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Capture, classification and incarceration of Communist captives during Vietnam's American War

Marcel Berni

The fate of captives designated as 'communist' prisoners during the Vietnam War has largely been overshadowed by that of US POWs detained north of the Seventeenth Parallel. This article, based on newly released archival sources in multiple languages, considers their classification and treatment in captivity. In particular, civilian captives and members of the National Liberation Front were often categorised as 'civil defendants' by South Vietnam and thus deprived of their rights as POWs, as codified in the Geneva Conventions. Yet, as representatives of a state dealing with both an insurgency and an invasion at the same time, South Vietnamese officials realised the significance of enemy captives. By illustrating the complex policies and practices of prisoner taking and incarceration, this article interprets and explains the gap between civilian and military law and informal and oftentimes self-serving practices on the ground. Thus, the Second Indochina War foreshadowed a global trend of excluding captured irregular combatants from the laws of war.

'In neither of the two recent wars in which the United States has engaged, World War II and Korea, had treatment of prisoners posed such a serious problem as it does in Vietnam.'¹

Phú Quốc, situated in the Gulf of Thailand between Vietnam and Cambodia, is an island of stellar beauty. Upon landing on the scenic 574 square-kilometre isle, adventurers and explorers dive into a tropical paradise. Even during the longest war of the twentieth century, Phú Quốc was famous as a sport fishing ground for South Vietnamese officials, including President Nguyễn Văn Thiệu and his Vice President Nguyễn Cao Kỳ. Apart from its rich sources of seafood and black pepper, and its reputation as the best producer of the classic Vietnamese fish sauce *nước mắm*, the island was strategically unimportant.² Today, an ever-increasing number of tourists marvel at its picturesque white sand beaches, gaze at the waterfalls descending

Marcel Berni is an Assistant Lecturer at the Swiss Military Academy at ETH Zurich. Correspondence in connection with this article may be addressed to: marcel.berni@milak.ethz.ch. The author would like to thank the anonymous reviewers for their insightful comments and suggestions. Additionally, the author would like to thank Dayaneetha De Silva for copyediting the article.

1 Neil Sheehan, 'Vietnam: The unofficial brutality', *New York Times*, 30 Sept. 1965, p. 4.

2 Unsigned, 'A Vietnamese isle is spared by war: But 300 Vietcong remain on scenic, remote Phuquoc', *New York Times*, 18 May 1969, p. 17.

from its exotic rock formations and, taking up a viewpoint on its high mountain ridges, look out over the crystal-clear fishing grounds in the Gulf of Thailand. Few of these visitors will be aware that during the Second Indochina War, this remote island became infamous for the prisoners jailed here. Indeed, during the bloody, decade-long fight over Vietnam's future, Phú Quốc housed the Republic of Vietnam's largest prison camp for enemy combatants.

If it were not for the South Vietnamese government's prisoner of war (POW) camp, housing up to 40,000 inmates at the height of the conflict, Phú Quốc would go unmentioned in the annals of the Second Indochina War. Yet, this prison island was an integral part of South Vietnam's system for detaining enemy prisoners.

This article focuses on the treatment of communist captives in these prisons, camps, and interrogation centres as well as in the field. How did American and South Vietnamese officials judge, treat and incarcerate captured armed combatants as well as unarmed enemy sympathisers who may or may not have been engaged in hostile activity? Based on English sources in US military archives, newly released multi-lingual sources in the International Committee of the Red Cross (ICRC) archive, as well as a limited amount of South Vietnamese sources, it presents an overview of the capture of prisoners as well as the detention and interrogation regime, with a special focus on their treatment in captivity. The multi-archival, multi-lingual, and multi-level empirical material presented and analysed here offers new insights into the Cold War era in Southeast Asia, its significance to military and civilian captives on the ground, as well as the carceral regime employed by South Vietnamese and American officials. A special focus of this article is on South Vietnam, a state dealing with both an insurgency and an invasion at the same time.

In particular, this article argues that the categories used to distinguish between types of captives were contested, and in reality often meaningless. In fact, these external designations became subject to many forms of abuse. Interestingly, both parties overseeing communist captives—the South Vietnamese as well as Americans—increasingly took advantage of a formalistic ambiguity. Categories of non-military captives were designed to minimise the legal constraints on the prison and intelligence authorities. Since the regime in Sài Gòn could seldom know with precision whether detainees were indeed communists, it often classified civilian prisoners using the term 'communist' as a political buzzword. Soon, the epithet 'communist' became a convenient shorthand for defaming representatives of alternative visions for Vietnam's future.

The historiography has neglected any detailed study of this subject. This shortfall appears to owe to archival difficulties, language problems and ideological differences, thus producing a lacuna in the existing research on Vietnam's American War. Some works are only devoted to American transgressions in the treatment of captives, while the South Vietnamese perspective has largely been absent from the literature.³ It would be no exaggeration to argue that the existing research as well as public knowledge have so far not been very interested in the lives, the suffering, and the deaths of communist prisoners, but are instead mostly focused on their compatriots

3 See for example, Manooher Mofidi and Amy E. Eckert, 'Unlawful combatants or prisoners of war: The law and politics of labels', *Cornell International Law Journal* 36, 1 (2003): 59–92.

in misfortune in North Vietnam (officially the Democratic Republic of Vietnam, DRV). The treatment in the South has so far awaited serious investigation and has only been addressed by wider studies on the Vietnam War. Recent research in particular has pointed out that the general literature on the war is heavily ‘Americanised’ and that the role of South Vietnam is often neglected.

However, some authors have expressed general concerns regarding the handling of communist captives, mostly without citing any specific sources. According to Ronald H. Spector, there is evidence that there was continuous misconduct on the part of the South Vietnamese police and that this spread to American soldiers as the war persisted.⁴ Comparable assessments can be found in publications dating back to the early 1970s.⁵ Still other authors have emphasised prisoner abuse, especially during military operations.⁶ Historian Edwin E. Moise highlights that the laws of war were violated by both sides in their handling of prisoners.⁷ Political scientist David P. Forsythe concludes for Vietnam: ‘Enemy wounded were often intentionally killed, civilians were displaced, political prisoners were abused, military attacks were imprecise, [and] civilian leaders were assassinated.’⁸

These often generalising assessments contrast sharply with the perception of captives by contemporaries, especially towards the end of the war. Particularly from mid-1972, the issue became a major flashpoint, predominantly as the antiwar left in the United States criticised the Republic of Vietnam on this subject and the DRV began bringing it up during the negotiations which led up to the Paris Peace Accords.⁹ Indeed, both sides used prisoners as a tool to negotiate major policy decisions, especially in the latter part of the conflict.

Prisons, prisoners and publicity

The haphazardly organised South Vietnamese prison architecture was in part created in 1965, when the American Military Assistance Command, Vietnam (MACV) and the South Vietnamese government, jointly decided to expand on the existing system built by the French colonial empire. During the early years of the war, they established six POW camps—officially, ARVN (Army of the Republic of Vietnam) Corps Combat Captive Camps. The first camp opened in May 1966 at Biên Hòa in the III Corps Tactical Zone (CTZ), it was followed by others at Pleiku (II CTZ), Đà Nẵng (I CTZ), Cần Thơ (IV CTZ), Quy Nhơn (II CTZ), where only female prisoners

4 Ronald H. Spector, *After Tet: The bloodiest year in Vietnam* (New York: Free, 1992), p. 202.

5 See Anthony A. D’Amato, Harvey L. Gould and Larry D. Woods, ‘War crimes and Vietnam: The “Nuremberg Defense” and the military service resister’, in *The Vietnam War and International Law*; vol. 3: *The widening context*, ed. Richard A. Falk (Princeton, NJ: Princeton University Press, 1972), pp. 407–62.

6 Geoffrey P.R. Wallace, *Life and death in captivity: The abuse of prisoners during war* (Ithaca, NY: Cornell University Press, 2015), p. 130; Alexander B. Downes, *Targeting civilians in war* (Ithaca, NY: Cornell University Press, 2008), p. 60; Joan Beaumont, ‘Protecting prisoners of war: 1939–1995’, in *Prisoners of war and their captors in World War II*, ed. Bob Moore and Kent Fedorowich (Oxford: Berg, 1996), p. 285.

7 Edwin E. Moise, *Historical dictionary of the Vietnam War* (Lanham, MD: Scarecrow, 2002), p. 324.

8 David P. Forsythe, *The humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2010), p. 76.

9 George J. Veith, *Drawn swords in a distant land: South Vietnam’s shattered dreams* (New York: Encounter, 2021), pp. 364–68, 410–15.

were interned, and the largest in 1967, on Phú Quốc island (IV CTZ).¹⁰ Due to the fact that civilian prisoners were also held on Phú Quốc, the installation was only partly considered a POW camp and was sometimes also referred to as a civilian detention centre.¹¹

According to official figures, Sài Gòn set up some additional forty detention centres, some dating back to colonial times, for screening captives and interning civilian prisoners.¹² In fact, many local facilities in the South Vietnamese prison system had been built in the French colonial period and were then reused by the South Vietnamese.¹³ Four detention centres became South Vietnamese national prisons, also referred to as re-education centres or rehabilitation centres (‘Trung tâm cải huấn’, or ‘Trung tâm phục hồi chức năng’): namely Chí Hòa in Sài Gòn, Thủ Đức and Tân Hiệp near the capital, and another prison island called Côn Sơn.¹⁴ Particularly in Chí Hòa, Côn Sơn, and Phú Quốc, detainees were—according to their own testimonies—imprisoned in tiger and cattle cages (‘Chuồng cạp Mỹ’). Historian George J. Veith has exposed these testimonies as falsified, as ‘a way to embarrass the GVN [Government of Vietnam]’. However, Veith acknowledges, at least partially, ‘the harsh treatment’ of prisoners in these locations.¹⁵ One prisoner described his ordeal to the *New York Times*:

Not a single day passed that we were not beaten at least once. They would open the cages and they would use wooden sticks to beat us from above. They would drag us out and beat us until we lost consciousness.¹⁶

In addition, there were about forty-four other provincial prisons, each with 250 to 1,000 inmates, an unknown number of detention centres with 2,500 to 5,000 inmates each, as well as 76 district prisons, for which no inmate counts are available.¹⁷

10 Robert C. Doyle, *America's treatment of enemy prisoners of war from the Revolution to the War on Terror* (Lexington: University Press of Kentucky, 2010), p. 271; George S. Prugh, *Law at war: Vietnam, 1964–1973* (Washington, DC: Department of the Army, 1975), p. 67; Marcel Berni, *Außer Gefecht: Leben, Leiden und Sterben “kommunistischer” Gefangener in Vietnams amerikanischem Krieg* (Hamburg: Hamburger Edition, 2020), pp. 48–9.

11 Joseph Novitski and Thomas W. Lippman, ‘Viet prison brutality documented’, *Washington Post*, 22 June 1975, p. A16.

12 Amnesty International, *Political prisoners in South Vietnam* (London: Amnesty International, 1973), p. 6; Pham Tam, *Imprisonment and torture in South Vietnam* (Nyack, NY: Fellowship of Reconciliation, 1969), pp. 9–11.

13 On the French colonial prison system, see Peter Zinoman, *The colonial Bastille: A history of imprisonment in Vietnam, 1862–1940* (Berkeley: University of California Press, 2001). On intelligence gathering prior to the escalation of the Vietnam War, see Christopher E. Goscha, ‘Intelligence in a time of decolonization: The case of the Democratic Republic of Vietnam at War (1945–50)’, *Intelligence and National Security* 22, 1 (2007): 100–138.

14 Berni, *Außer Gefecht*, pp. 48–9, 284–302. As mentioned above, depending on the source, the prison system on Phú Quốc was sometimes also assigned to this category. Until 1973, the reeducation camp for juvenile prisoners in Đà Lạt was run as a national prison, before it was transformed into the ‘Đà Lạt Children’s Protection Center’.

15 Veith, *Drawn swords in a distant land*, p. 414.

16 An unnamed prisoner quoted in Sylvan Fox, ‘4 South Vietnamese describe torture in prison “tiger cage”’, *New York Times*, 3 Mar. 1973, p. 7.

17 Republic of Vietnam National Commission for Information, *The civilian prisoner question in South Viet Nam* (Saigon: National Commission for Information, 1973), p. 4; Republic of Vietnam National

Whether there were other local prisons, dungeons, and interrogation centres is almost impossible to determine with any accuracy. The South Vietnamese police as well as allied military units set up such facilities ad hoc.¹⁸ In 1973, Amnesty International complained of the lack of oversight of this confusing prison architecture, in which inmates frequently perished: ‘As it is, we hear nothing about the detention centres administered by the police and army. Only the tip of the iceberg is visible.’¹⁹

One of the many complex issues faced when studying the fate of prisoners in Southeast Asia is that there was an underlying binary distinction between captives—designated as either military POWs or civilian detainees. In fact, according to the logic of *tertium non datur*, Americans and South Vietnamese alike were keen on differentiating between POWs, who were to be covered by the extensive protections of the Geneva Convention Relative to the Treatment of Prisoners of War (GPW), and civilian captives—so-called civil defendants.

This creation of seemingly legally distinct categories of prisoner status was a critically important dimension of the prisoner processing regime in Vietnam. Civil defendants were defined as ‘civilian persons who are suspected as spies, saboteurs, terrorists, or criminals and therefore are not entitled to treatment as prisoners of war under article 4 of GPW’.²⁰ If a military court denied them POW status, they were only protected by Article 3 of GPW and were merely to be treated ‘humanely’.²¹ What exactly ‘humane’ meant was disputed and open to interpretation. Consequently, the very category of civil defendant was used as a catch-all for representatives of the political opposition. In fact, the demarcation between POW and civil defendant was contentious, thus pointing to the fundamental issue of how captured Vietnamese were designated and categorised. It was this difference over who was a political prisoner versus a captured communist cadre that sparked the condemnation of the antiwar left, leaving the Republic of Vietnam (RVN) open to charges that it was unjustly imprisoning legitimate anti-government voices and categorising them as communists.

Capture

Although US forces captured thousands of prisoners on the ground, they did not retain custody of them. Instead, to enhance the sovereignty of the RVN, captives were

Commission for Information, *The Republic of Viet Nam penitentiary system and the civilian prisoner question* (Saigon: National Commission for Information, 1973), p. 2.

18 Republic of Vietnam National Commission for Information, *The civilian prisoner question*, pp. 6–7; Pham, *Imprisonment and torture*, p. 11; Committee to Reform the Prison System of South Vietnam, *After the signing of the Paris Agreements* (Philadelphia, PA: National Action/Research on the Military-Industrial Complex, 1973), pp. 27, 32.

19 Amnesty International, *Political prisoners in South Vietnam*, p. 8.

20 The National Archives at College Park, Maryland (NARA), RG 472, Records of the US Forces in Southeast Asia, 1950–75, MACV Adjutant General Admin. Services Division, Reference Library, Issuances 1962–73, box 23, folder: MACV AG, Directive 190-3 w/ change, 24 May 1966, Headquarters MACV, directive no. 190-3: Evacuation of Prisoners of War (PWs), San Francisco, 24 May 1966, p. 2.

21 ‘Convention (III) Relative to the Treatment of Prisoners of War’, International Committee of the Red Cross, Art. 3, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E160550475C4B133C12563CD0051AA66> (accessed 17 Mar. 2021); Gary D. Solis, *The law of armed conflict: International humanitarian law in war* (Cambridge: Cambridge University Press, 2010), pp. 45, 208, 430.

turned over to the government of the RVN for internment by the ARVN, the national police, or the South Vietnamese Ministry of the Interior. During the war, the South Vietnamese police forces were considerably expanded with US support. However, 'the police were never very effective' and their reputation was tarnished by corruption.²²

A transfer of captives to another state for detention was permitted under Article 12 of the GPW, since South Vietnam was a signee and therefore 'high contracting party'. However, within the purview of international humanitarian law, the United States remained responsible for the treatment of former captives, even after they were transferred to the custody of South Vietnamese authorities.²³ As MACV directive 20-5 stated: 'Even after delivery of a person from the custody of the United States to the custody of Vietnamese authorities, the United States is responsible for that person.'²⁴

Before the large-scale intervention of American ground troops in the spring of 1965, the capture and interception of prisoners was handled by the ARVN and South Vietnamese police forces. Although South Vietnam had signed the Geneva Conventions, the government would refuse to grant POW status to captives belonging to the Armed Forces of the National Liberation Front (NLF) in South Vietnam, commonly known as the 'Viet Cong'.²⁵ When captured without weapons, they were classified as political prisoners and interned without trial in civilian prisons. After the first US Marines landed at Đà Nẵng in March 1965, Americans soon realised the intelligence potential of enemy prisoners. At the tactical and operational level, many orders aimed at the taking of captives were issued. An order issued to all US Marine commanders in 1966 pointed to the value of enemy prisoners in this irregular guerrilla war: 'Take prisoners—we need all the information we can get.'²⁶ Some US Army officers even gave credit for the taking of prisoners: The 173rd Airborne Brigade and units of the 25th Infantry Division, for example, kept meticulous accounts rewarding those who had captured enemy combatants.²⁷

Whilst every soldier involved knew about the importance of captives, the enemy's allegedly cowardly manner of fighting had an impact on troops' emotional response,

22 Jeremy Patrick White, *Civil affairs in Vietnam* (Washington, DC: Center for Strategic and International Studies, 2009), pp. 5–6. See also David E. Shepherd, 'Republic of Vietnam's National Police', *Military Review* 51, 6 (1971): 69–74.

23 See James F. Gebhardt, *The road to Abu Ghraib* (Fort Leavenworth, KS: Combat Studies Institute Press, 2005), p. 45.

24 NARA, RG 472, Records of the US Forces in Southeast Asia, 1950–1975, MACV Adjutant General Admin. Services Division, Reference Library, Issuances 1962–1973, box 11, folder: MACV AG, Directive no. 20-5, 17 May 1966, Headquarters MACV, Directive no. 20-5: Inspections and investigations prisoners of war—Determination of status, San Francisco, 17 May 1966, p. 1.

25 Henceforth, the term 'Viet Cong' will be used for the successors of the Viet Minh. This mainly refers to the armed segment of the NLF, which Ngô Đình Diệm and many Americans called Viet Cong (originally an abbreviation for 'Vietnamese Communist').

26 Clergy and Laymen Concerned About Vietnam, *In the name of America: The conduct of the war in Vietnam by the Armed Forces of the United States as shown by published reports* (Annandale, VA: Turnpike, 1968), p. 74.

27 See Ben Connable, *Embracing the fog of war: Assessment and metrics in counterinsurgency* (Santa Monica: RAND, 2012), p. 112; Gloria Emerson, *Winners and losers: Battles, retreats, gains, losses, and ruins from the Vietnam War* (New York: W.W. Norton & Co., 2014 [1972]), pp. 87–9.

which frequently prevailed in their dealings with captives. Important in this regard was the relative unpreparedness of both the US Army and the ARVN in handling the incoming prisoners. Soon, both institutions were inundated by the sheer mass of NLF and North Vietnamese captives. Although officers played a central role in dealing with captives in the field, it would be wrong to place blame for violence and war crimes against captives on the officer corps alone. However, various studies show that both civilian and military leaders failed to rein in violent officers.²⁸ These studies have received a fair share of criticism, mostly based on their source material and the generalisations deduced from them.²⁹ Without doubt, US Secretary of Defense Robert S. McNamara had uncompromisingly called for reaching the so-called ‘crossover point’, the point where the North was drained of manpower, and thus making the success of the war a statistical fact, based upon the attrition of the enemy forces by death. In pursuit of this elusive crossover point, many officers felt under pressure to contribute to it. Among the metrics used in reaching this military goal, the counting of dead enemy bodies was paramount. In reality, the ‘body count’ was not only misguided as a metric of success, but also increasingly led to a take-no-prisoners policy. This practice was known to many contemporaries; when General Douglas Kinnard, as part of his 1974 dissertation, surveyed about two-thirds of all 173 US Army generals who had held command positions from 1965 to 1972, he concluded that only 2 per cent of them believed that the body count was a valid system for measuring the progress of the intervention.³⁰ Charles David Locke of the 11th Brigade, 23rd Infantry Division, expressed this in one 1970 interview:

Before we left on this mission the captain of the company had told us definitely do not take any prisoners. He didn’t want to hear about any prisoners. He wanted a body count. He said he needed seven more bodies before he could get his promotion to major.³¹

James B. Duffy, First Lieutenant of C Company, 2nd Battalion (mechanised), 47th Infantry Regiment, 3rd Brigade, 9th Infantry Division, put it this way:

There was never a request that we take any prisoners. The only thing we ever heard was to get more body count, kill more VC [Viet Cong]!³²

28 Bernd Greiner, *War without fronts: The USA in Vietnam* (New Haven: Yale University Press, 2009 [Hamburg: Hamburger Edition, 2007]); Deborah Nelson, *The war behind me: Vietnam veterans confront the truth about U.S. war crimes* (Philadelphia: Basic, 2008); Nick Turse, *Kill anything that moves: The real American war in Vietnam* (New York: Henry Holt, 2013).

29 See Gary Kulik and Peter Zinoman, ‘Misrepresenting atrocities: “Kill anything that moves” and the continuing distortions of the war in Vietnam’, *Cross-Currents: East Asian History and Culture Review* 12, 1 (2014): 162–98; Fred L. Borch, ‘War without fronts: The USA in Vietnam’, *Journal of Military History* 74, 2 (2010): 646–49; Andrew J. Bacevich, Edwin Moïse, Mark Atwood Lawrence and Bernd Greiner, ‘U.S. conduct in the Vietnam War: Commentaries on Bernd Greiner’s *War without Fronts*’, *Journal of Cold War Studies* 13, 3 (2011): 185–204; Andrew J. Bacevich and Edwin Moïse, ‘Responses to Bernd Greiner on U.S. conduct in Vietnam’, *Journal of Cold War Studies* 14, 1 (2012): 111–13.

30 Douglas Kinnard, *The war managers* (Hanover, NH: University Press of New England, 1977), p. 74.

31 Charles David Locke, quoted in The Citizens Commission of Inquiry, *The Dellums Committee Hearings on War Crimes in Vietnam: An inquiry into command responsibility in Southeast Asia* (New York: Vintage, 1972), p. 228.

32 James B. Duffy, quoted in unsigned, ‘Tan Am Base, Vietnam, Feb 12, 1000 Hrs’, *Scanlan’s Monthly*, Apr. 1970, p. 9.

The glorification of the body count is thus a factor that needs to be considered when explaining acts of violence against prisoners in Vietnam.

NLF fighters employed mostly irregular tactics, planting booby traps, mines, deadly Punji sticks, or shooting at the enemy by employing hidden snipers. In many instances, this created an atmosphere in which GIs as well as South Vietnamese soldiers faced difficulties in recognising an enemy without traditional frontlines. The perceived attitude of the civilian population fed frustration, hatred, and anger. Locke of the 23rd Infantry Division described the informal rule in his unit in the most explicit terms: 'If [the captured] wasn't a Viet Cong then, he sure as hell is one now [after capture].'³³

This is not to suggest that enemy behaviour was more humane. The NLF made a reign of terror a part of its overall military strategy, which included decapitating villagers, assassinating pacification workers and collaborators, looting and levelling entire villages, as well as murdering enemy POWs.³⁴

Laws of war

According to international humanitarian law, largely derived from the conventional wars of the nineteenth and twentieth centuries, military POWs were granted extensive rights and placed under the protection of the neutral ICRC. In accordance with the provisions of the GPW, this protection had to be granted to prisoners of the regular armed forces of North Vietnam, so long as they were 'commanded by a person responsible for his subordinates', showed 'a fixed distinctive sign recognizable at a distance', were 'carrying arms openly', and conducted 'their operations in accordance with the laws and customs of war'.³⁵

It was Lyndon B. Johnson's administration that deliberated whether to extend full GPW protection to prisoners from the NLF, as well as prisoners of the People's Army of Vietnam, PAVN, commonly known as the NVA (North Vietnamese Army). Ultimately, the administration decided to extend the GPW protection to all enemy prisoners—at least theoretically. It was decided that:

In order to establish the proper framework for US compliance with provision of GPW, it is prerequisite in all courses of action [...] for the US to institute the following procedures with regard to all persons captured by its force: Full PW [prisoner of war] treatment to all persons captured until such time as their status had been determined by a US tribunal.³⁶

33 Charles David Locke, quoted in The Citizens Commission of Inquiry, *The Dellums Committee Hearings on War Crimes in Vietnam*, p. 228.

34 On communist atrocities, see Douglas Pike, *The Viet Cong strategy of terror* (Saigon: US Mission Saigon, 1970); Frances FitzGerald, *Fire in the lake: The Vietnamese and the Americans in Vietnam* (Boston: Little, Brown & Co., 1972), pp. 156–7; Directorate of Psy-War Planning, *Viet Cong atrocities and sabotage in South Vietnam* (Saigon: Ministry of Information and Chieu Hoi, Directorate of Psy-War Planning, 1967); Jean-Louis Margolin, 'Vietnam and Laos: The impasse of war communism', in *The Black Book of Communism: Crimes, terror, repression*, ed. Stéphane Courtois et al. (Cambridge: Harvard University Press, 1999), pp. 565–76.

35 'Convention (III) Relative to the Treatment of Prisoners of War', ICRC, Art. 4, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=2F681B08868538C2C12563CD0051AA8D> (accessed 17 Mar. 2021).

36 NARA, RG 389, Records of the Provost Marshal General, POW/Civilian Internee Information

This broad definition stemmed from the largely conventional experiences from two world wars—a set of lessons which had already been challenged during the Korean War due to North Korea's refusal to abide by the Geneva Conventions. It was especially difficult to apply to the hybrid insurgency in South Vietnam. Although in the I Corps area of South Vietnam, closest to North Vietnam, Americans and their allies faced a clearly definable enemy wearing a uniform, further south, the NLF launched a guerrilla war in which cover and concealment amongst the civilian population were essential. As a consequence, it soon became an open secret that communist prisoners were frequently not treated according to the provisions of the GPW. Major General George S. Prugh expressed the frustration of many of his fellow GIs when he told *New York Times* journalist R.W. Apple: 'What we are trying to do here, is to apply a conventional convention to an unconventional war. This thing [the Geneva Conventions] was written for large scale land combat, not a guerrilla war.'³⁷

However, a broad assignment of POW status remained the official American and South Vietnamese policy, until the end of the war. In fact, even during the so-called 'Vietnamisation' period after the 1968 Tet Offensive, the commanding General of MACV, Creighton W. Abrams, continued with General William Westmoreland's extensive granting of enemy POW status.³⁸ But the coordination and compliance of the ARVN as well as South Vietnamese police with the GPW policy continued to be a hotly contested and controversial issue. During the Tet Offensive, an NBC cameraman and an Associated Press photographer captured the last moment in the life of a captive whose identity is still debated.³⁹ The gunshot to the temple became front-page news, symbolising the brutality of an unpopular war. Yet months before Sài Gòn National Police Chief Nguyễn Ngọc Loan pulled the trigger of his Smith & Wesson, South Vietnamese Vice President Nguyễn Cao Kỳ had proclaimed that persons belonging to the so-called 'Viet Cong infrastructure' were fought and captured without much mercy.⁴⁰

Ostensibly, many American and South Vietnamese soldiers perceived prisoners as being worthy of treatment according to the laws of war only if they themselves fought according to regular and conventional rules. If this was not the case, as in many parts of South Vietnam, then the enemy *hors de combat* could become a target of violence, whether in combat situations or in the rear. One GI of the 23rd Infantry Division said after his time in the country:

Center, Secret Records, 101-11 Office Classified Documents Receipt Files, 1975 to 511-02 SHAPE Conf handling of POW & captured, 1972, box 1, folder: Secret, 511-02, Vietnam, Memo for DCSPER, JCS PMGP-C Dispn of PWs captured by US Forces in RVN (1965), Carl C. Turner, Disposition of prisoners captured by US Forces in Southeast Asia (U), 8 Nov. 1965, p. 5.

37 George S. Prugh, quoted in R.W. Apple, 'U.S. alters policy to safeguard enemy captives', *New York Times*, 7 July 1966, p. 6.

38 Defense Technical Information Center, Fort Belvoir, Virginia, HQ USMACV, Command History 1969, vol. 2, X-4, X-10-11; *ibid.*, HQ USMACV, Command History 1969, vol. 2, X-4-X6; *ibid.*, HQ USMACV, Command History 1971, X-1, X-7; *ibid.*, HQ USMACV, Command History 1972–Mar. 1973, pp. F-6, F-40, F-42-43, F-53.

39 It was long believed that the prisoner shot was known as Nguyễn Tấn Đạt or Nguyễn Văn Lém. However, the identity of the prisoner is debated, especially by recent research soon to be published by Erik Villard.

40 Tom Buckley, 'The villain of Vietnam', *Esquire*, 5 June 1979, p. 64.

They had explained the Geneva Convention to us during our training and in the beginning we did what we thought was right and we turned them [the prisoners] over, [but] it was kind of hard after you had been there a while and you started seeing, learning, finding out what real experience is all about. Here you are fighting an enemy who doesn't follow the Geneva Convention but you have to abide by it. It's like being in a football team where you have to follow the rules to the letter and the other team can do whatever the hell they like.⁴¹

Just like the quoted GI, there were myriad examples of US and South Vietnamese forces not following the rules to the letter. In juridical terms, the DRV and the RVN had both signed the Geneva Conventions. However, the North questioned their applicability to enemy prisoners. Captured American soldiers were seen as 'pirates' and 'serious criminals' who were not entitled to be treated according to the GPW.⁴² Since the NLF had not signed the Geneva Conventions, representatives of the NLF responded to a letter from the ICRC, dated 11 June 1965, as follows: 'These conventions contain articles that do not correspond at all to our situation, nor to the organisation of the NLF's armed forces, and that is why the NLF cannot apply this Convention mechanically.'⁴³

On the contrary, on 10 August 1965, US Secretary of State Dean Rusk had confirmed that the United States would apply all Geneva Conventions in Vietnam and expect the parties at war to do the same.⁴⁴ Thus, during the conflict, the US military high command issued numerous official decrees that were closely based on the Geneva Conventions and international humanitarian law. Field manuals, directives, regulations, pamphlets, pocket cards, and other guidelines were drafted to regulate the treatment of captives.⁴⁵ Even though MACV constantly revised such guidelines during the war, they could be overruled by commanders by invoking 'military necessity'. However, two significant juridical dogmas, institutionalised by the war crimes trials that followed the Second World War, also applied in Southeast Asia—*respondere superior*, meaning that superiors were responsible for the deeds of their subordinates, and *mens rea*, meaning that criminal liability should be imposed on soldiers who were aware of what they were doing⁴⁶—in accordance with the *Yamashita standard*.⁴⁷

41 Michael A. Bernhardt, quoted in Michael Bilton and Kevin Sim, *Four hours in My Lai* (New York: Penguin, 1992), p. 76.

42 ICRC, 'Response to the ICRC's appeal to have the rules of humanity respected in Viet Nam', *International Review of the Red Cross* 55, 10 (1965): 528 [unofficial retranslation].

43 Archives du Comité international de la Croix-Rouge, Geneva, Switzerland, B AG 202 223-005, Folder: Communications du 11 et 14 juin 1965 au gouvernement américain, au gouvernement de la République du Viêt Nam, au gouvernement de la République démocratique du Viêt Nam et au Front national de libération du Sud-Viêt Nam, rappel le 3 juillet 1965, rappel le 3 juin 1969 au gouvernement de la République démocratique du Viêt Nam, Communications du 11 et 14 juin 1965, p. 6.

44 ICRC, 'Response to the ICRC's appeal to have the rules of humanity respected in Viet Nam', *International Review of the Red Cross* 55, 9 (1965): 477–8; Robert B. Semple, 'U.S. bids all in Vietnam obey Geneva War Code', *New York Times*, 13 Aug. 1965, pp. 1, 3.

45 See Berni, *Außer Gefecht*, pp. 54–105.

46 NARA, RG 287, Publications of the US Government, US Army 1941–, Field Manuals, box FM 168, Department of the Army, FM 27-10: The Law of Land Warfare, Washington, 18 July 1956.

47 After the Second World War, Japanese General Tomoyuki Yamashita was condemned to death by hanging by an American military tribunal, as punishment for the murder of some 25,000 non-

Since prisoners captured by Americans were handed over to the US Army by all service branches, the army soon became the decisive authority in creating policy on the handling of enemy prisoners of war. Given the difficulties in labelling civilians captured who were working for the NLF, MACV attempted to create various categories. MACV directive 190-3 established the ‘responsibilities and procedures for the evacuation, processing, and accounting for prisoners of war captured by United States Military Forces or delivered to United States Military Forces by Free World Military Forces’.⁴⁸ The distinction between POWs and common criminals soon became obsolete, which is why the MACV introduced elaborate categories of captives.

The neutral term ‘captive’ included not only POWs but also other military prisoners such as ‘suspects’, ‘doubtful cases’, ‘regroupees’, and ‘returnees’.⁴⁹ The latter were guaranteed preferential treatment under the ‘Chiêu Hồi Program’ in accordance with field manual ‘31-16’.⁵⁰ Civilians who had been arrested by mistake had to be brought back for release at the place where they had been captured. Civilian detainees were treated as civil defendants.

It seems quite reasonable to conclude that these contemporary classifications and categorisations of captives reveal much more about the motives of the classifiers than they do about the prisoners themselves. Not much is known about the use of these classifications in the South Vietnamese Armed and Police Forces. In 1970, for example, 261 communist prisoners in Biên Hòa Prison were reclassified as ‘civilian prisoners’ by local authorities.⁵¹ Thus, contemporary terms are oftentimes instrumentalised, imposed by the bureaucratic institutions in charge of record-keeping. Take, for example, the official number of communist POWs in the Vietnam War in 1972: 37,451. Yet during the same period, an unknown number of additional civilian prisoners were held in South Vietnam. Although these prisoners were not legally considered POWs, it seems illogical to argue that they would have been held captive even if there had been no war. Therefore, it would be a cardinal methodological error for historians merely to limit themselves to contemporary categories. Rather, it seems more fruitful to pursue an all-encompassing approach and to take into account the agenda of the classifiers.

combatants by his troops. The *Yamashita standard* henceforth meant that a tacit acquiescence combined with a pleading of ignorance of crimes was sufficient to provide for a guilty verdict.

48 NARA, RG 472, Records of the US Forces in Southeast Asia, 1950–1975, MACV Adjutant General Admin. Services Division, Reference Library, Issuances 1962–1973, box 23, folder: MACV AG, Directive 190-3 w/ change, 24 May 1966, Headquarters MACV, Directive no. 190-3: Evacuation of Prisoners of War (PWs), 24 May 1966, 1. The term ‘Free World Military Forces’ was a denomination for the Allied countries who sent manpower and logistics in order to support the United States and South Vietnam.

49 On these often blurred categorical distinctions, see Marcel Berni, ‘Forgotten prisoners: Communist prisoners of war during Vietnam’s American War’, in *Useful captives: The role of POWs in American military conflicts*, ed. Daniel Krebs and Lorien Foote (Lawrence: University Press of Kansas, 2021), pp. 111–13.

50 In Vietnamese, *chiêu hồi* means ‘call back’ or ‘return’, but was soon translated by Americans as ‘open arms’.

51 Trung Tâm Lưu Trữ Quốc Gia 2 [National Archives 2], Ho Chi Minh City, Socialist Republic of Vietnam, Hồ sơ số 17 136, Cú rét thỉnh nguyện của 195 tu binh Công san tại Grai giam Biên Hòa nam 1970–1971 [Against the cold, the petitions of 195 soldiers of the Công San Tai Grai Prison, Biên Hòa Nam 1970–1971].

In any case, most Vietnamese deemed common criminals or civil defendants were placed outside the protection of POW status and turned over by American and Free World Military Forces to South Vietnam. From that point onward, civil defendants lacked the far-reaching privileges codified in the GPW. For this reason, the category of civil defendant was misused as the war continued. Journalist Orville Schell wrote in 1968:

[Civil defendant] is the vaguest and most poorly defined of the ... categories. Officially, someone who is suspected of being a 'spy, saboteur, or terrorist' comes under this category. But actually, it is a convenient designation for anyone about whom the interrogation teams cannot make up their minds. These unfortunates fall into a limbo category.⁵²

It should come as no surprise that the majority of all civilian captives in South Vietnam became civil defendants. Whereas the NVA did not turn over all prisoners after the war, all military North Vietnamese POWs were turned over or freed after the war. Some observers of the war claimed that in 1967, only 4 per cent of all captives were designated as POWs, leaving the overwhelming number of prisoners outside the protections of the GPW.⁵³ One GI spoke bluntly in this regard: 'Any person can be placed in the category of a civil defendant. It is a catchall.'⁵⁴ In particular, after capture, detainees in South Vietnamese hands were categorised as their captors saw fit, based on national security considerations. They were detained as criminals and hence interned under the rudimentary South Vietnamese civil law.

Juridical principles were only very vaguely anchored in South Vietnamese civil and military law. This mainly owed to the fact that the South Vietnamese state first had to create its own legal regime after the 1954 Indochina Conference in Geneva. Chinese-Confucian and French ideas of jurisprudence played a formative role in this process. The territorial division of the former French colonial territory meant that different understandings of the law prevailed in the former territories of the French Protectorate of Annam and French Cochinchina. Where French law merged with local customary law in the former protectorate of Annam, French law played a more conspicuous role in Cochinchina, which had been under French colonial rule for much longer. In both cases, an understanding of law transplanted from the top down was incomprehensible to many South Vietnamese: a 1962 Michigan State University study concluded that many Vietnamese were confused because of the new French law which was rigid compared with the flexibility of traditional Vietnamese law.⁵⁵ A 1965 study for MACV struck a similar tone:

52 Orville Schell, 'Cage for the innocents', *The Atlantic*, Jan. 1968, p. 31.

53 Clergy and Laymen Concerned About Vietnam, *In the name of America*, p. 89.

54 Peter N. Martinsen, quoted in unsigned, 'Testimony and questioning of Peter Martinsen', in *Against the crime of silence: Proceedings of the Russell International War Crimes Tribunal*, ed. John Duffet (New York: Simon & Schuster, 1970), p. 448.

55 Roy Jumper and Nguyen Thi Hue, Michigan State University Viet Nam Advisory Group, *Notes on the political and administrative history of Viet Nam: 1802-1962* (East Lansing: Michigan State University Viet Nam Advisory Group, 1962), p. 121; Prugh, *Law at war*, pp. 17-21, 28-9, 122-6; James L. McHugh and George F. Westermann, 'Reaching for the rule of law in South Vietnam', *American Bar Association Journal* 53, 2 (1967): 160-61; M.B. Hooker, *A concise legal history of South-East Asia* (Oxford: Clarendon, 1973), pp. 73-119.

We find a system of law which was originally engrafted upon the society and not devised for its own institutions, a bar which lacks vigor and strength and seems primarily interested in operating on a passive 'closed shop' basis, and a public which is ignorant of its own law, lacks respects for its own law, and has no real interest in its enforcement.⁵⁶

South Vietnam's political instability, as expressed in its series of military coups, contributed to this state's difficulty in establishing a transparent and fair legal system: by 1964, seven governments had come and gone, the constitution of the First Republic had been overruled after the coup in 1963. The following military governments operated in conformity with hastily written charters. Sài Gòn declared a state of emergency in August 1964 and a state of war in June 1965, which further concentrated power in the hands of the executive. Due to this lack of continuity, the South Vietnamese government was forced from early on to govern by either public or secret decrees, declared by the president or prime minister.⁵⁷ A decree issued by Chief of State Nguyễn Văn Thiệu (Decree 004/65) on 19 July 1965, allowed for the death penalty and confiscation of property of any Vietnamese who was part of a 'communist organization or collaborated with the communists'.⁵⁸ Military charters that the South Vietnamese armed forces had passed to justify the new government, prohibited any activity designed to propagate or introduce communism, offences such as 'sabotage', 'terrorism', 'carrying arms against the RVN', 'undermining public or political morals', or 'hooliganism' could be punished by prison sentences of more than five years or the death penalty.⁵⁹ In addition, under the emergency law proclaimed by Sài Gòn, and in particular under the 'An trí' decree (Decree 004/66) issued on 15 February 1966, any individual who posed a threat to the security of South Vietnam could be detained for at least two years without trial or specific charges. Such detentions could be extended indefinitely. For this law, the American antiwar left vilified the RVN in particular.

South Vietnamese who posed a threat to the RVN were in a particularly precarious legal position. George S. Prugh concluded: 'This category of civilian security suspects consisted of civilians arrested by the police or security guards, or persons detained as a result of military operations who were not readily classifiable as innocent civilians or prisoners of war.'⁶⁰

Such indistinct bases for the proper interpretation of the law would see little change until the fall of Sài Gòn. When Congresswoman Bella Abzug wanted to talk to political prisoners during a visit to South Vietnam in 1973, local officials did not know what was meant by the term. However, on her visit she discovered that many prisoners were incarcerated together, and uniform categories were rarely considered. Abzug subsequently politicised the issue and even claimed before the

56 MACV, 'The role of civil law in counterinsurgency: Staff study for Colonel George S. Prugh', quoted in Prugh, *Law at war*, p. 124.

57 See Phương-Khanh Nguyễn, *Vietnamese legal materials, 1954–1975: A selected, annotated bibliography* (Washington, DC: Library of Congress, 1977).

58 Group of French University Professors, *The forgotten prisoners of Nguyen Van Thieu* (Paris: Privately printed, 1973), p. 12.

59 Prugh, *Law at war*, pp. 21–4, 119–26.

60 *Ibid.*, p. 24. It remains unclear what George S. Prugh meant by 'security guards'. The term might be an English umbrella expression for South Vietnamese intelligence and guard personnel.

House Subcommittee on Asian and Pacific Affairs that ‘political prisoners in South Vietnam represented one of the greatest humanitarian tragedies of our time’.⁶¹

Under the South Vietnamese police state, civilian prisoners considered communist agents or sympathisers were handed over to South Vietnamese military courts or, more rarely, to the so-called Provincial Security Committees, which were responsible for administering justice.⁶² The result was a rather bizarre situation where an armed NLF member arrested by the armed forces should have been categorised as a POW. However, if captured by the South Vietnamese police, he or she was most likely imprisoned as a civilian prisoner. Anyone who spoke out against the government in Sài Gòn could soon be subsumed under this category: the term ‘civilian internee’ (*tù nhân*) applied from July 1954 to ‘all persons who contributed in any way to the political or armed struggle between the two parties’.⁶³

The Western concept of *habeas corpus* was unknown in South Vietnam. The influence of civil law meant that civilian and military courts felt obligated to deliver quick sentences in the event of an indictment. Hearings in military or field courts could be obtained for civilian suspects in all cases in which a potential threat to national security was alleged. They lasted less than a day and often ended in the conviction of the accused, who was only rarely adequately represented and advised by lawyers. William Colby, head of the Civil Operations and Rural Development Office and CIA Chief of Station in Sài Gòn, even attempted to influence the GVN to assign lawyers to the provinces to address this issue.⁶⁴ The Vietnamese interpretation of the legal principle of *in flagrante delicto* in most cases did not allow for evidentiary hearings prior to trials, a standard procedure that also applied to suspects who were not directly connected to a crime.⁶⁵ A large proportion of the sentences handed down to civilian prisoners were then pronounced by Nguyễn Văn Thiệu’s select military field courts. These institutions had been declared illegal by South Vietnam’s Supreme Court in 1970. Nevertheless, the military field courts, which were sometimes also called mobile military field courts, were not subsequently disbanded by Thiệu and remained in place, with minor changes, until at least 1973. If sentences were handed down at all, they were often transmitted without trial or with forged documents as evidence.⁶⁶ If defendants were granted a trial and did have a lawyer involved in the process, this was often an inexperienced graduate with a law degree hot off the press. As one contemporary American attorney discovered for himself:

61 Quoted in House of Representatives, Committee on Asian and Pacific Affairs of the Committee on Foreign Affairs, *The treatment of political prisoners in South Vietnam* (Washington, DC: US GPO, 1973), p. 2.

62 These Provincial Security Committees were reorganised in 1970, under pressure from the South Vietnamese National Assembly. A suspect had to have three negative reports against him before he could be arrested. In 1972, Nguyễn Văn Thiệu changed this to one report. See Veith, *Drawn swords in a distant land*, p. 436.

63 Protocol Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel, Art. 7, B, quoted in Republic of Vietnam National Commission for Information, *The civilian prisoner question in South Viet Nam*, p. 6.

64 Veith, *Drawn swords in a distant land*, pp. 36–7.

65 Prugh, *Law at war*, pp. 24–6, 28–31, 34–6.

66 Committee to Reform the Prison System of South Vietnam, *After the signing of the Paris Agreements*, p. 14.

There were no witnesses, no evidence produced, no cross examination of witnesses or any attempt to determine the guilt or innocence ... I found out, however, that this legal process ... is accorded only a minority of the political prisoners; most of them never even receive a trial at all. Most of them are simply sentenced by province level security committees which never see them, which simply review their dossiers.⁶⁷

The simple lack of lawyers in South Vietnam made it virtually impossible for attorneys to be present at most trials. In 1965, there were only 160 fully trained lawyers in the entire country; by 1967, there were 193, 150 of whom worked in Sài Gòn, and 30 of the 44 provinces did not have a single practising lawyer at that time.⁶⁸ All this had its impact on the South Vietnamese understanding of justice, which was even criticised by William Colby before the US Congress in July 1973: 'I do not think they [the South Vietnamese] meet the standards I would like to see applied to Americans today.'⁶⁹

Thus, many prisoners were not released even though they had served their prison sentences. This situation worsened in the summer of 1972, when the regime of Nguyễn Văn Thiệu issued a series of other decrees under martial law that made arrests even easier.

Detention and interrogation

Captives in the field were taken to small collection points by the capturing units. These were mostly established at the regimental or divisional level. Collection points as temporary holding locations were primitively equipped, prisoners were held exposed to the elements, and the sanitation was rarely good. Thus, ideally, detainees were only held for 24 hours until transportation could be arranged. Sometimes battle-field events or the weather prevented that from happening. If enough POWs were ready at a particular collection point, they were flown by military police to interrogation centres or POW camps.⁷⁰ Especially at the beginning of the war when the POW camps were still under construction, South Vietnamese authorities locked POWs up in civilian prisons. Once POW camps were built, their supervision was a South Vietnamese responsibility. Civilians captured by allied soldiers were also turned over to the Sài Gòn authorities for categorisation and detention.

Wounded prisoners were interrogated only in the hospital, thus bypassing the routine ad hoc interrogations in the field, where ICRC representatives were rarely present. However, in theory all interrogation personnel were required to always show the highest moral and professional standards, since prisoners responded more cooperatively to interrogations if they were conducted under high standards of discipline.⁷¹

67 Fred Branfman, quoted in House of Representatives, Committee on Asian and Pacific Affairs of the Committee on Foreign Affairs, *The treatment of political prisoners in South Vietnam*, p. 45.

68 Dale Andradé, *Ashes to ashes: The Phoenix Program and the Vietnam War* (Lexington, MA: Lexington, 1990), p. 208; Prugh, *Law at war*, p. 37; Westerman and McHugh, 'Reaching for the rule of law in South Vietnam', p. 163.

69 William Colby, quoted in House of Representatives, Committee on Asian and Pacific Affairs of the Committee on Foreign Affairs, *The treatment of political prisoners in South Vietnam*, p. 45.

70 US Army Heritage and Education Center, Carlisle, Pennsylvania, USA [AHEC], RG Field Manuals, Field Manuals, Folder: FM 19-40 (Sep 1951), Department of the Army, FM 30-15: Examination of Personnel and Documents, Washington 1951, p. 7.

71 *Ibid.*, pp. 2, 5–6.

Whenever possible, deserters, enemy agents, and 'enemy civilians' were also to be interrogated. As with POWs, a witness who had seen the capture taking place was always to accompany captors back to the regiment until the interrogation began. Hence, the interrogation team was provided with information about the prisoner.⁷²

Whereas civil defendants were interrogated in provincial interrogation centres by South Vietnamese police forces and CIA personnel, military POWs were questioned in thirteen combined division interrogation centres, four combined corps interrogation centres (in Đà Nẵng, Pleiku, Biên Hòa and Cần Thơ) and one Combined Military Intelligence Centre (CMIC) in Sài Gòn.⁷³ The CMIC was part of the Combined Intelligence Centre, which was responsible for inter-agency intelligence. Like the combined corps interrogation centres, the CMIC consisted of both a South Vietnamese and an American part. Officially opened on 31 January 1967, the CMIC interrogated potentially useful POWs as well as deserters from the 'Chiêu Hồi Program'. Less important POWs were interrogated directly in the field by military intelligence detachments or else in interrogation centres in the rear. The CMIC in Sài Gòn only had room for 63 inmates, who were questioned in 28 interrogation rooms.⁷⁴

Prisoners in the CMIC were interrogated at least twice, once by a Vietnamese and once by an American interrogation team. These interrogation teams conducted 20,217 interrogations from January 1967 to April 1972.⁷⁵ Little is known about how the prisoners were treated. Although the use of systematic torture was firmly denied by the South Vietnamese high command, there are indications that torture was at times used in the CMIC during the early years of hostilities.⁷⁶ In contrast to North Vietnam, prison visits by the ICRC and other humanitarian organisations were allowed in the South. However, from 1971, ICRC visits to the CMIC and other South Vietnamese interrogation centres were only rarely allowed by the South Vietnamese authorities.⁷⁷

Still, ICRC representatives did visit not only POW camps but interrogation centres, civilian prisons and POW collection points. Its neutral delegates meticulously documented their impressions in confidential monthly reports. Written in French and English, generally giving satisfactory grades to the centres, however, one leaked report from October 1972 described the state of affairs on Phú Quốc as

72 Ibid., pp. 12–27; *ibid.*, Department of the Army, FM 30-15: Examination of Personnel and Documents, Changes No. 1, Washington 1952, pp. 3–10; *ibid.*, Department of the Army, FM 30-15: Examination of Personnel and Documents, Changes No. 2, Washington 1954, pp. 7–14.

73 Prugh, *Law at war*, p. 128; NARA, RG 472, Records of the US Forces in Southeast Asia, 1950–1975, MACV Adjutant General Admin. Services Division, Reference Library, Issuances 1962–1973, Box 34, Folder: MACV AG, Directive 381-11, 04.05.1967, Headquarters MACV, directive no. 381-11: Military Intelligence: Exploitation of Human Sources and Captured Documents, 4 May 1967, p. 13.

74 Hoang Ngoc Lung, *Intelligence* (Washington, DC: US Army Center of Military History, 1976), pp. 96–105.

75 NARA, RG 472, Records of the US Forces in Southeast Asia, Headquarters MACV, Office of the Assistant Chief of Staff for Intelligence (MACJ2), Combat Intelligence Directorate (J21), Exploitation Division (J213); CMIC General Records, box 1, folder: 501-03, Pcly and Prec Files, CMIC, Tenant Host Agencies, Interrogations conducted by CMIC personnel.

76 Hoang, *Intelligence*, pp. 103–4; Quang Truong Ngo, *RVNAF and US Operational Cooperation and Coordination* (Washington, DC: US Army Center of Military History, 1980), pp. 34–5.

77 Alexander Casella, 'The politics of prisoners of war', *New York Times Magazine*, 28 May 1972, p. 12.

'catastrophic'.⁷⁸ In the same year, as per the ICRC's demand, the tiger cages on the island were closed.⁷⁹

High-ranking civilian prisoners, suspected of possessing non-military intelligence information, were interrogated in the National Interrogation Centre (NIC). Located in Sài Gòn and operated by the Central Intelligence Organization (CIO), the South Vietnamese counterpart of the CIA, the NIC became a cornerstone of allied intelligence gathering. Together with the civilian provincial interrogation centres, the CIO had set up a sophisticated network for interrogating civilian prisoners at the local level that bore the CIA's signature. In fact, four CIA advisers were present at the NIC to monitor interrogations orchestrated by the South Vietnamese CIO. Even less is known about the interrogation methods in the NIC than those in the CMIC.⁸⁰

The CIA was very interested in the prisoners. Like the RAND Corporation, it conducted studies to learn how the enemy thought. CIA and RAND researchers had continuous contact with communist prisoners, for example, for the 'Viet Cong: Motivation and Morale' (M&M) study series. When Robert McNamara learned of the study through political scientist Leon Gouré in June 1965, the Secretary of Defense increased the budget for M&M tenfold, from \$100,000 to \$1 million. Ultimately, the result was a four-year research project sponsored by RAND that consisted of 2,371 interviews of defectors and detainees from the NLF and NVA, recorded in 62,000 pages documented everything from military operations to the mindsets of top NLF leaders.⁸¹

After interrogation, communist prisoners not classified as POWs were sent to either one of four national prisons or to one of the provincial or district civilian prisons. The national prisons were in Chí Hòa, Thủ Đức, Tân Hiệp near Sài Gòn, and the island of Côn Sơn, on the Côn Đảo archipelago in the South China Sea. In national prisons as well as provincial and district prisons, these 'civil defendants' were mixed with common criminals.⁸² The fact that the United States and allies captured more prisoners throughout the war than they released, in order to deny manpower to the

78 Red Cross Inspection Report, quoted in Joseph Novitski and Thomas W. Lippman, 'Viet prison brutality documented', *Washington Post*, 22 June 1975, p. 1; Joseph Novitski, 'Phuquoc major Red Cross concern', *Washington Post*, 23 June 1975, quoted in NARA, RG ANRC, Records of the American National Red Cross, Box 37, Records Relating to the International Committee of the Red Cross (ICRC); 1900–2005, Folder: ICRC–Mention in Press–Con Son/Tiger Cage Incident–July/Sept. 1970.

79 On the debate on the extent to which prisoners were confined in tiger cages on Phú Quốc, see Novitski and Lippman, 'Viet prison brutality documented', p. 1; Trung Tâm Lưu Trữ Quốc Gia II [Authors of the Vietnamese National Archives II], eds, *Lịch sử Phú Quốc qua tài liệu lưu trữ: sách tham khảo* [The history of Phu Quoc in documents] (Hanoi: Nhà xuất bản chính trị quốc gia-Su thật, 2012), pp. 322–3.

80 As a starting point see, for example, the following works by American contemporaries: Sedgwick D. Tourison, *Talking with Victor Charlie: An interrogator's story* (New York: Ivy, 1991); Orrin De Forest and David Chanoff, *Slow burn: The rise and bitter fall of American intelligence in Vietnam* (New York: Simon & Schuster, 1990).

81 Mai Elliott, *RAND in Southeast Asia: A history of the Vietnam War era* (Santa Monica, CA: RAND, 2014), pp. 45–90; W. Phillips Davison, *User's guide to the RAND Interviews in Vietnam* (Santa Monica, CA: RAND, 1972), pp. iii, 1–9, 54.

82 Don E. Bordenkircher and Shirley A. Bordenkircher, *Tiger cage: An untold story* (Cameron: Abbey, 1998), p. 49; Joseph Novitski and Thomas W. Lippman, 'Separating friends from foes', *Washington Post*, 23 June 1975, quoted in NARA, RG ANRC, Records of the American National Red Cross, Box 37,

enemy, exacerbated the precarious space conditions throughout the country. On Phú Quốc island, guards were especially scarce. Whereas the number of South Vietnamese guard personnel remains unknown, some 30 American military policemen advised their South Vietnamese counterparts in guarding well over 20,000 civilian and military prisoners.⁸³ Towards the end of the war, the camps on Phú Quốc became increasingly crowded, as other prisoners were transferred to the island via Chí Hòa prison.

The national, provincial and district prisons were the cornerstones on which the regional South Vietnamese detention system rested, as it absorbed the influx of alleged enemy captives. As in the national prisons, many communist prisoners raised serious grievances, mostly about crowded space conditions and dirty cells. To improve conditions in the provincial and district prisons, the United States Agency for International Development launched an operation through which experienced American police officers and detectives were sent to South Vietnam. In return, South Vietnamese police officers were trained at the International Police Academy in Washington, DC, from 1963 onward.⁸⁴

Debate on prisoner abuse

The degree of abuse inflicted on communist captives varied, and remains somewhat disputed. Both South and North Vietnam abused prisoners, as in other wars since the beginning of time. This was not official policy: published doctrine, at least in the South, made it fairly clear that mistreatment and especially torture were illegal. Still, American and South Vietnamese units as well as members of police and intelligence branches illegally applied torture techniques, abused captives, and murdered prisoners. Further research could explore the extent to which prisoner abuse was tolerated and how the antiwar movement as well as diplomats from the DRV exploited reports and claims of the beating, kicking, rape, and punching of prisoners.

Alongside diplomats and journalists, different NGOs reported acts of violence against prisoners throughout the war. The ICRC soon saw its visits to prison camps as merely a humanitarian gesture.⁸⁵ Amnesty International also made allegations of murder, torture, and abuse of prisoners within the South Vietnamese prisoner system.⁸⁶

Of course, only a minority of communist captives were tortured, abused, raped, or murdered. Both on the battlefield and in the rear, established social practices as well as the informal battlefield climate were more powerful than policies of

Records Relating to the International Committee of the Red Cross (ICRC); 1900–2005, Folder: ICRC–Mention in Press–Con Son/Tiger Cage Incident–July/Sept. 1970.

83 Paul Joseph Springer, 'American prisoner of war policy and practice from the Revolutionary War to the War on Terror' (PhD diss., Texas A&M University, College Station, 2006), pp. 235–6, 246–7.

84 Fox Butterfield, 'South Vietnam lets reporters visit P.O.W. camp', *New York Times*, 29 Oct. 1971, p. 3; Melissa Louise Anderson, 'Modernizing the Sûreté: The Michigan State University Police Project Advisory Group in South Vietnam, 1955–1962' (PhD diss., University of Wisconsin-Madison, 2010).

85 On the role of the ICRC, see Marcel Berni, 'The ICRC and Communist captives during Vietnam's American War', in *Captivity in war during the twentieth century: The forgotten diplomatic role of transnational actors*, ed. Marcel Berni and Tamara Cubito (Cham: Palgrave Macmillan, 2021), pp. 137–56.

86 Amnesty International, *Political prisoners in South Vietnam*; Thomas M. Lippman, 'Clandestine document assails South Vietnam on prisoners', *Washington Post*, 27 July 1973, p. A10.

humanitarian and military law. The law, and the self-obligations derived from it, were unequivocally understood by American, South Vietnamese, and allied troops. All military legal decrees drafted by the US high command categorically prohibited the use of force against captives, as defined by international law. In practice, however, the spectrum of everyday interpersonal violence ranged from simple harassment to abuse, torture, murder, and rape; from simple hair-pulling to ejection from helicopters. Explaining such a flood of violence against prisoners is a complex problem. Future research should focus in particular on informal, lived practice, so-called command culture, and the standing operating procedure derived from it, especially in the South Vietnamese armed forces. This was, in contrast to the laws of war, seldom written down and characterised by a strong situational and subjective perception of the conflict. One GI from the 4th Infantry Division precisely expressed this divergence between theory and practice and the heightened culture of violence in his unit:

To hell with the directives of the Department of Defense. Neither as an individual nor as part of my platoon was I ever told by NCOs, platoon leaders, or other officers not to kill civilians. The opposite was true.⁸⁷

Furthermore, if an armed unit begins to measure the progress of war by the number of opponents killed, it also affects the way it treats captives as well as its tolerance for violence against non-combatants. American and South Vietnamese soldiers who were unprepared for war and increasingly frustrated by the invisibility of the real enemy and in need of revenge were looking for 'substitute enemies'. These were prisoners, suspects, and civilians in need of protection. Those who spoke of a *war of attrition*, *crossover points*, *search and destroy*, *body counts*, and *kill ratios* ought not to have been surprised if the subordinate troops took such bellicose demands as a free pass for unbridled violence.

Conclusion

Why does the study of wartime captivity during the Second Indochina War matter? First and foremost, because the treatment of captives reveals how both sides fought in this conflict on a day to day basis, how they defined the laws of land warfare, and thus how they conceptualised legitimate combatants. As this article illustrates, the ideological epithet 'communist' oftentimes became a four-letter-word to defame captives. In reality, most communist prisoners were not immersed in the societal theories of Hồ Chí Minh, Mao Zedong or Vladimir Il'ich Lenin. Instead, they fought for an alternative vision of Vietnamese allegiance and belonging.

Hence, questions of captivity connect to larger issues of the war in Southeast Asia and warfare in general. For example, the analysis of the framework in which prisoner of war questions were handled leads to insights of how states exercise control over contested regions, territories and populations. The South Vietnamese state-building project found itself under attack from both the outside and the inside. It therefore had to protect its internal and external boundaries and cast itself as a loyal and viable representative of American exceptionalism. American pressure led to regular enemy

87 James D. Henry quoted in Donald Duncan, 'The men of "B" Company: By James D. Henry (as told to Donald Duncan)', *Scanlan's Monthly*, Apr. 1970, p. 31.

soldiers mostly being considered as POWs. On the contrary, internal, insurgent enemies—who were typically part of the NLF, directly attacking the interior limits of South Vietnamese state power—became stigmatised as uncivilised and were thus routinely categorised as civil defendants. They thus had considerably less privileges and international oversight. But were these enemies of Sài Gòn legitimate soldiers and thus citizens of an independent nation? This insight would have been a major concession that the South Vietnamese leadership could not bring itself to make. Instead, especially irregular enemy prisoners were seen through the lenses of treason against the South Vietnamese cause and thus as civil defendants. It was convenient, in this regard, that once detained, this category of captives had only a fraction of the rights codified in the GPW.

Keeping these captives incarcerated was a matter of coercively controlling suspicious elements of South Vietnamese society, at a moment when a contrary vision of Vietnamese state-building directly threatened Sài Gòn. In this sense, it is surely unsurprising that captivity became a mass phenomenon in South Vietnam. Large number of prisoners strengthened the morale of the South at first sight, while it weakened the enemy by denying him manpower. In capturing enemies, the adversary should also be convinced to give up on the war altogether. However, in the case of North Vietnam, the opposite was the case.

For the Vietnamese captives on the ground, hunger, diseases, and precarious space conditions were only some of the consequences. Virtually no effort was made to make use of POW labour, and prisoner exchanges were a rare exception. Those in possession of valuable intelligence were sent to either the NIC or the CMIC. As for the camps, visits by the ICRC had little effect upon camp conditions, despite American pressure to obey ICRC requests and efforts to improve camp conditions as best as possible, mainly as a means of pressuring the DRV to treat US captives better. The poor responses by the South Vietnamese throughout the war, combined with the allegations of war crimes, did little to improve world opinion of the allied war effort in Southeast Asia.

Besides their significance to state power, this article illustrated how captives became politicised. By highlighting the myriad contemporary definitions, conceptualisations, categorisations and nomenclature applied to wartime captives, this article argues that the study of prisoners should be more than a subfield of historical enquiries. The way in which belligerent nations construct definitions of legitimate combatants, POWs and civil detainees matters not just in military terms, but also in political and moral ones. In Vietnam, captives were not only important for intelligence and information but as a political-diplomatic tool to win the propaganda war. In this regard, both sides exploited enemy captives as well as their own ones before the court of world opinion. Often their official treatment illustrates the desperate search for a moral high ground. This is why it is also important to analyse the gap between official policy regarding captives and implementation on the ground. As this article shows, allegations of mistreatment in the United States provoked a series of congressional and humanitarian investigations. Prisoner issues provided a multitude of arguments to US citizens opposed to the war as well as to the enemy side.

Additionally, the political, military, cultural, economic, environmental, emotional, ritual and symbolic significance of prisoners, mostly off the battlefield, not

only advances the scholarly understanding of the Vietnam War in general, but provides answers to wider questions. To both sides, captives were multifunctional. Vietnamese prisoners were, at the same time, hostages, consumers of food and material, proof of military success, tools for propaganda, instruments of communication, objects of political indoctrination, and bargaining chips for negotiations. Since captives played such multidimensional roles, the study of detainees beyond the prison camps and barbed wire is essential. In this regard, a comparative analysis should not neglect American POWs in enemy hands. It seems that they were no longer seen as capitulating cowards but much more as noble heroes continuing their struggle behind enemy lines. This ideal-type was exemplified by the figure of John McCain and his portrayal in public memory as a true American patriot. In order to challenge such claims, more comparative research on the agency of captives, their popular memory as well as manhood and gender issues is needed. These dimensions can be studied with regard to all parties at war and in many aspects of daily captive life: capture, guarding, interrogating, feeding and supplying as well as housing and release.

Additionally, this article stresses the inclusion of enemy prisoner captives in the discussion of warfare not just in Southeast Asia but in the global Cold War and its consequences up till the present. In this regard, the war in Vietnam accelerated a global trend that the United States has pursued also since the end of the East–West antagonism: the exclusion of enemy captives from the laws of war, through bureaucratic processes and their construction of political-military categories. Paul J. Springer convincingly argues that the United States increasingly avoids taking, holding and maintaining POWs. These tasks are frequently outsourced to auxiliary countries. As Springer argues, ‘current [US] policy has virtually eliminated the role of POWs in American warfare’.⁸⁸ Thus the treatment and classification of enemy prisoners still challenges the United States as well as its allies—a problem that can be traced back to the Vietnam War, where day to day administration of prisoners mostly fell to South Vietnam.

As a consequence of the war in Southeast Asia, in the context of Cold War proxies and widespread insurgencies, it became clear to many that the 1949 Geneva Conventions were out of date—especially in the Global South.⁸⁹ Accordingly, in 1977, Protocols I and II of the Geneva Conventions expanded the definitions of lawful combatants and victims of armed conflicts. However, the United States has to this day stubbornly refused to ratify these Protocols. Still, Stephanie Carvin argues that the period after the Vietnam War saw an international ‘legal revolution’ in the laws of war.⁹⁰ The abstract concept of ‘lawfare’ as well as clear and concise rules of engagement became crucial to the education of American GIs. This process culminated in the Gulf War and has since deteriorated in the form of the global War on Terror. According to Carvin, US wars in Afghanistan and Iraq illustrate a ‘dualistic tendency’ in American history between strictly adhering and contributing to *jus in bello*, but at

88 Paul J. Springer, ‘Abandoning traditional concepts of prisoners of war: Military captives in the twenty-first century’, in Krebs and Foote, *Useful captives*, p. 127.

89 Stephanie Carvin, ‘Caught in the cold: International humanitarian law and prisoners of war during the Cold War’, *Journal of Conflict and Security Law* 11, 1 (2006): 67–92.

90 Stephanie Carvin, *Prisoners of America's wars: From the early Republic to Guantanamo* (New York: Columbia University Press, 2010), pp. 14, 101–3, 138, 226.

the same time not prosecuting offenders, especially when fighting wars against enemies perceived as immoral.⁹¹ The War on Terror was emblematic in this search for a seemingly uncivilised enemy whose captives were not classified as legitimate POWs, but as 'illegal enemy combatants'. In many regards, these illegal enemy combatants resemble the Vietnamese civil defendants of some three decades earlier.

91 Ibid., pp. 224–5.