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## EXECUTIVE SUMMARY

**Title:** The Moral Obligation of the Government to Recover POWs

**Author:** Major August Immel, USMC

**Thesis:** By choosing to leave POWs in captivity after the cessation of hostilities, the U.S. Government is violating its moral covenant with its servicemembers.

**Discussion:** Following World War II, the Korean War, and the Vietnam War, U.S. servicemen remained as POWs, and despite the intelligence reports received by the government, they were not recovered. The U.S. Government knew it was abandoning its POW and MIA soldiers, but because of political, economic, and social reasons, it took no action to bring them home. The U.S. servicemember is compelled to follow a prescribed Code of Conduct, stating that if captured, he will remain loyal and keep faith in the United States. His moral responsibility is thusly a legal one. The government's responsibility, however, is not codified in law, and as a result, in each of the aforementioned military operations, it has failed to fulfill its half of the moral covenant with the servicemembers. The government possesses extreme authority, the ability to deploy soldiers into combat to achieve a political objective unobtainable by diplomacy. As a corollary, it is also responsible to ensure the return of all soldiers and act to bring them home alive. The government, in that capacity, has failed. Current legislation only calls for investigations into POW/MIA accounting efforts but does not require action in the event of a military deployment. Recovering remains of MIA personnel years following the cessation of hostilities is a policy of settling for bones. If the government has the intelligence and capability to bring soldiers home alive, it must act.

**Conclusion:** With no legal motivation to uphold its moral covenant with the military, the U.S. Government has repeatedly violated it, and live POWs were abandoned. Action must be taken before a deployment is ordered, and governmental officials must acknowledge their obligation to bring home all those they send into combat.

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## Introduction

Starving, violently ill, and nearly unconscious, a U.S. soldier knelt under the burning sun in a Southeast Asia jungle with his hands tied behind his back and the butt of a Russian-made AK-47 assault rifle inches from his face. The humidity was unbearable, the dysentery drained his system, and the bugs ate his flesh. A multitude of men took turns jabbing his torso with homemade spears and clubbed him with their rifles. That soldier was, moments later, lying unconscious in a puddle of his own blood and sweat, marked by new gashes and fresh bruises to his face and body. He was moved to a makeshift jail cell, where he was allowed to “rest” before he would be subjected to the savagery again. This horrific scene was a basic daily routine for a man listed by the U.S. Government as an official Prisoner-of-War (POW), a simple helicopter pilot shot down in the performance of his duties during the Vietnam War. For more than five years, that soldier was subjected to the most horrific conditions and brutal torture a warrior could possible face.<sup>1</sup> But it was not the disease, daily beatings, malnutrition, or isolation that caused him the most pain. It was realizing that the U.S. Government violated its moral obligation to bring him home.

Such a riveting tale recounts one POW’s hellish experience during the Vietnam War, but it represents the pain that hundreds of thousands of warriors have faced in the past major U.S. military actions, specifically those of the twentieth century. The pain, torture, and hopelessness felt by the men who became POWs while answering the call to serve their nation were horrific, but each understood the risk and possibility of falling into such circumstances. The unexpected and perhaps most poignant aspect of becoming a POW is the knowledge that those with the ability to send servicemembers into combat have also chosen to violate their ethical covenant with the military by leaving POWs in captivity. According to Eugene McDaniel, a former POW

in Vietnam from May 1967 until March 1973, “We went prepared to be captured. But we were never prepared to be abandoned.”<sup>2</sup>

The servicemember takes up arms on society’s behalf and engages in warfare in order to protect the nation’s interests and defend its citizenry. In return, he expects only respect, suitable compensation, such as a basic salary and adequate healthcare, and above all, remembrance. Such a moral covenant between the servicemember and the citizens of his country is an essential component of the modern, all-volunteer Armed Forces. The governmental civilians, as the duly elected representation of the citizens of the United States, have been granted the authority to deploy the military as it deems necessary and serve as its supreme commander. Therefore, the aforementioned moral covenant is thusly an ethical code between the servicemember and those that have the authority to send him into combat. By choosing to leave POWs in captivity after the cessation of hostilities, the U.S. Government is violating its moral covenant with its servicemembers.

Using statistics alone, an argument could be (and has been, by certain governmental officials) made that the POW “issue” is a minor predicament as a result of conducting extensive military operations. During the five major military operations of the twentieth century following World War I, less than 0.25% of the veterans of those conflicts are currently listed as unaccounted for – POW/Missing in Action. However, for those 83,469<sup>3</sup> warriors who continue to waste away thousands of miles from their homeland or whose bones lie under the foliage and mud of a foreign territory, the situation is more than a terrible feature of war, it is the result of a calculated decision to forget. And we, as responsible citizens upholding the moral covenant made with those who wear or have worn the uniform, must never forget their sacrifices, but more importantly, demand retribution for those unethical authorities that have.

Table 1. Official USG POW/MIA Numbers

	Unaccounted For					
	WWII	Korean War	Cold War	Vietnam War	Gulf War	Total
Total MIA	73,690	7,973	126	1,678	2	83,469

A significant number of books and articles have been written on the subject of POW treatment and conditions of captivity, such as *Prisoner of War* by Mike McGrath, *Five Years to Freedom* by James Rowe, and *Surviving Hell* by Leo Thorsness, several of a great many primary sources that tell autobiographically of life as a POW. A lesser number of books have addressed the idea that POWs were left behind and forgotten by the government. *The Men We Left Behind*, *An Enormous Crime*, and *Soldiers of Misfortune* are perhaps the best known books that discuss the U.S. Government’s failure to address the POWs that remained in captivity at the conclusion of the Korean, Vietnam, and Cold Wars. Finally, books like *Armed Servants*, *To Serve With Honor*, *Soldiers and Civilians*, and *The Soldier and the State* discuss the relationship between society and its Armed Forces, especially in the case of an all-volunteer or professional military. These works, while providing an amazing amount of information on POWs and the role of the soldier in society, do not address that missing element of the moral covenant: the code of responsibility of the U.S. Government for its servicemembers. Therefore, the focus of this thesis will be on identifying that half of the moral covenant and why the government is in violation of its responsibility.

It is necessary to clarify certain words and definitions that will be used throughout this essay in order to provide a standardization of terms. Unless specifically identified as pertaining solely to the U.S. Army, the term “soldier” will be used to signify any member of the Armed

Forces, as will “servicemember.” Additionally, “U.S. Government (USG)”, “government”, and “Congress” will be used interchangeably to refer to those elected civilians that have the collective authority to deploy the military. If not independently identified, the “President of the United States (POTUS)”, as an elected civilian who has supreme authority over the Armed Forces, should be considered part of the collective entity of “government.” Lastly, the term “Prisoner-of-War” (POW) will refer to all servicemembers officially identified by the U.S. Government as such, including all five categories of captured personnel during the Vietnam War, and those whose official status may reflect one of the official definitions of “missing status” as set forth in 10 U.S.C. Section 1513<sup>4</sup>:

- (A) Missing.
- (B) Missing in action.
- (C) Interned in a foreign country.
- (D) Captured.
- (E) Beleaguered.
- (F) Besieged.
- (G) Detained in a foreign country against that person's will.

The point of this categorization is not to evoke an argument over political technicalities of those soldiers left behind; it is to recognize all soldiers who never returned because of a governmental decision to not seek their repatriation.

### **The Ethical Contract**

The unwritten moral covenant between the military and society, carried out on its behalf by the government, is a simple concept that is rooted in the notion of compensation for sacrifice. In essence, those willing to take arms on behalf of the country to protect its citizens and interests, with their lives, if necessary, will be rewarded, typically in the form of monetary compensation and complementary healthcare and benefits, which are promised in government mandates, such as Title 37 of the U.S. Code. But more importantly, the servicemember is to be compensated

with an unspoken remuneration, that of a high level of honor. Honor is of course an abstract idea, which could incorporate everything from the issuing of medals of valor to official burial procedures. However, the element of honor that pertains specifically to the core of this thesis is the type of honor that bounds civilian leaders to ensure each man deployed in a military operation returns home. That specific aspect of honor is remembrance, the idea that those with the authority to send soldiers into combat will assure their return from combat. The authorities which contractual obligate the two groups to fulfill their respective commitments of the covenant fall into two principle categories: ethical, ideological imperatives and legal, constitutional statutes.

The relationship between the military and the government was formally established in the United States in the first two articles of the Constitution. Under Article I, Section 8<sup>5</sup>, the legal authority of Congress as it pertains to the military is defined:

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

Article II, Section 2<sup>6</sup> of the Constitution of the United States specifies the role of the Chief Executive, the President, as the supreme authority of the military:

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon

any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

In both Articles, the Constitution places legal authority over the U.S. Armed Forces in the civilian governmental leaders, who can shape, fund, and deploy the military as they require. Additionally, sections of the United States Code identify further obligations and limitations of the constitutionally provided authority of the government as it relates to the use, structure, and missions of the Armed Forces. For example, the War Powers Resolution of 1973<sup>7</sup>, found in 50 U.S.C.1541-1548, is a joint resolution passed by Congress that limits the ability of POTUS to commit the U.S. military to combat operations without the consent of the Congress. The President, as Commander-in-Chief, is required to notify Congress within forty-eight hours of deploying the military and prohibits their remaining in the combat area of operations for more than sixty days, unless authorized by Congress.

Such specific elements of the Constitution and United States Code identify the legal authority bestowed upon the government over the Armed Forces. These legal texts clearly define the power the government has over the military and the ability of the government to deploy the military as required. However, they do not specify what the government owes its servicemembers, which is one-half of the previously discussed moral covenant, in return for such power and control. A reference to the obligation of the government to its servicemembers is loosely discussed in a Senate Report written in 1993: “The Senate Select Committee on POW/MIA Affairs was created to ensure that our nation meets its obligation to the missing and to the families of those still listed as unaccounted for from the war in Southeast Asia or prior conflicts.”<sup>8</sup> Perhaps in an act of political acumen, the obligation itself is not identified, specifying the duty of the government to recover those soldiers unaccounted for.

In addition to the Senate Report and buried deep in the pages of 10 U.S.C. 1501 is a Congressional Statement of Purpose that identifies the rationale for Chapter 76, “Missing Persons”:

The purpose of this section is to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States and, as a general rule, is not declared dead solely because of the passage of time.<sup>9</sup>

The text of this section implies that something must be done by the United States to ensure servicemembers who become missing or captured are returned. To be accounted for, as stated in the above excerpt from Chapter 76 of 10 U.S.C,

- (A) the person is returned to United States control alive;
- (B) the remains of the person are recovered and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or
- (C) credible evidence exists to support another determination of the person's status<sup>10</sup>

Through a general inference, the term “United States” can be assumed in this case to refer to the those with the power to deploy troops, the U.S. Government. It can be therefore be surmised, that with such power over the lives of so many, in addition to any legal requirement, an ethical obligation to compensate the servicemembers with remembrance and honor in the form of guaranteed redeployment, whether alive or dead, should be an inherent requirement of the moral covenant: “As part of the sacrifice, the government, on behalf of the society it represents, demands that the servicemembers, by the very nature of their employment, accept the possibility of death or injury and they the must be duly rewarded for their willingness to do so.”<sup>11</sup>

The other side of the moral covenant discussed above pertains specifically to those that are willing to defend the country, its citizens, and its values as necessary. As the force that possesses such a unique mission, “to kill and blow things up,”<sup>12</sup> and “to carry out the systematic application of violence in the service of the state,”<sup>13</sup> soldiers are required to deploy to hostile

areas and may face an armed enemy in order to achieve a political aim established by governmental policy. The expectations of the soldier have changed little throughout history, as soldiers have been executing their duties on behalf of their societies and governments for millennia. As such, the moral covenant between the civilians and the soldiers has also existed for millennia. Throughout the many years of warfare, the fundamental expectation of the government when deploying its military to combat operations and as part of the moral covenant between the two groups is that these servicemembers are “supposed to be willing to die to defend the nation and its interests so that civilians do not have to risk their lives.”<sup>14</sup>

The idea of such sacrifice identifies the ethical code of the soldier, those standards against which the action of the members of the covenant can be measured, specify the obligations and values for its membership, and identify those critical means for linking the individual behavior of its membership to the expected behavior of the profession in terms of its wider obligation of service.<sup>15</sup> Service in the case of the professional soldier is total, what Sir John Hackett called the “clause of unlimited liability, which obligates the members of the profession of arms to give their lives in the performance of their professional duties in service to the state.”<sup>16</sup> Thus, the soldier’s portion of the moral covenant between the government and the military is ethically defined. However, the government chose not to limit the responsibility of the soldier to an unwritten standard alone. In 1955, the President of the United States chose to codify the ethical guide of the soldier in the form of legally binding governmental decree, Executive Order 10631: “All members of the Armed Forces of the United States are expected to measure up to the standards embodied in [a] Code of Conduct while in combat or in captivity.”<sup>17</sup> The presidential action, still in effect, requires each member of the Armed Forces to abide by six articles that define how he must behave in combat and especially in the event of capture by the

enemy. These articles are designed to dictate behavior of a soldier under extreme combat situations, including incarceration. Of note, Articles V and VI of the Executive Order reveal the obligation of the servicemember to the government:

Article V – When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause (underlining added).

Article VI – I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America (underlining added).<sup>18</sup>

Although not formally part of the Uniform Code of Military Justice (UCMJ), the formal military law is considered a lawful order because of its release by the Commander-in-Chief, and failure to comply with said order could result in a court-martial.

The Code of Conduct is written by the government for the soldier, making the ethical guide purely one-sided. This paradox is further exacerbated by the scope of application of the Code of Conduct, Uniform Code of Military Justice, and other military regulations. While each member of the Armed Forces is honor bound to obey the mandates set forth in these legal texts, no civilian authority is required to conform to them. Additionally, these legal documents nowhere indicate the government's duty or obligation to the servicemember if he becomes captured or missing. This inconsistency reflects the nature of the level of sacrifice given by the soldier: "Whereas American society is based fundamentally on the pursuit of individual self-interest, the American soldier is obligated to carry out his task even to the detriment of his self-interest for the good of the larger society or the profession itself."<sup>19</sup> The government of the society from which it is elected does not demand of itself the same level of commitment to the moral covenant. The role and expectation of the soldier is abundantly clear and codified in its portion of the moral covenant. The duty of the government is not as clear, and as a result, the government, on multiple occasions, has violated the covenant and breached its ethical duty

towards its servicemembers. The duty is not defined in legal or congressional text, but the servicemember is instructed to expect action, as evidenced in Army Pamphlet 360-512:

Just as you have a responsibility to your country under the Code of Conduct, the United States government has an equal responsibility – to keep faith with you and stand by you as you fight for your country. If you are unfortunate enough to become a prisoner of war, you may rest assured that your country will care for your dependents and will never forget you. Furthermore, the government will use every practical means to contact, support, and gain release for you and for all other prisoners of war.<sup>20</sup>

The soldier's moral and ethical duty is defined, codified, and standardized. Because this is untrue for the civilians that control military deployments, a rift has occurred. The different legal standards between the civilian leadership and the military results in a different set of moral obligations and ethical values. The military servicemember is obliged to obey a strict set of guidelines and even laws that dictate performance and demeanor. The civilian leadership is bound by no similar set of rules and written code of conduct. The result is the government's falling into a moral paralysis, and in no other case is this more evident and appalling than in the case of POWs abandoned by their government.

## **A History of Direct Contraventions of Duty**

### **World War II**

During the final years of World War II, a significant number of U.S. servicemen remained as POWs held by the Axis Powers throughout Europe. When the fighting ended, several of the prisoner camps in Eastern Europe that contained U.S. POWs were located in the Soviet zone of occupation. A meeting in Halle, Germany, on 22 May 1945 was convened to discuss among the Allies and representatives of the Russian High Command the procedures for repatriating POWs located in the Russian sector of control. After the six-day conference, U.S. Army Major General R.W. Barker, representing the Supreme Headquarters, Allied European Forces (SHAEF), wrote a cable to the Chief of Staff of SHAEF informing him that the Russians

were essentially holding British and U.S. POWs hostage until they permitted their release. Two reports submitted by members of the SHAEF representation at the conferences estimated the total number of U.S. POWs held by the Russians to be between 15,597 and 25,000. The Supreme Allied Commander of the European Allied Forces, General D.D. Eisenhower, formally acknowledged the large number of U.S. POWs under Russian control, but in an inexplicable political maneuver, he dismissed the accepted number in a memorandum (SHAEF Memo FWD 23059). Only forty-eight hours after receiving a cable from his Surgeon General identifying more than 15,000 U.S. POWs were under Russian control, Eisenhower stated that:

It is now estimated that only small numbers of U.S. prisoners of war still remain in Russian hands. These no doubt are scattered singly and in small groups as no information is available of any large numbers in specific camps. They are being received now only in small driblets and being reported as received.

Everything possible is being done to recover U.S. personnel and to render accurate and prompt reports thereon to the War Department.<sup>21</sup>

The future POTUS sealed the fate of tens of thousands of servicemembers that served their country in the largest conflict in modern history. The true betrayal of the captive soldiers was the “political decision made to abandon thousands of American and British prisoners.”<sup>22</sup> On 1 December 1946, the *Wisconsin State Journal* presented a story that more than 20,000 U.S. soldiers were still held by the Soviets in an attempt to reveal a bureaucratic cover-up of the fate of thousands of servicemembers who, more than a year after the cessation of hostilities, had not returned home. The newspaper was discredited, as was the mother of a U.S. pilot shot down over Romania in 1943 who tried to expose the truth. Unfortunately for Ida Mae Reitz Stichnoth, her POW activism made her an enemy of the U.S. political process, which instituted a disinformation program against her to shape opinions of influential congressmen and journalists and lead them away from the POW issue. Although she eventually learned her son was taken as

a Russian prisoner to the gulag in Siberia, as were the majority of the POWs held by Russia after 1945, her efforts could not override the betrayal and abandonment of the U.S. POWs.<sup>23</sup>

### **Korean War**

After 1951, the U.S. government attempted to negotiate a cease-fire with the North Korean enemy in which it was engaged in a massive military conflict mandated by the United Nations. For more than two years, one looming issue precluded the two sides from agreeing to terms: repatriation of POWs. The North Korean government demanded that the U.S. and its U.N. allies return all captured Northern Korean and Chinese POWs taken during the conflict. The U.S. government did not want to repatriate those prisoners its soldiers had captured that expressed a desire to not return home, effectively defecting from the communist countries for which they originally fought. The political stalemate based on this issue lasted until the military stalemate exhausted both sides in 1953. The two parties to the conflict eventually agreed on terms of a ceasefire, which included a POW exchange. The initial “Little Switch” resulted in the release of more than 6,600 North Korean and Chinese prisoners in exchange for slightly more than 600 U.N. prisoners.<sup>24</sup> However, no subsequent exchange of the remaining prisoners occurred. The U.S. Government, knowing fully that a significant number of its servicemembers was still being held by its communist enemy, chose to accept the terms and the exchange rather than demand the release of all its POWs. Such a betrayal was worsened when the government, receiving no cooperation from its enemy in returning POWs, chose to let the Korean War POW issue fade from priority: “During the mid-1950s, the U.S. demanded the North Koreans and Chinese account for missing Americans. After 1955, due to the lack of response (except for the return of 1,868 remains in 1954), the issue abated...”<sup>25</sup> Perhaps the most deplorable display of political indifference by the U.S. Government was the inaction taken after receiving a report

from its primary agency dedicated to the POW/MIA issue, the Department of Prisoners of War/Missing Personnel Office nearly three decades after the ceasefire was signed:

The U.S. Government has received numerous reports concerning Americans living or detained in North Korea after the prisoner exchanges with North Korea in 1953. Based on number of unaccounted for personnel captured by the communist forces and not returned from the Korean War and, a number of recent live American sightings in North Korea, the DPMO concludes that there are two groups of Americans in North Korea: a small group of defectors and a larger group of 10 - 15 possible POWs. A second, larger group of Americans is comprised of U.S. service members, most likely from the Korean War and possibly Vietnam War era. There have been numerous reports of both American and British POWs in North Korea. One of the most compelling reports received over the years was a sighting reported to DoD by a Romanian in 17 Feb. 1988.<sup>26</sup>

Despite such reports, the efforts by the government did not include any missions to seek live POWs. The DPMO was ordered to send recovery teams to search for remains ten years after the above report was issued. Those efforts were suspended in 2006 due to deteriorating relations with North Korea. The limited dedication to its POWs and fulfilling its moral covenant are illustrated by a single figure, 7,973: the startling statistic of the total number of personnel still missing from the Korean War.

### **Indochina**

Beginning with the deployment of military advisors in 1950, the Government of the United States began a military campaign in Vietnam that lasted until the withdrawal of troops from the country in 1973. In 1965, the government chose to deploy full units of dedicated combat troops, and by 1968, the U.S. had 543,000 servicemen serving in a military conflict whose battlefields spanned five countries. The official deployment of combat troops began under the Kennedy Administration, but the Indochina legacy would be most associated with the presidency of L.B. Johnson, during which time the total number of U.S. servicemembers reached its peak. The fighting took place on land, sea, and in the air, on the soils of multiple countries, and sometimes against a faceless enemy employing guerilla tactics that hid in plain sight among civilians. The communists of Indochina received logistical support from its communist allies,

including advanced weapon systems, such as surface-to-air missiles and anti-aircraft artillery that posed a major threat to U.S. pilots in their sortie missions. Ground troops were also exposed to concentrated small unit jungle tactics, especially at night, which could sometimes divide friendly units and leave some soldiers exposed. More than 3,000 servicemembers went missing or were captured as the result of the difficult conditions for both ground and air forces. Of that total number, 1,678 still remain on the MIA rosters of the U.S. government, listed as “unaccounted for.” While a significant number of confirmed POWs were returned to the U.S., especially during Operation HOMECOMING in 1973, where 591 POWs were released by the North Vietnamese, the official total number of POWs cannot ever be known. Total numbers listed as “unaccounted for” and MIA both can incorporate captured soldiers.

Although less than four per cent of the casualties of the Vietnam War were POW/MIA, repatriation of them was still a critical issue at the war’s end. The Paris Peace Accord, which formally brought a ceasefire to the hostilities in Indochina, contained a specific paragraph identifying the requirement to turn over all POWs to their respective parent authorities:

Chapter III

THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS AND CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

Article 8

(a) The return of captured military personnel and foreign civilians of the parties shall be carried out simultaneously with and completed not later than the same day as the troop withdrawal mentioned in Article 5. The parties shall exchange complete lists of the above-mentioned captured military personnel and foreign civilians on the day of the signing of this Agreement.

(b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.<sup>27</sup>

The Accords were signed, but their provisions were not upheld. The agreement required both parties to return all captured personnel, but the U.S. accepted less. The U.S. Government acknowledged in 1992 that “some Americans may have been indeed left behind after Operation

HOMEcomings...”<sup>28</sup> Furthermore, the Vietnamese refused to take responsibility for any Americans captured outside that country, which adds to the total number of individuals unaccounted for. This included more than 500 servicemembers captured in Laos, Cambodia, and China. More than 480 were lost or captured in Laos alone. However, due to political positioning, those POWs in Laos were not included in the provisions of the Paris Peace Accords, which dealt specifically with U.S. POWs in Vietnam.

As a result of political convenience, a number of servicemembers in Indochina following the Vietnam War were left in POW camps throughout the region and not included in negotiations for peace. While an appalling fact in itself, this moral violation is further exacerbated by the decision of the U.S. government to not pursue reports of live sightings of POWs in Laos and Vietnam in the years following the war. Colonel D.L. Hrdlicka was reported alive in Laos by Russian press throughout the 1980s and 1990s. A Thai businessman with contacts in Laos reported Chief Warrant Officer William Milliner alive and able to be moved to the Thai border. Army Special Forces Sergeant Charles Huston was reported alive by an Asian prisoner with whom he was incarcerated and escaped to Thailand.<sup>29</sup> In a different part of Laos, three letters, “USA,” were dug out of the bottom of a rice paddy between October 1987 and January 1988. Just below these letters was the letter “K” formed from rice straw, used as a then-classified ground to air distress symbol in an escape and evasion code. Coupled with live sighting reports in that same area of Americans being held in a prison camp, the notion of live POWs still captive in Indochina become more credible. Additionally, Robert Newberry, the Acting Deputy Assistant Secretary of Defense for POW/Missing Personnel Affairs in 2006, wrote that “between March 2005 and 6 July 2006, we received 63 additional reports of Americans sighted in Southeast Asia. Of the 63, 17 are firsthand reports, which we are currently analyzing. At least 9

of the 17 first hand reports are wartime sightings referring to purported Americans seen during the Vietnam War.”<sup>30</sup> The U.S. government possessed (and still does) credible intelligence to the locations of live POWs held in Indochina, but no action was taken to affect their release and repatriation to the United States.

The U.S. government chose to not seek the recovery of at least seventy reported POWs in Indochina following the Vietnam War. While those in uniform interned behind enemy lines keep faith among themselves and in the United States of America, per their Code of Conduct, the government does not actively demand their return. The government is not fulfilling its part of the covenant it shares with the servicemembers of the Armed Forces, to ensure their return. The covenant that exists between a “nation and the people it sends into war obliges that nation to do all within its power to return home those servicemen captured in the line of duty.”<sup>31</sup> Based of the information in the above three histories of the POWs of the major armed conflict of World War II, Korea, and Vietnam, the government is in violation of the covenant.

### **Settle for Bones: Current POW/MIA Diplomacy**

Despite it being an intrinsic and ethical obligation of its duty, the government has, on multiple occasions, deliberately chosen to not seek the recovery of POWs during and after the cessation of the military action in which its servicemembers were engaged. The justification to not uphold its portion of the moral covenant can essentially be divided into three main pretexts: political obstructions, economic complications, and social interference. Following the end of World War II, the United States found itself immediately engaged in a silent battle with a new adversary, the Soviet Union, whose political philosophy of communism was viewed as a direct threat to the values and freedom espoused and defended by the United States and its western allies. After the division of former German-controlled territory into areas of responsibility

among the Allies, the Soviet Union chose not to follow the reconstruction plan proposed by other members of the victorious group, and the tension between them grew significantly. Including materiel and equipment taken to the Soviet Union as war spoils, the former prisoners of German detention camps were also moved, including tens of thousands of Americans. As discussed in the previous chapter, members of the U.S. Government and the SHAEF command staff knew of this personnel movement, but the authorities refused to act. The rationale found in declassified memoranda cite unsubstantiated sightings and intelligence reports, but members of the Eisenhower Administration in the 1950s revealed the political situation with the Soviets as a primary obstacle in seeking the return of the U.S. POWs in Siberia. One of the demands of the Soviet Union to return U.S. and other allied POWs was the repatriation of all Soviet prisoners to the U.S.S.R., including those that sought asylum as defectors. The U.S. Government refused to repatriate those that did not want to return to the Soviet Union, and as a corollary, the Soviet Union refused to release its U.S. POWs. This same situation occurred after the Korean War, in which Chinese and North Korean troops sought refuge in South Korea, despite the North Korean demand to return all prisoners. The U.S. refused, and the North Korean-held American POWs were not released, and some were even reportedly moved to Siberia. The political obstacles of World War II became the same obstacles post-Korean War that rendered the U.S. Government impotent to ensure the return of its POWs. The resulting reality is that by using the lives of the POWs held by the communists following those conflicts, the government justified inaction in order to keep the Cold War cold.

The history of the POWs left in Indochina following the Vietnam War is also certainly plagued with political barriers that the government used to justify not seeking the return of all its POWs, but one major economic complication reverberated throughout the peace talks in the

1970s. North Vietnam had “undertaken a program to capture American servicemen alive both in the North and in the South and use them as hostages to ensure that North Vietnam would be compensated for damages inflicted by American bombers.”<sup>32</sup> The North Vietnamese authorities understood the monetary value of holding U.S. POWs, and even a report by the RAND Corporation concluded that the U.S. would be faced with a demand, “one it may want to accept,” by the North Vietnamese government to pay reparations in exchange for U.S. POWs.<sup>33</sup> During secret meetings in 1970 – 1971 between U.S. representatives (led by Henry Kissinger) and North Vietnamese officials (led by Le Duc Tho), monetary compensations for the release of POWs became the focus of the negotiations for a ceasefire. Verbally agreeing to fund more than \$2 billion directly to the Democratic Republic of Vietnam, which would not be written in any peace accords, Kissinger had initial success. However, after the 1972 bombing campaign of the U.S. that attacked North Vietnam, Tho demanded more than doubled his demand, now at \$4.5 billion in war reparations. The U.S. government eventually refused any reparations specific to the release of U.S. POWs, and despite the successful return of those capture servicemen in Operation HOMECOMING, some still never returned home.

The final justification for governmental inaction as it pertains to recovery of POWs, social interference, spans all three previously discussed conflicts. With no internal motivation to act in order to fulfill its obligation to the POW, what remains is a small element of society that puts pressure on the government to fulfill its ethical responsibility to return its servicemembers. Social groups, family members, and veterans, including former POWs, continue to demand action by the government to bring home those soldiers that fulfilled their obligation to society but unfortunately were captured or went missing during their official duties as warriors. Such pressure on the government can result in a new attention to the issue, but pressure alone does not

guarantee action. The bureaucratic process of categorizing soldiers POW and MIA has frightening results. Time alone can change a servicemember's status from MIA to "presumed dead," and the military pays tribute to another fallen soldier, even if no formal confirmation of the soldier's death took place. An official report by the U.S. government reveals a trend in policy on dealing with POW/MIA servicemembers:

The interim conclusions are very disturbing. After examining hundreds of documents relating to the raw intelligence, and interviewing many families and friends of POW/MIAs, the Minority Staff concluded that, despite public pronouncements to the contrary, the real, internal policy of the U.S. government was to act upon the presumption that all MIAs were dead. As a result, the minority Staff found, any evidence that suggested an MIA might be alive was uniformly and arbitrarily rejected, and all efforts were directed towards finding and identifying remains of dead personnel, even though the U.S. government's techniques of identification were inadequate and deeply flawed.<sup>34</sup>

Should a reader infer that the government believes it is easier to discuss dead bodies and remains than to discuss live POWs? Do the POWs and potentially live soldiers MIA form too much a reminder of the conflict in which they were ordered to participate? The families and colleagues of POWs are offered the consolation of the government that the soldiers still "unaccounted for" made the ultimate sacrifice and died for their country. The social interference in the form of protests, demonstrations, rallies, letters, and speeches force the government to take political action through legislation, but the frightening reality is that congressional resolutions and the like do not address actions for the recovery of live POWs, for such an attempt would disrupt political sensitivities, become too costly, and also prevent the country from "moving on" and letting the scars caused by years of war heal. Settling for bones in missions to recover remains is both economically and politically easier than to search for live men still captive in countries of former hostilities.

Current legislation efforts might appear to be making headway on the POW/MIA issue. For example the passage of House Resolution 111 on 28 February 2011, which created the Select Committee on POW and MIA Affairs, demands that full investigations be conducted in all

unresolved matters of personnel unaccounted for following the major wars of the twentieth and twenty-first centuries.<sup>35</sup> What appears to be a remarkable move towards fulfilling its moral obligation is unfortunately an example of eloquent wordplay. This resolution in no way authorizes any action to recover POWs, nor does it force the Committee to take action on its own to exact such an effect. This resolution merely allows a group of ten Congressmen to examine concerns surrounding the POW/MIA issue. Dishearteningly, the same political shuffle exists in the Senate's version of the Committee on POW/MIA Affairs. According to the Committee's mission statement, "the Committee was not created with the expectation of final, definitive, case-by-case answers. That is a task that may well be beyond mortal power to achieve..."<sup>36</sup> The government has essentially decreed it will not seek answers on each case of live POW reports.

The one political act that does merit a positive acknowledgement is in the Bring Them Home Alive Act of 2000. On 9 November 2000, the President signed Public Law 106-484, a congressional resolution that "provides refugee status to foreign nationals of specified countries who assist in returning to U.S. control a live American POW or MIA from the Vietnam or Korean Wars."<sup>37</sup> In 2002, the Act was amended to include the same provisions for any information concerning a live American POW or MIA from the Persian Gulf War. While such legislation does not demand that the government uphold its moral obligation to the servicemember, it does recognize a need to honor it, at least in part, by creating some proviso that might result in action to bring home POWs alive, not simply settling for bones.

### **An Open Conclusion**

Following three major wars during the twentieth century, the U.S. Government made a calculated decision to not seek the recovery of its POWs held by adversaries following the conclusion of the military operations. Thousands of servicemembers, keeping faith in their

government, spent the remainder of their lives thousands of miles from home and received the military honor of being listed on a statistical database as “unaccounted for.” Despite live sightings and multiple intelligence reports, however minor, no action was taken to attempt recovery of the live POWs held in foreign territory. The choice of inaction was based on political, economic, and even social reasons, and the fate of the soldiers being held captive was sealed by those governmental officials with the authority to originally send them into combat to face the enemy. It was a political decision to initially use military force, and it was a subsequent political decision to abandon part of that military force once the war was over. The blood of the servicemen who died, who became missing, and who were taken as POWs in the conduct of military action on behalf of their nation became the currency with which the U.S. Government traded for peace, and sometimes purposely forgotten. Colonel Millard Peck expressed his sentiment on that very issue in his letter of resignation from his post as the Chief of the Special Office for Prisoners of War and Missing in Action: “Everyone is expendable. I have seen firsthand how ready and willing the policy people are to sacrifice or ‘abandon’ anyone who might be perceived as a political liability. It is quick and facile, and can be easily covered.”<sup>38</sup>

The government has a duty to recover its servicemembers if they become captured, killed, isolated, or missing in the execution of their official duties in military operations. This is one half of the moral covenant that exists between the soldier and his nation. The government is the representative of that nation, and because it possesses the authority to deploy the soldier into combat, the covenant is essentially an ethical pact between the warrior and his civilian leadership. In return for the honor, remembrance, and benefits that should be bestowed on him for his sacrifice, the servicemember agrees to take up arms for his country, engage in combat and accomplish the mission, and if necessary, give his life in the execution of such duties.

Additionally, if he is captured, the servicemember will continue to resist, attempt to escape, and keep faith with his fellow prisoners and in the United States. This part of the soldier's moral duties are officially detailed in Code of Conduct, the ethical guide for the servicemember that specifies the standards expected of any soldier in combat or in captivity. The soldier has both an ethical and legal responsibility to fulfill his portion of the moral covenant he shares with the government. The government, in comparison, is not mandated by any legal code to fulfill its obligation; the covenant is simply a philosophical requirement. With the absence of such a codified standard by which it must act and obey, the government has, as seen following World War II, the Korean War, and the War in Vietnam, chosen to not accomplish its duty and ensure, by all and any means necessary, the return of its warriors sent abroad to continue American policy through force. Limitations, political, economic, or social, have led the government to evaluate the cost and benefit of attempting recovery of POWs. The result is a dark chapter in U.S. military history, as described by a former POW in Vietnam, Chief Warrant Officer Frank Anton: "What is most troubling about this century's history of American prisoners of war is the 'cynical attitude' adopted as unofficial policy more than forty years ago. I learned from cruel experience that there were limits to the value placed by the government on men who fell into the enemy's hands."<sup>39</sup>

An ethical violation of the covenant has clearly occurred following three major wars in the twentieth century. And with the passage of time, the issue fades from the collective social memory, allowing the government to politically maneuver itself for the next adversarial engagement. The political climate is much too sensitive to take any action during or immediately following hostilities, so many live POWs and soldiers MIA are sentenced to wait. Policy changes, and the government chooses to return remains rather than conduct operations to

recover live POWs or missing servicemembers known to be alive. POW/MIA affairs become an issue of concern for the government at the end of hostilities. Considering the fate of the POWs and MIA servicemembers ex post facto is too late. The potential problem should be addressed, however, long before the first soldier is even ordered to deploy. When considering the use of force to achieve political aims, as Karl von Clausewitz defined war, the government must create a plan for the recovery of any servicemember captured or missing, and it must formally agree in any congressional decree or executive order how it will recover them, even including it as an addendum if required. This will force the government to honor its moral covenant by planning well in advance the action it will take in the event of a POW or MIA. The government must also stipulate that no military action will conclude until all soldiers are returned home, missing, captured, alive, or dead. “Getting the men back would demonstrate a moral commitment few nations possess,” Wall Street Journal reporter Bill Paul wrote in 1985.<sup>40</sup> That same idea holds true today. No soldier should be deployed unless the government is willing to take all actions necessary to guarantee his return, and “to stay and negotiate, as Ross Perot suggested to Ronald Reagan that any U.S. negotiator should, ‘for as long as was necessary to gain release of the prisoners.’”<sup>41</sup> Furthermore, each member of Congress and the President himself should be required to take an oath, in addition to the one upon entering office, that if they chose to send soldiers into combat, they will ensure their return. It is necessary to make the ethical responsibility of the government to its servicemembers a legal one as well. POWs have been politically forgotten, and it is necessary to hold governmental officials legally responsible so that what Mark Sauter and Jim Sanders wrote in 1993 will be unmistakably true: “Some may yet be alive; the U.S. government has not done nearly enough to bring them home. And that is more than a shame. It’s a crime.”<sup>42</sup>

## NOTES

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<sup>1</sup> Frank Anton, *Why Didn't You Get Me Out?* (New York: St. Martin's Paperbacks, 1997).

<sup>2</sup> Excerpt from biography of Eugene McDaniel, former POW in Vietnam, POW Network Website, <http://www.pownetwork.org/bios/m/m101.htm> (accessed 27 December 2011).

<sup>3</sup> Defense Technical Information Center, Dense Prisoner of War Missing Personnel Office Statistics, [http://www.dtic.mil/dpmo/summary\\_statistics/](http://www.dtic.mil/dpmo/summary_statistics/) (accessed 18 December 2011).

<sup>4</sup> United States Code, Title 10, Chapter 76, "Missing Persons," <http://uscode.house.gov/download/pls/10C76.txt> (accessed 18 December 2011).

<sup>5</sup> United States Constitution, [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html) (accessed 19 December 2011).

<sup>6</sup> Ibid.

<sup>7</sup> United States Code, Title 50, "War and National Defense," [http://uscode.house.gov/download/pls/Title\\_50.txt](http://uscode.house.gov/download/pls/Title_50.txt) (accessed 19 December 2011).

<sup>8</sup> Senate Select Committee on POW/MIA Affairs, *Report of the Senate Select Committee on POW/MIA Affairs*, 103rd Cong., 1st sess., 13 January 1993, Senate Report 103-1.

<sup>9</sup> United States Code, Title 10, Chapter 76, "Missing Persons," <http://uscode.house.gov/download/pls/10C76.txt> (accessed 18 December 2011).

<sup>10</sup> Ibid.

<sup>11</sup> Jill Segger, "A Moral Covenant with the Military," Ekklesia website, <http://www.ekkleisia.co.uk/node/14782> (accessed 17 November 2011).

<sup>12</sup> Peter Feaver, *Armed Servants* (Cambridge: Harvard University Press, 2003), 73.

<sup>13</sup> Richard Gabriel, *To Serve With Honor* (Westport: Greenwood Press, 1982), 87.

<sup>14</sup> Peter Feaver and Christopher Gelpi, *Choosing Your Battles* (Princeton: Princeton University Press, 2004), 213.

<sup>15</sup> Gabriel, 83.

<sup>16</sup> Ibid., 84.

<sup>17</sup> President, "Code of Conduct for Members of the Armed Forces of the United States," *Executive Order 10631*, <http://www.archives.gov/federal-register/codification/executive-order/10631.html> (accessed 19 December 2011).

<sup>18</sup> Ibid.

<sup>19</sup> Gabriel, 83.

<sup>20</sup> Headquarters, U.S. Army, *Code of the U.S. Fighting Force*, Army Pamphlet 360-512 (Washington, D.C.: 1 June 1988), 1.

<sup>21</sup> Supreme Headquarters, Allied Expeditionary Forces Memorandum SHAEF 383.6-2 MED to General Kenner, Surgeon General, "Displaced Persons, Allied ex-PW and German PW," 30 May 1945; Supreme Headquarters, Allied Expeditionary Forces Memorandum S-94080 to U.S. War Department, "Camp Visit Incident," 29 June 1945; Supreme Headquarters, Allied Expeditionary Forces, Forward Cable FWD-23059 to U.S. War Department, 1 June 1945, <http://www.nationalalliance.org/vietnam/ovrvw04.htm> (accessed 11 December 2011).

<sup>22</sup> Jim Sanders, Mark Sauter, and Cort Kirkwood, *Soldiers of Misfortune* (Washington, D.C.: National Press Books, 1992), 255.

<sup>23</sup> Ibid., 256.

<sup>24</sup> Burton Kaufman, *The Korean Conflict* (Westport: Greenwood Press, 1999), 66.

<sup>25</sup> Charles Henning, *POWs and MIAs: Status and Accounting Issues*, CRS Report for Congress RL33452 (Washington, D.C.: Congressional Research Service, 1 June 2006), 9, <http://www.fas.org/sgp/crs/natsec/RL33452.pdf> (accessed 16 December 2011).

<sup>26</sup> Defense POW/Missing Personnel Office, *Accountability of Missing Americans From The Korean War – Live Sighting Reports* (Washington, D.C.: DPMO, 26 March 1996), <http://www.nationalalliance.org/korea/k-alfond.htm> (accessed 22 December 2011).

<sup>27</sup> Paris Peace Accords, Chapter III, Article 8, Excerpts from the Paris Peace Accords, Vassar College, <http://vietnam.vassar.edu/overview/doc16.html> (accessed 28 December 2011).

<sup>28</sup> Senate Select Committee on POW/MIA Affairs, *U.S. Government's Post-War POW/MIA Efforts: Hearings Before the Select Committee on POW/MIA Affairs*, 102nd Cong., 2nd sess., 11-12 August 1992, 2.

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<sup>29</sup> POW Freedom of Information Act Litigation Account, Live Sightings, <http://www.powfoia.org/timesad.pdf> (accessed 17 November 2011).

<sup>30</sup> Bill Hendon and Elizabeth Stewart, *An Enormous Crime* (New York: St. Martin's Press, 2007), 483.

<sup>31</sup> Anton, 209-210.

<sup>32</sup> Bill Hendon and Elizabeth Stewart, 65.

<sup>33</sup> *Ibid.*, 66.

<sup>34</sup> Senate Committee on Foreign Relations, Minority Staff, *An Examination of U.S. Policy Toward POW/MIAs*, 102nd Cong., 1st sess., 23 May 1991. <http://www.nationalalliance.org/vietnam/overview.htm> (accessed 24 December 2011).

<sup>35</sup> House Resolution 111, *Establishing a Select Committee on POW and MIA Affairs*, 112th Cong., 1st sess., 28 February 2011.

<sup>36</sup> Senate Select Committee on POW/MIA Affairs, Mission Statement, <http://www.gx2527leftinvietnam.com/sscmis.html> (accessed 27 December 2011).

<sup>37</sup> *Bring Them Home Alive Act of 2000*, Public Law 106-484, 106th Cong., 9 November 2000, <http://www.govtrack.us/congress/billtext.xpd?bill=s106-484> (accessed 19 November 2011).

<sup>38</sup> Millard Peck, Official Letter of Resignation from Chief of the Special Office for Prisoners of War and Missing in Action, <http://vietnamblues.com/ColPpg3.html> (accessed 24 December 2011).

<sup>39</sup> Anton, 227.

<sup>40</sup> Bill Hendon and Elizabeth Stewart, 484.

<sup>41</sup> *Ibid.*

<sup>42</sup> Mark Sauter and Jim Sanders, *The Men We Left Behind* (Washington, D.C.: National Press Books, 1993), 16.

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## APPENDIX A

### The Code of Conduct

**Article I:** I am an American fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

**Article II:** I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

**Article III:** If I am captured, I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

**Article IV:** If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

**Article V:** When questioned, should I become a prisoner of war, I am required to give name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

**Article VI:** I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

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