ibid.

[69] Parker, *The Cambridge History of Warfare*, 368.

[70] Millett and Maslowski, *For the Common Defense*, 468.

[71] Ibid., 472.

[72] Ibid.

[73] Millett and Maslowski, *For the Common Defense*, 443.

The growth of nuclear arsenals meant that the destruction of one belligerent in war would come at an unbearable cost to the other. This created an environment where avoiding unlimited war became a priority for both superpowers.[74] The destructive power of nuclear weapons coupled with the expensive costs of maintaining a large conventional military led the United States to downsize its military and compensate with deterrence through nuclear weapons.[75] The bipolar system created a zero-sum game for the superpowers that saw every region of the world as part of a greater contest between superpowers and ideologies.[76]

*What type of war was the conflict?* The conflict was a multinational peace enforcement operation with limited war aims.[77] The UNSC saw the North Korean invasion of South Korea as a violation of an earlier United Nations General Assembly resolution that had established the government of the Republic of Korea as the legitimate governmental authority over South Korea. Immediately after the North Korean invasion the UNSC passed a resolution calling for withdrawal of North Korean forces.[78] A series of additional UNSC resolutions quickly followed, authorizing the use of force against North Korea and recommending all members provide military assistance under a unified command led by the

[74] Carter Malkasian, *A History of Modern Wars of Attrition*, Studies in Military History and International Affairs (Westport, CT: Praeger, 2002), 119.

[75] Ibid.

[76] Ibid.

[77] Peace Operations are "multiagency and multinational operations…to contain conflict, restore the peace, and shape the environment to support reconciliation and rebuilding and facilitate the transition to legitimate governance" as defined in Joint Publication 3-0 *Operations*, page VII-2.

[78] United Nations Security Council, *United Nations Security Council Resolution 82*, 1950, accessed November 9, 2017, http://www.un.org/en/sc/documents/resolutions/1950.shtml.

United States.[79] Seventeen nations contributed to the UNC, with the United States being the largest foreign contingent.[80]

*What was the operational approach during the conflict?* The UNC operational approach changed from a war of annihilation through maneuver warfare to one of attrition through limited objective attacks during the war. The UNC, under the command of General MacArthur, first fought a war of maneuver against the North Korean forces, demonstrated by the amphibious landings at Inchon in September 1950, to destroy their forces and unit Korea under South Korean governance.[81] MacArthur pursued this approach until the PRC invasion on behalf of North Korean forces in November 1950 routed the UNC back south of the 38th parallel. The UNC approach then changed to attrition warfare to increase security for UNC forces, avoiding a general war with the PRC or USSR, keeping the conflict confined to the peninsula, and eventually ending the conflict along a solid front.[82]

General Matthew Ridgway took command of the Eighth Army in December 1950 and replaced MacArthur in April 1951. He implemented an attrition approach that focused on inflicting severe casualties on the communist that minimized the cost to the UNC while accounting for an enemy whose numerical superiority allowed them to sustain heavier losses.[83] His concept of limited objective attacks focused on killing the enemy and not on seizing or holding unnecessary terrain. He used delaying actions and encouraged tactical counterattacks to inflict the massive casualties he needed to compel the Communists to

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[79] United Nations Security Council, *United Nations Security Council Resolution 84*, 1950, accessed November 9, 2017, http://www.un.org/en/sc/documents/resolutions/1950.shtml.

[80] Harry P. Riconda, *Prisoners of War in American Conflicts* (Lanham, MD: Scarecrow Press, 2003), 236.

[81] Malkasian, *A History of Modern Wars of Attrition*, 121.

[82] Ibid.

[83] Ibid., 123.

agree to a ceasefire along status quo lines.[84]Attrition as an approach achieved the limited aims of stabilizing a front generally along the 38th parallel but it was not capable of destroying the Communist forces or of reaching a decision quickly.[85]

*What was the plan for detention operations at the onset of hostilities?* The UNC and US forces were not prepared for detention operations at the onset of hostilities. Although no plan for detention operations existed, the UNC adopted the provisions of the 1949 Geneva Prisoner of War Conventions in July 1950 even though the United States had not ratified the convention by the time hostilities began.[86] The Pusan Base provost marshal began building the first POW camp in July 1950. Known as POW Enclosure 1, it fell under control of Eighth Army and contained 1,899 detainees by the end of August 1950. The guard force consisted of RoK soldiers who consistently mistreated their prisoners and required supervision by US forces.[87]

The US reduction of forces after World War II resulted in many soldiers associated with detention operations leaving the service before 1950 and UNC forces conducting detention operations in an improvisational instead of planned manner.[88] The UNC was not prepared for the guard and logistical requirements to secure and administer large POW camps and relied on RoK units and US combat units to fulfil its detention mission.[89]

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[84] Malkasian, *A History of Modern Wars of Attrition*, 125–127.

[85] Ibid., 135.

[86] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 15.

[87] Ibid.

[88] Springer, *America's Captives*, 166.

[89] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 119.

The UNC lacked trained language and culture experts to administrate the camps and process Korean and Chinese prisoners.[90] The UNC instead used English speaking detainees as translators even though most of the detainees with language abilities were specially trained communist political officers, many of which who had deliberately surrendered or allowed themselves to be captured to organize resistance in camps.[91] A lack of cultural understanding led the UNC to outfit all detainees with red jumpsuits at one time; a policy that resulted in violent reactions from North Korean detainees because of the stigma prisoners associated with wearing red, as it was reminiscent of Japan forcing prisoners to wear red during the previous occupation.[92]

*What were the planning variables for detention operations during the conflict?* The UNC never achieved full control over the issue of detention operations and spent the entirety of the conflict continuously attempting to establish order in multiple overcrowded and undermanned camps.[93] As the UNC advanced to the Korean and Chinese border, they built a series of transit camps consisting of barbed wire around existing warehouses, tent cities, and local jails. These camps held anywhere from 30,000 to 60,000 detainees by October 1950.[94] The UNC retreated after the PRC invasion and brought with them the 137,000 detainees from the forward camps for holding in and around crowded camps at

[90] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 17.

[91] Springer, *America's Captives*, 163.

[92] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 18.

[93] Ibid., 119.

[94] Ibid., 16.

Pusan.[95] Planners saw a need for eventually holding up to 220,000 detainees but never established facilities to accommodate this number.[96]

2d Logistical Command, under Eighth Army, took control of POW Camp 1 on Koje-do, built by prison labor on an island 40 miles off the port of Pusan, in February 1951 and by June it held 140,000 detainees with another 7,000 to 10,000 detainees held throughout Pusan in hospitals.[97] The six guard companies and two RoK guard platoons at Camp Koje-do were inadequate for a population that required fifty guard companies based on the doctrine at the time.[98]

The US forces did not anticipate the need to screen detainees beyond rank, gender, and nationality. Beyond the traditional identification of detainees, the UNC needed to segregate the communist North Koreans, the conscripted South Koreans fighting for the DPRK, the communist Chinese, and the conscripted anti-communist Chinese fighting for the PRC. Strongly held and conflicting political beliefs among the detainees resulted in rampant assaults and murders in the camps as each group tried to control the camps.[99] The inability to control the camps resulted in scores of murdered prisoners each month and the UNC incapable of conducting any disciplinary or judicial proceedings, as authorized by the Geneva Conventions and Army regulations.[100]

In addition to severe but expected indiscipline in the camps, the PRC leadership actively infiltrated agitators and political officers to intimidate noncommunist detainees,

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[95] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 16.

[96] Ibid.

[97] Ibid., 16–17.

[98] Ibid., 16.

[99] Ibid., 17.

[100] Ibid., 18.

harass guards, and instigate full scale riots.[101] The UNC saw detention operations as something separate from combat operations whereas the communist prisoners saw their detention as a continuation of their struggle against western forces, albeit in a different location and with a different means.[102] UNC forces lost complete control of separate detainee compounds at Koje-do throughout the conflict, only to regain control after the deployment of a combination of infantry and tank companies to the camps. These attempts to regain control of the camps resulted in scores of detainees killed or wounded and cost several US killed and wounded.[103]

*How were prisoners handled at the end of the conflict?* The release or repatriation of detainees extended the war and became a major barrier to peace because the Communists and the UN did not view detainees from the same perspective.[104] The United States also remembered how after the Allies helped to return captured personnel to the Soviet Union, the Soviets often treated the repatriated persons as traitors and who were killed or sent to the gulag as slave laborers; an outcome still fresh in the mind of the United States and a mistake they did not want to repeat.[105]

The UNC estimated that half of the 170,000 Chinese and Korean detainees did not want repatriation to their country, causing an ethical dilemma for the UNC and embarrassment for the PRC and North Korea.[106] The PRC and North Korea wanted

[101] Millett and Maslowski, *For the Common Defense*, 472.

[102] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 119.

[103] Ibid., 20–22.

[104] Millett and Maslowski, *For the Common Defense*, 472.

[105] Rich, *Great Power Diplomacy Since 1914*, 369.

[106] Millett and Maslowski, *For the Common Defense*, 472.

compulsory repatriation as mandated in the 1949 Geneva Convention.[107] Truman opposed forced repatriation for humanitarian reasons but also saw the possible propaganda victory in the greater Cold War.[108]

The PRC and North Koreans eventually accepted voluntary repatriation after additional encouragement by the South Korean unilateral release of 27,000 detainees.[109] In July 1953, the UNC still maintained custody of 66,000 repatriates and 23,500 non-repatriates as detainees.[110] Large prisoner exchanges, such as Operation Big Switch involving 76,000 detainees, eventually returned repatriation detainees to their home countries. At the 38th parallel, international commissions managed those not wanting voluntary repatriation and conducted final interviews to determine their disposition.[111]

*How did detention operations affect domestic and international views?* The United States and Communist opposition on the question of forced repatriation extended the Korean conflict as each side fought for propaganda wins during negotiations. The United States opposed forced repatriation for not only humanitarian reasons but also to achieve a Cold War propaganda victory over an embarrassed communist nation.[112] The value of the propaganda victory is evident by the fact the United States continued to fight and extend the negotiations, despite the cost of 9,000 US killed in action and tens of billions of dollars during the war's final two years.[113] The PRC and North Koreans deliberately used their

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[107] Herring, *From Colony to Superpower*, 644.

[108] Ibid.

[109] Millett and Maslowski, *For the Common Defense*, 474.

[110] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 23.

[111] Ibid., 24.

[112] Rich, *Great Power Diplomacy Since 1914*, 644.

[113] Gideon Rose, *How Wars End: Why We Always Fight the Last Battle: A History of American Intervention from World War I to Afghanistan*. (New York: Simon & Schuster, 2011), 8.

captured soldiers as propaganda tools by encouraging them to instigate uprisings and unrest throughout the camps. The resulting heavy response from UNC forces provided publicity for perceived atrocities and leverage during armistice negotiations for the communists.[114]

The ICRC's involvement and opinion during the conflict improved conditions for communist detainees but had little effect on the conditions US soldiers faced when captured, as world opinion consistently focused on US detention operations and ignored the worse conditions in the north.[115] The ICRC visited all UNC camps throughout the war and were generally satisfied with the conditions they inspected. The ICRC did object to the heavy responses from the UNC when the camp administrators lost complete control of the camp. This prompted the UNC to argue that the prisoners still considered themselves to be combatants and the amount of force necessary to regain control of the camps was necessary.[116] At one point the UNC withheld food and supplies from their prisoners until they gave control back to the guard force, generating a strong protest from the ICRC and a reversal of UNC tactics.[117]

## Vietnam, 1965-1975

When World War II ended the French attempted to reassert themselves as a colonial and world power. They reoccupied Vietnam but Vo Nguyen Giap led communist Vietnamese forces to defeat the French at Dien Bien Phu in North Vietnam in 1954.[118] The resulting Geneva Peace Accords in 1954 established an anti-communist regime in the south

[114] Springer, *America's Captives*, 164.

[115] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 119–120.

[116] Ibid., 26–27.

[117] Ibid., 20.

[118] Parker, *The Cambridge History of Warfare*, 371–372.

led by Ngo Ding Diem and a communist regime in the north led by Ho Chi Minh.[119] The Geneva Peace Accords called for national elections in 1956 to unify the country but the United States and Diem governments withheld their support for the elections because of the expectation that Ho Chi Minh would win.[120] Ho Chi Minh maintained the goal of eventual unification of the country and in 1959 began supporting political and military activities in the south designed to overthrow and undermine the Diem government. President Kennedy began to send US advisors to South Vietnam as the insurgency spread in 1961.[121]

President Johnson continued the advising mission and escalated the conflict with air raids after the Gulf of Tonkin incident.[122] The air campaign in Vietnam eventually passed the total tonnage of bombs dropped in Europe in all of WWII multiple times over.[123] Giap attempted to spawn a popular uprising against the South Vietnamese government in 1968 with the Tet Offensive, a large conventional assault over multiple parts of Vietnam. The South Vietnamese and US forces soundly defeated the North Vietnamese forces and the uprising did not occur.[124] Giap did achieve a strategic victory during his Tet Offensive by displaying the high level of violence and vulnerability the United States and South Vietnamese faced in Vietnam. Shortly after the Tet Offensive, President Johnson announced he would not seek reelection and the United States and North Vietnamese agreed to begin peace negotiations.[125]

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[119] Parker, *The Cambridge History of Warfare*, 375.

[120] Rich, *Great Power Diplomacy Since 1914*, 464–466.

[121] Parker, *The Cambridge History of Warfare*, 376.

[122] Ibid., 378.

[123] Rich, *Great Power Diplomacy Since 1914*, 471.

[124] Parker, *The Cambridge History of Warfare*, 381.

[125] Rich, *Great Power Diplomacy Since 1914*, 473.

The United States transitioned to a policy of gradual withdrawal of US troops and of shifting responsibility to the South Vietnamese, a process called Vietnamization. Concurrently, the bombing campaigns continued and expanded into Cambodia to destroy enemy sanctuaries and lines of communication.[126] President Nixon then approved US offensive land operations into Cambodia in 1970.[127] Then in 1971, the United States supported South Vietnamese land operations into Laos which were met disaster and large counterattacks by the North Vietnamese.[128]

The last US combat troops left Vietnam in 1972. The North Vietnamese launched a large-scale conventional attack to destroy South Vietnam but a heavy US air campaign prevented the collapse of South Vietnam at this time, forcing the North Vietnamese to continue negotiations. The United States would use its air power to reinforce a position of strength for negotiations as its withdrawal of land power weakened its positions during negotiations.[129] The Paris Peace Accords were signed in 1973 but they failed to end the war. The North Vietnamese launched a large conventional offensive throughout South Vietnam, now absent any US support, quickly defeating all resistance and unifying the country as a communist nation.[130]

*What was the political context of the examined conflict?* The political context in Vietnam was one where each side refused to recognize the legitimacy of the other. This complicated how and if they would follow international norms, such as the treatment of

[126] Rich, *Great Power Diplomacy Since 1914*, 475.

[127] Parker, *The Cambridge History of Warfare*, 381.

[128] Rich, *Great Power Diplomacy Since 1914*, 476–477.

[129] Parker, *The Cambridge History of Warfare*, 383.

[130] Ibid., 383–384.

prisoners, and how they would negotiate.[131] The United States recognized the government of South Vietnam, beginning with Ngo Ding Diem and subsequently a series of others, even though these governments were closer to dictatorships than democracies.[132] The war became unpopular domestically despite various US administrations' efforts to placate the people by refusing to call up the National Guard or Reserves.[133]

*What type of war was the conflict?* The Vietnam War was coalition warfare fought against both conventional and insurgency forces in the support of a host nation.[134] The United States saw the conflict as a limited war with the aim of halting further communist expansion and confronting communism worldwide.[135] The war began as an advising mission to a host nation but quickly escalating to something more. The United States had 23,000 advisors in South Vietnam in 1965 but over half a million by 1969 as the United States involvement in combat operations increased.[136]

*What was the operational approach during the conflict?* The United States initially fought the conflict using statistics, such as body counts or the number of patrols, as a means to identify progress against a conventional enemy in an attritional war.[137] General William Westmoreland, the Military Assistance Command, Vietnam (MACV) commander from 1964-1968, pursued favorable statistics through search and destroy missions while avoiding

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[131] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 41.

[132] Rich, *Great Power Diplomacy Since 1914*, 465.

[133] Parker, *The Cambridge History of Warfare*, 380.

[134] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 41.

[135] Gregory A Daddis, *Westmoreland's War: Reassessing American Strategy in Vietnam.* (New York: Oxford University Press, 2015), 43.

[136] Rich, *Great Power Diplomacy Since 1914*, 471.

[137] Parker, *The Cambridge History of Warfare*, 377.

the political war in the countryside.[138] General Creighton Abrams, MACV commander 1968-1972, then began to emphasize the development and training of South Vietnamese forces through Vietnamization.[139] Throughout the conflict, the United States used heavy air campaigns in the north and surrounding counties to try and degrade enemy lines of communication and to use as leverage when negotiating with the North Vietnamese.[140]

*What was the plan for detention operations at the onset of hostilities?* When the United States entered the conflict, it supported the South Vietnamese approach to detention operations of treating all captured persons as criminals and not prisoners subject to GPW protections. As a result, the United States turned over all captured persons to the South Vietnamese no matter the circumstances of their capture.[141] The transfer of prisoners from the detaining party to another party is acceptable under the GPW if the receiving party is a signatory of the convention and willing to apply its protections.[142]

The US advisors convinced the South Vietnamese to confer protected POW status on all captured persons, regardless of the circumstances of capture, so the United States could meet its treaty obligations. This would then give the United States leverage to encourage the North Vietnamese to exercise reciprocal status and treatment for captured Americans.[143] Through a series of memos in 1965 and 1966, the South Vietnamese Joint General Staff worked with American advisors to provide common procedures and

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[138] Parker, *The Cambridge History of Warfare*, 379.

[139] Ibid., 381.

[140] Ibid., 383.

[141] Benard, Cheryl, Edward O'Connell, Cathryn Quantic Thurston, Andrés Villamizar, Elvira N. Loredo, Thomas Sullivan, and Jeremiah E. Goulka, *The Battle Behind the Wire: US Prisoner and Detainee Operations from World War II to Iraq* (Santa Monica, CA: RAND, 2011), 35.

[142] The International Committee of the Red Cross, *The Geneva Conventions of 12 August 1949*, Article 12.

[143] Doyle, *The Enemy in Our Hands*, 270–271.

definitions for captured persons, to include who would receive protected status and where they would be processed, detained, or released.[144] Eventually, the South Vietnamese considered a captured person a protected POW and sent them to a POW camp if they were captured with a weapon. They considered a person captured without a weapon, be they a Vietcong supporter or fighter, a common criminal.[145]

*What were the Planning variables for detention operations during the conflict?* The MACV commitment to military police advisement to South Vietnamese detention operations increased as the war progressed but remained subservient to South Vietnamese detention methods. Detention advisors lacked authority to dictate policy and could only urge their South Vietnamese partners to follow Geneva protocols.[146] Each of the four tactical zones plus Saigon established a POW camp from 1966-1968 with a 1,000 detainee capacity. An Army of the Republic of Vietnam (ARVN) guard force with a small MACV military police advising team guarded each camp. MACV and South Vietnam established the sixth and largest camp at Phu Quoc in 1967. [147]

The South Vietnamese lacked adequate facilities and systems to manage the number of captured persons. They held 1,825 detainees in 1966 but nearly 10,000 detainees by the end of 1967.[148] The camps continued to increase in capacity but remained overcrowded, reaching a total of over 35,000 detainees in 1971 with 13,000 of these captured by Americans.[149] The nature of the conflict also brought the capture of women and children—

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[144] Springer, *America's Captives*, 182–183.

[145] Benard et al., *The Battle behind the Wire*, 42–43.

[146] Springer, *America's Captives*, 180.

[147] Doyle, *The Enemy in Our Hands*, 271.

[148] Springer, *America's Captives*, 182.

[149] Doyle, *The Enemy in Our Hands*, 272.

there were over 1,300 detainees aged 11-18 captured in 1968—that required separate facilities and brought unique challenges.[150] The effect of the overcrowding of facilities was the early release of detainees. Political prisoners, the most common kind, were confined for an average of six months.[151]

In addition to the built POW camps, the South Vietnamese maintained four major civilian prisons and forty-two provincial jails operated by their Ministry of Interior. These prisons did not have a standard system of confinement and held common criminals, convicted ARVN criminals, and communist criminals or political prisoners. The communist criminals were individuals detained as Vietcong support personnel or Vietcong infrastructure members.[152] The United States sent civilian prison advisors to work with the Ministry of Interior to assist with their administration. The penal system held approximately 32,000 prisoners in 1967, 70 percent of which were considered communist criminals or political prisoners.[153]

*How were prisoners handled at the end of the conflict?* The South Vietnamese used a combination of repatriations, continued detention, and the Chieu Hoi defection program to handle prisoners at the end of the war. Chieu Hoi, or "Open Arms," was active during the second half of the war and encouraged Vietcong defection and intelligence sharing while assisting with the overcrowding of prisons as reformed insurgents were released.[154] When the United States withdrew from Vietnam, the South Vietnamese held 37,540 detainees. Approximately 10,000 of these were North Vietnamese Army (NVA) soldiers and

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[150] Springer, *America's Captives*, 185.

[151] Benard et al., *The Battle behind the Wire*, 37–38.

[152] Doyle, *The Enemy in Our Hands*, 281.

[153] Ibid., 282.

[154] Springer, *America's Captives*, 185.

repatriated back to North Vietnam in 1973 after the signing of the Paris Peace Accords.[155] The remaining 27,000 Vietcong detainees posed a greater challenge, as many were South Vietnamese citizens who still threatened the government of South Vietnam.[156] Nearly 10,000 of these Vietcong detainees joined the Chieu Hoi program.[157] The North Vietnamese freed or repatriated all remaining detainees after their complete victory in 1975 and executed defectors who had joined the Chieu Hoi program.[158]

*How do detention operations affect domestic and international views?* Domestic and international views of detainee treatment again focused on the conditions of prisoners in the south and ignored worse conditions in the north.[159] The Vietcong and NVA seized this opportunity for propaganda wins against the United States by attempting to provoke violent responses by guards and even attacking POW camps to show that the South Vietnamese did not take adequate measures to protect and care for its prisoners.[160] Negative remarks from various inspection teams from MACV, the Army's Office of the Provost Marshal, and the ICRC all contributed to the perception of poor treatment, overcrowdedness, and an untrained guard force.[161] Although the South Vietnamese were in the lead for the care and custody of all prisoners, the ICRC and world opinion held the United States responsible due to its role as an advisor and a signatory bound to Article 12 of the Geneva Conventions.[162]

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[155] Doyle, *The Enemy in Our Hands*, 288.

[156] Springer, *America's Captives*, 189.

[157] Ibid.

[158] Doyle, *The Enemy in Our Hands*, 289.

[159] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 120.

[160] Springer, *America's Captives*, 186.

[161] Ibid.

[162] Benard et al., *The Battle behind the Wire*, 36.

## Operation Iraqi Freedom, 2003-2010

The United States justified a preemptive attack on Iraq because the Bush administration believed the 9/11 terrorist attacks taught that waiting for a threat to materialize means waiting until it is too late.[163] The Bush administration also saw the policy of regime change in Iraq as both good overall policy and a logical step in the Global War on Terror begun after 9/11.[164] Planning for the invasion and Saddam Hussein's removal began in the days and weeks after 9/11 and began with a decapitation strike against Saddam in March 2003.[165]

United States Central Command (CENTCOM) wargames conducted prior to invasion called for 300,000 ground troops but cuts by President Bush and Secretary of Defense Rumsfeld brought the total number down to 140,000. Demonstrating a myopic view of how the war would progress, CENTCOM and the administration made severe cuts to service support units that would be needed after major combat operations.[166] Troops normally associated with stability operations, such as civil affairs troops, military police, and engineering units were not available as early as they needed to be.[167]

The US led coalition began the invasion on March 19, 2003, with an air strike against the supposed location of Saddam Hussain. The next day, American forces approached Baghdad along two lines of operation while British forces secured Basra and oil fields in the south. The Turkish parliament blocked an additional planned advance from

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[163] Terry Anderson, "9/11: Bush's Response," in *Understanding the US Wars in Iraq and Afghanistan*, ed. Beth L. Bailey and Richard H. Immerman (New York: New York University Press, 2015), 62.

[164] Ibid., 63.

[165] Parker, *The Cambridge History of Warfare*, 409–410.

[166] Millett and Maslowski, *For the Common Defense*, 656.

[167] Ibid., 652.

Turkey into northern Iraq, delaying these forces while they were rerouted to Kuwait.[168] The United States then created the Coalition Provisional Authority (CPA) to oversee Iraqi governance matters, which subsequently proceeded with de-Baathification of Iraqi institutions and the disbanding of the Iraqi Army.[169]

After the end of major combat operations, an insurgency quickly developed throughout Iraq. It grew and spread as Sunni and Shi'a groups targeted each other in spectacular and retaliatory attacks.[170] The CPA dissolved all Iraqi government infrastructure, including the Iraqi military, adding to the instability and power vacuum that fueled the insurgency.[171] Eventually a movement by a group of Sunni leaders, known as the Sons of Iraq, formed in the al-Anbar province with the goal to protect their tribes from foreign al-Qaeda fighters. They were willing to temporarily work with occupying US forces towards this mutual goal. The United States worked with the Sons of Iraq to rebuild the Iraqi Police and Army while the United States conducted a surge of troops to help quell the violence.[172]

*What was the political context of the examined conflict?* President Bush received congressional support to use force against Iraq, although notably not as soundly as he did when authorized to use force in Afghanistan in the wake of the 9/11 terrorist attacks.[173] Organized demonstrations against the war were held in and outside the United States, protesting the impending invasion. President Bush sought mandates for the use of force

[168] Rose, *How Wars End*, 246.

[169] Ibid., 248–249.

[170] Millett and Maslowski, *For the Common Defense*, 663–665.

[171] Ibid., 663.

[172] Ibid., 669–670.

[173] Millett and Maslowski, *For the Common Defense*, 651.

from the UN and support from NATO but did not receive either. [174] Inside Iraq, a fractured sectarian system with deep-rooted hatred broke open once Saddam Hussein was removed and no longer able to keep the tensions at a manageable level through fear and repression.[175]

*What type of war was the conflict?* Operation Iraqi Freedom was coalition warfare fought for a limited aim. The United States believed that the threat Saddam Hussain's regime in Iraq posed to the United States and its allies through its weapons of mass destruction program required its destruction.[176] The United States saw the removal of Saddam Hussain as necessary to bring stability to the Middle East and to remove a direct threat to the United States.[177] Iraq's weapons of mass destruction, its support to al-Qaeda and other terrorist groups, and its part in starting two offensive wars in the region over the previous two decades were all reasons used to justify the invasion and removal of Saddam Hussain.[178]

*What was the operational approach During the conflict?* The US operational approach called for overwhelming air and land power to quickly destroy Iraqi military forces but did not adequately address stability or follow-on operations.[179] The coalition received less international support than the First Gulf War, despite the closeness to the 9/11 attacks and the United States' success in Afghanistan, which gave planners additional challenges in establishing security and legitimacy after major combat operations.[180] The

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[174] Parker, *The Cambridge History of Warfare*, 410.

[175] Millett and Maslowski, *For the Common Defense*, 660.

[176] Ibid., 651.

[177] Anderson, "9/11: Bush's Response," 62–63.

[178] Parker, *The Cambridge History of Warfare*, 411.

[179] Millett and Maslowski, *For the Common Defense*, 655.

[180] Ibid., 651.

inability to hand off security concerns to an international or host nation force prohibited the United States from leaving Iraq as planned and changed the operational approach to one that called for large, secure forward operating bases from which heavily armed patrols conducted operations.[181]

*What was the plan for detention operations at the onset of hostilities?* The coalition that invaded Iraq in 2003 did so with inadequate preparation, planning, or training in regards to detention operations.[182] The US policy towards captured individuals changed from previous wars in 2002 when the Bush administration determined that al-Qaeda and other terrorist fighters were not subject to protections under the Geneva Conventions but considered unlawful combatants.[183] US military detention operations doctrine, FM 3-19.40 *Military Police Internment/Resettlement Operations* updated August 2001, still maintained the principles of the Geneva Conventions as the standards for care.[184]

As the invasion began, coalition forces dropped millions of leaflets urging enemy forces to surrender—a successful tactic from the First Gulf War. By the end of April 2003, just one month after the invasion began, coalition forces had captured 80,000 Iraqi troops. These troops retained POW status under the Geneva Convention while future captured persons would not.[185] The CPA in June 2003 issued instructions that delineated between security detainees and criminal detainees. The former would receive a hearing within six

[181] Rose, *How Wars End*, 251.

[182] Springer, *America's Captives*, 195.

[183] Doyle, *The Enemy in Our Hands*, 312–313.

[184] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 114–117.

[185] Springer, *America's Captives*, 197–198.

months of capture in accordance with Geneva convention rules while the latter would be given to Iraqi authorities and enter into their criminal justice system.[186]

The United States built four Theater Internment Facilities by July 2005.[187] The most notorious, Abu Ghraib, gives evidence in the lack of planning and preparation for long-term detention operations. The United States used existing prison facilities for detention sites due to the need for a rapid solution to the detention problem.[188] This could be interpreted as a violation of Article 22 of the Geneva Conventions which stipulates that prisoners will not be interned in penitentiaries unless it is in their best interest.[189] The choice of Abu Ghraib also demonstrates a lack of cultural and political understanding by the Americans as that site was used by Saddam Hussein to confine and torture political prisoners.[190]

*What were the Planning variables for detention operations during the conflict?* The CPA transitioned to Multi-National Force-Iraq (MNF-I) with Multi-National Corps-Iraq (MNC-I) as a subordinate command responsible for combat operations. Task Force-134 (TF-134) stood up under MNC-I to oversee all detention operations in Iraq.[191] The 800th MP Brigade was responsible for manning theater internment facilities and, according to the 15-6 investigation of the Abu Ghraib prison abuse, did not receive any internment/resettlement training prior to their mobilization.[192] The TF-134 commander served as the Deputy Commanding General for Detainee Operations in MNC-I but the MNC-I Provost Marshall

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[186] Benard et al., *The Battle behind the Wire*, 51.

[187] Ibid., 55.

[188] Springer, *America's Captives*, 198.

[189] *The Geneva Conventions of 12 August 1949*, Article 22.

[190] Springer, *America's Captives*, 198.

[191] Benard et al., *The Battle behind the Wire*, 52.

[192] Doyle, *The Enemy in Our Hands*, 318.

oversaw detention operations for MNC-I subordinate units. So, while the TF-134 commander oversaw operations at theater internment facilities he had little influence or visibility on detention operations at division and lower detainee collection points.[193]

Previous conflicts had allowed the United States to become accustomed to working with partner or host nation forces in detaining and guarding prisoners. In the First Gulf War, the Saudis managed detainees, in Vietnam the South Vietnamese, and in Korea the RoK Army. No other nation offered support during OIF and detainee operations became an American problem.[194] The noncontiguous battlefield meant that there was no rear or secure area to detain prisoners and detention sites remained subject to mortar and other attacks.[195] This, combined with the detainee's belief that they remain belligerents even after capture, created challenging conditions for TF-134 and MNC-I.[196]

TF-134 initially housed and segregated detainees based on their assumed risk level. Conflict within the compounds led TF-134 to begin segregating detainees by religious sect.[197] TF-135 eventually developed a scoring system with multiple variables to assign detainees a score of one through five that identified their risk level for segregation.[198] As the insurgency progressed the number of juvenile detainees grew, adding another variable to

[193] Benard et al., *The Battle behind the Wire*, 57.

[194] Springer, *America's Captives*, 198.

[195] Doyle, *The Enemy in Our Hands*, 319.

[196] Ibid., 327.

[197] Benard et al., *The Battle behind the Wire*, 55–56.

[198] Ibid., 60.

TF-134's mission.[199] TF-134 employed civilian prison gang experts from the Texas Department of Criminal Justice as advisors to help control detainee behavior.[200]

*How were prisoners handled at the end of the conflict?* The counterinsurgency mission of MNC-I and its subordinate units led to Iraqi leaders and government officials applying political pressure to release detainees, often on short notice.[201] Some of these releases involved up to 2,000 detainees over a period of a few months, creating a security problem for TF-134 as they tried to identify who could and should be released.[202] TF-134 and MNC-I also attempted to hand over detainees to Iraqi authorities throughout the war but often found that a lack of evidence or classified evidence precluded a detainee release to the Central Criminal Court of Iraq. This created a backlog in detainee transfers and increased the overall population.[203]

The United States held 26,000 detainees in 2006, the most it held at one time. By March 2009 the number had decreased to 14,000.[204] The Status of Forces Agreement between Iraq and the United States, signed November 2007, established new rules for detaining Iraqis and procedures for transferring detainees to Iraqi authorities.[205] The United

[199] Benard et al., *The Battle behind the Wire*, 75.

[200] Ibid., 58.

[201] Ibid., 59.

[202] Ibid.

[203] Ibid., 60–61.

[204] Doyle, *The Enemy in Our Hands*, 348.

[205] US Department of State, "Agreement Between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq," November 17, 2008, accessed November 2, 2017, https://www.state.gov/documents/organization/122074.pdf.

States transferred up to 15,000 detainees a month to Iraqi custody in 2009, many of which went to the newly renovated Abu Ghraib prison, now called the Baghdad Central Prison.[206]

*How do detention operations affect domestic and international views?* The hastily planned and executed detention operations, punctuated by the Abu Ghraib prison abuse scandal, led to an overall loss for the United States in soft power capabilities in the conflict and in other parts of the world.[207] General David Petraeus, while serving as the commander of CENTCOM after serving as the MNF-I commander, described the effects OIF detention operations had as "non-biodegradable" and that the "enemy continues to beat you with them."[208]

## Findings and Analysis

The above case studies provided an overview of Untied States detention operations to help understand how the United States plans and prepares detention operations during various kinds of conflict. The seven structured, focused case study questions facilitated the determination of whether the United States met all moral, legal, and operational requirements during the conduct of detention operations. This section is a description of the findings and an analysis of those focused questions.

The first question asked what was the political context of the examined conflict. The research demonstrates that the United States fought all three conflicts as limited wars with limited aims. The United States fought all three as the leader of a multinational force but received much wider support during the Korean War than during Vietnam or OIF. The Korean War and Vietnam War both began with the United States questioning the political

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[206] Doyle, *The Enemy in Our Hands*, 324.

[207] Joseph S Nye, *The Future of Power* (New York: PublicAffairs, 2012), 86.

[208] Joseph Berger, "US Commander Describes Marja Battle as First Salvo in Campaign," *The New York Times*, February 21, 2010, accessed November 8, 2017, http://www.nytimes.com/2010/02/22/world/asia/22petraeus.html.

legitimacy of the opposing government but ended with formal negotiations and recognition of legitimacy. In OIF, the United States quickly removed the legitimate political authority and then fought a mix of insurgencies and militias deemed illegitimate by the United States until the eventual formation of the Iraqi government.

The second question dealt with what kind of war the conflict was. The research shows that the Korean War was fought at the behest of the UN, the United States, and the South Korean government as a peace enforcement operation. The war in Vietnam began as an advising mission to support the host nation but evolved into warfare against both conventional and insurgent forces. Operation Iraqi Freedom began as regime change and became a counterinsurgency conflict to create stability in the region. Each war involved conventional fighting, even if the conventional fighting varied in duration, scope, and intensity.

The next question answered what the operational approach was during the conflict. The operational approach in each conflict changed over time and concluded as something different than originally planned. The approach to the Korean war began as annihilation through maneuver and changed to attrition and maintaining the status quo once the United States faced overwhelming enemy numbers. The Vietnam War used advisory, counterinsurgency, seek and destroy, and Vietnamization approaches at various times throughout the conflict. During OIF, the United States began with an approach focused on a quick and decisive victory but changed to one of counterinsurgency as the security situation failed to improve.

The fourth question discussed the plan for detention operations at the onset of hostilities. All the conflicts lacked a complete plan for detention operations, other than using the Geneva Conventions as a framework for the treatment of detained persons. The Korean War surprised military planners and they did not have an adequate plan to hold or secure the number of detainees. During the Vietnam War, advisors and combat units adopted the host

nation's approach to detention operations instead of developing their own. The United States failed to anticipate the problem of detention operations during OIF planning and began the war with ad hoc facilities and holding measures for captured persons, who were now called unlawful combatants.

What where the planning variables for detention operations during the conflict is the fifth question. All conflicts brought unforeseen planning variables that caused a reallocation of resources and cost US legitimacy. The research demonstrates that the necessity to control the various prisoner groups and the question of forced repatriation were major planning variable during the Korean War. The US policy of relying on South Vietnam to handle all detainee issues and their inability to do so effectively, and sometimes ethically, increased the difficulty of counterinsurgency operations. This also created challenges to gaining legitimacy and reciprocal treatment for its own captured soldiers. A noncontiguous battlefield, organizational challenges, and a lack of the accustomed host nation security force all helped create a detention challenge for the United States during OIF that remained unsolved, even after the signing of the Status of Forces Agreement.

The sixth question asks how the prisoners were handled at the end of the conflict. The final disposition of prisoners in each conflict was different from what was originally planned at the onset of hostilities. The US policy of no forced repatriations created several categories of prisoners during the Korean War with some repatriated to their home country and others settled through an international commission. The South Vietnamese continued to hold prisoners until their fall in 1975 when the North Vietnamese succeeded in their invasion and freed all remaining political prisoners, executing many who had joined the Chieu Hoi program. The United States transferred all remaining prisoners to the Government of Iraqi after the signing of the Status of Forces Agreement between the United States and Iraq.

The final question asked how detention operations affected domestic and international views. Consistently in each conflict, international views focused on the Unite States detention operations and its treatment of prisoners, often ignoring the far worse conduct of the other belligerent. Detention operations greatly affected international views during the Korean War. The uprising of prisoners and failure to control camps provided propaganda wins for the communists and aided them in their negotiations. The treatment of prisoners in the custody of the South Vietnamese—a partner and beneficiary of US military might— often led to propaganda and losses of the United States and host nation legitimacy. The mistreatment of prisoners by US forces during OIF let to a loss of reputation and soft power in the region and the world.

Four hypotheses were used to guide the study to determine if the proposed thesis holds true. The first hypothesis asserts that individuals are detained for shorter periods of time in environments consisting of the Rule of Law. The evidence suggests this hypothesis is partially supported. The United States did not conduct detention operations during the Korean War within the understanding of the Rule of Law at the time. They conducted operations outside of consistent international norms and standards of the Rule of Law until those norms could be changed. The question of forced repatriation and disorder in the camps each prolonged the conflict and the detention of individuals. Had the United States and communists acted in accordance with the prescribed Rule of Law of the time then the conflict would have ended sooner and detentions would have been shorter.

The United States, through their South Vietnamese partners, also acted outside the Rule of Law by holding detainees in overcrowded prisons, subjected to poor treatment by undertrained guards. The overcrowded facilities coupled with the determination to treat all captured persons as political criminals instead of protected prisoners of war led to shorter detention periods. The United States operated outside the Rule of Law during OIF by operating without an accountable host nation-state for the first several years of the war and

then by its inability to transfer detainees to the host nation because of a lack of evidence or intelligence sharing concerns. This resulted in the transfer of all detainees, regardless of their status, to the host nation after the signing of a political agreement, even though many of the concerns remained the same.

The second hypothesis is that there is decreased animosity between the local population and US forces in environments consisting of the Rule of Law. The evidence partially supports this hypothesis. The Korean War case study does not discuss the level of animosity between the Korean people and US forces; however, it does discuss the animosity between the detained population and US forces. The detained population held great animosity against their American captors, demonstrated by the disorder and rioting in the camps. This animosity was greater than previous wars involving prisoners of war, demonstrated by the unforeseen need to categorize prisoners by ideology as well as by traditional screening methods, and exacerbated by the perceived lack of Rule of Law by the detained population. The Vietnam War case study did not address the relationship between detention operations and animosity between the local population. One can infer that by turning the responsibility of detention operations over to the host nation, the United States transferred any animosity or grievances from the local population to the host nation. US detention operations during OIF, acting outside the Rule of Law, increased animosity between the local population and US forces. Stories of prison abuse and even the choice of the location of prisons not only led to an increase in insurgent activity but also encouraged continued resistance after capture.

The third hypothesis, that US forces maintain legal and ethical safeguards in environments consisting of the Rule of Law is partially supported by the case study evidence. Detention operations during the Korean War were driven by ethics and values at the expense of international Rule of Law norms. This gave US forces ethical safeguards for holding prisoners for an extended period until negotiators on both sides reached a legal and

political solution. During the Vietnam War, the United States maintained legal protections due to Article 12 of the Geneva Conventions that allow the transfer of prisoners but remained subject to ethical judgment by the ICRC and the international community for any prisoner mistreatment perpetrated by host nation forces.

The invasion of Iraq, planned without an adequate detention operation plan, led to US forces operating in an environment absent the Rule of Law. They became vulnerable to ethical violations by employing an undertrained and under-supervised guard force, leading to major ethical lapses and abuse. The absence of a host nation operating within the confines of the Rule of Law removed an adequate legal framework for detainee transfers and releases.

The last hypothesis states that operations have a greater chance of success in environments consisting of the Rule of Law. The evidence suggests this hypothesis is supported. An initial lack of Rule of Law during the Korean War extended the conflict until political solutions could be reached. The political solution could not be reached until international Rule of Law norms changed to the adoption of the prohibition of forced repatriation. This brought the international view of the Rule of Law into alignment with the United States view, giving them a propaganda and strategic victory over communist China and North Korea. During Vietnam, the inability of the South Vietnamese to hold prisoners in accordance with the Rule of Law led to short detention periods for captured persons. The lack of a legitimate coercive authority by the state led to a detainee's unwillingness to share intelligence, hampered Chieu Hoi recruitment, and removed incentives to stop supporting the Vietcong.[209] The United States' chances for success decreased during OIF as Rule of Law concerns increased or were fully realized. The US detention policy and missteps fueled

[209] Benard et al., *The Battle behind the Wire*, 38.

the insurgency, which in turn cost the United States in combat power and international legitimacy.

This section compared the three case studies across the structured, focused case study questions. It provided an analysis of the findings and evidence of partially or fully supported hypotheses related to the research question. All three hypotheses were partially supported and the fourth fully supported. The final section concludes this study and provides recommendations for further research.

## Conclusion

This monograph shows the difficulties and importance of planning and preparing for detention operations in a way that meets all moral, legal, and operational requirements. Failure to do so results in operational planners and commanders having to react to a volatile political and operational environment where they must reallocate critical resources and combat power away from their desired objectives. Planners must not only account for detention operations when planning but they must adjust those operations as the political and operational environments change. Four hypotheses showed that using the Rule of Law as a lens when evaluating policies and procedures for detention operations provides a framework for successful operations. Using this framework minimizes the burden placed on forces during all phases of the conflict. By working within or building up the Rule of Law, US forces detain individuals for a shorter period, decrease animosity between themselves and other actors, maintain legal and ethical safeguards, and create a better chance of success for their operations.

Examining the period of detention during conflict shows that the Rule of Law at the international level, national level, and operational level all influence the length of detention. International pressures influence political decisions which in turn affect operational approaches to detention operations. At the national level, host nation Rule of Law concerns

can either shorten or increase individual detainee holding periods, both of which can extend the conflict. Lastly, operational level Rule of Law violations can increase detention periods as units react to challenging environments in detainee camps or reallocate combat power away from other objectives.

Animosity increases between all actors when conducting operations outside the Rule of Law. This animosity extends both conventional and unconventional conflicts. The extension of negotiations during the Korean War and the fueling of insurgencies in Iraq both demonstrate how this animosity costs US forces. There is, of course, already major animosity between actors in war but conducting detention operations outside the Rule of Law only serves to inflame these tensions.

US forces retain legal safeguards for the detention of individuals when acting in accordance with established policy and procedures but face legal challenges when working with host nations. The OIF case study demonstrates how these legal challenges hinder detention operations and how they manifest when the Rule of Law is absent. Operations conducted outside the Rule of Law increase the chances of ethical violations of US troops. These violations feedback into the animosity discussed above and cost the United States legitimacy and soft power.

There is a greater chance of success when operations are conducted within the Rule of Law framework. This framework helps to align operational and political concerns, as demonstrated by the Korean War case study. Operations outside the Rule of Law in Vietnam and OIF extended the conflict by increasing violence and limiting the effectiveness of detention operations.

This monograph identifies two points of additional research. First, further research should be conducted on defining the Rule of Law at the international, national, and operational levels planners can reach this goal. Additional recommended research would consider when a combatant becomes a noncombatant. The Korean War and OIF case studies

demonstrate that detainees and detaining parties disagree on when this occurs. Michael Walzer argues that the act of surrendering is made under extreme duress and therefore not a legally binding decision.[210] This then brings into question what legal obligations both detainees and detaining parties have under the GPW. This is especially pertinent to the Korean War when the UNC responded to ICRC allegations of abuse that the captured Chinese never gave up their combatant status and the level of force used to retain order was justified.[211] This study could be improved by incorporating the above additional research questions as well as expanding the case studies to conflicts involving operational approaches with a stated goal of establishment of the Rule of Law.

The United States will continue to conduct operations in environments with varying degrees of Rule of Law. These operations always have the potential to involve the detention of belligerents and nonbelligerents. The resolution of all the mentioned conflicts required political solutions supported by military aims. Detention operations conducted contrary to the Rule of Law easily derail these political solutions. Operational planners must incorporate the Rule of Law framework to avoid the ad hoc nature of detention operations the United States is accustomed to and to best align the military aim to the political.

[210] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th ed. (New York: Basic Books, a member of the Perseus Books Group, 2015), 340.

[211] Gebhardt, *The Road to Abu Ghraib: US Army Detainee Doctrine and Experience*, 27.

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