

PRISONERS OF WAR AS INSTRUMENTS OF FOREIGN POLICY

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Historical Development of the Treatment of Prisoners of War. Prisoners of war historically have been used as instruments of foreign policy. From ancient times to the Vietnam war there has been a growing concern for the humane treatment of prisoners of war. This trend is evident from an examination of the attempts to codify the standards of treatment accorded to prisoners into recognized rules of international law. This change of standards falls logically into four stages. The division between these stages is not sharp and precise. Rather, overlapping appears as the new method of treatment replaces the old in gradual transition. Nevertheless, a definite progression is noticeable in which each mode of handling prisoners became, in turn, the generally accepted practice.

It is during the last stage, the 20th

century, that the most definitive rules for humane treatment of prisoners of war have been developed into international law in the aftermath of World War II. It seems a paradox, though, that concurrently the actual treatment of these victims of war has degenerated to the treatments common during the earlier stages.

In ancient times, from the first armed conflicts recorded in the history of mankind, the almost universal fate of the captive was death.¹ He was either slaughtered on the battlefield, tortured and put to death after the battle, or used as a sacrificial offering. The circumstances varied, but his fate was almost inevitable. Testimony of this practice is given in ancient historical writings, including the Old Testament, as well as in scenes depicted on bas-reliefs.²

The transition to the second stage also took place in ancient times. It probably was largely motivated by economic considerations. Ancient conquerors came to the realization that profit was to be gained by sparing the lives of captives and making them their slaves. Gradually it became the accepted custom to make slaves of those captured in battle. Entire nations were subjected to slavery. In fact, captivity resulting from battle was the origin of the practice of slavery.³ The Romans generally enslaved their prisoners, although they also killed some outright and developed others as gladiators.

Humanitarian concern for captives appeared for the first time in the third stage. Yet, the basic economic factor remained very much in evidence. Prisoners not held in slavery were returned to their homes after payment of ransom. The practice of ransom had been used previously on occasion, notably in ancient tribal warfare and by the Greeks and Romans. However, during these times the practice was more an isolated act of mercy rather than the prevailing custom. It was not until the Middle Ages that ransom supplanted slavery as the normal practice in the fate of prisoners of war, especially those of aristocratic origin.⁴ A significant codification of the practice of ransom resulted when the Lateran Council of 1179 prohibited enslaving captives who were Christian.⁵

The final stage was attained with the emergence of the nation-state system and modern international law. Humanitarian considerations became increasingly influential as the treatment of prisoners of war was addressed and defined in international agreements. Most historians trace the start of this stage to the Treaty of Westphalia of 1648, which ended the Thirty Years War. This was the first international instrument to establish modern rules for the treatment of prisoners of war. It provided that prisoners of both sides

were to be freed without payment of ransom and without exception or reservations.⁶

Shortly before this Hugo Grotius, the eminent Dutch jurist commonly referred to as the Father of International Law, published in 1625 his great work, *De Jure Belli ac Pacis*. Grotius exerted profound influence on the development of international law with his appeal to the law of nature as a moderating influence in the conduct of war. Although he continued to recognize the right to enslave captives, he advocated exchange and ransom instead.⁷

The fourth stage was characterized by bilateral treaties and unilateral declarations. Between 1581 and 1864 there were at least 291 international documents dealing with the treatment of the sick, wounded, and captured. One of the more important was the Treaty of Amity and Commerce between the United States and Prussia in 1785. The First Geneva Convention (1864) was patterned closely after it.⁸

The first tentative step in the transition to the great multilateral treaties of the 20th century was the diplomatic conference called by Switzerland at Geneva in 1864. The 12 participating nations produced the Geneva Convention of 22 August 1864 for the Amelioration of the Conditions of Soldiers Wounded in Armed Forces in the Field.⁹ Its 10 articles were the first attempt to create international law by virtue of the ratification or accession of all the great powers. This First Geneva Convention was ratified by all the powers by 1867. It was ratified by the United States in 1882 and subsequently by a total of 54 nations.¹⁰

From this time until around the turn of the century and the start of the Hague Conventions of 1899, several attempts were made to codify the rules of warfare, including treatment of prisoners. The most notable of these occurred in September 1880, when the Institute of International Law adopted a

"Manual of the Laws and Customs of War" at Oxford, England. Although never adopted, the "Oxford Manual," as it became known, influenced the treatment of prisoners of the Boer War.¹¹

The First Hague Conference, called in May 1899, produced three conventions. Convention No. II dealt with the laws and customs of land warfare and contained a section of 17 articles concerning the treatment of prisoners of war.¹² These articles were based largely on the Oxford Manual and were ratified as part of Convention No. II by 24 nations, including the United States.

The Geneva Convention of 1906 for the Amelioration of the Condition of the Sick and Wounded in Armies in the Field, drafted by representatives of 35 nations, contained 33 articles which were more comprehensive and explicit than those of the First (1864) Geneva Convention.

The Second Hague Conference, held in 1907, produced 14 conventions covering the conduct of war, which included an updating and improving of the articles pertaining to prisoners of war contained in the Hague Convention No. II of 1899.

A distinction should be made between the laws and rules of the Geneva Conventions of 1864 and 1906 (as well as the subsequent 1929 and 1949 conventions) and laws and rules resulting from the conventions of the Hague Conferences of 1899 and 1907. Both conventions are based on, and motivated by, humanitarian considerations. There is some redundancy between the two, particularly with regard to prisoners of war. Basically, the Hague Conventions codify the rules of war and attempt to restrict the use of weapons and the application of force in war. The Geneva Conventions, on the other hand, are specifically concerned with the protection of the individual against the abuse of force in wartime.¹³

The Two World Wars. The experience

of World War I demonstrated the need for increased protection for prisoners of war and the necessity of improving the provisions of the Geneva and Hague Conventions. Starting in 1921 the International Law Association and the International Red Cross (IRC) recommended review and amplification of the Hague Conventions of 1907 and the Geneva Convention of 1906. These efforts led the Swiss Government to issue invitations to 47 nations to attend a conference in Geneva, starting in July 1929, to revise the conventions on prisoners of war. On 27 July the delegates adopted two conventions; the Geneva Convention of 1929 for the Amelioration of the Condition of the Wounded and the Sick of Armies in the Field and the Geneva Convention of 1929 Relative to the Treatment of Prisoners of War. In approving these conventions the delegates were for the first time attempting to create international law directed toward the humanitarian treatment of prisoners of war rather than merely recording existing practices as had been done at the two Hague Conferences (1899 and 1907).¹⁴

By the time of American entry into World War II in December 1941, 35 nations had ratified or announced their adherence to the Geneva Conventions of 1929. Six additional nations announced their adherence during the war. The U.S.S.R. acceded in 1932 to the convention concerning humane treatment of the sick and wounded. However, she refused to accept as binding the convention relative to prisoner-of-war treatment on the contention that the Hague Convention No. IV of 1907 was adequate. Japan never did announce adherence to the Geneva Convention of 1929.¹⁵

The cruel and inhumane treatment of Allied prisoners of war at the hands of the Japanese has been well chronicled. The saga of the Bataan Death March remains infamous. The apparent basis for this treatment can be traced, in part,

to a differing Oriental philosophy and a general antipathy for Caucasians. The Japanese interrogated prisoners of war primarily to obtain military information; they were required to perform tiring menial work under adverse conditions and were severely punished for violation of rules. The difference in diets between the Japanese captors and the Western prisoners of war also contributed to the plight of the captives.¹⁶

The Nazi regime of Hitler earned its mark in history for inhumanity. The genocide of an estimated 6 million Jews and the ruthless reigns of terror imposed in occupied areas of Europe during World War II led to the Nuremberg Trials. Despite this barbarous record, the treatment of American and British prisoners of war by their German captors, though not exemplary, did reflect conscious attempts to adhere to the Geneva Convention of 1929.¹⁷

The record of treatment of prisoners of war in the hands of the U.S.S.R. during and after World War II is atrocious. In 1939, when the Nazi-Soviet pact was still in effect, it was known that the bulk of the Polish Officer Corps had surrendered and were in Russian hands. In April 1943 the Germans announced to the world the discovery of mass graves in the Katyn forest containing the remains of some 8,000 Polish officers. The Soviets denied the allegation, labeling the German announcement a propaganda ploy. However, the Soviets, not the Germans, refused to permit an investigation by the IRC. Subsequently, it was confirmed that this mass murder was perpetrated by the Russians in 1940.¹⁸

Further indications of Soviet callousness toward human life in general and prisoners of war in particular are given in the Churchill memoirs. During the "Big Three" summit meeting at Tehran in December 1943, Stalin announced that it would probably be necessary to liquidate some 50,000 officers of the "German Commanding Staff" as a

means of insuring a permanent solution to the problem of postwar German resurgence. Churchill was so appalled by the proposal that he abruptly left the meeting.

The total number of German prisoners of war and civilians displaced to Russia to "help rebuild Russia" will probably never be known.¹⁹ Indications of the cynical and ruthless disregard of all humanitarian principles by the U.S.S.R. were evidenced at the Moscow Conference of Foreign Ministers, when Molotov announced on 14 March 1947 that 1,003,974 German prisoners of war had been released and that 890,532 were still being held. Not only was this "new" figure of 1,894,506 significantly lower than the previously announced total of 3,180,000 in May 1945, it was bland admission that 890,532 were still held captive in violation of the terms of surrender imposed on the Germans at Rheims on 7 May 1947 and the Potsdam Declaration of 26 July 1945.²⁰

Despite repeated attempts on the part of the IRC and the Governments of the United States, France, and Great Britain, the Soviets refused inspections, negotiations, or in some instances even to reply to official queries on the subject of repatriation of German or Japanese prisoners of war.²¹ Finally, in the fall of 1950, this matter of U.S.S.R. failure to repatriate or otherwise account for prisoners of war was presented to the United Nations. Germany reported that as of March 1950 some 923,000 German prisoners of war, verified in the hands of the U.S.S.R., were still missing. Japan listed at least 376,939 prisoners of war unaccounted for at the end of 1949.

On 14 December 1950 the United Nations General Assembly, by a vote of 43 to 5, adopted a resolution expressing concern over the large number of prisoners of war that had "neither been repatriated nor otherwise accounted for." The resolution provided for an Ad Hoc Commission to settle the issue.²²

The U.S.S.R. adamantly refused to cooperate with the commission investigation.²³

The harsh treatment of German and Japanese prisoners of war by the Soviets could be expected, though not condoned, based on the treatment of Soviet prisoners of war by these nations. The Japanese, as mentioned earlier, treated all prisoners in a subhuman manner. The German treatment of Russian prisoners was more harsh than their treatment of U.S. and British prisoners.²⁴ The Soviets and Germans did not provide lists of prisoners of war to each other as specified by the Geneva Convention of 1929; whereas the United States and the British did exchange lists with the Germans.

In October 1941, the Red army issued a directive to all Communist interrogators which included the following instructions: "From the very moment of capture by the Red Army, and during the entire period of captivity, the enemy enlisted men and officers must be under continuous indoctrination by our political workers and interrogators."²⁵ This directive was followed by a series of other directives explaining in detail the type of information to be extracted from the German prisoners, how to conduct the interrogations, and the manner and extent of indoctrination. In general, these instructions provided for an initial interrogation of about 30 minutes on purely military matters as soon as conditions permitted. Subsequent interrogations were to be made at regimental level, again on military matters. Officers and senior NCO's were also programed for further interrogation on military matters at division level.

Upon arrival at a permanent camp, prisoners were earmarked for more intensive interrogation. The permanent camps were controlled by the "MVD," under the supervision of the Ministry of Internal Affairs, not the Ministry of Defense. It was during this period that a

fundamental evaluation was made concerning the future of each prisoner of war. The prisoner was placed in either of two categories. Either he was a subject for indoctrination or he was not, in which case he was consigned to a labor camp.

Understanding of the Soviet treatment of prisoners of war can be gained from the writings of survivors such as Sgt. Maj. Helmut M. Fehling, who endured some 6 years of captivity from October 1943 to November 1949, and Lt. Col. Wolfgang Schell, imprisoned from January 1945 to October 1955, almost 11 years. Their vivid firsthand accounts evidence the attention given to the NCO's and officers in the interrogation process leading to the fundamental categorization of the prisoners. Until this decision was made, physical pressure was applied only to selected individuals, never on a group basis. However, once it was determined through interrogation that a prisoner was not a profitable candidate for indoctrination, he was sent to a labor camp to assist in rebuilding Russia. The treatment of these "labor" prisoners, as distinct from those who were earmarked for indoctrination, was unbelievably inhuman. It was this group of labor-camp prisoners who faced a constant battle for survival and whose ranks were thinned by the hundreds of thousands not able to survive the battle. For example, of the 93,000 prisoners captured at the battle of Stalingrad in February 1943, only 6,000 survived to return to Germany through 1958.²⁶

Within months of the German invasion of Poland and Russia in June 1941, the Red Army recognized the need to employ psychological warfare in support of military operations. By early 1942 the Seventh Division of the Red Army (propaganda) was operating on the eastern front. German emigrés and prisoners of war were used. Victories of the German Armies and crudeness of the propaganda efforts initially

hampered Soviet efforts. In early 1942, in an attempt to improve the system, the Soviets established anti-Fascist schools (A-schools) staffed with selected cadres to indoctrinate prisoners of war and train them for use with the 7th Division. The A-school candidates were carefully chosen through a vigorous and repetitive interrogation screening process. The first "hard-core" groups were limited to 50 to 100 prisoners.²⁷ This initial effort of using prisoners of war as propaganda instruments to undermine the morale of the frontline troops was greatly expanded as more collaborators became available from the mounting number of prisoners being taken and as the prisoners discerned the difference in treatment at labor and political camps.

The A-schools, where students were offered lectures in Marxist-Leninist doctrines, group discussions, self-criticism, autobiographical critiques, and rigid discipline, were continued until the early 1950's. Most hard-core graduates were later transferred to East Germany to occupy key positions in the administration, party bureaucracy, and media of mass communications.

Post-World War II and the Korean War. Even before the full story of the shocking treatment visited upon millions of prisoners of World War II had completely unfolded, it was apparent that the Geneva Conventions of 1929 and conventions of the Hague Conferences of 1899 and 1907 required revision. The International Committee of the Red Cross (ICRC) prepared four draft conventions. These were reviewed by the Preliminary Conference of National Red Cross Societies at Geneva in July 1946 and the Conference of Government Experts at Geneva in April 1947. They were then considered by the 17th International Conference of the Red Cross at Stockholm in August 1948.²⁸

Finally, the draft conventions were submitted to a diplomatic conference of

59 nations at Geneva in April 1949. The conventions did not come into force until 21 October 1950, and none of the parties in the Korean war had ratified the conventions at the time of the outbreak of hostilities of 25 June 1950. In prompt response to a query from the ICRC, the United States on 3 July 1950 announced full adherence to the provisions of the Geneva Conventions of 1949. Two days later, on 5 July, the South Korean Government formally announced its adherence to the conventions. As with U.S. acceptance, South Korea agreed to admit representatives of the ICRC into the area and to cooperate fully with those representatives. The Chinese Communists did not state a position until 13 July 1952, when Chou En-lai announced their recognition of the conventions "since they are basically conducive to a lasting peace."²⁹

Repeated messages from the ICRC to the North Korean Government were ignored. On 13 July 1950, Pak Heu Yeu, North Korean Minister of Foreign Affairs, signed a message to the Secretary General of the United Nations stating that: "the Democratic People's Republic of Korea is strictly abiding by the principles of the Geneva Convention in respect to prisoners of war."³⁰ With this message and subsequent commitments on the part of United Nations members providing forces in support of South Korea, all participants in this first war after promulgation of the Geneva Conventions of 1949 had indicated adherence.

By mid-July 1950, representatives of the ICRC were admitted to South Korea to commence on-site inspection and to report concerning United Nations Command (UNC) treatment of North Korean prisoners of war.

As of 2 August 1950, the North Korean Government had not responded to any ICRC query or message on the subject. Repeated attempts, even through the Chinese Government in Peking, to gain permission for an ICRC

delegate to enter North Korea had met with silence and inaction. Finally, on 15 August, a ray of hope was seen when permission was granted for an ICRC delegate to enter China to negotiate with the North Korean Embassy representatives on entry into North Korea.³¹ This hope proved to be unfounded, and further appeal to Jacob Malik, U.S.S.R. representative on the U.N. Security Council, was ignored.

Even after presentation of lists of 5,230 North Korean soldiers held captive by the UNC in mid-September 1950, the ICRC could not elicit any communication or reaction from Pyongyang. The North Koreans did not attempt to provide packages for these captives nor did they try to get mail to or from them. The message was as clear as it had been from the Russians of World War II. The Communists, whose governments are founded on concern for the workers and peasants, were not concerned with the welfare of their prisoners of war while they were in the hands of the UNC.

The extent of the brutal, cruel, and inhuman treatment imposed on UNC captives by the North Koreans was not fully known at the time. Yet, shortly after the Inchon landings, gruesome examples were uncovered by the advancing U.N. forces. At Kumchon, Taejon, and other places, as the UNC forces advanced up the peninsula, the evidence of brutal mass executions of UNC prisoners of war and civilians was uncovered.³² The full extent of the barbaric treatment of UNC prisoners of war at the hands of the North Koreans did not become known until after the prisoners had been repatriated in August and September 1953.

In piecing together the threads of the story of U.S. Marines captured during the Korean war, a Marine author documented that of one group of 38 U.S. officers of all services captured by the North Koreans through September 1950, only nine survived to the spring

of 1951.³³ Though the numbers involved were small compared to other conflicts, especially World War II, the overall record of treatment of UNC prisoners of war in the hands of the North Koreans matches any in sheer cruelty and inhumanity.³⁴ Of the known 7,190 U.S. prisoners of war captured during the Korean war, 2,730, or 38 percent, died in captivity. This is a higher percentage than experienced in our own Civil War in the middle of the last century or of U.S. captives of the Japanese during World War II. The majority of these 2,730 who died were captured during the first 6 months of the war when the North Koreans had custody of the prisoners of war.³⁵ In addition to the 2,730 who died in captivity, 1,036 others have been authenticated as victims of battlefield atrocities, mostly in massacres such as at Kumchon and Taejon.³⁶

The intervention of the Chinese in the conflict in November 1950, in addition to changing the conduct of the war, also dramatically changed the enemy's treatment and approach in handling and processing UNC prisoners of war held captive by the Communists. The Chinese took over control of the prisoner-of-war camps starting in December 1950.³⁷ No longer was the main theme of treatment senseless beatings, public parading of prisoners before enemy citizenry who stared, spit upon, and beat them, and limited (though frequently brutal) interrogation for military information. Concurrent with the Chinese intervention came a marked change in the treatment of the prisoners.

The Chinese publicly referred to their policy as the "Lenient Policy." Initially, the UNC prisoners could not believe they were not to be shot or otherwise maltreated upon capture. Rather, the Chinese advised most prisoners that they only wanted to help them now that they had been "liberated from the control of the imperialists."³⁸

By January 1951 the Chinese had established their first model indoctrination center at a permanent prisoner-of-war camp near the Yalu River town of Pyoktong. Designated "Camp 5" by the Chinese, it became known facetiously among the UNC prisoners as "Peaceful Valley."³⁹ Originally about 300 American prisoners of war were selected for this pilot indoctrination center and institution of the "Lenient Policy." Here the pattern of treatment quickly became abundantly clear. Calculated leniency was shown in return for "cooperation"; harassment, mental and physical pressure for neutrality; and brutality for resistance to their "leniency."⁴⁰

To the Chinese, cooperation meant attending classes on the Marxist-Leninist theories; informing on fellow prisoners who resisted; signing documents and petitions seeking peace or acknowledging the "rightness" of the Communist cause; broadcasts of the same type propaganda or even stronger denunciations of the "American Wall Street warmongers"; and making self-accusations before fellow prisoners. These "progressives," as the cooperators became known, found themselves under mounting pressure to succumb to the increasing demands of the Chinese indoctrination program. This trend, so easy to discern in a position of comfortable reflection, was not apparent to many subjected to the treatment under the conditions existing in "Peaceful Valley." Paradoxically, many prisoners became progressives to be relieved of the physical and psychological pressures imposed by the Chinese captors. The same held true for the "neutrals," or those who gave indications that their will might be broken, but had not yet overtly cooperated.⁴¹

The misnomer of the "Lenient Policy" became strikingly apparent to the "reactionaries," or resisters to Chinese indoctrination. The cases of Capt. Jesse V. Booker, USMC, and Maj. John

J. Dunn, U.S. Army, are typical of the treatment visited on "reactionary" prisoners. Booker was the first marine to be taken prisoner in the Korean war. Flying from the decks of the U.S.S. *Valley Forge*, his plane was shot down on 7 August 1950. Dunn had been serving as an adviser to Republic of Korea (ROK) forces whose positions had been overrun by the Chinese near Kunu-ri in November 1950.⁴² These officers were subjected to frequent and incessant interrogation centered on their political beliefs and family backgrounds. They were kept awake by beatings and blowing smoke into their forcibly opened eyes. Still refusing to cooperate, they were tied to stakes in the open or placed in cramped solitary holes in the ground and left naked for hours on end in the subfreezing weather of the winter of 1950-51 in the Yalu River valley. Still not willing to do the bidding of their captors, both Booker and Dunn were separately and repeatedly exposed to the threat of execution, in which the "game of Russian roulette" was played by the Chinese interrogators.⁴³

While the Chinese took control of the UNC prisoners of war in Communist hands, they did permit their North Korean comrades to participate and presumably learn the principles of interrogation and indoctrination for political objectives. "Pak's Palace" on the outskirts of Pyongyang, the North Korean capital, was named for Major Pak, the North Korean chief interrogator. This infamous center was singled out in the Secretary of Defense Advisory Committee on Prisoner of War Report of 1955 as being "the worst camp endured by American prisoners of war."⁴⁴ Captain Fink, a U.S. Marine officer, was questioned in 1951 by a Russian female interrogator over a period of several days. The interrogations were punctuated with repeated beatings of Captain Fink for nonresponsive answers.⁴⁵

Even before the Chinese intervention in the Korean war, Communist use of

prisoners of war for political purposes was evident. In late August 1950, Jacob A. Malik, U.S.S.R. delegate to the U.N. Security Council, issued a statement to the world press claiming to have received a cable of protest to the war signed by 39 captured U.S. officers. The protest was "against further senseless bloodshed in Korea." The names of the 39 officers were released and included "Capt. Jesse V. Booker."⁴⁶ In light of the treatment subsequently inflicted on Booker, it is doubtful if the Communists ever obtained Booker's signature on the protest. Indeed, the majority of the officers whose names were released subsequently denied under oath having signed the protest.⁴⁷

This early and rather clumsy propaganda attempt was greatly refined and improved after the Chinese took over control of the prisoners of war in December 1950. In January 1951 the Chinese circulated the "Stockholm Peace Appeal" in "Peaceful Valley" and other camps with indoctrination centers. This appeal had been issued just prior to the North Korean invasion of South Korea as a result of a Stockholm meeting of the "Communist World Peace Committee" in May 1950.⁴⁸ In circulating this appeal, peace committees were formed in the prisoner-of-war camps to develop and sign a petition to the U.N. appealing for peace. This petition was sent to the U.N. in February 1951 with the signatures of many American prisoners of war.⁴⁹

Concurrent with the success of the U.N. spring offensive of 1951, the North Koreans on 8 May 1951 lodged a formal protest to the U.N. charging the U.S. forces with germ warfare.⁵⁰

It was at this time that the Communists tried to substantiate these charges by a program aimed at gaining the cooperation of largely U.S. Air Force flying personnel.⁵¹ On 16 May 1952 the signed confessions of two captured U.S. lieutenants appeared in *People's China*, a Peking newspaper, and

were announced to the world.⁵² Despite the failure to have their allegations proven with the aid of confessions of American prisoners of war, grave doubt on the matter was created in world public opinion.

In the aftermath of the Korean war, Communist attempts to use prisoners of war and their families to weaken the opposition came more clearly into focus. In testimony before a U.S. House of Representatives Subcommittee of the Committee on Un-American Activities in June 1956, FBI witnesses and former U.S. prisoners of the Korean war exposed the extent of the Communist efforts in this area. "The Save Our Sons Committee" (SOSC) based in Argo, Ill. became active in 1952 and remained so until October 1953, the month following the repatriation of the Korean war prisoners. The SOSC consisted of two native-born American women, identified by FBI agents as members of the American Communist Party. These women obtained the names, camp locations, and other particulars of American prisoners from Communist sources. They wrote letters to the parents and friends of these prisoners, encouraging them to sign petitions and letters to Congressmen and newspapers. They were able to correspond directly with the American prisoners in a matter of days, whereas mail between prisoners and next of kin was normally not allowed by the Communist captors. Though these two women repeatedly claimed the "fifth amendment" during the hearings, facts presented by other witnesses clearly established Communist efforts in this area.⁵³

The major issue of the Korean Armistice Negotiations was voluntary repatriation. A convincing position is that the UNC demands, insisting on voluntary repatriation, were in violation of the Geneva Conventions of 1949, specifically articles 7 and 118. Article 7 provides that prisoners may under no circumstances renounce, in whole or in

part, rights secured to them by the convention. Article 118 states that prisoners of war shall be released and repatriated without delay after the cessation of hostilities. The opposing humanitarian view of not forcing some 87,000 people to be committed to return to control of regimes they abhor also has merit. It would be difficult to ignore the lessons learned from the Soviet treatment of repatriated personnel at the end of World War II.

Vice Adm. C. Turner Joy, the initial Chief UNC Negotiator from July 1951 until 22 May 1952, differed strongly on this point, although his position as UNC negotiator required him to support it. He felt the voluntary repatriation issue cost our prisoners an extra year of captivity and cost the UNC an additional 50,000 casualties. Joy later contended that the welfare of ex-enemy soldiers was placed above that of our own personnel in Communist prison camps and those still fighting in the battleline.⁵⁴

To date, international law has not codified the principle of voluntary repatriation. Yet the signed armistice itself may sustain the principle as a precedent. In any event, this principle is Korea's legacy to Vietnam. Consideration must be given this principle to insure success in obtaining the release of our prisoners of war in the months ahead.

Vietnam. Major conflicts have given impetus to changes in international laws which have been increasingly concerned with the humanitarian treatment of prisoners and other victims of war. The Geneva Conventions of 1929 and 1949, following World Wars I and II, respectively, illustrate this. No change occurred following the Korean war. Resolution of the voluntary repatriation issue stemming from the Korean armistice was heralded as a significant precedent by President Eisenhower. Yet, the

impact of this precedent on international law is a matter of conjecture at this time. With this possible exception, international law relative to the treatment of prisoners of war is essentially the same for Vietnam as it was for the Korean war.

Shortly after the introduction of American forces into the Vietnam war, the ICRC in June 1965 reminded the Governments of the United States, South Vietnam, and North Vietnam, by letter, of the provisions of the Geneva Conventions of 1949 and of their previous commitments to adhere to the conventions.⁵⁵ The ICRC also indicated it would attempt to deliver the letter to the National Liberation Front (NLF), the political arm of the Viet Cong.

All parties, including the NLF, replied to the ICRC letter. The United States and South Vietnam gave unqualified assurance of their compliance with the conventions and authorized the ICRC to send designated inspection representatives.⁵⁶ North Vietnam's reply was not as straightforward. It was a lengthy reply couched in terms that make it difficult to isolate truly responsive portions. The letter did state that "pilots" would be regarded as "major criminals" and liable to the laws of North Vietnam, "although captured pilots are treated well."⁵⁷ Clearly, North Vietnam was saying officially that they treated pilots well, but reserved the right not to do so. The NLF flatly refused to be bound by the Geneva Conventions; however, they affirmed that "prisoners held were humanely treated and that, above all, enemy wounded were collected and cared for."⁵⁸ Upon sending troops in support of South Vietnam, all other nations (notably Australia, New Zealand, Thailand, South Korea, and the Philippines) acknowledged the Geneva Conventions as binding. Thus, all active participants in the Vietnam war, except the NLF, formally announced their general adherence to the conventions.

The record of the United States in Vietnam relative to the treatment of prisoners of war has not been officially questioned by the enemy. However, two major issues have arisen, one involving overt actions of the South Vietnamese. In each instance attention to the issues has been "self-generated," being instituted by Americans, not the enemy.

As early as 1964, reports began reaching the United States concerning maltreatment of Viet Cong prisoners of war by South Vietnamese captors. These reports continued through 1965, the time of American commitment to the ground war, and concerned enemy personnel initially captured by American forces as well as those captured by South Vietnamese forces. In a few instances American personnel were pictured observing the alleged maltreatments. These instances apparently took place at the scene of the fighting or during evacuation from it.⁵⁹ There is little doubt that instances of maltreatment occurred. There has never been a war in which some frontline maltreatment has not taken place.⁶⁰ The announced American position was that these incidents of maltreatment were alleged against an ally, South Vietnam, which bore responsibility for handling prisoners, not the United States. This initial American position was legally correct but morally questionable. There is "no provision in the Geneva Conventions making a nation responsible for violations committed by its allies."⁶¹

Initially, American ground forces turned over enemy prisoners to the South Vietnamese forces as soon as possible. Mindful of the maltreatment charges, the U.S. forces changed procedures in 1966 and retained custody of captured enemy until delivered to rear area camps.⁶² No similar charges were made after this until 1969, when release of information alleging the unlawful killing of some 100 South Vietnamese civilians at the Song My hamlet of My Lai, South Vietnam, on 16 March 1968.

At this writing, a number of American fighting men are awaiting trial on charges resulting from actions at My Lai. Fourteen others have been charged with repressing information concerning the incident and may be brought to trial.⁶³

The South Vietnamese operate the prisoner-of-war camps containing some 31,500 North Vietnamese and Viet Cong prisoners of war. There have been documented cases of maltreatment in the six camps operated by the South Vietnamese. Significantly, complaints in these cases have been filed by the ICRC representatives having access to the camps for inspection.⁶⁴ The prisoners are permitted to send and receive mail. An accounting of the prisoners is made and lists are made available to North Vietnam and the NLF.⁶⁵ Every effort is made to comply with the Geneva Conventions and requests of the ICRC representatives.⁶⁶

The story of treatment of allied prisoners of war (United States, South Vietnam, South Korea, Australian, and others) by the North Vietnamese (and their confederates, the Viet Cong, under the NLF) is far from complete. That which is known is available from two sources; the information the North Vietnamese have seen fit to disclose for propaganda and political purposes and from questioning of released or escaped prisoners.⁶⁷ Even with the limited sources of information available to date, the complete disregard of international law by North Vietnam is abundantly clear. Equally clear, and of greater concern, is the callous treatment of prisoners of war by the North Vietnamese. They have shown the same characteristics of Communists in previous wars: a complete disregard for humane treatment; a concerted effort to use prisoners for propaganda purposes; and an utter disregard for the welfare of their own people once captured.

In mid-July 1966, broadcasts from Radio Hanoi and dispatches from

Communist newsmen served notice that captured American flyers were to be tried as war criminals, and American prisoners were paraded, manacled, in the streets of Hanoi, presumably to whip up local public support. Photographs of these happenings were taken and disseminated in the world press.⁶⁸ This brazen effort at political blackmail backfired. The obvious intent of conducting trials of these prisoners to force a halt in the bombing of North Vietnam and gain world sympathy was a miscalculation. U.N. Secretary General U Thant, the Pope, and American organizations opposed to the war in Vietnam sent appeals to Ho Chi Minh to stop the scheduled trials. Even the so-called U.S. Senate "doves," spearheaded by Senator Frank Church, issued strong statements against the trials.⁶⁹ On 23 July 1966, Ho Chi Minh backed down and announced that "no trials were in view." It appears that when Ho Chi Minh realized he was losing support for his political objectives, particularly from within the United States where a hardened unified American position might result, he relented.

Earlier, in June and September 1965, following trials and execution of Viet Cong terrorists by the South Vietnam Government, the Liberation Radio of the Viet Cong announced that American prisoners of war had been executed in retaliation for the trial and execution of the terrorists. Irrespective of the legal or moral issues concerning acts of reprisal, the wanton murder of American prisoners in retaliation for an act of South Vietnam is clearly neither legally nor morally valid. The ICRC concurred in this view in filing formal complaints and requesting permission to investigate.⁷⁰

The execution of one of these victims, Capt. Humbert R. Versace, was confirmed in December 1968 by Maj. James N. Rowe when he escaped after being a prisoner of the Viet Cong for over 5 years.⁷¹ Rowe and Versace had been among a group of eight prisoners

captured by the Viet Cong in October 1963 and held in the delta region of South Vietnam. According to Rowe, three of the prisoners died during captivity in 1966 and 1967, while the other three were released through Cambodia in October 1967.⁷²

The story unfolded by Rowe substantiates that the Viet Cong follow the same pattern already established by the Communists for treatment of prisoners of war. Immediately after capture Rowe was given an ICRC data card to fill out.⁷³ Appended to this card was a lengthy questionnaire concerning full details of personal and military history, training, and military intelligence. Rowe refused to fill out the questionnaire; then the established Communist treatment started. Rowe was subjected to isolation from human contact and placed in a confining, uncomfortable cage as conditions for the inevitable indoctrination. Part of the indoctrination included explanations that Rowe was a criminal having no rights and that his captors had the right to execute him. The reason given for not executing him was the "lenient policy" of the Viet Cong. Upon "failing indoctrination lessons," Rowe was sent to a punishment camp where he was subjected to treatment even worse than before. His diet of rice and salt, without water, severely strained his stamina and will to survive.⁷⁴

The politically inspired, unpredictable releases of other groups of American prisoners, either to peace-seeking antiwar Americans in Cambodia or at arranged meetings in cleared areas of South Vietnam, also provides insight to prisoner-of-war treatment by North Vietnam and the Viet Cong. The stories of some of those men have not been published for fear of jeopardizing those remaining as prisoners. What has been told is another chronicle of cruel and inhuman treatment by the Communists. In August 1969, Navy Lt. Robert F. Frishman, upon his release, related his experiences as a prisoner of war of the

Communists, which included solitary confinement, imprisonment in a cage, being bound in straps, removal of his fingernails, being denied food and medical care, and being dragged along the ground while suffering a broken leg. Seaman Douglas Hegdahl, released at the same time after over 2 years of captivity, was also maltreated. He had lost over 60 pounds since his capture and had spent 7 months and 10 days in solitary confinement.

The experience of Lt. (jg) Dieter Dengler, USN, during 1966 presents a stark example of treatment at the hands of the Communists in Southeast Asia. Dengler was captured but later managed to escape to U.S. lines. Captured by the Pathet Lao and turned over to the North Vietnamese, Dengler was spread-eagled on the ground and left to the mercy of insects. He was tied in position and used for nerve-racking target practice. Repeatedly, Dengler was beaten with fists and sticks, being rendered unconscious on one occasion. As further persuasion to sign a statement condemning the United States and apparently to heighten the enjoyment of his captors, Dengler was bound and dragged through the bush behind a water buffalo. At the time of his rescue this formerly 180-pound pilot weighed 98 pounds.⁷⁵

The stories of maltreatment from escaped prisoners, and even from those released for propaganda purposes, have a common thread. Admittedly, the documented evidence available at this time is limited. Yet the evidence available is overwhelmingly uniform in reflecting callous and inhumane treatment of our prisoners in the hands of the Communists in Southeast Asia. A pattern has emerged which includes jungle camps operated by the Viet Cong and the Pathet Lao and the larger permanent camps operated by the North Vietnamese. The most notorious of these North Vietnamese camps is known already as the "Hanoi Hilton." It appears

likely that this facility will join "Pak's Palace" of the Korean war on the list of infamous prisoner-of-war camps.

These limited glimpses of the treatment of prisoners of war in Vietnam give cause for grave concern for the treatment of the estimated 1,400 American prisoners still in the hands of the Communists in Vietnam.⁷⁶ As of February 1970, the Department of Defense listed 422 Americans known to have been in the hands of the Communists in Vietnam. These figures have been compiled from eyewitness battle accounts, information from released prisoners, as well as from Hanoi press and radio announcements.⁷⁷ The Communists have to date refused to comply with the Geneva Conventions and provide lists of prisoners they hold. In March 1970 North Vietnam did acknowledge to an Associated Press newsman (Daniel De Luce) that they held 320 American prisoners of war and "were considering" releasing their names, not to ICRC representatives, but to "friendly" news media.⁷⁸

Repeated attempts by the American Government and relatives to obtain information on American prisoners held by the Communists have failed.⁷⁹ Response to these groups would not materially benefit or support the political objectives of the Communists and, therefore, seem doomed to failure. Massive direct pressure by American citizens, appeals by "dovish" U.S. Congressmen and other vehement American antiwar groups, and concentrated efforts by the Government through the United Nations would appear to offer the best opportunity for determining the status of American prisoners in Vietnam and insuring their welfare and ultimate freedom. Since the North Vietnamese consider their own captured personnel as expendable and since they know we value highly the lives and welfare of our soldiers in captivity, they are using their control of our prisoners of war as a bargaining tool for propa-

ganda and leverage for a settlement of the war favorable to them.

Legacy and Lessons. The development of meaningful and essential international law relative to prisoners of war has been extremely slow, yet ever more precisely defined. Up to World War II this development had significant impact on improving the humanitarian treatment of prisoners. From World War II came the Geneva Conventions of 1949, which materially strengthened the law in this area, more clearly defined its application, and provided for humane treatment agreed upon by some 117 nations as of 1968.⁸⁰ From World War II also came distinct evidence that, regardless of the law and weight of world opinion, the Communists did not intend to abide by international law to which they and others had committed themselves. As the history of World War II unfolded with the passing of time, more precise proof became available. The extent and enormity of some of the evidence strains humanitarian understanding, and even today many ignore or refuse to assess the record.

In the aftermath of the Korean war it became clear once again that the Communists had shown an utter disregard for international law and contempt for humanitarian treatment of prisoners of war, which other peoples and nations sought to uphold. Though smaller in scale, the barbaric and cruel treatment of prisoners of war by the Communists established a record in modern times for the high rate of death among captives. Again the rules for conduct of affairs among nations were severely set back. This demonstrated contempt for the precepts of human dignity and compassion for fellowmen is appalling. This, coupled with the hypocrisy of claiming adherence to international law, while resolutely and consistently failing to do so, invites more grave questions. Although only shreds of evidence are available from the current war in Viet-

nam, these shreds point to the Communists adding to the legacy passed on from World War II and Korea.

A review of history supports the contention that prisoners of war have been used as instruments of foreign policy. Concurrent with the evolution of international law, mounting concern for the humane treatment of prisoners of war has resulted in increasing well-defined international agreements to protect the victims of war, thus tending to reduce the effectiveness of prisoners of war as instruments of foreign policy for those nations adhering to the law. Starting in World War II and continuing through to the current Vietnam war, the Communists have demonstrated a complete reluctance to be inhibited in their use of prisoners of war to achieve national and international political objectives. This remains so, whether or not they profess adherence to international conventions.

Based on the record of treatment accorded their own people when recovered from captivity, the Communists are not receptive to bargaining for the exchange or treatment of prisoners predicated on humanitarian principles. Accordingly, it appears that even when assured of our propriety in the treatment of their prisoners, the Communists are unwilling to reciprocate and guarantee humane treatment for U.S. prisoners of war. This, coupled with the fundamental principle of the dignity and rights of man upon which the Government of the United States is based, rules out any consideration of reprisal against Communist prisoners as ineffective and repugnant.

Thus, to obtain humane treatment and release of prisoners from Communist control, it appears that the most realistic alternative is to marshal American opinion unifying the country on the issue. To affirm our resolve to deny the Communists their political objectives through use of our prisoners of war is the most positive way to insure their

fair treatment and release. In this regard the text of President Nixon's First Annual Foreign Affairs Message to Congress of February 1970 concerning the treatment and release of prisoners of war merits comment and is quoted in part below:

This [prisoners of war in Vietnam] is not a political or military issue, but a matter of basic humanity. There may be disagreement about other aspects of this conflict, but there can be no disagreement on humane treatment for prisoners of war. I state again our readiness to proceed at once to arrangements for the release of prisoners of war on both sides.⁸¹

This statement is a true reflection of previously stated American policy and most likely was heartily supported by the majority of people of the United States. However, considering that it is a part of a 40,000-word address designed for foreign as well as domestic consumption, the reaction of the Communists would seem of paramount importance. The Communists would not agree with the first portion of the pronouncement which states that the prisoner-of-war question in Vietnam "... is not a political or military issue, but a matter of basic humanity." The history of Communist actions disputes that portion of the address which states "... there can be no disagreement on humane treatment for prisoners of war." Finally, in advising the Communists of "our readiness to proceed at once with arrangements for the release of prisoners of war on both sides," they are being advised of a fact of which they have been fully cognizant. In summary, the statement of the President appears to have contributed little toward obtaining humane treatment and release of American prisoners of war.

Positive statements by our national

leaders are needed, recognizing that prisoners of war are used as "political instruments" by the Communists, but affirming U.S. rejection of this practice. Identification and clarification of the fact that there is "disagreement on humane treatment of prisoners of war" between the Communists and ourselves is also required. Lastly, a positive declaration should be made that any peace negotiations must first obtain agreements on the accounting for and release of prisoners of war.

The Communist practice of releasing small groups of our prisoners of war to American pacifist groups should be denounced for the degrading and inhumane practice it is. As stated by the *Washington Evening Star* the practice is "a little like the Oriental water torture—and just as humanitarian." To put this release ploy in perspective, consider that at the current rate of release it would take over 400 years to obtain the release of our captured men.⁸²

Ho Chi Minh recanted in July 1966 on his threat to try American prisoners as war criminals due to the weight of world public opinion, especially the statements of some U.S. Senators. Again in August 1969, at the instigation of prisoners' next of kin, 42 U.S. Senators signed a strong statement condemning North Vietnam for its record of violation of international law and for its "cruel and inhuman treatment of prisoners of war." This statement also condemned the callous treatment of the families of prisoners who traveled to Paris seeking information about the prisoners from the North Vietnamese delegates to the peace talks. On 21 August the North Vietnamese rejected the protest. It is significant to note that some of the leading antiwar Senators, including the Chairman of the Senate Foreign Affairs Committee, had not signed the statement of protest. The full impact of a similar statement signed by all 100 Senators or of a joint resolution by Congress is a matter of conjecture.

The question that presents itself is "Why should this critical matter be left to conjecture?"

The need to focus attention on the current plight of American prisoners in the hands of the Communists is evident. Previous limited success in combating the Communists' use of prisoners of war as instruments of foreign policy has been attained only when antiwar fac-

tions in the United States, particularly members of Congress, have repudiated these inhuman practices. It appears that these factors must drive concerted American efforts to deny the Communists their political objectives. The continued maltreatment of American prisoners of war in direct violation of international law is totally unacceptable.

FOOTNOTES

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60. *Ibid.*, p. 338.
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62. *Ibid.*, p. 340.
63. "Army Inquiry Charges 14 Officers in Suppression of Song My Facts; West Point Head Accused, Quits," *The New York Times*, 18 March 1970, p. 1:8, 14:1-6. The Song My/My Lai incident involves civilians and not military prisoners of war, the subject of this paper. However, treatment of civilians is also covered by the Geneva Conventions of 1949, and the possibility of Viet Congs being among the 100 victims still exists.
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70. *Ibid.*, p. 347-355.
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