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January 27, 2005

Mr. John Greenewald, Jr.
The Black Vault Headquarters



Dear Mr Greenewald:

This responds to your Freedom of Information Act (FOIA) request of March 31, 2004 in which you seek a copy of a document identified as AD B96164, *Prisoner of War Negotiations Korea and Vietnam*. Your request was forwarded to this command for response and was received by this office on January 6, 2005, and assigned file number 05-04.

Pursuant to procedures established in Secretary of the Navy Instruction (SECNAVINST) 5720.42F, our search for responsive records will encompass only those records in existence at Naval War College as of January 20, 2005. Per procedures established in SECNAVINST 5720.42F, we are treating you as an "all other requestor" under the instruction.

We have reviewed the attached documents which are responsive to your request and they are released to you in their entirety. The fees associated with the processing of your request are waived in this instance.

Any questions concerning this matter should be directed to CDR Jane Brill, Naval War College Freedom of Information Act Officer at 401-841-2279 or email brillj@nwc.navy.mil.

Sincerely,

A handwritten signature in cursive script that reads "Jane Brill".

JANE BRILL
Commander, JAGC, U.S. Navy
Staff Judge Advocate
By direction

Enclosure: AD B96164, *Prisoner of War Negotiations: Korea and Vietnam*.

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THESIS



PRISONER OF WAR NEGOTIATIONS

KOREA AND VIETNAM

by

Harry P. Ball

Lieutenant Colonel, U.S. Army

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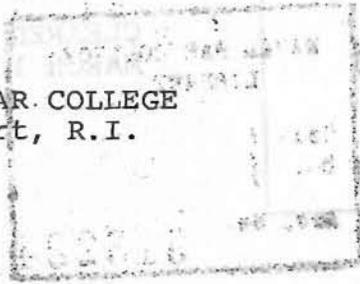
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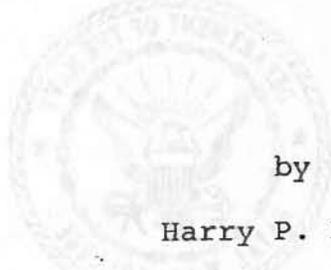
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Newport, R.I.



THESIS

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Lieutenant Colonel, U.S. Army

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signed

Harry P. Ball

Date

13 May 1968

15 MAY 1968

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ABSTRACT OF PRISONER OF WAR NEGOTIATIONS, KOREA AND VIETNAM

As the United States objective in Vietnam is not the military occupation of either North or South Vietnam, the release of Americans who are prisoners of the Communists must be negotiated. It will be recalled that from December 1951 until June 1953 the United States was engaged in negotiations for the release of prisoners of war of the Korean conflict. It is believed that there are lessons from the Korean experience that will have application to Vietnam. This paper has as its objective the determination of such lessons.

After comparing the political and military backgrounds of the conflicts in Korea and Vietnam, an analysis is made of the Korean prisoner of war negotiations. Six major errors by the United States are isolated. The prisoner of war situation of the opposing sides in Vietnam is then investigated. Finally, the lessons learned from Korea are related to Vietnam.

It is concluded that the major obstacle to agreement in the Korean negotiations, "voluntary repatriation," need not be an issue in Vietnam, but that early repatriation of American prisoners is not to be expected. They represent a valuable bargaining asset to the Communists that Communist prisoners do not represent to the United States. We must therefore insist in truce negotiations that early consid-

eration be given the prisoner of war question, and be prepared to make concessions on other issues in order to obtain the early release of our personnel.

TABLE OF CONTENTS

CHAPTER	PAGE
ABSTRACT.	ii
INTRODUCTION.	vi
I KOREA AND VIETNAM: A COMPARISON	1
The Requirement for Negotiations in Vietnam	1
Similarities	3
Differences.	7
Summary.	9
II KOREA: THE INITIAL NEGOTIATIONS	11
Determining the UNC Position	12
Negotiations Begin	14
Agreement to Poll Prisoners.	17
Analysis of Motives.	18
III KOREA: THE DEADLOCK	25
The Polling of Prisoners	25
The Package Proposal	26
War in the PW Camps.	27
Attempts to Bargain.	30
Unilateral Release	32
The General Assembly Debates	33
IV KOREA: AGREEMENT.	37
The Key Concession	37
Negotiations Resume.	38
Syngman Rhee Objects	40
Agreement and Repatriation	42
V LEGACY AND LESSONS	45
The Negotiations in Retrospect	45
Voluntary Repatriation - A Legacy.	46
Lessons from Korea	47
VI VIETNAM: THE PRISONER OF WAR SITUATION.	56
Application of the Geneva Convention	56
The United States/Republic of Vietnam Program.	57
The Communist Attitude	62
Repatriations to Date.	64
Communist Motives toward Prisoners of War.	67

CHAPTER

PAGE

VII NEGOTIATING WITH COMMUNISTS. 70

 Influences on Negotiations 70

 Voluntary Repatriation versus Code
 of Conduct 72

 Preparation for Negotiations 74

 Avoiding Propagandizing. 76

 Coordination with the Republic of Vietnam. 76

 Conclusion 77

BIBLIOGRAPHY. 79

INTRODUCTION

From April through September of 1953 over 3,700 Americans were released to United States control from the prisoner of war camps in North Korea. Today several hundred Americans are estimated to be held prisoner in North Vietnam and in the jungle strongholds of the Viet Cong in South Vietnam. As will be demonstrated, the fate of these prisoners will depend, as did the fate of those in Korea, on the outcome of negotiations.

The United States must be prepared for these negotiations. It should not again allow talks to drag on for two years, serving Communist purposes, while casualties are being suffered on the battlefield and men continue to languish in prisoner of war camps. We must learn from the experience of Korea. It is hoped that this paper will contribute to that learning. Its purpose is simply to draw upon our experience in both negotiating for the repatriation of prisoners of war and in administering prisoners of war in Korea. Lessons will be sought that have application to negotiations over prisoners of war in Vietnam.

To satisfy this purpose requires first a brief comparison of the political and military situation in Korea in 1951-53 with that in Vietnam in 1968 in order to appreciate the similarities and differences of the two settings. Our

purpose then involves the accomplishment of three tasks. The first is to make a detailed study of the Korean prisoner of war negotiations with the object of isolating mistakes that were made and determining whether the agreement finally reached will have an impact on Vietnam negotiations. The second is an examination of the current prisoner of war situation on both sides in Vietnam and its possible influence on negotiations. The third and final task is to recommend procedures and courses of action that, if astutely implemented, will assist our negotiators in insuring the early repatriation of American prisoners of War.

PRISONER OF WAR NEGOTIATIONS

KOREA AND VIETNAM

CHAPTER I

KOREA AND VIETNAM: A COMPARISON

The Requirement for Negotiations in Vietnam. On July 27, 1953 the commander of the United Nations Command in Korea,¹ the commander of the [North] Korean People's Army and the commander of the Chinese People's Volunteer Army signed the military armistice bringing a cease fire to the Korean War. This document was the result of two years of negotiations between representatives of the commanders on each side. It ended the first conflict since 1812 in which the military situation did not allow the United States either to force concession or dictate terms. The last fourteen months of the negotiations were concerned with the only unresolved issue between the two parties: the repatriation of prisoners of war.

At this writing, just short of fifteen years after the signing of the Korean armistice, United States forces

¹The United Nations Command controlled those forces contributed by members of the United Nations for the prosecution of the war in Korea. General Matthew B. Ridgeway, United States Army, was the Commander in Chief, United Nations Command at the start of the armistice talks and was also Commander in Chief of the U.S. Far East Command. In the latter role he commanded U.S. armed forces in Korea and military units of the Republic of Korea.

are again locked in combat with a Communist enemy on an Asian peninsula. Once again the misfortunes of war have resulted in the capture and confinement in Communist prisons of American soldiers, sailors and airmen. As in Korea the United States has chosen to limit its application of military power. Further, it proposes to bring an end to the fighting through negotiations.

There is no assurance that negotiations will be the method through which the fighting in Vietnam is brought to a close. Combat could quite logically gradually decrease in intensity, as did the guerrilla war in Greece in 1948, until the war is simply no longer being fought.² But the United States has a solemn obligation to its captured personnel. Their repatriation can only be accomplished through negotiation with those that hold them. The alternative to negotiating their release is to abandon them.

It does not follow, of course, that these negotiations will necessarily be of the same format and protocol as those in Korea. Possible forms of these negotiations range from a full-blown international conference, where the exchange of prisoners of war is but one agenda item, to quiet dialogue in a neutral country, or mere clandestine

²Dean Acheson expresses this view in an interview quoted in Reporter, Dec. 28, 1967, p. 28.

meetings in a jungle clearing. They could also be conducted by third parties representing one or both sides. But whatever form the negotiations take, they will be a reflection of the political and military situation in Vietnam at the time. Accordingly, the application of the Korean negotiating experience to Vietnam depends upon the comparability of the two settings.

Similarities. Both conflicts stemmed from a confrontation between Communist expansion into the periphery of Asia and the United States determination to contain that expansion. Both revolve around a single nation which became two states divided by a line, the 38th parallel in Korea, the 17th in Vietnam, which ostensibly was to have been temporary. In each case the Communist-controlled north, bordering on Communist China, attempted to seize the southern portion through the use of force. In Korea the seizure was attempted through invasion by conventional forces supported to a degree by a guerrilla force, in Vietnam through armed insurgency and guerrilla warfare supported to a degree by conventional military formations infiltrated into the South. Communist objectives were identical in both instances: to unify the nation by force under a Communist regime.

In each case the US supported forces in the south proved to be inadequate to the task of defense. American

armed force was introduced at the last moment, just in time to save Pusan in 1950, just in time to save Saigon in 1965. The American military commitment took similar forms; piecemeal introduction of ground forces to secure critical areas in the south, coupled with an air campaign against the north, with all military action being limited to the geographical area of the contested nation. Limited as the commitment was in each case, military initiative ultimately passed to the United States forces. Intervention occurred at just that time when the Communists must have begun to think of victory parades.

The Communist reaction to American intervention was similar in both events. To salvage the situation in Korea, major formations of the Chinese Communist army were committed. In an attempt to regain the initiative in Vietnam, major formations of the North Vietnamese army entered the struggle. Communist military successes at first relatively cheap, had been made extremely expensive. Prospects of achieving their objective through military action dimmed. Victory, once appearing but months or weeks away receded into the future, if possible at all.

While stalemate does not accurately describe either the situation in Korea at the time armistice negotiations began or the situation in Vietnam today, the two situations can be depicted as ones in which victory in a military

sense cannot be quickly achieved by either side with the force levels deployed. In Korea a realistic estimate of the military situation led the Communists to propose truce talks--a proposal accepted eagerly by the United States. In Vietnam the Communist estimate has not yet led them to a similar conclusion.

In the meantime battles in Vietnam have resulted in over 6,000 Communists being interned in prisoner of war camps in the South³ as were 169,000 Communists at the time of the Korean negotiations.⁴ As of August 1967 there were approximately 650 American military personnel who were classified as either missing or as prisoners of war in North and South Vietnam. The United States believed that some 200 of these men were being held as prisoners of war. Also held as prisoners of war were an unknown number of soldiers of the Army of the Republic of Vietnam (ARVN).⁵ This compares to 3,746 Americans, 8,321 personnel of the Republic of Korea Army (ROKA) and 1,377 personnel from other national contingents of the United Nations Command who were held in North Korea.⁶ While the weight of prisoners on both sides is smaller, a larger number is again held by the side allied with the United States.

³U.S. Dept. of State Publication 8275, "Prisoners of War," Vietnam Information Notes No. 9, August 1967, p. 3.

⁴Walter G. Hermes, Truce Tent and Fighting Front (Washington: Office of the Chief of Military History, United States Army, 1966), p. 141.

⁵Dept. of State Publication 8275, p. 4.

⁶Hermes, App. B-1.

The United States government cannot turn its back on the Americans in enemy hands. It is obligated by the fundamental beliefs underlying the American political system to do all it can to obtain the release of its citizens. The "Code of Conduct" promulgated in 1955 for the guidance of United States servicemen made even more explicit this obligation of the U.S. government.⁷

The Code formally imposes obligations on the individual members of the Armed Forces of the United States, but it is the last sentence of the last article which is of pertinence to this paper. It reads, "I will trust in my God and the United States of America." The Department of Defense has stated in its training instructions, "Just as you have a responsibility to your country under the Code of Conduct, the United States Government has a matching responsibility--always to stand behind every American fighting man. An individual unfortunate enough to become a prisoner of war will not be forgotten by his Government... his Government will use every practical means to establish contact with and support our prisoners of war, and to gain their release."⁸ American negotiators in Vietnam, therefore,

⁷U.S. Dept. of Defense Code of the U.S. Fighting Man (DOD GEN-11) (Washington: Armed Forces Information and Education, 23 December 1964).

⁸Ibid., p. 2-3.

will be subject to limitations and pressures, as were their predecessors in Korea, that Communist negotiators do not experience.

Differences. While the situations in Vietnam and in Korea have striking similarities, they are not carbon copies. In 1951-53 the Communist forces could be treated as the instrument of a monolithic bloc lead by Moscow. In Vietnam in 1968 this situation no longer holds. The Sino-Soviet split places Hanoi in a middle position between the two Communist giants--a position which provides some freedom of maneuver and independence but which is nevertheless precarious. In order to retain the support of both, Hanoi must somehow reconcile the divergent desires of each. The statements of Kosygin and Chou in 1968 do not carry the same authority regarding the Vietnam War as did the statements of Stalin and Chou of 1952 regarding the Korean War. It would be unrealistic today to rely upon the Communists making concessions in Asia in order to influence events in Europe or elsewhere on the international scene. It would be equally unrealistic to rely on American actions outside of Asia influencing events in Vietnam. The leverage of both the United States and the USSR is therefore considerably reduced in Vietnam as compared to Korea.

As in Korea, the Communists in Vietnam find it advantageous to camouflage the identity of its participants in

the fighting. In the Korean case the Communists professed that North Korea was their only belligerent, maintaining the fiction that the "Chinese People's Volunteer Army" was only assisting it. In Vietnam the camouflage is even denser, the Communists insisting that the only belligerent is the so-called National Liberation Front in South Vietnam. The Hanoi government doesn't admit that regular units of the North Vietnamese army participate in the fighting in South Vietnam. Negotiations for a military cease-fire in Korea were conducted with two representatives, one from the North Korea army, one from the Chinese army. In Vietnam, assuming that the North Vietnamese continue to maintain the fiction of their non-participation, they may insist that negotiations concerning a cease-fire in South Vietnam be conducted with representatives of the National Liberation Front even though it is North Vietnam that holds the majority of American prisoners.

On the U.S. and allied side, the command relationships between U.S. forces and indigenous forces are not the same as it was in Korea. In Korea all forces, including those of South Korea, were under the operational control of the United Nations Command; in Vietnam such an arrangement does not exist. General William C. Westmoreland, the United States Commander in Vietnam does not exercise command over the Republic of Vietnam Armed Forces (RVNAF) nor, indeed,

those U.S. forces being employed in the air campaign against North Vietnam.⁹ Subordinate U.S. commanders do not command Vietnamese Army (ARVN) units as did the Eighth U.S. Army commander over South Korean units. Lacking a single military command it is unlikely that one Senior Delegate to an armistice conference could be empowered to represent all anti-Communist forces as did Admiral C. Turner Joy and later General William K. Harrison in Korea.

Summary. In our comparison of Vietnam with Korea, we have determined that in each case the Communist objective has been the same: to unify by force a divided nation into a Communist state. We have seen that the intervention of United States armed force in each case frustrated the Communist purpose and that a military situation resulted in which neither side was able (or willing) to achieve military superiority that would allow dictating the terms of an armistice. Prisoners of war have been generated by the fighting, the large majority again being held by the anti-Communist forces. In Korea the military situation led to truce talks during which the repatriation of prisoners of war was negotiated. In Vietnam the military situation has

⁹RVNAF is under control of its national commanders. U.S. units operating outside of South Vietnam are under the control of Commander in Chief, U.S. Pacific Command (CINCPAC).

not yet led to truce talks and there is no assurance that it will. The repatriation of prisoners of war must nevertheless be negotiated if the United States is to meet its commitment to its personnel as expressed in the Code of Conduct. Because of the fiction of non-participation by North Vietnam in the southern battles, it appears at this time that separate negotiations may well have to be held with the Hanoi regime and with the National Liberation Front. Difficulties could also be encountered on the United States-Republic of Vietnam side due to the lack of a single unified command. With these similarities and differences between the two situations in mind, we will turn to our study of the Korean negotiations.

CHAPTER II

KOREA: THE INITIAL NEGOTIATIONS

The Korean Armistice was signed three years and one month after the outbreak of hostilities; but during two of those three years negotiations with the enemy were being conducted to terminate the fighting. The most difficult issue to resolve stemmed from fundamental disagreement on whether a prisoner of war had a choice to be repatriated. The United Nations Command (UNC) maintained that he did have a choice and it would return no prisoner of war who indicated he would resist repatriation. The Communist side held that all prisoners of war must be repatriated regardless of their desires. The UNC stayed with its position until the end. The Communists eventually made the necessary concessions that allowed the armistice to be concluded.

To facilitate discussion, the two-year negotiations will be separated into five phases as they pertained to the prisoner of war issue:

Phase I (July-December 1951): The prediscussion phase. Prisoners of war included as an agenda item, but no negotiations on the issue are conducted.

Phase II (December 1951-April 1952): Initial negotiations. Opposing positions are reached on repatriation. Agreement to poll prisoners on their desire.

Phase III (April 1952-October 1952): Deadlock. Results on poll are announced. Repatriation becomes sole unresolved issue. Attempts at compromise fail.

Phase IV (October 1952-February 1953): General Assembly debates. Negotiations in recess. General Assembly passes resolution sponsored by India.

Phase V (February-July 1953): Agreement reached. Sick and wounded prisoners exchanged. Armistice agreement signed.

Each of the above phases will be discussed in turn, with emphasis on the reasoning behind the actions taken by each side.

Determining the UNC Position. The UNC position, initially termed "voluntary repatriation" was in full accord with Western liberal tenets holding that each man has a voice in his own destiny. It was not a position that was assumed automatically by the United States government. It was taken somewhat reluctantly. The initial instructions to General Ridgeway on the prisoner of war question were in the context of confining the negotiations solely to military matters. The armistice was to insure that the Communists did not profit militarily by a cease-fire. The UNC negotiators were to insist on no reinforcement of troops except a one-for-one replacement and prisoners of war were to be exchanged likewise on a one-for-one basis. If agreement on these points could be obtained no manpower increase on one side would result that was not to be enjoyed by the other.¹

¹Message from JCS to Ridgeway, JCS 95354, 30 June 1951.

Armistice negotiations began on July 10, 1951. Both sides agreed without dispute to include as Item Four of the agenda, "Arrangements relating to prisoners of war." In late August the JCS informed General Ridgeway that he could develop for planning purposes a negotiating position based on voluntary repatriation.² At the end of World War II United States leadership had been shocked at the reaction of former Soviet and eastern European personnel who had to be forced to return to their communist homelands. They had been even more severely shocked by the treatment these returnees had received at the hands of the Communists.³ The humanitarian aspect of the UNC position therefore had great appeal.⁴

In November, General Ridgeway submitted to the JCS his plan on prisoner of war negotiations. He proposed to attempt a one-for-one exchange. If the Communists agreed, the UNC could retain or release prisoners who did not want to return since it held many more prisoners than did the Communists.

² Message from G-3/DA to CINCFE, DA 99024, 15 August 1951.

³ Boris Shub, The Choice (New York: Duell, Sloan and Pearce, 1950) p. 36-47 is one account of Russian prisoners repatriated to the U.S.S.R. after World War II.

⁴ That humanitarian considerations were overriding was not an unanimous opinion among U.S. officials. For a discussion of the views on voluntary repatriation held by senior officers in the Department of the Army see Hermes, p. 136-138.

If the Communists insisted upon an all-for-all exchange, Ridgeway was prepared to agree.⁵ The JCS approved these proposals but suggested that Ridgeway try to get Communist agreement to a scheme whereby a joint UNC-Communist team would screen prisoners prior to their release. Those who indicated they did not desire repatriation would remain with their captors.⁶ When Rear Admiral Ruthven E. Libby entered negotiations on December 11, 1951 as head of the UNC subdelegation on Item Four, he did not have a firm mandate. He was to seek agreement on a one-for-one exchange thereby insuring the principle of voluntary repatriation. He was not to insist on such an exchange, however, to the jeopardy of the speedy return of Communist-held prisoners.

Negotiations Begin. The first agreement between Admiral Libby and his Communist counterpart was to exchange rosters of the prisoners of war held by each side. The Communists' rosters indicated they held only 7,142 of the 88,000 South Korean soldiers carried as missing. They admitted to holding only 3,198 of the 7,142 U.S. personnel listed as missing.

⁵ Message from Ridgeway to JCS, DA-IN 3785, 28 November 1951.

⁶ Message from JCS to CINCFE, JCS 89172, 10 December 1951.

Of the 188,000 personnel listed by the Communists as missing, the UNC could provide the names of 169,000 captives.

As had been feared, the Communists insisted on an all-for-all exchange. The Communists thereby would be exchanging only some ten thousand prisoners for over one hundred thousand. An equivalent of some ten divisions would be added to the Communist force. Admiral Libby objected to this inequity and further accused the Communists of not reporting all the prisoners they held.

In explaining the discrepancy between the number of prisoners the Communists had boasted as having captured during the fighting and the number on the rosters they submitted to the UNC negotiators, the Communists claimed that the lists were small because,

we allowed those who wanted to go back home and did not want to join a war against their own country (Koreans) to go back and live a peaceful life at home. And we directly released at the front those foreign prisoners of war (non-Koreans) who did not want to join the war against people who fight for their real independence, who fight for their own people. These measures of ours are perfectly right....⁷

This claim was in essence a statement that the Communists had allowed their captives a choice. They had already practiced voluntary repatriation.

⁷United Nations Command, Korean Armistice Negotiations: Subdelegation on Agenda Item 4, Summary of Proceedings (Pan Mun Jom Meetings: Session 1, 11 December 1951, through Session 71, 15 March 1952), Sessions 10 through 17, 23-30 December 1951.

The UNC presented its first substantive proposal on prisoners of war on January 2nd. It was a crucial point in the negotiations because it was this proposal which first officially linked the UNC to the concept of "voluntary repatriation." Admiral Libby stated that the UNC would accept the concept that had been practiced by the Communists. It would release prisoners who upon their release could exercise individual option as to whether to return to their own army or join the capturing side. It was proposed that the International Red Cross supervise the exercise of the choice. To alleviate any military advantage, Libby proposed that prisoners of war in excess of a one-for-one exchange be paroled, not to fight again against their captors. Similarly those who refused repatriation would not be allowed to take up arms against the other side. The UNC had not only adopted "voluntary repatriation," it had at the same time retreated from its original position of a pure one-for-one exchange, substituting therefore an unenforceable parole system.⁸

Negotiations on the January 2nd proposal continued for the next three months. During the course of these negotiations the UNC completely dropped the phrase "one-for-one"

⁸Ibid., Sessions 19 and 20, 1-2 January 1952.

and "equal numbers" from the repatriation principles. The basic demand of the UNC became "no forced repatriation" in lieu of "voluntary repatriation." The Communists on their side conceded that natives of South Korea held prisoner by the UNC might have an option but that Chinese and North Korean prisoners must be returned.⁹ This was an apparent retreat from their previous "all-for-all" demand.

Agreement to Poll Prisoners. On April 1st the UNC proposed that "the release and repatriation of such prisoners of war shall be effected on the basis of lists which shall be checked by and shall be mutually acceptable to both sides prior to the signing of the Armistice Agreement." The UNC added two understandings, however, which clearly held there would be no forced repatriation stating that, "those who could not be repatriated without the application of force shall be released by the detaining power and resettled...in a location of their own choosing...."¹⁰

In discussing this proposal the Communists insisted on being furnished a round figure on the number of prisoners the UNC might return to the Communist side. They were told 116,000, a figure admittedly based on guesswork but a

⁹ United Nations Command, Korean Armistice Negotiations: Staff Officers' Meetings on Agenda Item 4 (Pan Mun Jom: 23 January-10 May 1952), 36th Meeting, 29 March 1952.

¹⁰ Ibid., 39th Meeting, 1 April 1952

sincere estimate that the Far East Command had furnished the Department of the Army in mid-February. To obtain more accurate information it was agreed that the prisoners would have to be polled. Once again, the Communists appeared to move from their "all-for-all" position. General Ridgeway had previously objected to his superiors in Washington on conducting the prisoner poll, believing that one of his strongest points was the prisoner's choice would be expressed at the exchange point in the presence of representatives of both sides and neutral observers.¹¹

Analysis of Motives. As we have categorized the negotiations, the initial phase terminated with the agreement to poll the prisoners. Before proceeding to the next phase, the motives behind the actions taken to date by each side should be examined. On the U.S. side four objectives can be considered:

1. To obtain the speedy and complete release of U.S. prisoners in Communist camps.
2. To prevent a manpower advantage from accruing to the Communists.
3. To avoid forcing anti-Communist prisoners back into Communist control.
4. To achieve a psychological victory over the Communists by illustrating that a substantial number of their soldiers did not desire to return to the Communist Promised Land.

¹¹Message from JCS to CINCFE, JCS 92059, 15 January 1952.

The first objective was overriding and in order to achieve it, the second objective had been abandoned early with the substitution of the unenforceable parole feature for the initial "one-for-one" position. In compromising on the one-for-one principle, however, it became more difficult to achieve the third objective without forcing a loss of face on the Communists and thereby cause a hardening of their position and a subsequent failure to gain the first objective. While the second objective then was compatible with the third, both were in opposition to the first. The second objective the U.S. was willing to concede, but not the third. Once public opinion was marshalled behind the principle of no forced repatriation, the UNC negotiators' flexibility was lost. It is one thing to compromise to gain agreement; it is quite another to compromise on a humanitarian principle.

At this stage of the negotiations, the United States cannot be accused of merely attempting to score a psychological victory by demonstrating that many prisoners were not desirous of returning to the good life of a communist society. The prisoners had not been polled to determine their views, and while the UNC may have suspected that many would not want to return, they did not know how many would refuse. It can only be concluded that the U.S. purpose was essentially humanitarian.

The objectives behind the Communist position are more difficult to determine and we must to a degree speculate on their substance. First, the more than 100,000 prisoners in UNC camps represented a considerable military asset that the Communists undoubtedly would have preferred to recover. Second, the Communists probably believed, and not mistakenly, that any prisoners that were not returned to them would be released to serve Chiang Kai-shek and Syngman Rhee. Third, the Communists may have suspected that many of their personnel would refuse repatriation. They knew full well that the Chinese soldiers were not volunteers, that many of the Chinese prisoners were ex-soldiers of the Nationalist armies and many of the Koreans ex-soldiers of the army of South Korea. Mass refusal to be repatriated would constitute a major psychological defeat.

All of the reasons outlined above may have played a part in the decision of the Communists to be obstinate on the matter of prisoner exchange. What appears even more likely, however, is that the Communists considered the U.S. prisoners in their hands to be an asset which should not be expended prematurely. Agreement had not yet been reached on other issues of the armistice. Refusing to agree on prisoner repatriation, the Communists retained bargaining power that they could apply to gain concessions on other issues, not only in the Korean negotiations but, if required,

elsewhere in the Cold War. The Communists may have looked to a future when public patience within the United States and its allies would grow thin. The agitation to stop the war, to recover prisoners, could cause deep dissension within the United States and between the United States and its allies. Unfettered by any humanitarian concern for their own personnel or for the prisoners they held, the Communists refused to give up their greatest negotiating asset.

Whatever motives may have guided the parties in the negotiations, much of the discussion was characterized by legal arguments on the interpretation of the Geneva Conventions of 1949. The Communist side presented a "literalist" argument based on the first paragraph of Article 118 which reads "Prisoners of war shall be released and repatriated without delay after the cessation of hostilities." They then cited Article 7 which states that "Prisoners of war may in no circumstances renounce in part or entirety the rights secured to them by the present Convention..."¹²

Opposed to the literal interpretation of the Communists was the UNC interpretation that in considering the Convention in its whole context there was nothing to lead one to believe a prisoner of war must be forced to return home

¹²International Committee of the Red Cross. The Geneva Conventions of August 12, 1949 (Geneva: 1950) p. 79, 123.

when that was not his desire. The UNC maintained that the convention insured an opportunity to go home but did not negate the right of a State to grant political asylum to an individual when it selected to do so. The UNC contended that the spirit of the Convention, to protect the individual rights of prisoners of war, clearly would be violated by forcible return.¹³

The UNC was correct in that the drafters of the Convention had not envisaged a Detaining Power having to use force to return a prisoner of war to his homeland. Article 118 had been written under the assumption that the great majority would desire repatriation, so that the guarantee of this right was of primary importance. An amendment by Austria had actually proposed provisions for voluntary repatriation but had been rejected on the grounds that such provision might be used to the detriment of the prisoner of war and allow undue coercion by the Detaining Power.¹⁴

The UNC argument, however, was not universally convincing. After the conclusion of the armistice, Admiral C. Turner Joy, Senior UNC Delegate, expressed reservations stating that "the principle of voluntary repatriation was an

¹³Dean Acheson, "The Prisoner Question and Peace in Korea," Dept. of State Bulletin, November 10, 1952, p. 746-747.

¹⁴Julius Stone, Legal Controls of International Conflict, (New York: Rinehart, 1954), p. 280-281.

arbitrary one, commanding no solid support in the Geneva Conventions except by unilateral interpretation of that covenant" and that the Communist interpretation that the Geneva Convention required the return of all prisoners to the side of their origin was "a correct literal interpretation of that covenant."¹⁵

Perhaps the arguments of the UNC would have found more widespread support if they had contained less lofty appeals to humanitarianism and more legal substance. Article 118 calls for release and repatriation. Forcible repatriation obviously would have required detention and repatriation through conveyance of the prisoner of war under some sort of restraint to the authorities of his own country.¹⁶

The appeal of the Communists to the Geneva Conventions was entirely cynical. Admiral Libby had pointed out to them that they themselves had already practiced voluntary repatriation. They violated repeatedly other articles of the convention, such as the requirement of furnishing rosters of prisoners to the International Red Cross, allowing inspection

¹⁵C. Turner Joy, How Communists Negotiate, (New York: Macmillan, 1955) p. 150-151.

¹⁶Jaro Mayda, "The Korean Repatriation Problem and International Law," American Journal of International Law, July 1953, p. 431.

by that body, and the proper marking of prisoner of war camps--not to mention their maltreatment of prisoners, as was revealed later.

CHAPTER III

KOREA: THE DEADLOCK

The Polling of Prisoners. On April 8th screening of prisoners of war commenced in the UNC camps. No effort was made by the UNC to influence prisoners to refuse repatriation. Quite the reverse was true. The UNC leaned over backwards to encourage prisoners to choose repatriation. At UNC insistence the Communist negotiators had provided an amnesty statement that was read to all prisoners prior to the screening.¹ The screening was completed on the 15th. The results were as shocking to the UNC as to the Communists.

On April 19 the Communist negotiator was informed that of the 170,000 military and civilian prisoners in UNC hands, only about 70,000 would return to the Communists without the use of force: 7,200 civilian internees; 3,800 South Koreans; 53,900 North Koreans; and 5,100 Chinese. Whatever reason the Communists initially had for wanting an all-for-all exchange was now submerged in their need to overcome the psychological blow and propaganda defeat caused by over one-half of their personnel refusing to return home. The Communists felt they had been deliberately deceived by

¹United Nations Command, Staff Officers' Meetings on Agenda Item 4, 40th and 41st Meetings, 2 and 4 April 1952.

being furnished the 116,000 figure only to have it reduced to 70,000.² They felt they had been duped and led into a propaganda trap. They had certainly fallen into a trap; but the UNC, in its ignorance of the true extent of the prisoners' feelings, had not known itself of the trap's existence.

The Package Proposal. The next move by the UNC and one long in preparation in the event that the Communists did not accept the results of the prisoner poll, was to present a package proposal that the UNC hoped would resolve all outstanding issues. The three issues remaining were:

1. Repatriation of prisoners of war.
2. Whether the Communists were to be allowed to rehabilitate airfields in North Korea that had been destroyed by U.S. bombings.
3. Whether the U.S.S.R. could serve as a member of the Neutral Nations Supervisory Commission.

The UNC proposal conceded the airfields issue in exchange for a concession on naming the U.S.S.R. to the commission. The UNC position on "no forced repatriation" was substantially unchanged, however. Admiral Joy presented this proposal in executive plenary session on April 28th. The Communists side, still smarting from the results of the camp screening, rejected it, but the only unresolved

²Ibid., 43rd Meeting, 20 April 1952.

issue now remaining was the repatriation of prisoners of war. The negotiations were in complete deadlock as the UNC had officially taken its "final and irrevocable position."³

War in the PW Camps. Communist efforts now turned to a massive and worldwide propaganda campaign to discredit the screening of prisoners that had resulted in over half of their captured personnel refusing to return to the Communist side. In this effort they exploited thoroughly the incredibly bad administration and lack of control in the prisoner of war camps of the UN Command. The UN authorities in charge of the camps did not know at the start of the negotiations exactly how many prisoners they held, who they were, or what their desires might be toward repatriation. In certain compounds they did not have internal control of the prisoners, such control having passed to Communist organizers inside the fences. The camp authorities had simply failed to visualize that hardcore Communist prisoner groups would grow up inside the crowded camps and that the leadership of these groups could still receive instructions

³United Nations Command, Korean Armistice Negotiations: Military Armistice Conferences, Record of Events and Transcript of Proceedings (Pan Mun Jom Meetings 1-132: Session 27, 25 October 1951, through Session 158, 19 July 1953), Session 44, 28 April 1952.

from and remain responsive to the Communist command in North Korea.⁴

As early as September 1951 violence had taken place in the camps, Communist leaders having murdered 18 prisoners after trial by a self-appointed "people's court." On December 18th, 14 prisoners died in riots as Communist and anti-Communist prisoner factions fought to control the compounds. In February 1952, when U.S. troops entered a compound containing 5,600 Korean civilian internees in order to screen out hard-core Communists, they were attacked by some 1,000 to 1,500 prisoners. In the resulting fight, 77 prisoners were killed, but the compound was not screened. On March 13 Communist prisoners stoned their Korean guards. Twelve prisoners were killed in the retaliation that ensued.

During the screening in early April, seven compounds containing 37,000 North Koreans refused to submit to screening. They were all counted as desiring repatriation. The prime example of Communist control within some of the compounds and its direction from North Korea in order to discredit the screening process occurred on May 7. On that date the U.S. general officer in command at Koje-Do was captured by the prisoners, held inside the compound for three days, and tried by a prisoner court. He was released after the new commander signed what amounted to admission of U.S. brutality in carrying out the screening. The

⁴"The Communist War in POW Camps" Dept. of State Bulletin, Feb. 16, 1953, p. 273.

Communists, of course, gave this unwitting admission worldwide publicity as well as demanding explanations at the negotiating table.

On June 10th the UNC finally regained control of the Communist compounds. To do so required a battle in which 31 prisoners were killed (many by the Communists themselves). In one compound peaceably put under control, bodies of 16 prisoners murdered by their fellow inmates were found.⁵

The disorders in the prisoner of war camps were exploited to the maximum by the Communists, not only at the negotiating table but by their worldwide propaganda apparatus. Even in friendly countries such as Britain and Japan responsible persons were expressing opinions which indicated serious weakening of the international support that the UNC had been receiving on its screening program and on the principle of voluntary repatriation. The Communists had purposely and effectively employed their personnel in the prison camps as a propaganda weapon and negotiating asset.⁶

Despite the flat Communist rejection of the package proposal of April 28th and the constant stream of invective the UNC negotiators had to endure, screening of prisoners continued during April and May. By June the last compound

⁵Hermes, p. 233-260 for description of PW camp disorders.

⁶Ibid., p. 262.

had been screened with 83,071 prisoners requesting repatriation and 86,867 stating they would resist it. It was almost a year after the armistice negotiations had begun that the UNC negotiators had accurate data on which to base repatriation negotiations.

Attempts to Bargain. In July the Communists indicated for a third time that they might be willing to compromise on their position. While considering in executive plenary session the prisoner of war article of the draft armistice, the senior Communist delegate frankly told General Harrison, now UNC Senior Delegate, that the UNC must come up with a figure approximating 110,000 repatriates and that this figure must include all Chinese prisoners.⁷ General Harrison then released to them the 83,000 figure obtained in the latest screening. The Communists rejected the UNC list once again. The UNC had held firm to "no forced repatriation."

On September 28 General Harrison proposed to the Communists three options which it was hoped would save Communist face. All three choices retained the principle of no forced repatriation and provided for transporting non-repatriates to a demilitarized zone. The options

⁷United Nations Command, Military Armistice Conferences, Sessions 104 and 105, 13 and 18 July 1952.

varied as to how further determination of the non-repatriates' status was to be made, such determination being either observed or conducted by combinations of International Red Cross and joint military commissions. On October 8 the Communists rejected this proposal and the negotiations recessed on the initiative of the UNC.⁸

The recess of the negotiations closes our third phase of the negotiations. The attempt by the UNC to trade a concession on airfield rehabilitation for a concession on repatriation had failed. The Communist concessions had narrowed the controversy to Chinese captives who did not desire to return to the volunteer army, but the deadlock seemed permanent. The UNC could not alter its position without either renouncing a moral principle or admitting that its screening process was as dishonest as the Communist propaganda claimed it to be. The Communists on the other hand had suffered a psychological defeat before the world audience and a loss of face that they would not accept.

When the UNC agreed to the Communist suggestion that the prisoners be polled and when the results became known, both sides found themselves suddenly in a position from

⁸Ibid., Session 122, 8 October 1952.

which only surrender rather than negotiation was possible. The objectives of both sides had in the end been determined by the sum of the individual desires of 14,000 captured Chinese soldiers.

Unilateral Release. Late in June the UNC began the release of 27,000 Korean civilian internees. This was the first unilateral release of prisoners by the UNC and even though they were classified as civilian internees rather than prisoners of war, the Communists objected bitterly. They were informed that the release was an internal affair of the South Korean Government and the UNC negotiators refused to discuss it further.⁹ General Harrison suggested at this time that if the Communists failed to accept the revised screening figures (83,071 repatriates), the UNC should unilaterally release the non-repatriates, presenting the Communists with a fait accompli. Such a scheme might have permitted the Communists to save face and thereby speed agreement. Harrison's superiors did not approve.¹⁰

Actually the idea of unilateral release of non-repatriates had been suggested to General Ridgeway as early as February 1952 by Secretary of the Army Earl D. Johnson and

⁹Ibid., Session 88, 23 June 1952.

¹⁰William H. Vatcher, Jr., Panmunjom: The Story of the Korean Military Armistice Negotiations (New York: Praeger, 1958). p. 157-158.

Vice Chief of Staff for the Army, General John E. Hull, during a visit to Tokyo. Ridgeway had feared then that if the UNC followed such a plan it would not only open itself to charges of deceit but would endanger the lives of prisoners in Communist hands.¹¹

In October the UNC reclassified 11,000 South Koreans from "prisoner of war" to "civilian internee" and began to release them. The Communist protests were again ignored. Once again General Harrison suggested that if the Communists persisted in demanding forced repatriation, the UNC should release all the non-repatriates. General Mark W. Clark, the new UN Commander, like General Ridgeway before him, was not ready to accept this suggestion.¹²

The General Assembly Debates. Until the breakdown of the talks in October 1952, the United Nations General Assembly had taken no part in the negotiations. Partly to counter Communist propaganda and partly to put the weight of the General Assembly behind the principle of no force repatriation, the Secretary of State delivered in the U.N. Political Committee a three-hour review of the history of the Korean question. In his speech Dean Acheson pointed out that the U.S.S.R. had accepted the principle of voluntary

¹¹Hermes, p. 150.

¹²Ibid., p. 278.

repatriation in the Treaty of Brest-Litovsk in 1918 and that twice during World War II the Russians had offered what amounted to voluntary repatriation to German soldiers at Stalingrad and Budapest. He also stated that the conflict over repatriation had been "wholly unexpected" and "surprising" to the U.N. Command.¹³

India took the initiative in offering on November 17th a resolution to the General Assembly. This resolution after discussion and amendment approved repatriation of all prisoners of war following the signing of the armistice. All prisoners of war would be turned over to a Neutral Nations Repatriation Commission in a demilitarized zone. The Commission would make every effort to facilitate their return but "force shall not be used against prisoners of war to prevent or effect their return to their homelands." Each side would be free to explain to the prisoners their rights and all prisoners who had not chosen repatriation after 90 days would be referred to the political conference provided for in the armistice agreement. If this conference did not settle the non-repatriates' fate within 30 days, the prisoners would be turned over to the United Nations for disposition.¹⁴

¹³Acheson, "The Prisoner Question and Peace in Korea," p. 745.

¹⁴"Text of Resolution on Prisoners of War, 3 December 1952," Dept. of State Bulletin, 8 December 1952, p. 916-917.

The U.S.S.R. and the Communist bloc were adamant against the resolution. It was roundly denounced by Soviet Foreign Minister Vishinsky and on November 28th flatly rejected by Chou En-lai. On December 3rd a U.S.S.R. counter-resolution calling for forcible repatriation was voted down and the Indian resolution adopted 54 to 5, only the Communist bloc opposing.

While there was little chance of the Communists accepting the resolution, it did demonstrate to the Communists that world opinion as represented in the General Assembly was still on the side of voluntary repatriation despite the Communist propaganda and contrived disorders in the prisoner of war camps.

As the General Assembly concluded its debates, the President-elect of the United States, General Eisenhower, was visiting Korea. His declaration at the end of his visit on December 6 characterized as ill-founded any hope the Communists might have held that the incoming administration would be willing to compromise on voluntary repatriation.¹⁵ After the Republican Administration took office the scheme of unilateral release of the non-repatriates was once again recommended, this time by General Clark.¹⁶ Events, however,

¹⁵ Press statement, Dwight D. Eisenhower, Seoul, 1952, as published in U.S. News and World Report, 12 December 1952, p. 44.

¹⁶ Mark W. Clark, From the Danube to the Yalu, (New York: Harper, 1954), p. 262.

soon overcame further discussion of the concept and its implementation.

The fourth phase of the negotiations carried no change in the basic position of each side. If measured by forcing the UNC to compromise on the principle of no forced repatriation and by persuading other nations to abandon the UNC position, the Communists' propoganda campaign and its supporting disorders in the prisoner of war camps had been a failure. The United States presidential election had been completed and a new administration was in office. There was no indication, however, of a weakening of U.S. policy in the Far East.

CHAPTER IV

KOREA: AGREEMENT

The Key Concession. On February 22, 1953, General Clark proposed to the Communists an immediate exchange of all sick and wounded prisoners of war. The Communist reply of March 28th agreed to the UNC proposal. Liaison officers met on April 7th and on April 9th the exchange of sick and wounded prisoners of war was agreed upon. The exchange, dubbed "Little Switch," took place from 21 through 26 April. On the UNC side 5,194 Koreans, 1,030 Chinese and 446 civilian internees--a total of 6,670--were returned to the Communists in exchange for 684 prisoners of war, including 149 U.S. personnel. Each side had released approximately five percent of the prisoners it held.

As gratifying as the exchange of sick and wounded prisoners was to the UNC, even more promising was the hint of a break in the Communist position contained in their reply of March 28th. In it the Communists stated "settlement of the question of exchanging sick and injured persons on both sides during the period of hostilities should be made to lead to the smooth settlement of the entire question of prisoners of war...."¹ This was followed by a statement

¹United Nations Command, Korean Armistice Negotiations: Liaison Officers' Meetings (Pan Mun Jom: 10 October 1951-29 July 1953), Letter from Marshal Kim Il Sung and General Peng Teh-huai to General Mark W. Clark, 28 March 1953, Enclosure to Memorandum for the Record, Meeting 28 March 1953.

on March 30th by Chou En-lai which appeared to contain

the key concession. Chou state that both sides,

should undertake to repatriate immediately after the cessation of hostilities all of those prisoners of war in their custody who insist upon repatriation (italics added) and to hand over the remaining prisoners of war to a neutral state so as to ensure a just² solution to the question of their repatriation.

Negotiations Resume. While Chou's statement offered much promise there were still many questions to be answered and clarified. It was agreed to resume plenary sessions on the matter on April 26th. The long recess was at an end. Initial negotiations were based on a Communist proposal and it quickly became evident that there were three major areas of disagreement. Two concerned the explanations that were to be made to the non-repatriates, where they were to be held and how long would be allowed for them. The Communists wanted six months in a neutral state, the UNC wanted 60 days in Korea. The third was the selection of the neutral state. At this point General Harrison threatened that if the talks broke down again, the UNC would unilaterally release all prisoners who did not desire repatriation.³

²Ibid., Statement of Chou En-lai, 30 March 1953, Enclosure to Memorandum for the Record, Meeting, 2 April 1953.

³United Nations Command, Military Armistice Conferences, Sessions 126 and 127, 29 and 30 April 1953.

On May 7th a new Communist proposal was tabled. In ~~it the question of transporting non-repatriates physically~~ out of Korea was conceded and a Neutral Nations Repatriation Commission suggested. Poland, Czechoslovakia, Switzerland, Sweden and India were the proposed members of the commission, each was to furnish an equal number of armed personnel and to share in the task of maintaining custody of the non-repatriates in their original places of detention. This plan bore a close resemblance to that contained in the General Assembly resolution and was believed by the UNC to provide a basis for negotiating an acceptable armistice.

The U.S. Government desired that four conditions be added to the proposal. First, unanimity should be the basis of business conducted by the Repatriation Commission. Second, a time limit of 30 days should be imposed upon the political conference for settling the non-repatriates' future. Third, India alone should furnish all the armed forces and operating personnel. Finally, not more than 90 days could be allowed for the Communist explanations to the non-repatriates. These four conditions were put to the Communists in a counter-proposal on May 13th. The conditions were not accepted.⁴

On May 25th the UNC submitted a revised proposal. In it the UNC continued to insist that all armed forces

⁴Ibid., Sessions 138 and 139, 13 and 14 May 1953.

and operating personnel be Indian. It also held out for a maximum of 90 days for explanations. The unanimity issue was conceded; majority rule for the commission as desired by the Communists being accepted. The UNC would agree either to turn disposition of the non-repatriates over to a political conference with a 30-day time limit and then release them, or alternatively let the U.N. General Assembly determine their disposition.⁵

On June 4th the Communists accepted the UNC conditions, and by June 8th staff officers of both sides agreed on the final details of the terms of reference for handling prisoners of war. As the third anniversary of the start of hostilities and the second anniversary of the start of negotiations approached, it appeared that an armistice was finally in sight.

Syngman Rhee Objects. The UNC and the Communists had agreed, but the government of South Korea led by the doughty Syngman Rhee was yet to be reconciled. Rhee's objections to the armistice stemmed from his life-long and continuing objective of a free unified Korea, an objective that the United States and its U.N. allies had long since abandoned. As regards specifically the

⁵ Ibid., Session 142, 25 May 1953.

agreement on handling prisoners of war, Rhee insisted that no Indian troops would be allowed on the territory of the Republic of Korea, that Communists explainers would not be allowed in his rear areas, and finally that no Korean prisoners would be turned over to troops of India, a nation Rhee considered as having Communist inclinations.⁶

How far Rhee was willing to go to upset the approaching armistice could only be guessed by U.S. officials. On 18 June their fears were confirmed. Between midnight and dawn that day, with the collusion of South Korean security troops, approximately 25,000 anti-Communist North Korean prisoners of war escaped. By the end of June only 8,600 Korean non-repatriates remained of the some 35,400 confined on June 17th. Syngman Rhee had carried out what had been practiced previously by the Communists and what had often been considered by U.S. officials: he had unilaterally released prisoners of war who did not desire to be repatriated. While the UNC had considered such a measure as a possible means of expediting an armistice, Rhee had used it as a means by which he hoped to forestall an armistice.

⁶(1) Richard C. Allen, Korea's Syngman Rhee (Rutland, Vt.: Tuttle, 1960), p. 163.

(2) Clark, p. 264-265.

The UNC was now faced with negotiating on two fronts.

~~There was the task of getting Rhee's acceptance of the~~
armistice and the task of persuading the Communists to continue negotiations despite Rhee's release of prisoners. The first task was accomplished by Mr. Walter Robertson, Assistant Secretary of State for Far Eastern Affairs, who in long conversations with Rhee between June 24 and July 11 reaffirmed once again that no anti-Communist prisoners would be returned to the Communist side and won Rhee's cooperation with the armistice.

Agreement and Repatriation. The task of continuing negotiations with the Communists proved less difficult than winning the reluctant cooperation of Syngman Rhee. The negotiations had been interrupted on June 20 as a result of the unilateral prisoner release, plenary sessions not resuming until July 10th. By July 19th the Communists indicated a willingness to go ahead with an armistice. A supplementary agreement on prisoners of war was then completed, providing that all non-repatriated prisoners of war would be delivered to the Neutral Nations Repatriation Commission in the demilitarized zone. Rhee's conditions of having neither Indian troops nor Communist explainers on South Korean soil were thus satisfied. The Armistice Agreement was signed by the respective commanders on July 27, 1953.

On September 23rd the UNC turned over more than 22,000 non-repatriates to the Neutral Nations Repatriation Commission.

Of the 14,704 Chinese non-repatriates turned over, 440 elected to return to Communist control, 12 went to India with the custodial force, and 14,235 returned to UNC control.

Of the 7,900 Korean non-repatriates, 188 returned to the Communists, 74 went to India, and 7,604 were returned to UNC control. By February 19, 1954 the Chinese under UNC control

had been moved to Taiwan and the Koreans released. In all exchanges, including those of the sick and wounded in April, 83,121 UNC-captured prisoners were repatriated, some 27,000 short of what the Communists had indicated willingness to settle for in July of the previous year.

The last phase of the prisoner of war negotiations was marked by the complete capitulation by the Communists on the principle of nonforcible repatriation. When Chou En-lai made his announcement on March 31, 1953, there was in essence agreement that no prisoner of war would be forced to return to the side from which he was captured. From that date, it is apparent now that the Communists desired to end the Korean situation. The final agreement on the disposition of the non-repatriates was not fundamentally different from General Clark's proposals to the Communists of September 28, 1952 or from the General Assembly Resolution of December 3, 1952.

We can only speculate as to the motives behind the Communist decision to concede on the repatriation issue and conclude an armistice agreement. The concession was, however, a significant item of the "peace offensive" that followed the death of Stalin on March 5, 1953. The reasons behind this "peace offensive" were undoubtedly varied and may have been quite unrelated to the prisoner of war issue or even to the Korean situation.⁷ The concession on repatriation at this time does demonstrate, nevertheless, that prisoners of war in the Communist view are to be used to facilitate political maneuverings and to serve political objectives.

⁷John Foster Dulles, address, "The First 90 Days," Dept. of State Bulletin, 27 April 1953, p. 603-608, for view of reasons behind peace offensive.

CHAPTER V

LEGACY AND LESSONS

The Negotiations in Retrospect. A striking feature of these long negotiations was that the only true negotiating in the sense of give and take, occurred between December 1951 and April 1952. Once the UNC had made its "final and irrevocable" offer, its principle of voluntary repatriation was not negotiable. From December until April the UNC had moved from a "one-for-one" position to that of "no forced repatriation" and the Communists had moved from "all-for-all" to an apparent willingness to accept a figure of some 116,000 repatriates. After April 1952 the Communist offer to accept voluntary repatriation for South Koreans and the later offer to accept a figure of 110,000 if it included all Chinese were both rejected by the UNC. The UNC efforts to have the Communists accept voluntary repatriation by cloaking it in various procedural arrangements at the transfer point were equally fruitless. Only when the Communists conceded could the armistice be brought about.

It should be recognized that the Communists showed more flexibility in these negotiations than the UNC. Although they had themselves applied voluntary repatriation, they insisted in the beginning of negotiations upon the principle of complete repatriation. From this position

they went to partial voluntary repatriation and finally agreed to the UNC principle. Prisoners of war apparently were to be used for whatever advantage the Communists might gain from them under a particular set of circumstances.

Voluntary Repatriation - A Legacy. The inflexibility of the UN position and the possibility of its having been a major cause of prolonging the Korean War gave rise to the question whether establishing the principle of voluntary repatriation was worthwhile. The long additional months UN personnel had to endure in Communist prison camps and the additional casualties suffered on the battlefield were indeed a high cost. Admiral Joy writing after the Armistice was concluded, described the cost as follows:

"Voluntary repatriation" placed the welfare of ex-Communist soldiers above that of our own United Nations Command personnel in Communist prison camps, and above that of our United Nations Command still on the battle line in Korea.

Voluntary repatriation cost us over a year of war, and cost our United Nations Command prisoners in Communist camps a year of captivity. The United Nations Command suffered at least 50,000 casualties in the continuing Korean War while we argued to protect a lesser number of ex-Communists who did not wish to return to Communism."¹

If it was thought that in the future Communist soldiers, recalling the terms of the Korean Armistice would desert in mass, then conflicts at the Bay of Pigs, on the India-

¹Joy., p. 152.

China border and in Vietnam have failed to bear out the theory. President Eisenhower, however, taking a longer view of the principle's influence on the future, stated:

The armistice in Korea has inaugurated a new principle of freedom--that prisoners of war are entitled to choose the side to which they will be released. In its impact upon history, that one principle may weigh more than any battle of our time.²

Whether insisting on voluntary repatriation was correct or not at the time of Korea, we are already seeing its impact on the future. The United States and its allies in Korea sacrificed heavily to establish this "new principle of freedom." Even if the sacrifice were a mistake in Korea, it cannot be corrected now. In negotiations over the prisoners of war of Vietnam which may be held in the future the "new principle of freedom" cannot be abandoned. Voluntary repatriation for better or for worse, is Korea's legacy to Vietnam.

Lessons from Korea. Though reversal of our Korean position of voluntary repatriation is not a feasible

²Dwight D. Eisenhower, May 31, 1954 address "The American Concept of Education," Vital Speeches of the Day, June 15, 1954, p. 516. Note that although the UNC has argued that voluntary repatriation was in accord with the Geneva Conventions of 1949, Eisenhower refers to it as a new principle.

corrective action to be applied to Vietnam negotiations, it does not mean that there are no lessons to be derived from the Korean talks that have value for Vietnam. Review of the Korean prisoner of war negotiations discloses six errors made by the United States that may have delayed the armistice and hence the repatriation of its captured personnel. They will be discussed below in the order in which they occurred.

Mistake 1: Not insisting that prisoner of war matters be discussed earlier in the armistice negotiations. Discussions on the prisoner of war question did not begin until five months after the armistice talks started. The settling of important issues prior to the prisoner of war question being discussed meant that the UNC negotiators had few remaining concessions to make that could be traded for Communist concessions on the prisoner of war issue. By the time the "package proposal" tying the prisoner of war issue to other issues, was offered the only substantive question yet unresolved was the rehabilitation of airfields in North Korea. This resulted in the UNC negotiating for the return of its prisoners, about whom it cared deeply, while having little to concede except Communist prisoners, about whom the Communists cared nothing. The lesson is that arrangements for repatriation of prisoners of war should be settled (or preferably, carried out) before

the Communists have gained all the concessions they consider vital on other issues. If the Communists refuse to agree on repatriation of prisoners of war, we must refuse to agree on a matter of importance to them.

Mistake 2: Introducing a political issue, voluntary repatriation, into negotiations for a military armistice.

It would be naive to hope that a military armistice conference does not have political overtones and a political impact, or indeed that such a conference, like war itself, is not a political act. Deliberately inserting the highly political issue of voluntary repatriation into the prisoner of war negotiations, however, was not in the interest of an early truce. That the UNC purpose might have been entirely humanitarian does not alter that conclusion. When the political issue resulted in a psychological defeat for the Communists, their greatest requirement became time. Time was needed to prove that the UNC was brutalizing Communist prisoners into refusing repatriation, to allow the U.S. and its allies to grow weary of the issue, and to let the world forget the results of the screening. It was almost a year after the poll before the Communists felt they could afford a concession. Had the UNC continued to insist, as it did initially, on a purely military armistice, it could have magnanimously offered to exchange as many as six prisoners for every one received and never have had to

bring up the voluntary repatriation issue. One cannot ~~state with assurance that this would have brought about~~ an earlier armistice, but it would have avoided the political issue and precluded what may have appeared to the Communists either as an obligation to spend months attempting to discredit the prisoner polling or an opportunity to delay the negotiations. The lesson is that there is a legitimate basis for avoiding political issues in a military armistice conference; it should be exploited when this is in our interest.

Mistake 3: Not having accurate information on the desires of prisoners of war as to their repatriation. Had the UNC decided not to introduce the political issue of voluntary repatriation into the armistice talks it could not in fact have offered a two, three or six to one exchange because of its abysmal ignorance of the human material it had in its camps. Its prisoner of war camps were operated with the sole intention of keeping neutralized the confined manpower while complying with the obligations of the Geneva Prisoner of War Convention. Only when it was decided to use this manpower in negotiations did the UNC discover the complications involved.

Had the UNC negotiators realized the extent of anti-Communist feeling in the prisoner of war camps, they could have anticipated the Communist reaction to the results of

a prisoner poll. The chain of events that would follow could have been predicted and therefore avoided. As it turned out, until the results of the prisoner screening were learned in April 1952, the UNC had been negotiating in the dark; insisting upon voluntary repatriation when such insistence, unbeknownst to them, was leading inevitably to deadlock. The direct confrontation on the principle of voluntary repatriation need not have occurred had the UNC known the facts. Additionally, the round figure of 116,000 repatriates would not have been furnished and the subsequent Communist charge of bad faith avoided. The lesson from this mistake is to have accurate information on all factors which will influence the negotiations before discussions are started.

Mistake 4: Conducting a unilateral poll of prisoners.

Once the Communists agreed to a poll of the prisoners, the UNC should not have conducted the poll unilaterally. If the results of a UNC-conducted poll turned out badly for the Communists, they could claim a fraudulent poll. If the poll were made by neutral or joint commissions, the Communists would have had a much more difficult time arguing fraud. General Ridgeway's early reluctance to conduct the poll and recommendation that the chore be left to a neutral commission at the transfer point, were well-founded. Once

the Communists learned of the extent of the anti-Communist feeling, they had no choice but to object to a second poll, even one conducted by a neutral. If a joint or neutral commission on the other hand had made the original poll, and every Communist had expressed a desire to return to his homeland, it would have considered quite normal. The lesson is that the UNC had much to gain by giving the poll an aura of legitimacy that was difficult to dispute.

Mistake 5: Utilizing as a propaganda theme the refusal of Communist prisoners to be repatriated. It is understandable, given the intense competition of the Cold War of the early 1950's, that any opportunity was seized to demonstrate disillusionment within the enemy camp. It is equally true that with a free and aggressive press the United States is not always able to present news in a restrained fashion. Nevertheless, treating the defection of Communist prisoners as a major ideological victory was definitely not in the interest of an early armistice or an early repatriation of American prisoners of war. If it had been understood that such a propaganda victory was actually counterproductive of the U.S. objective in Korea of obtaining an honorable cease-fire, that objective might well have been reached earlier. We were trying to stop the military phase of the war, but were still campaigning

vigorously on the psychological front. The lesson, as Admiral Joy put it, is that "a military armistice conference is no place to seek a propaganda victory."³

Mistake 6: Failure to take greater advantage of the scheme of unilaterally releasing prisoners. On three separate occasions during the negotiations large scale releases of Korean prisoners were made without the agreement of the Communist side. The Communists, prior to the start of the negotiations, had by their own admission also made large scale releases. On at least four occasions unilateral release was proposed by senior responsible U.S. officials. In each case concern that such action would jeopardize the return of American prisoners was the principal reason for not going through with the scheme. While the Communists objected vehemently on every occasion when the UNC released prisoners, there is no indication that the release either delayed the armistice or jeopardized the return of U.S. prisoners.

The release of Korean prisoners would have been a relatively simple matter, as Syngman Rhee proved to everyone's dismay but his own. The Chinese prisoners were a different matter. Sending them to Taiwan may have been politically unpopular; as Chiang had been driven from the mainland only two years before and was discredited in the

³Joy, p. 177.

eyes of much of the world. Nevertheless it was to Chiang that these people were eventually sent. If the prisoners who did not desire repatriation had been sent to Taiwan prior to the start of the negotiations, and their desire to go to Taiwan confirmed by neutral observers, there was nothing that the Communists could have done but accept the fait accompli. The lesson from this mistake is that if voluntary repatriation is to be practiced, it should be done unilaterally and before negotiations have started.

While perhaps not falling in the category of negotiating "mistakes," there were other difficulties that the UNC encountered which are important to the understanding of the Korean prisoners of war negotiations. The first one, causing extreme embarrassment to the UNC negotiators, was the lack of firm control over the prisoner of war camps. This was a basic reason for not knowing the desires of the prisoners of war on repatriation and it would have complicated unilateral releases and could have made a shambles of any joint or neutral polling of the prisoners. It also provided the means by which the unilateral screening was discredited.

A second difficulty was the lack of an agreed position with the government of the Republic of Korea. That government did not object to the formulation of prisoner of war arrangements as much as it did to the armistice itself.

Syngman Rhee's prisoner release was not successful in preventing the armistice but if they had so desired it would have provided an opportunity for further stalling by the Communists.

Such were the principal errors made by the United States in the process of establishing the principle of voluntary repatriation. To determine if the lessons learned in Korea have application to the negotiations over prisoners of war that might evolve in Vietnam, it is necessary to examine the current prisoner of war situation there. This is the object of the following chapter.

CHAPTER VI

VIETNAM: THE PRISONER OF WAR SITUATION

Application of the Geneva Convention. The 1949 Geneva Convention relative to the treatment of prisoners of war is applicable to the Vietnamese conflict just as it was to the Korean. Article 2 states that "the present Convention shall apply to all cases of declared war or of any other armed conflict *[italics added]* which may arise between two or more of the High Contracting Parties even if the state of war is not recognized by one of them." The Republic of Vietnam (Saigon), the Democratic Republic of Vietnam (Hanoi) and the United States are all signatories to the Convention. Article 3 makes reference to "the case of armed conflict not of an international character." Whether the Vietnam conflict is or is not a civil war is therefore immaterial as far as the application of the Convention is concerned.¹

Included in the categories of captives who are to be considered as prisoners of war per Article 4 are "members of the armed forces," which certainly includes the crewmen of U.S. Air Force and Navy aircraft, and also "members...of organized resistance movements" provided they fulfill the following conditions:

¹ICRC, The Geneva Convention, p. 75.

that of being commanded by a person responsible for his subordinates; that of having a fixed distinctive sign recognizable at a distance; that of carrying arms openly; that of conducting their operations in accordance with the laws and customs of war.²

Few of the conditions of Article 4 are met by the Viet Cong guerrillas, particularly those pertaining to the requirements to be readily identifiable as combatants. Nevertheless, in order to encourage reciprocal treatment of American and South Vietnamese captives, the United States and the Republic of Vietnam interpret Article 4 liberally and grant prisoner of war status to many captured guerrillas who do not qualify under a literal interpretation of Article 4. In general the rights of prisoners of war are accorded to all captives captured under arms during the course of military operations.³

The United States/Republic of Vietnam Program. As was true in Korea, the United States and its allies attempt to comply with the provisions of the convention despite the difficulties presented by an insurgency situation. In June, 1965 the International Committee of the Red Cross (ICRC) addressed letters to the governments of the United States,

²Ibid., p. 76-77.

³International Committee of the Red Cross, International Review of the Red Cross, April 1967, p. 188.

the Republic of Vietnam and the Democratic Republic of Vietnam and to the National Liberation Front reminding each of their obligations under the Prisoner of War Convention. In their replies the United States and the Republic of Vietnam both assured the ICRC that treatment of prisoners by their forces would be in full accord with the Convention.⁴ This position was reiterated at the Honolulu Conference of February 1966, where "the leaders of the two governments. . . reaffirmed their determination. . . to adhere to the Geneva Conventions of 1949 on the treatment of prisoners of war"⁵ To carry out this intent, a prisoner of war camp construction program was started in Vietnam. The initial camp was completed at Bien Hoa in the Spring of 1966, the first prisoners being interned there in May of that year.⁶

By agreement between the Commander, United States Military Assistance Command, Vietnam (MACV) and the government of the Republic of Vietnam, all prisoners of war taken by the United States forces in South Vietnam are ultimately

⁴ (1) Letter, Secretary of State Dean Rusk to President of International Red Cross Samuel Gonard, 10 August 1965. Text in Dept. of State Bulletin, 13 September 1965, p. 447.

(2) Letter, Minister of Foreign Affairs Tran Van Do to ICRC Representative Andre Durand, 11 August 1965. Text in International Legal Materials, November 1965, p. 1174.

⁵ Joint Communique, 8 February 1966, Honolulu. Text in Dept. of State Bulletin, 28 February 1966, p. 304-305.

⁶ R.W. Applie, Jr., "US Alters Policy to Safeguard Enemy Captives," The New York Times, 1 July 1966, p. 6:4.

transferred to the custody of the Army of the Republic of Vietnam (ARVN). This procedure is allowed under Article 12 of the Convention. The United States does retain a contingent responsibility that those prisoners captured by its forces are accorded all rights as prisoners of war.⁷ In meeting this responsibility, MACV procedures stipulate that American units will not turn over custody of prisoners of war except at an established prisoner of war camp. Evacuation up to that point remains entirely under the control of U.S. forces. By September 1967, in addition to the camp at Bien Hoa, camps were operating at Pleiku, Danang, Qui Nhon, Can Tho and on the Ile de Phu Quoc off the southwestern coast of Vietnam. A U.S. Army advisory detachment is present at each of these ARVN-administered installations.⁸

The ICRC has assumed the humanitarian functions of the "Protecting Power" under Article 10 of the Convention. It periodically visits camps, inspecting conditions and interviewing prisoners of its own choice without witnesses. Additionally the ICRC visits hospitals where sick and wounded prisoners of war are confined as well as the

⁷ICRC, The Geneva Convention, p. 81.

⁸Larry G. Parks, "Enforcement of the Laws of War,"
Lecture U.S. Naval War College, Newport, R.I.:
4 October 1967. (WITH PERMISSION)

temporary detention facilities operated by US, ARVN and allied forces. The ICRC has visited prisons and jails in South Vietnam where prisoners of war were located prior to construction of the prisoner of war camps.⁹ The Press has visited the camps.¹⁰

As the freedom of access accorded the ICRC indicates, US forces and the Republic of Vietnam make every effort to comply with the spirit as well as the letter of the Geneva Convention on Prisoners of War despite an earlier and understandable reluctance on the part of the government of the Republic of Vietnam to accord prisoner of war status to persons who from its point of view were guilty of treason. In the battle conditions in South Vietnam only the uniformed soldiers of the North Vietnamese Army are readily identifiable as having the right of prisoner of war status. Whether other captives are entitled to prisoner of war status depends to a large degree upon the circumstances of their capture. Until proper status can be determined, all captured persons are classified as "detainees." During screening and interrogation a detainee is determined to be either a "prisoner of war," a "civilian defendant" or an "innocent civilian." The first category is interned in a

⁹International Committee of the Red Cross, International Review of the Red Cross, March 1967, p. 125.

¹⁰"3200 of Foe Held in 4 Vietnam Camps," The New York Times, 13 April 1967, p. 5:3.

prisoner of war camp, the second transferred to civil authorities for trial, and the third is released, if possible at the point of apprehension. In doubtful cases the tribunal procedure prescribed by Article 5 of the Convention is applied.¹¹

Among the Communist prisoners of war, three types are found: the North Vietnamese soldier, the South Vietnamese who moved to the Communist North after the French-Viet Minh cease-fire of 1954 and later was infiltrated back into the South to join the insurgent movement, and the Viet Cong, who may be a local guerrilla or member of a main force unit but who has never left South Vietnam. Each poses a different problem concerning his eventual release and repatriation.

One further factor, which though not part of the treatment of prisoners of war has a bearing on the repatriation problem, is the amnesty or Chieu Hoi ("Open Arms") program conducted by the Republic of Vietnam, which assures a Viet Cong or North Vietnamese Army soldier who decides to return or defect to government control that he may do so without prejudice. Such persons are sent to special centers, where they are instructed on the goals of the Saigon government and are given training intended to equip them to lead

¹¹parks.

constructive lives as citizens of the Republic. They are allowed to enlist in the ARVN or return to a civilian community, exempt from conscription into ARVN for one year.¹²

The Communist Attitude. The Hanoi government has taken a very different attitude toward captured persons than have its adversaries. Although a signatory nation to the 1949 Geneva Convention since 1957, it has informed the ICRC that in its view the Prisoner of War Convention is not applicable due to the lack of a declaration of war. It therefore considers captured American airmen to be "major criminals," not prisoners of war who come within the scope of the 1949 Geneva agreement.¹³ Although Hanoi professes that the prisoners in its hands are treated humanely, it has denied representatives of the ICRC access to North Vietnam. Particularly discouraging is Hanoi's refusal to provide rosters of prisoners and the lack of a regular mail service. Hanoi in effect is holding these prisoners incommunicado,

¹²U.S. Department of State, National Reconciliation in South Vietnam, Vietnam Information Notes Number 8, July 1967, p. 2-4.

¹³(1) "ICRC Confirms North Vietnam Will Treat Captives as War Criminals," The New York Times, 30 September 1965, p. 3:3-5.

(2) Tran Tu Binh, North Vietnamese Ambassador to Communist China, quoted in "Opinion at Home and Abroad," The New York Times, 24 July 1966, p. IV 1:7.

and the US authorities will not know with certainty how many prisoners are being held and who they are.

On July 6, 1966 captured American airmen were paraded through the streets of Hanoi and the North Vietnamese announced that they would be tried as war criminals. This action set off a wave of protest which included an appeal from 18 "dovish" United States Senators, a request from the Secretary General of the United Nations for Hanoi to "exercise restraint," and an appeal from Pope Paul, requested treatment of prisoners "according to international norms."¹⁴ Realizing perhaps that he had gone too far, that carrying through with a trial would more likely alienate world opinion toward his regime than win sympathy for it, and would tend to unify the people of the United States, setting off within the United States a demand for reprisal (a possibility the Senator warned against), Ho Chi-minh announced on 27 July 1966 that an eleven-member commission had been established to investigate United States war crimes but that no trials were "in view."¹⁵

¹⁴The New York Times

- (1) 16 July 1966, p. 1:1.
- (2) 17 July 1966, p. 8:3.
- (3) 21 July 1966, p. 12:8.

¹⁵Robert E. Dallos, "No Trail in View for US Captives," The New York Times, 25 July 1966, p. 1:8.

Hanoi has not yet seen fit to recognize the applicability of the Geneva Convention, however, or to implement fully its provisions.

The National Liberation Front in South Vietnam has adopted an attitude similar to that of the government of North Vietnam. The Front asserts that it is not bound by the Convention because it was not a party to the deliberations that brought it about. It does not consider that any of the captives it holds are prisoners of war.¹⁶ The Viet Cong have even publicly announced the execution in 1965 of three captured US soldiers as a reprisal for the execution of Viet Cong terrorists by the authorities of the Saigon regime.¹⁷ The Viet Cong have furnished no information on the identity, location or number of prisoners that they hold. Viet Cong confinement areas overrun by US forces are grim testimonials of starvation conditions and of prisoners being murdered en masse before their guards fled.¹⁸

Repatriations to Date. The Geneva Convention provides for repatriation of prisoners of war during hostilities,

¹⁶U.S. Department of State, Prisoners of War, Vietnam Information Notes Number 9, August 1967, p. 1-2.

¹⁷"US Denounces VC Execution of Americans," The New York Times, 28 September 1965, p. 1:1.

¹⁸"GI's Rescue 51 Vietnamese from Jungle Prison," The New York Times, 11 February 1967, p. 3:2.

and the United States has repeatedly attempted through various channels to effect such exchanges. On December 8, 1966 the ICRC announced that North Vietnam had rejected a proposal by President Johnson for a conference under Red Cross auspices to consider the possibility of releasing or exchanging prisoners held by both sides.¹⁹

In August 1967 the US Department of State summarized its efforts to arrange a prisoner of war exchange as follows:

We have contacted both North Vietnam and the National Liberation Front, directly and through intermediaries, to propose discussions of repatriation, exchange or other matters pertinent to prisoners of war. On July 20, 1966 President Johnson publicly declared our willingness to meet with Hanoi government on these matters at a conference table under sponsorship of the International Red Cross Committee. The International Red Cross, national Red Cross societies, governments and private persons have appealed to North Vietnam and the National Liberation Front to discuss these matters, but every initiative has been rejected. Both North Viet-Nam and the Viet Cong refuse to comply with these vital provisions of the Geneva Convention, and both refuse to discuss the matter directly or through any intermediary.²⁰

Despite the failure of the United States to arrange prisoner of war exchange or repatriation on a large scale,

¹⁹"Prisoner Exchange Rejected," The New York Times, 9 December 1966, p. 23:6.

²⁰Dept. of State, Prisoners of War, p. 8.

there have been a number of instances of prisoner release. The United States has hoped to start a chain reaction of informal unnegotiated releases. Between January 1966 and August 1967 over 100 North Vietnamese prisoners of war were repatriated to North Vietnam at the demilitarized zone astride the 17th parallel. These personnel were accepted by the Hanoi regime, not as returned prisoners of war but as refugees from the south. Two wounded North Vietnamese sailors captured in an attack by North Vietnamese motor torpedo boats on US fleet units in the Tonkin Gulf were repatriated to North Vietnam in June 1967 through Cambodia, again in hopes that North Vietnam would reciprocate. Additionally in South Vietnam the government has released 34 Viet Cong prisoners of war during the period January 1966 through August 1967.²¹

As of 1 February 1968 the Viet Cong have released nine American military prisoners. A release of three American soldiers in Cambodia in November 1967 revealed a new technique by the Communists: the men were turned over to a representative of an American anti-war group; according to the National Liberation Front representative at the scene, in response to "the United States movement of opposition to American involvement in the Vietnam War."²²

²¹Ibid.

²²Tillman Durdin, "Mystery Clouds Release of 3 GI's by the Vietcong," The New York Times, 12 November 1967, p. 1:4.

The single release that has been carried out by the Hanoi regime was quite similar. Three captive American pilots in company with two representatives of an American peace group were flown from Hanoi to Vientiane, Laos and released on 16 February 1968. Hanoi stated that the release was "vivid proof of the lenient and humanitarian policy of the Democratic Republic of Vietnam despite the fact that the United States government is continuing its aggressive war in South Vietnam and intensifying its bombing of the Democratic Republic of Vietnam." The Hanoi representative also asked that the two American anti-war advocates "convey our wishes for still greater successes to the movement of the American people against the U.S. war in Vietnam."²³

Communist Motives toward Prisoners of War. The behavior of the Hanoi regime and the National Liberation Front regarding the prisoners of war question is fully consistent with the image of the conflict in Vietnam the Communists desire to present to the world. The refusal of Hanoi to acknowledge returned prisoners as members of the army of North Vietnam supports its contention that

²³Nguyen Xuan Oanh, Secretary General of Vietnam Peace Committee, quoted in "North Vietnam Frees 3 American Pilots," The Washington Post, 17 February 1968, p. 1:3.

no North Vietnamese army units are operating south of the 17th parallel and that the conflict there is a struggle of the southerners against an oppressive regime. The "war criminal" allegation against captured US airmen is consistent with the charge that the US air attacks against North Vietnam constitute unprovoked aggression and are to a large degree directed against non-military targets. The access given the foreign press (and certain members of the American press that might be sympathetic) to individual prisoners leads one to believe that the Hanoi regime desires to present itself to the world as humanitarian and generous despite the gravity of the "crimes" of the airmen.²⁴

The release of three enlisted soldiers by the Viet Cong and three officers by the Hanoi regime to representatives of American peace groups appears designed to encourage such groups, aid them in gaining support among the American people and thereby divide further the U.S. public opinion as to the Vietnam involvement. If the purpose of the Communists has also been to choose for return to the United States personnel who would be convinced of the correctness of the Communist cause and would espouse that cause publicly, they

²⁴ Benjamin Welles, "US Asserts Hanoi Mistreats Fliers," The New York Times, 15 October 1967, p. 3:1 for account of sale of East German films of American prisoners to National Broadcasting Company and Life Magazine.

have not been successful. In each case, after an initial flair of press interest, the repatriates have slipped quietly from public view.²⁵

The Communists in Vietnam, just as the Communists in Korea before them, view prisoners of war, both their own personnel and those they hold, as tools of psychological and political warfare. The prisoners they hold will be mistreated, well-treated, or released depending upon the political purpose to be served. Their own personnel in anti-Communist hands are being ignored currently by both Hanoi and the National Liberation Front. If it were in the Communist political interest, however, repetitions of disturbances such as were experienced on Koje Do could well be attempted in order to manuever the camp authorities to take suppressive measures. Were negotiations undertaken, the Communists could profess a solicitous concern for their people that they have not indicated to date.

²⁵Two of the three soldiers released to the anti-war activist in Cambodia have since reenlisted in the U.S. Army.

CHAPTER VII

NEGOTIATING WITH COMMUNISTS

Having analyzed the Korean negotiations and having examined the prisoner of war situation in Vietnam, there remains the final task of relating the one to the other. By so doing certain factors can be isolated that will influence the Vietnam negotiations as they did those in Korea. Recommendations can be made that will assist in avoiding the errors and difficulties that hampered us in Korea and that hopefully will expedite the repatriation of American prisoners of war.

Influences on Negotiations. That the Communists in Vietnam refuse to recognize the Geneva Convention on prisoners of war as applicable to the situation does, in their view, relieve them of the obligation to repatriate the sick and wounded prisoners during and all of them at the close of hostilities. Nevertheless, there have been more releases during the hostilities in Vietnam than there were in Korea, where the Communists did acknowledge the applicability of the Convention. If the Communists in Vietnam continue not to recognize the Convention, it is difficult to see how they can delay negotiations through non-acceptance of our interpretations of its provisions. The negotiations should therefore revolve more closely

around the real issues instead of being made to appear as discussions of legal interpretation.

Similarly, the Hanoi regime's pretense that there are no North Vietnamese Army units in South Vietnam, hence, no North Vietnamese prisoners of war should result in their declining to even discuss the problem of voluntary repatriation. Hanoi can hardly demand the return of persons whose existence it denies. Whether or not by design, Hanoi has avoided placing itself in a position where it could be embarrassed, as were the Communists in Korea, by the defection of its personnel. On the other hand, Hanoi's insistence that it is not involved in South Vietnam will necessitate negotiating with two parties and therefore our making a double set of concessions in order to obtain the return of all prisoners of war.

In Korea, the United States not only represented the United Nations but was able to marshal through the General Assembly world-wide non-Communist support of its position. The United States position in Vietnam hardly enjoys such support today. Sympathy for the Viet Cong and for Hanoi, however, is dependent upon their being able to continue to convince sympathizers that they are the aggrieved parties and victims of American aggression, who only desire to be left alone to settle their problems. Mistreatment of American prisoners of war or recalcitrance in

principle of voluntary repatriation would be to break faith with those Americans who suffered and died to establish it in 1952-53. To fail to meet its obligations under the Code of Conduct to its men now in Viet Cong or North Vietnamese prison camps would be an equally sorry breach of faith. The best approach for the United States is to avoid being placed in a position where voluntary repatriation can become an issue.

Avoiding such a position can best be achieved by not holding in prisoner of war camps any personnel who do not desire to be repatriated. The Chieu Hoi program represents the first step in achieving this goal, for it provides a means for screening out anti-communists and disillusioned rebels before they are categorized as prisoners of war. Since these returnees are provided treatment superior to that they would receive in the prisoner of war camps there is no objection from the ICRC. Since they are in effect seeking political asylum, which any sovereign nation has the right to grant at its discretion, the procedure is fully in accord with the norms of international law. This same right to grant political asylum can be applied to prisoners of war, thereby removing from the prisoner of war camps on a continuing basis those prisoners who would have to be forced to go back to Communist control.¹

¹Manuel R. Garcia-Mora, International Law and Asylum as a Human Right, (Washington: Public Affairs Press, 1956) p. 103-116.

To avoid renegotiating the principle of voluntary repatriation obviously requires a depth of control and efficiency in the administration of the prisoner of war program that was lacking in Korea. The political orientation (or lack of orientation) of the prisoners must be known and the prisoners must be free of coercion from other prisoners of any political persuasion. More basically what is required is prior planning for the negotiations.

Preparation for Negotiations. The lack of an agreed position on prisoner repatriation and lack of preparation for those negotiations, both at the points of decision and at the level at which camp administration policy was established, worked to the serious detriment of our negotiators throughout the Korean armistice talks. Hopefully the appointment of Ambassador at Large W. Averell Harriman to provide general supervision of all Department of State actions concerning prisoners held by both sides and the formation of a Department of Defense Committee on Prisoner of War Policy chaired by the Assistant Secretary of Defense (International Security Affairs) will provide the coordinated high-level direction and emphasis that is required.² The construction of prisoner of war camps

² (1) Dept. of State Bulletin, 6 June 1966, p. 888.

(2) Journal of the Armed Forces, Washington, D.C., 16 September 1967, p. 4.

with adequate physical facilities and the close coordination established with the representatives of the ICRC in South Vietnam should prevent some of the difficulties which were apparent in the Korean situation.

In planning for negotiations, we must keep in mind how extremely important in Korea was the order in which agenda items were addressed. We must insist on early settlement of prisoner of war repatriation if other items are also being negotiated. Our negotiators must make unequivocally clear to the other side that the United States will not consider any agenda item settled until the repatriation of prisoners of war has been agreed upon. If the Communists are made to understand that whatever objective they hoped to gain by entering into negotiations cannot be gained without early agreement to release prisoners of war, we can disabuse them of the notion that by retaining prisoners of war they can, as in Korea, exact concession after concession from our side. Our government owes it to our captured personnel to make their release an agenda item of the highest priority.

Holding prisoners of war is of interest to the Communists only as a negotiating lever on other issues. Early repatriation by itself is a concession they can make without damage. We should not conclude, however, that they will release our prisoners without making us pay for them. Korea indicates otherwise. We must be prepared to make concessions

in return and not expect that a mere exchange of our prisoners for theirs will result in fruitful negotiations. We must settle the prisoner of war issue while we still have something to concede that, while not vital to us, is of importance to the other side.

Avoiding Propagandizing. As was seen in the Korean analysis, the propaganda victory the UNC and the United States achieved may well have been a major contributing factor to the long delay in reaching an armistice. The lasting effect or benefit to the United States of this propaganda victory has been negligible. To regain our captive personnel we should avoid embarrassing the other side no matter how tempting the opportunity may seem. If repatriation in increments begins we should not propagandize about the condition of the personnel returned or allow publication of returnees' accounts of conditions within the prisoner of war camps. To attempt to disfigure at that time the image the Communists have attempted to build of humanity and generosity would not be in the interest of early repatriation.

Coordination with the Republic of Vietnam. The fact that all prisoners of war in South Vietnam are in the custody of ARVN could cause complications that must be anticipated. It is proper to assume that the regime in

saigon, as was the regime in Seoul, will be against any concessions to the Communists that would either weaken their position or infringe upon their sovereignty. We should expect them to be understandably suspect of any bilateral United States-Communist negotiations. They will believe that in order to get back our prisoners of war, something that belongs to us, we will bargain away something that belongs to the Republic of Vietnam. We should, of course, make every effort to establish fully mutual confidence and understanding and attempt to bring them to our point of view. Such things as the bombing of North Vietnam, a blockade of North Vietnam (if such is established prior to negotiations) and repositioning of American troops in South Vietnam do belong to us, however, and can be conceded if necessary without infringing upon the sovereignty of the Republic of Vietnam. We cannot allow the South Vietnamese to use their custody of American-captured prisoners as a lever against us, reducing our flexibility in negotiations with the Communists.

Conclusion. On any occasion when the United States negotiates with the Communists it suffers from one fundamental disadvantage; the United States must consider individual rights and human dignity. The Communists consider only the power position resulting from the outcome of the negotiations. This fundamental disadvantage is

particularly severe in prisoner of war negotiations, where the object of the negotiations is the individual. The Communists in Vietnam have demonstrated that they consider prisoners of war legitimate pawns of political warfare. They do not vary from the Communists in Korea in this consideration. The basic lesson from Korea is clear: To the Communist the prisoner of war is a hostage. If you are not prepared to liberate him by force, you must be prepared to ransom him at some political cost. Perhaps the best advice for future American negotiators is that given by General Harrison after his experience at Panmunjom: "The most important thing in dealing with a Communist is to remember -- and never forget -- that you are dealing with a common criminal."³

³Vatcher, p. 104.

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