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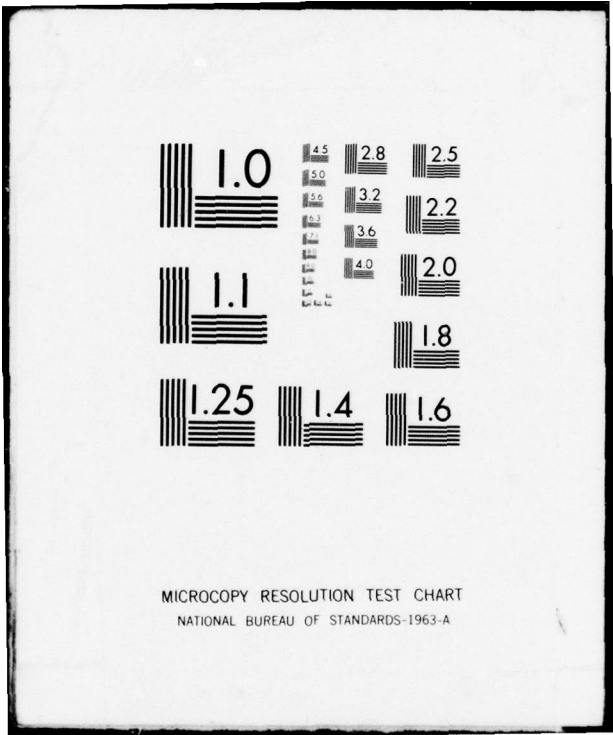
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# The MISSING MAN

POLITICS AND THE MIA

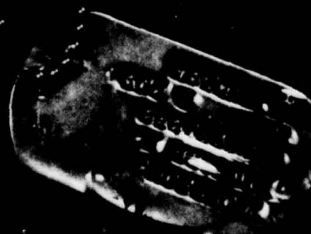
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# The MISSING MAN

POLITICS AND THE MIA

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by

Captain Douglas L. Clarke, USN  
The National War College

11

January 1979

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## About the Author

Captain Douglas L. Clarke, a naval aviator and a 1978 graduate of The National War College, has spent the majority of his career in operational billets. In 1965, as a member of a propeller-driven A-1 "Skyraider" squadron, Captain Clarke flew his first combat mission in Southeast Asia. Three-hundred missions later in 1973, as Commander of an A-7 "Corsair" squadron aboard the aircraft carrier *Midway*, he participated in the last American combat sorties of the war. Captain Clarke is one of the few naval aviators to have accomplished over 1,000 carrier-arrested landings. Before reporting to The National War College, he was the Strike Operations Officer on the staff of the Commander, Carrier Group THREE.

A graduate of the University of Washington, Captain Clarke received his commission through the Naval Reserve Officers Training Corps program. He is also a graduate of the Army Command and General Staff College, and earned the degree of Master of Science in International Affairs from George Washington University while attending The National War College. Presently, he is on the staff of the Commander-in-Chief, Allied Forces Central Europe.

Captain Clarke's research earned him the 1977-78 Award for Excellence in Research and Writing, which is presented annually by the Navy League in recognition of outstanding research performed by a student attending The National War College.

### DISCLAIMER

Opinions, conclusions, and recommendations expressed or implied within are solely those of the author, and do not necessarily represent the views of the National Defense University, the Department of Defense, or any other Government Agency.

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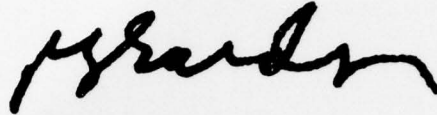
## Foreword

The matter of American servicemen missing in action (MIA) in Southeast Asia is a poignant and tragic issue resulting from the United States involvement in the Vietnam war. The problem of an adequate MIA accounting remains a principal point of contention between this country and the Socialist Republic of Vietnam, as well as a discordant issue separating the United States Government and a small but determined group of its citizens—some of the MIA families.

One of the goals of the National Defense University is to provide an opportunity for our students and faculty to contribute to the public dialogue on a broad range of national security issues. Captain Clarke prepared this carefully researched study while a resident student at The National War College during the 1977-78 academic year; and we are pleased to make it available through publication for a wider audience.

The author describes the process of determination of MIA status, the political and psychological considerations that impacted on that process, and the development of the MIA question as an example of the intersection of domestic and international considerations impacting on policy. He discusses the manner in which the Vietnamese have attempted to employ this contentious issue for their own purposes, and analyzes the differing approaches taken by Presidents Nixon, Ford, and Carter toward resolving the problem.

By explaining how this painful impasse evolved, Captain Clarke's study not only contributes to public understanding of a sensitive and complex issue but also assists future policymakers in avoiding a repetition of this or similar predicaments.



**R. G. GARD, JR.**  
**Lieutenant General, USA**  
**President**

## **Preface**

I cannot claim complete detachment from the missing in action issue, since many of these men are my squadron-mates, friends and acquaintances from happier flying days. My three combat tours as a carrier pilot in Vietnam were punctuated by an 18-month stint (1970-1972) in the office of the Special Assistant for Prisoner of War Matters to the Chief of Naval Personnel. It was during this rewarding tour that I became familiar with the full scope of the problems facing the Government, the services, and the POW/MIA families; I also had the opportunity to meet many POW/MIA family members.

In view of the currency of this subject, relatively little published material is available. Consequently, I have relied heavily on personal interviews, congressional hearings on the topic, and the daily press. A number of current and former government officials working in this field kindly consented to interviews. Among these were Dr. Roger Shields, former Deputy Assistant Secretary of Defense for International Security Affairs and the head of the Defense Department's POW/MIA Task Force; Frank Sieverts, Deputy Assistant Secretary for Human Rights and Humanitarian Affairs and Coordinator for Prisoner of War and Missing in Action Matters, Department of State; and Michael Oksenberg, the member of President Carter's National Security Council Staff with cognizance over MIA matters. Dr. Henry Kissinger played a prominent role in this subject, as he did in all international relations questions of the last decade. While I was unsuccessful

in arranging an interview with the busy former Secretary of State, his staff kindly directed me to David Burgess of Georgetown University's Institute of Public Affairs. Mr. Burgess had interviewed Dr. Kissinger on this subject in connection with a history he is preparing of the National League of Families of Prisoners and Missing in Southeast Asia, and he generously shared his notes and recollections of that meeting with me.

This paper is dedicated to two wonderful women: my wife, Conni, who escaped the tortures of a POW/MIA wife by the fickleness of chance; and Maerose Evans, who did not share this good fortune. Lieutenant Commander Jim Evans was shot down in Laos in 1965 and became the first Navy pilot missing in action. Throughout the intervening years Maerose has brought a courage, wisdom, and integrity to this issue that has been an inspiration to all of us who have worked with her.

DOUGLAS LANE CLARKE

# 1

## Introduction

The casualties of war fall into several categories: the killed in action, the wounded, the civilians made homeless, the dispossessed, the refugees, and the prisoners of war (POW's). This paper will focus on yet another type of casualty, the serviceman<sup>1</sup> who is missing in action (MIA).

People are placed in this rather ambiguous category when there is a lack of conclusive evidence as to their death or capture. This designation is meant to be an interim measure, to be rectified when the man's true status is determined. Missing in action is an accounting limbo. It reflects a lack of knowledge concerning an individual rather than being truly descriptive of his condition. In only the most isolated and bizarre cases (for example, the Japanese soldier discovered on Guam 20 years after World War II had ended) are men able to evade capture in enemy territory for any length of time. Virtually all MIA's are either dead or in enemy hands from the day they disappear—except this information is not available to their country. When the hostilities have ended and the POW's are released it would logically follow from the preceding statement that those MIA's not among the returnees are most likely dead. An examination of American experiences in World War II and the Korean war tends to confirm this hypothesis. In World War II the accounting regulations were significantly different from those of the Vietnam era, and the services' capabilities to identify remains were far more primitive than those of today, so a direct correlation is difficult. For example, 8,532 remains of American World War II servicemen were

recovered but could not be identified while, to date, the Armed Services Graves Registration Office has been unable to designate an Unknown Soldier for the Vietnam war.<sup>2</sup>

Twenty-two percent (78,794) of the Americans ultimately listed as killed in action (KIA) during the Second World War were not recovered because they were either lost at sea, or simply disappeared. Some of these would today be classified as missing in action, and the House Select Committee on Missing Persons in Southeast Asia (hereafter referred to as the Select Committee) has estimated that between 9,000 and 17,000 of the deaths in World War II were based on the equivalent of a presumptive finding of death.<sup>3</sup> (See Chapter III for an explanation of the status determination process and presumptive findings of death.)

In the Korean war, 5,866 men were listed at one time or another as missing in action. Of these, 4,735 were ultimately placed in a KIA status by presumptive findings of death while the others were declared dead on the basis of later evidence. Twenty-four men were still listed as MIA 14 months after the war was over.<sup>4</sup> Eleven of these men were released by the Chinese in August 1955. They were the crew of a B-29 that had been shot down in early 1953. The Chinese rationale was that the men were "political prisoners" instead of prisoners of war, as they had allegedly been captured in Manchuria instead of in the war zone.<sup>5</sup>

History has shown that the overwhelming majority of American MIA's are ultimately placed in a KIA status. This finding could be invalidated should a former enemy, for unknown and unexplainable motives, secretly continue to incarcerate prisoners following the postwar prisoner exchange. Indeed, this situation has been often rumored, and has sustained parents and families in their increasingly slender hopes, but—except for the unusual situation of the B-29 crew in Korea discussed above—has never been proven to be the case.

Today, the military services are still carrying men as missing in action 13 years after their aircraft failed to return from a mission over North Vietnam, or after they became separated from their unit during a fire fight in South Vietnam. The MIA issue has attained a prominence and importance out of all proportion to the miniscule chance that any of the men so listed are alive. This hope is perpetuated by emotion and desire, as exemplified in the words of the father of an Air Force pilot missing in Laos, who

reminded a Senate committee holding hearings in 1974 on MIA's that ". . . we are not talking about numbers; we are talking about living, breathing individuals, each one of whom is represented by a miserable family. . . ."6

Later chapters will address the various processes and circumstances that contributed to initially placing men in a missing status and then the legal, humanitarian, and political rationales for maintaining that status. The MIA statistics will be tabulated and inspected. It is impossible to look at the MIA question without frequent reference to the prisoners of war for, until the prisoner repatriation in 1973, the issues were largely indivisible. The unprecedented public efforts by POW/MIA family groups and concerned citizens that began in 1969 were aimed at improving the treatment afforded the prisoners by the Vietnamese, and then a prisoner release endeavor and an accounting of the missing men were enthusiastically supported by the United States Government. President Nixon's motives in this matter can be judged as altruistic or cynical, depending on one's political perspective. He can be pictured as engineering the entire campaign in order to put pressure on America's enemies, or as dutifully supporting the legitimate demands of the families, or as capitalizing on an inevitable outburst of emotion and indignation that could no longer be suppressed. Whatever the truth regarding the genesis of this campaign, it inevitably raised the expectations of the MIA families, and gained a momentum that profoundly affected the positions of all the participants when the MIA question became a clearly defined issue in its own right following the POW repatriation.

Principles had been announced and commitments made which seriously complicated the efforts to gain an accounting, to satisfy the families, or to do justice to the missing men themselves. Indeed, it is hard to doubt but that bitterness will be the principal legacy of these efforts.

From the beginning the crucial decisions in this matter were not made at the level of the uniformed services, or by the various service Secretaries as one might suppose from a careful reading of the appropriate legislation, or even by the Secretary of Defense. They were made at the highest level of the Government, with the accompanying domestic and international political considerations that impinge on all such decisions. Articulate pressure groups were involved, concentrated efforts were made

to mobilize public opinion both in the United States and abroad, and the Congress was particularly receptive to appeals on behalf of the missing, as its members had been for the prisoners.

It is difficult—even misleading—to isolate the issue, for it has assumed a *quid pro quo* relationship in United States dealings with Vietnam, and affects, and is affected by, the other unresolved issues between these two countries. Much attention is paid in later chapters to economic matters, particularly the whole question of the implied and stated commitments made by the United States during the negotiations that resulted in the Paris Peace Accord, and the validity of American economic obligations to Vietnam given the latter's violations of this agreement. The interdependence of these two issues—economic assistance and MIA accounting—has been repeatedly stressed by the Vietnamese, making an examination of the economic question central to this study.

Clearly, the warring states in Vietnam fell far short of the American goal of treating the problem of the MIA's as a purely humanitarian one. It is the thesis of this book that the issue of American servicemen missing in action in Southeast Asia has been emphasized and sustained beyond the degree required to fulfill the Government's responsibilities to the lost men themselves, and at the expense of the legitimate interests of the United States Government, the missing men, and their next of kin. Should this thesis be found accurate, it would make even more poignant and tragic another category of casualty not discussed at the beginning of this chapter—the families of the MIA's.

## **ENDNOTES**

1. All military POW's/MIA's in Southeast Asia were male.
2. US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Rept. 1764, 94th Cong., 2d sess., 1976, pp. 73-74.
3. *Ibid.*, p. 74.
4. *Ibid.*, p. 75.
5. *Ibid.*, p. 77, and J. Angus McDonald, "Problems of US Marine Corps Prisoners of War in Korea" (M.A. thesis, University of Maryland, 1961), pp. 234-235.
6. Quoted in US, Congress, Senate, Committee on Foreign Relations, *US POW's and MIA's in Southeast Asia, Hearings before the Committee on Foreign Relations on Accounting for US Prisoners of War and Missing in Action in Southeast Asia*, 93d Cong., 2d sess., 1974, p. 8.

## The Arithmetic of War

# 2

Almost 46,000 Americans were killed in action in Indochina during the Vietnam war while over 300,000 were wounded.<sup>1</sup> Yet, of the 2.6 million American military and civilian personnel who were involved in the Southeast Asian war, only 2,546 were not accounted for. These were the 2,505 servicemen and 41 civilians who were missing in action, unacknowledged prisoners of war, or who were known to have been killed in action, but whose bodies had not been recovered (BNR). This number amounted to slightly over 5 percent of the fatal losses. The comparable figure for World War II was 22 percent (78,794 not recovered out of 360,844 losses) while in Korea over 25 percent of the 33,629 combat deaths were never found.<sup>2</sup>

These relatively few 2,505 servicemen were to have a domestic and international political impact of a far greater extent than their World War II or Korean counterparts. This fact was one of several that have made the Vietnam war unique in American history. Another difference is in the makeup of these unaccounted men. Most were officers, and over 80 percent were lost in incidents involving aircraft, whereas the majority of the missing in previous wars had been enlisted ground combat troops. The most significant difference between the Vietnam war and its precedents was the long duration of this latest American war. Nine years elapsed from 1964—when four American servicemen were listed as missing in action and three more carried as prisoners of war—to the spring of 1973 when, following the repatriation of the American prisoners, 1,392 servicemen

were still unaccounted for and the bodies of another 1,113 men killed in action had not been recovered. The geographic disposition of these casualties is indicated in Table 1.

**Table 1**  
**Geographic Distribution of Casualties Not Recovered**

Country	POW/MIA	KIA(BNR)	Total
North Vietnam.....	475	294	769
South Vietnam.....	541	566	1,107
Laos.....	344	206	550
Cambodia.....	28	47	75
China.....	4	0	4
	1,392	1,113	2,505

SOURCE: US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Rept. 1764, 94th Cong., 2d sess., 1976, p. 22.

Of the five countries included in the statistical breakdown, only the two Vietnams are discussed in this paper. China appears in the statistics only by virtue of its geographic proximity to North Vietnam and the navigational lapses of several American aviators. The United States was at no time involved in armed conflict with the Chinese, and the men held, or suspected of being held, by the Chinese were officially listed by the military services as "detained." Once the Paris Peace Agreement was signed, and it became politically feasible for the Chinese to return these men, and provide information on the missing, they did so with little reticence.

Conflict spread to Cambodia late in the war and few casualties occurred because of the relatively limited action in that small country. There was considerable public interest in the 21 journalists—only 5 of whom were Americans—who were, and remain, missing in Cambodia, but the 28 POW's/MIA's and 47 KIA's(BNR) comprise less than 3 percent of the total of such casualties and were far outweighed by their counterparts in the other countries of Indochina. For a time the United States Government attempted to hold the North Vietnamese responsible for these men, but this position has been abandoned as it has be-

come increasingly clear that the North Vietnamese are not the masters of the Khmer Rouge. Attempts to open channels of communication with the Cambodians about this, or any other, issue have been singularly unsuccessful. The Select Committee received confidential reports through *friendly Asian governments* revealing that high level Cambodian Government spokesmen had categorically denied that any Americans were being held in Cambodia.<sup>3</sup>

Significant numbers of Americans were carried as missing in Laos, and it was anticipated that an appreciable percentage of these would be returned once the fighting was over. The virtual absence of any returning prisoners from Laos was a shock to everyone involved with the prisoners and the missing. A very few Americans who had been captured in that country by the North Vietnamese, and subsequently transferred to Hanoi, were released in the North Vietnamese capital. For political reasons these returnees were said to have been released by the Pathet Lao—one of their officials was on hand for the ceremony—but, in fact, no true Pathet Lao prisoners were ever returned. The reasons for this disparity are difficult to isolate with any degree of certainty. A principal factor must be that there was never effective territorial control by any of the conflicting parties in Laos, nor adequate centralized control by one faction over its own members. The Laotians engaged in what was at times almost a comic opera war among themselves, but they apparently exhibited a terrible brutality toward any American captive. Recurrent rumors of scores of live Americans still held in Laos have appeared—usually traced to opportunists and profiteers in that country.<sup>4</sup> The present Laotian Government has parroted the Vietnamese demand for economic aid in return for an accounting, but there have been no signs, either from the Laotians or through intelligence sources, to indicate any American servicemen are alive in Laos.

In any event, throughout the war and subsequently, the principal focus of the American public and Government was on the North Vietnamese in matters regarding the missing in action. Accordingly, it is this bilateral relationship that is the subject of this paper.

## DEPLETION OF THE MIA RANKS

Following the return of the 591 military and civilian POW's in early 1973, the various military services began the process of reviewing the cases of the men that did not return. The procedures, circumstances and difficulties associated with these reviews are discussed in Chapters III and IV. The net result was a steady decrease in the numbers of the POW's/MIA's and a corresponding increase of those for whom a presumptive finding of death had been made—either due to new intelligence, or simply because no new information could be found to indicate that the men were still alive. Table 2 shows the numbers of men carried as missing and captured, by service, at specific dates during and since the war. As of 28 January 1978, 770 servicemen once listed as captured or missing had been changed in status to KIA by means of a presumptive finding of death. This development is shown graphically in Figure 1.

**Table 2**

### POW's/MIA's by Service

Date	Army		Navy		USAF		USMC		Total
	MIA	POW	MIA	POW	MIA	POW	MIA	POW	
31 Dec 1972	355	87	138	169	722	309	110	26	1,916*
30 Jun 1974	279	12	90	20	508	6	93	2	1,010
31 Dec 1976	211	11	59	18	407	2	46	2	756
30 Sep 1977	196	10	54	16	378	2	44	2	702
28 Jan 1978	186	9	34	8	342	1	40	2	622
30 Sep 1978**	77	6	11	5	153	1	27	2	282

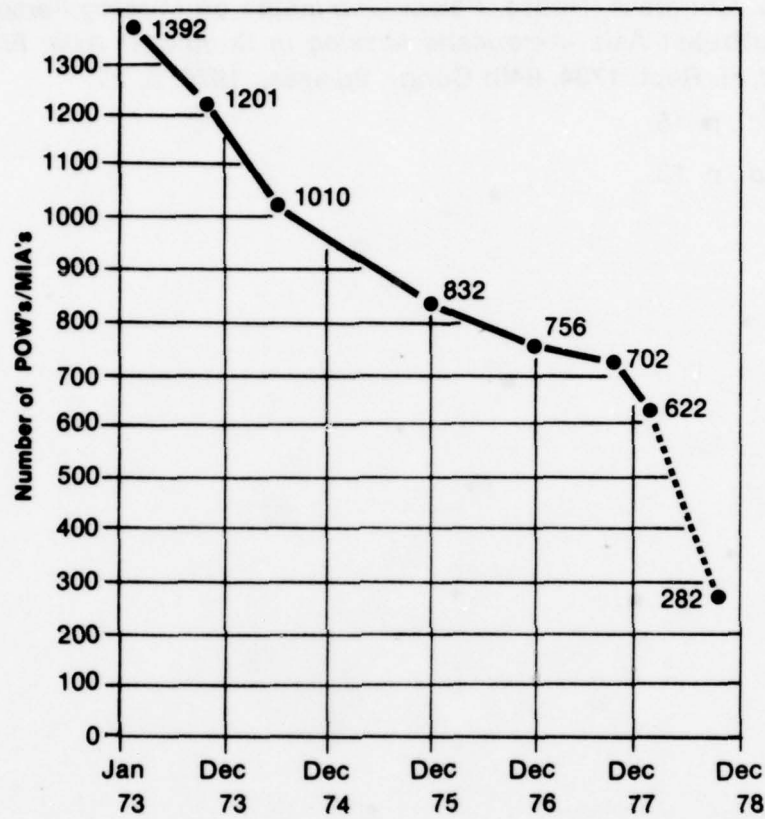
SOURCE: Department of Defense Comptroller.

\*Includes confirmed POW's that would be repatriated early in 1973.

\*\* Editor's note: Since this study was completed, the status review process has further reduced the number of men carried in a POW/MIA status.

**Figure 1**

**Reduction in POW's / MIA's Due to Status Changes**



**SOURCE:** Department of Defense Comptroller, and US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Rept. 1764, 94th Cong., 2d sess., 1976.

..... New data supplied by DOD Comptroller since the author completed his study. As indicated, the trend has continued, resulting in a figure of 282 POW's/MIA's as of 30 September 1978.

## ENDNOTES

1. *New York Times*, 2 February 1973, p. 9, col. 4.
2. US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Rept. 1764, 94th Cong., 2d sess., 1976, p. 21.
3. *Ibid.*, p. 15.
4. *Ibid.*, p. 13.

## **The Status Determination Process**

# 3

To fully understand the complexities of the missing in action dilemma, it would be useful to examine in some detail the process by which an individual is initially placed, and then maintained, in a missing status. What at first glance might appear to be a straightforward, cut-and-dried choice between dead (KIA) and alive (MIA, POW) is often a very difficult decision, and can involve a full panoply of fact, supposition, insight, emotion, and sentiment.

### **FIELD COMMANDER'S ROLE**

While the administrative procedures vary among the services, there is uniformity in placing the responsibility for the initial status determination on the commander in the field. The local commander has the right and responsibility to declare the individual dead should he feel the circumstances so warrant. A decision to place a man in a KIA status is final and not subject to review or appeal. The local commander makes the appropriate reports to higher authority, the next of kin (NOK) is notified, the man's records are closed out, and disbursements are made in accordance with service regulations and the recorded desires of the deceased.

The philosophy behind this procedure is simple: no one should have more understanding of the circumstances surrounding a loss than the commander on the scene. No one could weigh all the facts, including those intangible factors that could never be adequately addressed in even the most

voluminous report, better than he. Indeed, the local commander can, in fact if not in theory, make a finding of death based on little more than intuition. This opportunity is a fleeting one, as the on-scene decisionmaker must commit himself one way or the other upon the completion of the organized search.

Each of the services provides guidance to aid its commanders in making this decision. All of the governing regulations specify that an individual can only be placed in a deceased status when there is "conclusive" evidence of death. This specific criterion is further amplified. The Air Force defines conclusive evidence, in the absence of remains, as when the "available information indicates beyond any reasonable doubt that a missing person could not have survived."<sup>1</sup> The Army's definition is equally restrictive: "conclusive evidence of death must be more than an indication of death. The facts must be such that death is the only plausible alternative under the circumstances."<sup>2</sup>

"Conclusive evidence," like "reasonable doubt" or "only plausible alternative," is a very subjective matter, and can be considered very broadly; or in very narrow, legalistic terms; or elsewhere along the continuum between these extremes, depending on the personality, training, and inclinations of the individual commander.

During the Vietnam war there were a number of psychological factors that impinged on the commanders' decisions. The vast majority of the MIA's in Southeast Asia were Air Force and Navy pilots, members of relatively small units with considerable esprit. The average commanding officer would have to deal with only a few losses, and each one would be a highly emotional experience involving not only the loss of a subordinate officer, but also a friend and colleague. It was not unusual for the commanding officer, particularly in the Navy squadrons, to know the missing man's wife and family, and he would find it difficult not to let these obvious emotional ties cloud his perception to some degree. This filtering could work in conflicting directions over time. As an example, early in the war it was commonly held that the best interests of the man's family would be served by placing all but the most obvious cases in a missing status—if only for financial considerations. The Select Committee felt that field commanders often showed "excessive optimism" in status determinations, and implicitly recognized the motive of family

assistance in their final report when they stated that "commanding officers who erroneously or optimistically classified their subordinates MIA did not render a favor to next of kin; instead they did a cruel misservice."<sup>3</sup> This tendency toward optimistic findings was based on two assumptions: that the war would be of limited duration, and that an accurate accounting of the missing and prisoners would soon take place. When, over the years, these two assumptions were seen to be invalid, there was a tendency in the opposite direction—to interpret "conclusive evidence" very liberally in order to spare the family a lengthy limbo status.

It would be unfair to overemphasize the role of emotional and psychological considerations in the commanding officers' status decisions. What is important is to recognize that the original MIA/KIA decision was a judgment call, and two commanding officers could each arrive at different decisions when examining very similar cases. Generally speaking, the criteria of "reasonable doubt" and "conclusive evidence" were very inhibiting, and tended to discourage a KIA finding in the absence of *prima facie* evidence of death. Of course, there were exceptions, and there are fewer MIA cases today than there might have been otherwise because a number of commanders tempered a paucity of facts with "gut" feelings, and had the courage to allow their intuition to prevail.

## **TWO REPRESENTATIVE EXAMPLES**

To illustrate the complexities involved in status decisions, it might be of benefit to examine two particular cases. The examples have been chosen for two reasons. In the first example, the author was Executive Officer in the unit involved, was consulted by the Commanding Officer during his deliberations, and was privy to his rationale. The second example, very similar in several ways to the first, has been recently cited by the Select Committee as an example of the type of loss for which the Vietnamese could never provide an accounting even were they so inclined. This implies that the individual should have been declared dead initially.

### **The Chinese Anchorage Case**

The pilot in this first example was the flight leader of a section of aircraft detailed to monitor several Chinese merchant ships anchored off the mouth of the Vinh River on the central coast of North Vietnam in the hours just after midnight. The

weather was marginal at best, with several large thunderstorms in the area. At night or in inclement weather it was customary for one pilot at a time to investigate the anchorage, while his partner would hold a pattern above and to seaward. As the leader descended through the clouds toward the Chinese ships, with the intention of illuminating them with parachute flares for his inspection pass, he reported over the radio to his wingman that his aircraft had been struck by lightning. The pilot appeared calm as he discussed the situation, gave no indication that he was *in extremis*, and stated that he was continuing with his mission. Nothing was ever heard from him again, nor were he or his aircraft ever found by American or South Vietnamese forces.

It would be simple to deduce that the pilot was killed when his aircraft crashed at sea following the lightning strike, but this finding falls far short of all the classification criteria previously mentioned. To begin with, a lightning strike, while certainly not pleasant, is not necessarily dangerous to an aircraft in flight, since the aircraft is, of course, not grounded. Difficulties can be expected with electrical components—radios, instruments, lights, etc. The fact that the pilot reported the lightning over his radio indicates that no catastrophic failure occurred immediately. Many possibilities could be hypothesized: the plane was structurally sound but the pilot was forced to eject over water due to a loss of electrical power denying him the lights and instruments required for instrument flight; he lost his radio and navigational instruments and strayed over the enemy shoreline before ejecting due to the same causes discussed above; he made a small error in his earlier navigation and initiated his descent several miles to the west of his assumed position such that he was over hostile land instead of at sea; and the presumed lightning strike was, in fact, a hit from either conventional anti-aircraft artillery or surface-to-air missiles.

A search was initiated immediately, although it was hampered by the poor weather. Both offshore and inland areas were investigated without any conclusive findings. A small oil slick was noticed off the mouth of the Vinh River. Such slicks were far from unique in view of the merchant ships present and the large number of power-driven North Vietnamese fishing boats that frequented this area. The bitter truth was that the pilot was *missing*; there were several possible explanations, but none

that was conclusive, or the only plausible alternative. He was accordingly placed in an MIA status—which continues to the date of this writing.

### **The Missing Wingman Case**

The second example also involves a pilot lost at sea, in poor weather, and with an oil slick as a factor. While proceeding toward their entry point at low altitude, the two aircraft in question encountered increasingly deteriorating weather conditions. When the flight leader finally decided that it was impossible to continue, he initiated a 180-degree turn. It was necessary to take his flight into the lowering clouds during the turn, and when the leader came out of these clouds at the completion of this reversal turn, he was alone. A search disclosed a large oil slick in the immediate area of the wingman's loss.

Many individuals would be tempted to interpret these circumstances as certainly approaching the conclusive evidence required to make a determination of death. The commanding officer involved did not so determine at the time. Whatever his motivation or rationale, once he elected not to declare this man dead, that option was effectively denied for virtually the next decade—for reasons that will be addressed in this and subsequent chapters.

The tendencies of commanders in the field to err on the side of finding an individual MIA instead of KIA have been mentioned. Obviously, mistakes could be made in the other direction, and they were. Several aviators (all in the Navy) originally determined to be KIA turned up in North Vietnamese prisons. Their true status was discovered—usually when the Vietnamese allowed the prisoner to write his family—relatively early in the war, and these unusual situations became common knowledge. The Select Committee concluded that some Navy commanding officers were influenced by these events to utilize excessive caution in their subsequent classification efforts.<sup>4</sup>

Emotional and psychological considerations undoubtedly influenced some field commanders. Even without these complications the system was driven toward a finding of MIA by the requirement for “conclusive” evidence of death before an individual could be declared KIA. While it is true that the various service directives specifically stated that it was not necessary to recover a person's remains, especially in those obvious cases

when such recovery was impracticable or impossible, in order to justify a KIA finding, these exceptions were severely constrained. Witness the pertinent Air Force instruction:

. . . conclusive evidence of death need not be based upon recovery of remains since situations will arise in which remains may never be recovered but in which *the chance of survival is too remote to be logically considered.*<sup>5</sup> (Emphasis added)

The Select Committee, in examining the validity of United States classifications, observed that a substantial number of MIA classifications could just as easily have been KIA(BNR—body not recovered). The committee found that a great many decisions were “tilted in favor of MIA status” and that a KIA finding was unlikely without “*prima facie* evidence of death.”<sup>6</sup> The committee judged that 40 of the first 53 MIA cases its investigators reviewed (75 percent) could “justifiably have been KIA(BNR) at the outset based on the circumstances known at the time and reinforced by information, or lack of any information, since the loss.”<sup>7</sup> It can be argued that such an explanation substantially disregards the “conclusive evidence” criterion, and represents a perspective based on considerable hindsight and a preoccupation with the frustrating realities of a long-standing MIA issue. When the services attempted to change statuses based on unofficial information from the enemy, or on the lack of information, they were curtailed by first, political decisions, and then pressures from the families and the courts, as shall be discussed in later chapters.

### **HIGHER AUTHORITY REVIEW**

If the field commanders were reluctant to place people in a KIA status, the higher reviewing echelons were equally reluctant to change an MIA recommendation to KIA. While the field commander, should he be satisfied that a man was dead, could declare him deceased, not subject to higher review, he could only recommend an MIA status should he lack the conclusive evidence necessary for the KIA finding. Certain of the services required that the field commander—or his immediate superior—convene an investigating board to assist him in his decision.<sup>8</sup> The recommendations of this board and the field commander, or in the Navy and Air Force cases, the recommendation of the commander, are forwarded to the service headquarters where the

final determination is made. In fact, the service headquarters merely validated or certified the field commanders' recommendations in virtually all missing in action cases. (This contrasts with headquarters' action in non-war zone *missing* cases, as opposed to MIA incidents. In the former category, the service casualty branches would often declare the individual dead.) The clear rationale throughout the war was that the remote decisionmaker could not improve on the grasp of the circumstances held by the man in the field. Plainly, this might have been a poor assumption, as for instance in the example of the wingman lost in the turn, but by the time this sentiment began to gain adherents, there were too many precedents. No one wanted to change horses in mid-stream.

### **SECRETARIAL REVIEW—THE MISSING PERSONS ACT**

Once a man has been confirmed in an MIA status, the subsequent disposition of his case is governed by the Missing Persons Act (Chapter 10, Title 37, United States Code). The chief provisions of this act direct the services to continue the serviceman's pay and allowances while he is in a missing status, enabling the Secretary of each Military Department to take certain fiduciary actions on behalf of the missing member or his dependents, and, what is most central to this study, to review the status of the missing individual and make such findings and determinations as are appropriate. Due to their importance to this study, the section on Secretarial review, and a portion of the section on Secretarial determinations, are quoted herein in their entirety:

(a) When a member of a uniformed service entitled to pay and allowances under section 552 of this title has been in a missing status, and the official report of his death or of the circumstances of his absence has not been received by the Secretary concerned, he shall, before the end of a 12-month period in that status, have the case fully reviewed. After that review and the end of the 12-month period in a missing status, or after a later review which shall be made when warranted by information received or other circumstances, the Secretary concerned, or his designee,<sup>9</sup> may—

(1) If the member can reasonably be presumed to be living, direct a continuance of his missing status; or

(2) make a finding of death.

(b) When a finding of death is made under subsection (a) of this section, it shall include the date death is presumed to have occurred for the purpose of—

(1) ending the crediting of pay and allowances;

(2) settlement of accounts; and

(3) payment of death gratuities.

That date is—

(A) the day after the day on which the 12-month period in a missing status ends; or

(B) if the missing status has been continued under subsection (a) of this section, the day determined by the Secretary concerned, or his designee.

(c) For the sole purpose of determining status under this section, a dependent of a member on active duty is treated as if he were a member. Any determination made by the Secretary concerned, or his designee, under this section is conclusive on all other departments and agencies of the United States. This subsection does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled.<sup>10</sup>

(d) When the Secretary concerned receives information that he considers establishes conclusively the death of a member of a uniformed service, he shall, notwithstanding any earlier action relating to death or other status of the member, act on it as an official report of death. After the end of the 12-month period in a missing status prescribed by section 555 of this title, the Secretary concerned, or his designee, shall, when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that a member in a missing status is dead, make a finding of death.<sup>11</sup>

Thus, under the Missing Persons Act, a service Secretary has three options: (1) when, and if, he receives information which conclusively establishes that a member is dead, he shall issue a report of death; (2) barring such definitive information, he must review each case prior to the first anniversary of the loss and either continue the man in a missing status; or, (3) make a finding of death when the circumstances are such that he can no longer presume that the member might be alive.

It should be noted that the law does not require an *annual* review, only a review prior to the first anniversary of the loss, and subsequently when the circumstances warrant. Many next of kin were under the impression there would be a formal review of each case each year.

Another misconception about the Missing Persons Act concerns its scope and applicability. The act's principal purpose is to guide the service Secretaries as to when they must continue the pay of their members, and when they must terminate it. Indeed, Title 37 of the United States Code is entitled "Pay and Allowances of the Uniformed Services." While it is true that findings under this act are binding on all other federal agencies, they are not binding on the states in those many matters under state jurisdiction. The reverse is also true—state court decisions are not binding on the Federal Government. For example, several MIA's were declared dead in state courts. They were continued in a missing status by the services concerned. Several POW and MIA wives obtained divorces in state courts and then remarried. A significantly larger number of MIA wives remarried without divorce, utilizing the "good faith" principle in many state marriage laws. Under this principle, the wife merely declares that she is convinced that her first husband is dead.

These actions had no bearing on a man's status, although the dependency allotment—other than a reasonable amount for child support when appropriate—was terminated to the wife who obtained a divorce, or who remarried without divorce. Continued dependency payments under the new circumstances would obviously not be in the best interest of the service member.<sup>12</sup>

A third common misconception is that a presumptive finding of death would be made after 7 years in accordance with the common law, barring any information that the man was alive. This element of common law is described in Greenleaf's *Evidence* as follows: (Emphasis added.)

Where the issue is upon the life or death of a person, once shown to have been living, the burden of proof lies upon the party who asserts the death. *But after the lapse of seven years, without intelligence concerning the person, the presumption of life ceases, and the burden of proof is devolved on the other party. . . .* But the presumption of the common law, independent of the finding of the jury, does not attach to the mere lapse of time, short of seven years, . . .<sup>13</sup>

No such provision is in the Missing Persons Act. The only time constraint mentioned is the 12-month review. The World War II precursor of the present act specified that the pay and allowances of the member would be continued *only* for 1 year. Later in the war this period was extended due to the difficulties in determining status, caused "largely by failures of an enemy to comply with international agreements in reporting deaths and captures, which necessitate greater latitude in the continuance of absentees in a missing status."<sup>14</sup>

The present law is essentially unchanged from the 1944 version, and provides for a continuance in a missing status for an undetermined period as long as there is a reasonable chance the member might be alive. As the Select Committee points out, "the phrase 'a lapse of time without information' clearly anticipated that many of the missing servicemen would disappear without a trace and would never be heard from again."<sup>15</sup>

Herein lies the kernel of the problem. When can a lapse of time without information truly substantiate a presumptive finding of death? Or, in simpler terms, how long is long enough? It was the contention of the Department of Defense during the Vietnam war that time alone was not as significant a factor as the law implied since the United States did not have an adequate capability to gather intelligence on those men held by the other side. The North Vietnamese were very reticent in revealing the names of their prisoners. The situations in Laos and South Vietnam were much worse. It was anticipated that returning POW's would be a great source of intelligence regarding the MIA's.

One source of information was eschewed by the US Government as a basis for status changes from POW/MIA to KIA—the North Vietnamese themselves. In 1970, Hanoi provided a list, through several intermediaries, of a number of men who they

claimed had died either coincident with the loss of their aircraft, or in captivity. While the initial sentiment of the several service casualty offices was to initiate a change of status based on this information—since the chance of anyone so listed showing up alive was virtually nil—the decision was ultimately made to not take this option. The Vietnamese had refused to comply in any significant manner with the Geneva Conventions, were using the prisoners for blatantly political purposes, and it was felt that, by accepting their “unofficial” lists as the basis for status determinations, the United States would be undercutting its demands that the enemy comply with the basic tenets of international law regarding prisoners of war. This precedent, once set, was never violated. Dr. Roger Shields, until recently the Deputy Assistant Secretary of Defense for International Economic Affairs, and the principal DOD official concerned with POW/MIA matters, has revealed that no status changes have been made solely on the basis of lists provided by the other side.<sup>16</sup> In a personal interview with the author, Dr. Shields added another reason for the Government’s refusal to accept the North Vietnamese lists as an adequate basis for a change in status. “We knew that some of the families would not stand for it.” Recalling a specific name on the 1970 list, Shields remarked that this individual’s wife—an outspoken activist in POW/MIA matters—“would have hit the overhead.”<sup>17</sup>

The Paris Agreements of 1973, which terminated the United States long involvement in the Vietnam war, provided for the return of the POW’s and required an accounting of those missing in action and killed in action (body not recovered). Both of these developments have provided little information on which to base a status change—other than the lack of information itself.

As it became apparent that the long and increasingly pessimistic wait for an information breakthrough was futile, the services commenced to make presumptive findings of death in significant numbers. At this point, a new twist was added to the MIA issue when Federal court decisions on suits filed by MIA next of kin caused a moratorium on unsolicited presumptive findings of death. The use of the MIA issue in international politics before, during, and after the Paris talks, and the domestic pressures that contributed to the significance of this issue, will be discussed more fully in later chapters.

## ENDNOTES

1. Air Force Regulation 30-25, para. 2-10b(1).
2. Army Regulation 600-10, para. 8-7b.
3. US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Report 1764, 94th Cong., 2d sess., 1976, p. 223.
4. *Ibid.*, p. 238. One of these incidents also prompted an even more unusual change of status—from KIA to MIA. Both the pilot and rear-seater (radar intercept officer, or RIO) had been declared KIA after the combat loss of a Navy F-4. Some months later, the wife of the RIO received a letter from her husband from a Vietnamese prison. Since the original finding—that no one could have survived the crash—was obviously in error, the status of the pilot was changed to MIA following an appeal from his wife and father. When no information was discovered concerning this individual following the POW repatriation at the end of the war, he was again placed in a KIA status at the instigation of his wife.
5. Air Force Regulation 30-25, para. 2-10B(1).
6. Select Committee, *Final Report*, pp. 65-66.
7. *Ibid.*
8. The Army requires a formal board of not less than three officers headed by a major, or officer of equal rank to the missing man, to investigate the circumstances of loss and report to the convening authority within 7 days. In the Marine Corps an informal one-man investigation is conducted, with results forwarded to the Commandant of the Marine Corps within 15 days.
9. Each of the Secretaries has formally delegated his authority to administer the act. For example, the Secretary of the Navy has designated the Director, Personal Affairs Division, Bureau of Naval Personnel to act on his behalf regarding Navy personnel, and the Head, Personal Affairs Branch, Personnel Department, United States Marine Corps to act in the case of missing Marines. (Title 32, Code of Federal Regulations 1976, Section 718.4.)
10. 37 USC, Section 555.
11. 37 USC, Section 556.
12. A most unusual case, which dramatically illustrates the complexities of administering the Missing Persons Act, occurred in

1971 while the author was working in the office of the Special Assistant to the Chief of Naval Personnel for POW/MIA Matters. A Navy MIA wife, convinced that her husband was dead, remarried "in good faith." After more than a year of marriage, and a child, she went back to the judge and stated that she now had misgivings about her earlier decision, and was no longer certain her first husband was dead, whereupon the judge *annulled* her second marriage. The woman then petitioned the Navy to resume her allotment, which had been terminated following her remarriage. When the Comptroller General ruled that the Secretary of the Navy could make such dependency payments, since she was still legally married to the Naval officer under the appropriate state law, her allotment was resumed. In such cases it is difficult to be assured that one is acting at all times in the best interests of the missing man. The returning POW's provided some measure of satisfaction with the method in which their accounts were administered in their absence. Apparently, only one returnee has contested in court his service's handling of his money. (Select Committee, *Final Report*, p. 163.)

13. 1 S. Greenleaf, *A Treatise on the Law of Evidence*, sec. 41, at 138-140 (16th ed. 1899). (Emphasis added)

14. House Committee on Naval Affairs, Report No. 1674, June 17, 1944. Quoted in Select Committee, *Final Report*, p. 174.

15. Select Committee, *Final Report*, p. 175.

16. US, Congress, House, Committee on Armed Services, *Hearings before a Subcommittee of the House Committee on Armed Services on H.R. 16520*. 93d Cong., 2d sess., 1974, p. 50.

17. Roger Shields, interview, Washington, DC, 18 November 1977.

## Domestic Developments

# 4

The missing in action issue has been cultivated in the domestic environment by both the Government and the MIA families. It has not developed as a unified, coordinated effort by these two main participants. At times they have worked together in harmony while at other times there has been considerable discord. In this chapter the all-important domestic dimension of the missing in action issue will be examined—the political, emotional, and psychological considerations that have spawned, nurtured, and molded this issue. Without this domestic dimension there would be no MIA issue. The subject is not a neat and tidy one as American POW/MIA policies and attitudes evolved hesitantly, incrementally, and in an ad hoc manner. The principal reason was that no one imagined that the war would involve such a long commitment by the United States.

It is not within the scope of this book to study the larger prisoner of war issue in detail, although some understanding of this matter is necessary since the POW and MIA questions were so closely integrated until the prisoners were repatriated in 1973. The primary goals of the Government, the families, and the POW/MIA groups that proliferated after 1969, were to obtain both the release of the prisoners *and* an accounting of the missing. As it was not felt that the other side was providing a complete or comprehensive listing of their captives, the distinction between a POW and an MIA was a fine one. While common sense and logic indicated that many of the MIA's—when they were viewed as a category—were dead, the possibility

was very real that any one individual MIA would turn up alive. One of the root causes of much of the later bitterness and animosity felt by some families toward the Government was due to the practical impossibility of the services treating the families of the MIA's any differently from those of the known or suspected prisoners. While the services did not purposely encourage MIA next of kin in believing that their particular husband or son was alive, their actions inevitably had that effect on some families.

All the services recognized immediately that, for reasons of politics and public relations, POW and MIA families must be treated equally in all respects. Thus, identical information was provided to each on such matters as: what sort of things to talk about in their monthly letters; the exact addresses for mailing letters to prisoners in North Vietnam, South Vietnam, and Laos; what to include in Christmas and other holiday packages; and how to forward such packages via the American Red Cross.

Much of this advice, however well-meaning, was bound to raise the expectations of the MIA families, and consequently make more painful the failure of these expectations to be realized. For example, in 1971 a significant number of Navy pilots were carried as missing in action in Laos, while only one was a confirmed prisoner. (The POW had been captured by the North Vietnamese and was actually in Hanoi. These facts were classified at the time, but had been provided to the family concerned.) Any next of kin wanting to write to a son or husband lost in Laos was advised by the Navy's Bureau of Naval Personnel to forward a letter to the missing man via the head of the Pathet Lao Government, Prince Souphanouvong. The Prince could supposedly be reached in care of the Pathet Lao liaison officer in Vientiane, Laos, Mr. Sot Pethrase, and that official's exact address was supplied. The Navy's Casualty Branch further suggested "that such a letter might have a better chance of reaching the recipient if the date and general location where the service member was captured or became missing (if known) is listed in the forwarding letter. This is to assist forwarding personnel in determining where the captured/missing member is held."<sup>1</sup> The families were warned that some letters had been returned to the sender, for the specified reasons of "erroneous sorting and misrouting by postal personnel. Capitalizing and underlining . . . is recommended as an aid in precluding such errors."<sup>2</sup>

Such detailed instructions and explanations were in response to numerous inquiries from family members who desired to write, and were honest efforts to be as responsive and as helpful as possible. It is now realized that there were no "forwarding personnel" in Laos and the letters were not usually returned because of sorting errors by postal employees, but for far more somber reasons.

The North Vietnamese utilized an organization of American antiwar activists, the Committee of Liaison with Families of Servicemen Detained in North Vietnam, as an intermediary for conveying letters to and from the confirmed prisoners in Hanoi. The Committee of Liaison generally returned letters addressed to men not on a list published by the North Vietnamese with the explanation that the Vietnamese would not accept such mail.

There was one way in which, from the first, the MIA problem was different from the POW one. As was suggested in Chapter 2, in some of the MIA cases it was extremely doubtful that the serviceman was alive. The families were provided with all of the information available, and, in many of these questionable cases, the next of kin made the decision that the service concerned could or would not make—that the husband was dead. This decision created some conflicts between the service offices responsible for administering the missing man's affairs—and which was obliged to act on the assumption that he was alive—and the wife who no longer shared that belief. These problems were relatively minor, as both parties found ways to live with the situation. These wives were usually not activists in the POW/MIA movement when the issue became a public one. It is ironic, however, that several threatened to take their cases to court in order to force a change of status from missing to killed, while other family members, with different philosophies and motivations, were later to wage a vigorous court fight to *prevent* any such change.

#### **"GOING PUBLIC"**

During the first years of the war, the POW's/MIA's were not a public issue. The expectation that the war would be a short one certainly contributed to this fact. As the months and years passed, the Government maintained the position that publicity in this matter would only be a hindrance in obtaining a prisoner release, which was to be brought about through bilateral

diplomatic negotiations. It was felt that publicity might only harden the positions of the Southeast Asian Communist governments.

This policy yielded few results, while adding to the families' frustrations in thinking that their government cared little and was doing even less to get their sons and husbands back. Six American prisoners were released by the North Vietnamese—in two groups of three each, in February and July of 1968—but the circumstances of these repatriations gave little comfort to the administration or the families. Rather than any sort of government-to-government operation, the men were released to antiwar activists such as David Dillinger of the American Mobilization Committee Against the Vietnam War, who made the arrangements, and pacifists such as the Reverend Daniel Berrigan, Howard Zinn, and Stewart Meacham, who traveled to Hanoi to act as "escorts" for the returnees. Considerable efforts were made by both the Vietnamese and domestic groups opposing US policy in Southeast Asia to garner antiwar capital from the releases.

In May 1969 the United States Government abandoned the silent, diplomatic approach and placed the issues of the prisoners' maltreatment and the refusal of America's enemies to identify their captives before the public. The new policy was announced by Secretary of Defense Melvin Laird, the individual who has been generally credited as the principal originator and advocate of this new tack. Henry Kissinger has privately expressed the opinion that Laird wanted to manage the new policy from the Defense Department, supposedly to further his own political aims, but that President Nixon chose to take control of the issue with his immediate White House National Security Council Staff. Alexander Butterfield was reported to be the point of contact between the President and the principal next of kin organization.<sup>3</sup>

Several considerations would tend to make the POW/MIA issue appealing to the President. He, and all the men around him connected with this matter—especially Henry Kissinger—were genuinely moved by the plight of the men and their families. By 1969 there were increasing manifestations of deep domestic dissatisfaction with American participation in the Southeast Asian war, and the POW/MIA issue was one that could rally the vast majority of Americans, even many of those who might

oppose the war itself. Better for the administration to co-opt this potentially popular issue and use it than try to continue an unsuccessful silent policy. Besides, the efforts to avoid publicity were becoming increasingly futile as the families began to organize and seek outlets for their frustrations.

### **THE NATIONAL LEAGUE OF FAMILIES**

The principal family organization—ultimately to be named the National League of Families of Prisoners and Missing in Southeast Asia—had its genesis in the fall of 1966 in San Diego, California. It was largely the creation of one remarkable and talented woman, Sybil Stockdale, the wife of an equally remarkable and talented husband—Commander (now Vice-Admiral) James B. Stockdale. It is a tribute to this unusual couple that Mrs. Stockdale was providing the same courageous and astute leadership to the POW/MIA families that her imprisoned husband was affording his fellow captives in North Vietnam. (For his inspiring performance in captivity, Jim Stockdale was awarded the Congressional Medal of Honor.)

The military services had traditionally dealt with each POW/MIA family on an individual basis, and had made no effort to notify one family of the existence of any other families in the same location. What Mrs. Stockdale did originally in San Diego was to seek out other POW/MIA wives, women who had so many problems in common, and to form an informal "sorority." They met in each other's homes, and gave each other moral support while seeking ways to help their husbands' cause. As the group expanded in this local military-oriented area, they requested and received a visit by members of the office within the Department of Defense that had cognizance in POW/MIA matters to discuss their mutual perspectives. The original organization consisted of members of 35 POW/MIA families, all in the San Diego area.<sup>4</sup>

As of the end of 1968, the North Vietnamese had neither made public the names of the men they held captive nor had they allowed many of these men to send letters to their families.<sup>5</sup> In October of that year, the subject of the sparse POW mail was picked up by the press, and the resultant spate of news stories acted as a catalyst in mobilizing the families and spurring communication among the next of kin.

The first public campaign on behalf of the POW's/MIA's was an effort by a group of families, in early 1969—before Secretary Laird's disclosures—to flood the North Vietnamese delegation in Paris with telegrams of concern about the prisoners and missing.<sup>6</sup>

On 19 May 1969, Secretary Laird signalled the Government's sympathy with this public effort by forcefully attacking the Vietnamese intransigence, particularly Xuan Thuy's refusal in the peace talks underway in Paris, to provide a list of prisoners. In a memorandum for correspondents issued on 21 May, Laird repeated his, and the Government's, position:

I am deeply shocked and disappointed by this cruel response of Hanoi's representative to such a basic request for humanitarian action.

Hundreds of American wives, children, and parents continue to live in a tragic state of uncertainty caused by the lack of information concerning the fate of their loved ones. This needless anxiety is caused by the persistent refusal by North Vietnam to release the names of US prisoners of war.

I want to reaffirm the continuing hope that Hanoi will provide a list of American prisoners and permit a free flow of mail between US prisoners of war and their families.

We continue to urge the immediate release of sick and wounded prisoners, the neutral inspection of prisoner of war facilities and the prompt release of all American prisoners.<sup>7</sup>

As interest and activity on behalf of the missing men and their families expanded, Sybil Stockdale realized that these efforts could not be effectively coordinated out of her home in San Diego. In May 1970, she called an ad hoc meeting of family members active in public efforts, to be held in Washington, D.C. Out of that meeting came the formal structure and bylaws of the National League, a "tax-free, non-profit, nonpartisan, humanitarian organization."<sup>8</sup> The League opened a permanent headquarters in Washington, at first in space donated by the Reserve Officers' Association, and later in its present location, provided by the American Legion.

## **PUBLIC EFFORTS ON BEHALF OF POW'S/MIA'S**

With the formal establishment of the National League of Families, and Secretary Laird's public pronouncements, the floodgate was opened on efforts by and for the POW/MIA families that were only constrained by the imagination of those working in this cause. An immense public awareness campaign—more properly a continual series of various campaigns—was directed by the many concerned organizations that sprang up throughout the country. There were petitions of all sorts: to the Vietnamese, the Russians, the Prime Minister of Sweden, the President, the Congress, and the United Nations. POW/MIA bumper stickers proliferated, as did billboard advertisements, newspaper ads, and radio and television public service spot announcements. Displays of simulated Viet Cong prison cages were set up in the Rotunda of the Capitol in Washington, and wherever else their sponsors could get approval for them, such as, in state capitols, at fairs, and on military bases. H. Ross Perot, a former naval officer turned millionaire businessman, founded United We Stand, in Dallas, and undertook many public and private initiatives throughout the world to aid our men and their families. His most dramatic effort was in December 1969 when he made a futile attempt to convince the Vietnamese to allow a chartered commercial Boeing 707, filled with Christmas presents for the POW's, to land in Hanoi. United We Stand felt that the \$600,000 needed for this unsuccessful venture was well spent in attracting attention worldwide to the plight of the men and their families.<sup>9</sup>

Of all the POW/MIA organizations, the most financially successful one started as a conservative volunteer organization based in Orange County, California. With the public spotlight on the POW/MIA issue, Voices in Vital America (VIVA) abandoned its dabbling in right-wing politics and concentrated solely on this new cause. The key to VIVA's success was the POW/MIA bracelet, a stainless steel or copper band inscribed with a man's name and the date he was captured or reported missing, which more than five million Americans purchased and wore. VIVA grew to include a paid staff of more than one hundred, and, in the words of the *New York Times*, functioned "with all the professionalism of a large mail-order corporation." While remaining nonprofit, the organization grossed almost three and three-quarter million dollars in 1972.<sup>10</sup> It provided money, pamphlets, and other

promotional material to some forty-five POW/MIA organizations throughout the country. As shall be seen, in mid-1974 elements of VIVA merged with the National League and the remnants of the former organization began the transition back to Orange County and obscurity.

### **THE POLITICAL INDEPENDENCE OF THE NATIONAL LEAGUE**

While there were very many organizations conducting public relations efforts on behalf of the prisoners, only one claimed to speak for their families, and that was the National League. It was by far the most effective group in lobbying for the men and their next of kin. The League has been the most long lasting of any of the POW/MIA organizations, and remains in business today. Given the mutuality of interests in 1969, it was probably only natural that there would be a close relationship between the League and the administration.

The military services generally cooperated with the League for they perceived a particular responsibility on their part. While not all family members joined the League, by the nature of that organization's bylaws all League members were family members—the vast majority either primary or secondary next of kin—and the various service Casualty Offices recognized they had a constituency in the League.

After an initial hesitancy, the White House provided considerable assistance to the League of Families, from furnishing telephones and WATS (wide area telecommunications service) lines to helping the League find an advertising firm to devise a public service advertising campaign to publicize the POW's and MIA's. A POW/MIA commemorative postage stamp was issued by the US Post Office and Vice President Spiro Agnew contributed the royalties from the sale of "Spiro Agnew" watches to the League. Dr. Kissinger met with the League's Board of Directors on almost a regular basis. Occasionally the support given by the administration or the services was of dubious legality or ethicality. Representative Les Aspin entered documents in the *Congressional Record* that revealed how the League obtained lists of donors to the Republican Party from Robert P. Odell, the Finance Chairman of the Republican National Committee, who had also arranged for a mail-order firm to conduct a

fund-raising appeal for the National League.<sup>11</sup> Wives were flown without charge to and from the national conventions of the League in government aircraft. While such trips were nominally merely "space available" travel, to which the wives were entitled, the flights were, in fact, scheduled solely to provide this service.

Many saw ulterior motives in such actions. Critics charged the POW/MIA issue was "deliberately agitated by Republican administrations," strongly implying that the National League was merely a tool of these administrations.<sup>12</sup> But, from its inception, the League had been given sound advice by its original volunteer legal counsel, Charles Havens, III—a former Department of Defense lawyer—and had maintained a fine political balance. The League's goals were to bring about a release of the prisoners and an accounting of the missing in action. They carefully avoided any hint of partisan politics and while continually asking politicians embarrassing questions about what they and the Government were doing to bring about these goals, they never endorsed a candidate, nor took a pro or anti stand on the conduct of the war. For example, the League refused to publicly support President Nixon's Christmas bombings of North Vietnam's major cities, although such an endorsement was reportedly requested by Charles Colson, of the President's staff.<sup>13</sup>

Not all next of kin supported the nonpartisan principles of the National League. In May 1971 two wives founded a very politically oriented organization, POW/MIA Families for Immediate Release, which ultimately claimed 350 family members. This group was highly critical of Nixon's foreign policy regarding Vietnam, maintaining that the only way to get the prisoners back was to set a date for total United States withdrawal from South Vietnam. They established a Washington, D.C. office in early 1972 to organize an effort to support for election those candidates who supported their position.<sup>14</sup>

### **EFFECTS OF THE "GO PUBLIC" POLICY**

Before turning to the transformation of the National League of Families that occurred after the prisoner release, it would be useful at this time to attempt to analyze the overall effects of the vigorous public campaigns in accomplishing their goals. It is hard to pinpoint many specific results. On the positive side, the volume of mail that the North Vietnamese allowed their captives to write grew by almost a factor of 10, and over 350 POW's were

able to write as compared with the 100-odd previous writers.<sup>15</sup> In addition, the treatment of the prisoners improved significantly. While other factors have been cited for these new developments—the death of Ho Chi Minh, or the efforts of the antiwar groups—it is probable that they were brought about in great measure by the publicity that was focused on the Vietnamese. The same can be said for their finally providing a list purporting to include all the Americans held in captivity in North Vietnam. Domestically, the efforts were certainly therapeutic for the families that were involved in the myriad of local, national, and international efforts. They felt that they were *doing something constructive* for their sons and husbands, and no longer felt alone in their grief, as thousands of ordinary citizens joined them in these efforts. To the extent that public support for the war was mobilized by the POW/MIA issue, one's judgment as to the positive or negative nature of the campaigns will rest on personal preference.

On the negative side, the vast publicity and repeated declarations of public and governmental concern gave the North Vietnamese a bargaining chip. As the pilgrimages of family members to Paris multiplied, as the public pressured the Government with petitions, letter-writing campaigns, newspaper ads, and lobbying visits to congressional and executive branch officials, and as the Government responded with Senate resolutions, congressional hearings, National Weeks of Concern, and National MIA Awareness Days, the Vietnamese could only be expected to demand *more for the men and information they held*. In accordance with a diplomatic law of supply and demand, the value of the Vietnamese product was driven sharply up by the magnitude of the American demand.

This was in marked contrast to the North Vietnamese attitude regarding their men captured by the Americans and South Vietnamese. Whether by cultural predisposition, political gamesmanship, or a combination of the two, the Hanoi Government was relatively insensitive to the fate of its men. The Vietnamese appeared to almost begrudgingly accept the men that were repatriated, and they made little effort to cooperate in these exchanges, carefully avoiding any precedents that might weaken their position. As an example, when three American pilots were released from Hanoi in February 1968, the United States reciprocated by offering to release three North Vietnamese that it held. (Usually, prisoners captured by the Americans were turned

over to the South Vietnamese, but the US Navy had retained custody of 19 navy men captured on the high seas when their 3 patrol-torpedo boats attacked several American destroyers operating in the northern reaches of the Gulf of Tonkin. It was determined that these men should not be turned over to the South Vietnamese, since they had not been captured in the Republic of Vietnam.) After long and delicate negotiations, the Vietnamese agreed to accept the men in Vientiane, Laos. The three returnees were turned over to a representative of the International Committee of the Red Cross (ICRC) at the prison compound in Da Nang, South Vietnam, were escorted by the ICRC representative to Vientiane, there to be released to a North Vietnamese official. A recent study of POW management describes the difficulties that the ICRC representative, Dr. Jean Strasser, experienced when he tried to get the North Vietnamese to sign a receipt for the men and accept the health documents required by the Geneva Convention Relative to the Treatment of Prisoners of War:

The NVN official indicated, by word and gesture, that he would not discuss the matter with Strasser, that he did not acknowledge that the ICRC had any role as an intermediary in the affair, and that he considered only that the Americans were returning NVN nationals whom they had illegally arrested and held.<sup>16</sup>

Throughout the war the Vietnamese were never to acknowledge the applicability of the Geneva Convention nor allow the ICRC to inspect their camps or play any role in prisoner release. This could explain their actions in Vientiane in 1968, but it does not explain the continuing public indifference they have shown regarding their own missing men. The Central Identification Laboratory in Hawaii has the remains of 31 unidentified Vietnamese which have been offered to be returned to the Vietnamese. This offer has not been accepted.<sup>17</sup>

## **PARENTS AND PROFESSIONALS TAKE OVER THE NATIONAL LEAGUE**

Until the repatriation of American POW's in early 1973, the leadership of the National League of Families had been drawn predominantly from the ranks of the wives of the prisoners and missing. The League's bylaws specified that only family members

of prisoners, missing, or killed in action personnel, were eligible for membership. While there were many parents in the League, including some on the Board of Directors, they were in a minority, and most of the leadership positions were held by wives.

Certain generalizations can be made about the different perspectives of these two groups—the wives and the parents—recognizing that any such statements are bound to have exceptions. The wives tended to be far more knowledgeable about their husband's military service and were on the average more sympathetic to their country's aims in Vietnam. In other words, they tended to believe in the cause for which their husbands had been fighting. They were given far more attention by the services, since each was drawing all or a large portion of her husband's pay, and the majority still lived on or near military bases where they were the object of concern by their husbands' peers who felt an obligation to see to their well-being as much as was possible. And most importantly, the relationship of a husband to his wife and family is vastly different from that of a son to his parents. The husband and father plays a far more central role in the everyday life of the family than does the grown son to his parents. While the loss of either is distressing, it is a greater daily tragedy to the wives and children, a tragedy which they could not escape. The MIA wife wanted her husband back, or wanted to know that he was dead so that she could get on with her life. After the POW repatriations, when it became less and less likely that any more men would be found alive, the wives tended to become more amenable to a change in status than did the parents, although some wives balked at the manner in which a status change had to be initiated. The parents—and brothers, cousins, aunts, "concerned citizens"—on the other hand, not feeling the impact of the loss so centrally in their lives, were more likely to stand on principle in demanding an accounting, and to press for an indefinite suspension of status changes until specific information was obtained in each case.

There had always been differences of opinion as to both the strategy and tactics to be pursued by the National League, not surprising in a large organization pursuing such an emotional cause, but these differences were usually reconciled without too much difficulty or loss of membership.

The status change issue was different. It changed the composition and the character of the National League of Families when what had been initially a minority view came to prevail. Early in 1974 the Executive Director of the League, Scott Albright—himself the father of an Air Force officer missing in action—warned the membership of the difficulties facing the League.

Most of you are aware of the incredible series of events that have plagued this League recently—events that have threatened to divide the League and spread dissension and confusion among us. A small minority of the Board of Directors (four in number) has refused to abide by the majority principle under which this League has operated since its inception. In clear violation of the Articles of Incorporation and bylaws, they have attempted to override the majority, usurp the authority of the League, and in fact, take over the League.

We have had groups within the League in the past who determined that their own intentions and wishes would not be accomplished within the framework of the League—a nonpartisan, nonpolitical organization—thus they have broken away and formed their own group. It is patently impossible for an elected Board to represent in exact detail the wishes of each and every individual in the League. Those who cannot go along with the League policy should break away and do whatever it is they must do. It is equally imperative that they not destroy the League in the process.<sup>18</sup>

The dissidents did not destroy the League, they took it over. The fifth annual convention was held in Omaha, Nebraska, in June 1974. As in previous years, the military services provided air transportation for the primary next of kin (PNOK)—or the secondary next of kin when the PNOK did not choose to attend—to and from Omaha. Some 600 League members attended, including some of the "Old Guard" who hoped to deter the League from adopting an adamant position against continuing with the status changes.<sup>19</sup>

Their fight turned out to be a futile one, and the members, representing approximately 200 POW's/MIA's, elected a new Board of Directors and a new Executive Director, and liberalized the

membership requirements. The new leadership was heavily weighted with parents, and strongly supported the prohibition of status changes unless "new" information was found. The passage of time without information, in other words, was not felt to be a sufficient reason to change an MIA status to KIA.

David Burgess, who is preparing a comprehensive history of the National League, described another significant watershed event that occurred at this national convention. "VIVA (Voice in Vital America) essentially bought out the League at the Omaha meeting."<sup>20</sup> Burgess' observation reflected the reported \$20,000 contribution made by VIVA to the League at that time, and the acceptance of the non-family member POW/MIA activists from VIVA into the League's staff and leadership hierarchy. The most notable such transplant was Carol Bates—the originator of the very successful POW/MIA bracelet at VIVA—who first went to work as an assistant to the League's Executive Director, ultimately rising to the position of Executive Director. Miss Bates credits her elevation to this job to the fact that "nobody else wanted it," particularly since the incumbent must reside in the Washington, D.C. area to run the national headquarters.<sup>21</sup>

To encourage a broad membership while still maintaining credibility as an organization of POW/MIA families, the League's membership criteria specified that the category of "family members" should be given the "broadest possible interpretation and include, among other categories recognized by the Board of Directors, a blood or lawful relative of the American who is now or has been a prisoner or missing in Southeast Asia and his or her spouse."<sup>22</sup> Technically, concerned citizens and other non-relatives were not eligible for membership and could not vote or hold office in the League. The Connecticut State Coordinator of the League in February 1974 was Cheryl Eller, a self-proclaimed "adoptive sister" of an MIA, in that she had "adopted" the missing pilot and his family. Miss Eller explained her status as "a concerned citizen member of the League since no biological or legal bond makes me related. . . . We are related only by God's wish that we reach out to one another in love and mutual support as brothers and sisters are wont to do in time of great crisis."<sup>23</sup> While it is difficult to impugn the dedication of such people, they represent what might be called the "professional" crusader, and cannot always be expected to reflect the feelings of the MIA families—particularly the MIA wives.

Some wives felt that the activist parents were driving the League in the wrong direction. Another former state coordinator, and an MIA wife, wrote: "I feel the National League of Families is run largely by the *parents* of the MIA's and that it is *their* self-interest that is served by continued opposition to status changes."<sup>24</sup> To be sure, not all the parents active in the League agreed with the new policy. Mrs. Nancy Perisho, mother of a missing Navy pilot, one of the members of the Ad Hoc Committee that had formed the League in 1967, and a perennial member of the Board of Directors, explained her decision to decline nomination at Omaha. "At this point in time the League is not speaking for its entire membership but only for its vocal minority: that the League would make a commitment to stop all status changes is impertinent."<sup>25</sup>

Excepting Mrs. Perisho, and the few other parents who agreed with her, what was the "self-interest" of the MIA parents? A psychologist and sociologist team from the Center for Prisoner of War Studies of the Naval Health Research Center has conducted a study of 79 MIA parents during a religious retreat.<sup>26</sup> The researchers found a fear on the parents' part that their sons would be forgotten and cast aside because Americans wanted to forget the Vietnam war. Thus, the parents felt compelled to carry their share of the responsibility for acting in the men's behalf. "For a few parents the struggle to gain some control over the situation had virtually become a way of life."<sup>27</sup> These parents proudly described their total involvement in local and national POW/MIA activities, and a few "actually felt that their constant and never-ending preoccupation with thoughts of their son's survival was, in fact, the very force which might be keeping him alive."<sup>28</sup> The researchers concluded that, in these individuals, the normal and healthy process of mourning had been aborted, a situation which over time might lead to psychological complications.<sup>29</sup>

Clearly not all parents involved in seeking an accounting of their missing sons are candidates for a psychiatrist, but there are pathetic examples of persistent refusals to accept reality. One—hopefully unique—involves the family of a Navy pilot who was never carried in either an MIA or KIA status. His F-4 fighter developed engine difficulties immediately following a catapult launch from the aircraft carrier and disintegrated upon impact

with the water a few hundred yards ahead of the ship. The aircraft had been airborne for seconds. The Radar Intercept Officer (RIO) in the rear cockpit managed to successfully eject and was recovered. The pilot was briefly and routinely reported as missing (*not* missing in action) while a search by ship and helicopter was conducted of the crash site. Within hours the status was changed to killed, as the search was unsuccessful. At the time of the incident the carrier was approximately 65 miles off the coast of North Vietnam. Although the aircraft was airborne for mere seconds, the parents of the dead pilot have deduced from the earliest given time of the launch and the latest time of the accident reported in the various official and unofficial accounts of the incident that their son's aircraft *could* have been airborne for as long as 22 minutes, conceivably time to reach the North Vietnamese coast. Despite being shown films of the launch, eyewitness reports, and talking with the surviving RIO, the squadron commanding officer, and an eyewitness, the parents could not be dissuaded. Although their son has never been listed as MIA,<sup>30</sup> the distraught couple are members of the National League of Families and have appealed to the Congress to help secure an accounting of their son from the North Vietnamese. In all likelihood as a result of the persistent inquiries from the family, the pilot's name was added to the Joint Casualty Recovery Center's list of names for which the North Vietnamese would be asked to provide information.<sup>31</sup>

Although this last case is an extreme one, the emotional strain that all wives and parents have been forced to endure is very real. An MIA Air Force colonel's wife, who had been active in the National League from its inception, described both the common and the exceptional cases in the following statement made to the House Select Committee on MIA's: "In one way or another, we families have become emotional cripples. I feel that some families are so distraught and frustrated and angry that they no longer look for an accounting, but are waiting for a resurrection."<sup>32</sup>

A government official who has been working closely with the POW/MIA families since the very beginning of the war expressed the same idea in another way, when he observed that the MIA environment has had a "corrupting" effect on the families. Most of what he had in mind was emotional and psychological—the remorse, guilt, frustration and anger—but there

has been a persistent charge, even by family members themselves, that avarice motivates a few families. There is certainly the temptation in many cases.

While in a missing status, a serviceman draws his full pay and all the allowances in effect at the time of loss—such as combat pay, and flight pay. In addition he is promoted with his peers, and all of his income that is not paid to his wife is placed in a savings account that pays 10 percent interest. The difference between the benefits available to an MIA wife and those paid to the widow of a KIA is immense. The House Select Committee compared the hypothetical case of an Air Force captain, with a wife and three children, who was declared KIA on 1 July 1966 with the same individual carried as MIA until a presumptive finding of death was made on 1 July 1975. The total benefits paid to the MIA wife exceeded those paid the KIA widow over the same period by just under \$100 thousand. The average difference in yearly income of the two women over the 9 years was \$10,900 in favor of the MIA wife.<sup>33</sup> While parents, even if they are primary next of kin, seldom receive any of their son's pay while he is in a missing status—since they are not usually *dependents*—they stand to inherit substantial amounts when their son is declared dead. Some of the estates of single MIA's are approaching a quarter of a million dollars, and growing at 10 percent per annum above the yearly pay and allowances. In August 1976, when 795 men were listed as MIA, it was estimated that the Government was paying \$9 million more annually in benefits to MIA families than would be the case if the men were declared dead.<sup>34</sup>

### **THE FAMILIES TAKE TO THE COURTS**

No issue has divided the families as sharply as that of status changes. By seeking relief in Federal court, a very small minority of the MIA families significantly altered the Government's procedures and, for a while, affected the lives of all MIA wives regardless of their League affiliation.

Following the return of the American prisoners, the various military Secretaries began to make presumptive findings of death in accordance with the provisions of the Missing Persons Act. Some of these changes were made on the basis of the intelligence gleaned from the returnees, but many were based not on new information, but on the former prisoners' lack of any knowledge concerning an individual. Alarmed by what they

considered a flagrant disregard for the rights of the MIA's, five MIA family members—all belonging to the National League—filed a class action suit on 20 July 1973 in the US District Court for the Southern District of New York to seek an injunction prohibiting further status changes (*McDonald v. McLucas*, 73 Civ. 31900). The judge issued a temporary restraining order and then, on 6 August 1973, held that the complaint raised such substantial constitutional questions as to require the convening of a three-judge court. A second temporary restraining order was issued which allowed a review by a service Secretary only when requested by the primary next of kin. This restraint remained in effect until the final decree was issued on 11 March 1974, and produced considerable anguish and bitterness, both from wives who had asked for a review, and from some who had not.

Some women, recovering from the recent heartbreak of not finding their husbands among the returning prisoners, had become reconciled to making a new start in life. They had anticipated that the services would soon change their husbands' status, but were now told that *they* must request such a change. Conflicting views of wives and in-laws, and guilt at the thought of being the instrument of a husband's "death," if only on paper, complicated these decisions. Those that went ahead with the request did so with a mixture of relief and bitterness. One such wife expressed her feelings in the following words:

I would hope that no primary next of kin ever has to ask for a review as I did. That was the cruelest blow of all. My children and I had to find peace of mind. When the services were not allowed to proceed because of some people's greed, bitterness or frustration, I had no choice but to ask the Navy to review my husband's case. The agony has to be over.<sup>35</sup>

Other wives, who might have wanted their own agony to be over just as strongly, could not request a change for personal reasons. "Personally, I find it totally repugnant to me to ask for a status change," remarked one such wife. ". . . I would never contest a change of status, but I would never ask for a status change if this dragged on another 100 years."<sup>36</sup>

The court's Memorandum Opinion of 13 February denied the plaintiffs' class action motion, but declared that Sections 555 and 556 of Title 37, US Code, were unconstitutional insofar as

they denied due process to next of kin who were receiving governmental financial benefits (namely, the wives, and a few parents, who were receiving allotments from MIA's pay and allowances). The service Secretaries were ordered to advise such next of kin of a contemplated review hearing, provide them an opportunity to attend—with a lawyer should they wish—and give them access to the information upon which the review should be based plus an opportunity to provide information of their own. The next of kin no longer had to initiate the review. The services each promulgated appropriate review guidelines, and when the Supreme Court upheld the Circuit Court's decision, on 11 November 1974, they were free to resume unsolicited status changes. Because of the adamant stand of the National League, and the rumors of an imminent Presidential Commission and/or a congressional select committee to fully study the matter, the Department of Defense was reluctant to conduct such reviews without next of kin concurrence. When the House Select Committee was formed in September 1975, the Department tacitly agreed to abstain from unsolicited status changes during the committee's tenure.<sup>37</sup>

The Select Committee's final report was presented to the House of Representatives on 13 December 1976. One of their recommendations was that the military Secretaries should resume the case reviews. Not until the following August did the President order the Department of Defense to begin the reviews of the 712 US servicemen still carried in a missing status, thus ending a virtual moratorium of unsolicited status changes that had lasted for 4 years.<sup>38</sup>

Not unexpectedly, the League reacted strongly to both the Select Committee report and the President's decision to authorize the resumption of unsolicited reviews. The Select Committee was castigated for even voicing an opinion on the change of status question, with the argument that that particular issue was under the purview of the House Armed Services Committee. The committee's recommendation was described as "totally inappropriate," since the committee had no jurisdiction over the Department of Defense, and "highly suspect" in view of the claimed disagreement of 5 of the 10 committee members with the announced decision.<sup>39</sup>

President Carter had met with the officers of the National League soon after his inauguration and, according to the League, had promised at that meeting not to have the missing men arbitrarily declared dead, but rather to seek factual information as to their fate.<sup>40</sup> "The President blatantly lied," judged the Executive Director of the League, Carol Bates. She added that, in her view, Carter was using the changes in status as a means of getting rid of an uncomfortable issue hindering his efforts to be friends with America's former enemies.<sup>41</sup>

The League responded to the new turn of events with more than rhetoric, however, and initiated another class action suit in Federal District Court, claiming that the constitutional rights of the missing men had been denied when determinations of death were made without evidentiary support.<sup>42</sup> Again, the judge issued a temporary injunction prohibiting status changes for some MIA categories (those without dependent NOK's, or cases in which the PNOK did not oppose the status change). The Department of Defense halted changes of any of the now 704 MIA's until the court situation was clarified. On 23 September 1977, Judge Weinstein lifted his injunction, noting that he had found nothing to indicate that the Government was being less than fully sensitive to the rights of those missing and their families.<sup>43</sup>

The services were once again free to resume reviews and status changes. While the League is appealing the judge's decision—with additional hearings scheduled in early 1978—their prospects are discouraging.\* The rolls of the MIA's continue to dwindle, and the end is in sight, barring an unlikely change of heart by the courts. Possibly, some individual families might take their particular cases to court should the class action approach fail, but even an isolated victory in this manner would not halt the seemingly inexorable trend toward eliminating active MIA's. It remains to be seen whether the United States Government, as the families have been assured, will continue to vigorously seek an accounting of the 2,505 men lost in Southeast Asia—regardless of their status—or whether, as some families fear, the pressure for an accounting will evaporate with the MIA's.

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\*Editor's note: The appeal was still pending as of October 1978.

## ENDNOTES

1. US, Department of the Navy, Bureau of Naval Personnel, "Missing in Action and Prisoners of War Family Information" [n.d. (ca. 1970)], p. 13.
2. Ibid.
3. David Burgess, Georgetown University Academy of Public Service, interview, Washington, DC, 2 December 1977. Roger Shields, the official whom Secretary Laird placed in charge of the POW/MIA effort within the Department of Defense, agrees with Kissinger that Laird was the initiator of the shift in policy (Shields interview).
4. Iris Powers, "The National League of Families and the Development of Family Services," *Family Separation and Reunion: Families of Prisoners of War and Servicemen Missing in Action*, ed. Hamilton I. McCubbin et al. (San Diego: Center for Prisoner of War Studies, 1974), p. 3. Mrs. Powers does not identify either Mrs. Stockdale or San Diego by name.
5. US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Report 1764, 94th Cong., 2d sess., 1976, p. 137. From the beginning of the war, a cumulative total of 623 letters had been received in the United States, from 103 writers.
6. Powers, "National League of Families," p. 3.
7. Quoted in Select Committee, *Final Report*, pp. 135-136.
8. Powers, "National League of Families," p. 5.
9. Thomas T. Mounts, "What Effect are Groups (Other Than the United States Government) Having on Achieving Release of American POW's Held in the Vietnam War?" (Professional Study No. 4416, Air War College, 1971), pp. 7-8. (Typewritten.)
10. *New York Times*, 3 March 1973, p. 16, col. 4.
11. *Congressional Record*, 118:754-757.
12. Robert K. Musil, "The Politics of Cynicism: Manipulating the MIA's," *Nation*, 9 October 1976, p. 332.
13. David Burgess, Georgetown University Academy of Public Service, interview, Washington, DC, 2 December 1977.
14. Charles F. Kraak, "Family Efforts on Behalf of United States Prisoners of War and Missing in Action in Southeast Asia"

(Research Project, Army War College, 1975), pp. 25-27.(Type-written.)

15. Select Committee, *Final Report*, p. 137.

16. E. Mowery, C. Hutchins, and B. Rowland, *The Historical Management of POW's: a Synopsis of the 1963 US Army Provost Marshal General's Study Entitled "A Review of United States Policy on Treatment of Prisoners of War"* (San Diego: Center for Prisoner of War Studies, 1975), pp. 53-54.

17. Select Committee, *Final Report*, p. 231. Of course the Vietnamese are far less dependent on American assistance in their efforts to account for their missing than are Americans on Vietnamese cooperation. In overrunning the South, they obtained all the records, facilities, organizations, witnesses and grave sites relating to their lost men.

18. Executive Director, National League of Families, letter to membership, 21 January 1974, quoted in Kraak, "Family Efforts," pp. 53-54.

19. Maerose Evans, MIA wife, testimony before Subcommittee No. 2 of the House Armed Services Committee, in US, Congress, House, Committee on Armed Services, *Hearings Before a Subcommittee of the House Committee on Armed Services on H.R. 16520*, 93d Cong., 2d sess., 1974, p. 65.

20. Burgess interview.

21. Carol Bates, telephone conversation with the author, 23 January 1978.

22. Colonel Earl P. Hopper, Sr., Executive Director of the National League of Families, letter of 19 July 1976 to Representative Benjamin A. Gilian. Included in US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Hearings before the Select Committee on Missing Persons in Southeast Asia: Part 5*, 94th Cong., 2d sess., 1976, p. 114.

23. Cheryl Eller, letter to Senator J. W. Fulbright. Included in US, Congress, Senate, Committee on Foreign Relations, *US POW's and MIA's in Southeast Asia*, 93d Cong., 2d sess., 1974, pp. 101-102.

24. Quoted in Select Committee, *Final Report*, p. 186.

25. Dr. and Mrs. Gordon Perisho, letter of 20 July 1974 to James Schlesinger. Included in House Committee on Armed Services, *Hearings on H.R. 16520*, p. 67.
26. Hamilton I. McCubbin, Jr., and Philip J. Metres, Jr., "Maintaining Hope: The Dilemma of Parents of Sons Missing in Action," *Family Separation and Reunion: Families of Prisoners of War and Servicemen Missing in Action*, ed. Hamilton I. McCubbin et al. (San Diego: Center for Prisoner of War Studies, 1974), pp. 169-178.
27. *Ibid.*, pp. 174-175.
28. *Ibid.*, p. 175.
29. *Ibid.*, p. 177.
30. Captain Jack Coolgan, Special Assistant for POW/MIA Matters to the Chief of Naval Personnel, interview, Washington, DC, 9 January 1978.
31. Committee on Foreign Relations, *US POW's and MIA's in Southeast Asia*, pp. 105-115.
32. Select Committee, *Hearings: Part 5*, p. 20.
33. *Ibid.*, p. 165.
34. *Newsweek*, 9 August 1976, p. 26.
35. Quoted in House Armed Services Committee, *Hearings on H.R. 16520*, p. 64.
36. Select Committee, *Final Report*, p. 187.
37. *Ibid.*, p. 182.
38. *Los Angeles Times*, 17 August 1977, p. 21, col. 1.
39. National League of Families of American Prisoners and Missing in Southeast Asia, "Analysis of the Final Report of the House Select Committee on Missing Persons in Southeast Asia" (Washington, DC, 1977), p. 15.
40. "Disposing of the POW/MIA's," National League of Families of American Prisoners and Missing in Southeast Asia, *Newsletter*, 30 August 1977, p. 2.
41. Carol Bates, telephone conversation with the author, 23 January 1978.
42. *New York Times*, 9 September 1977, p. 15, col. 1.
43. *New York Times*, 27 September 1977, p. 8, col. 2.

## **Paris, January 1973— and Its Aftermath**

# 5

### **THE PARIS PEACE AGREEMENT**

At 12:30 in the afternoon of 23 January 1973, at the Hotel Majestic in Paris, Assistant to the President for National Security Affairs Henry Kissinger and Special Advisor Le Duc Tho initialed the Agreement on Ending the War and Restoring the Peace in Vietnam. Higher ranking yet less influential principals from each side signed the document and its protocols in Paris 4 days later. This agreement signaled the termination of active American military involvement in Vietnam. It had been brought about after years of negotiations, considerable threats and pressures by the United States Government on an increasingly unwilling ally, and a savage eleventh-hour B-52 blitz of Hanoi and Haiphong.<sup>1</sup>

The reaction throughout most of the world—with the exception of Saigon—was positive. For devising the instrument which, as President Nixon assured the American people, would bring about a “peace with honor,” the two chief negotiators—Kissinger and Tho—would later be awarded the Nobel Peace Prize.

The agreement did bring some immediate benefits to the United States. Americans would no longer be fighting in Indochina, and the American prisoners of war would be coming home. On the day the agreement was signed, the North Vietnamese provided a listing of all American prisoners of war held captive in North Vietnam, and within the specified 60 days they had all been repatriated. Now the missing in action issue was thrust to the center of the stage; it was no longer just a

hyphenated adjunct to the broader "POW-MIA" issue. The paucity of "surprises" in the enemy lists quickly deflated the hopes of those who felt that substantial numbers of the men carried in a missing status would be eventually discovered in the other side's prison camps. Even the initial pessimistic disclosure by the Department of Defense that only a "few" MIA's names appeared on the recently obtained lists was excessively encouraging.<sup>2</sup> The House Select Committee determined that there was really only one surprise—an Army officer held by the Viet Cong.<sup>3</sup>

Two articles from the Agreement on Ending the War and Restoring Peace in Vietnam have been particularly pertinent to the whole issue of an accounting for our men missing in action. Obviously germane is Article 8, which deals specifically with the return of prisoners and MIA information.

#### **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 [within sixty days of the day the agreement was signed]. 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>4</sup>

The second article, one that over the years has become increasingly connected with Article 8 when discussing the MIA issue, comes from the chapter in the agreement dealing with the future relationship between the United States and the Democratic Republic of Vietnam.

## Article 21

The United States anticipates that this agreement will usher in an era of reconciliation with the Democratic Republic of Vietnam as with all the peoples of Indochina. In pursuance of its traditional policy, the United States will contribute to healing the wounds of war and to postwar reconstruction of the Democratic Republic of Vietnam and throughout Indochina.<sup>5</sup>

### THE JOINT MILITARY ORGANIZATIONS

For many months after the signing of the agreement the *quid pro quo* relationship between information on the missing men and American aid to North Vietnam—or later a unified Socialist Republic of Vietnam (SRV)—was not evident. It was expected that the understandings signed in Paris would be implemented, at least as far as an MIA accounting was concerned.

The task of insuring the joint action necessary for the agreement to be carried out was the responsibility of the Four-Party Joint Military Commission (FPJMC) consisting of representatives from each of the four parties participating in the Paris Conference—the United States, the Republic of Vietnam (South Vietnam), the Democratic Republic of Vietnam (North Vietnam), and the Provisional Revolutionary Government of the Republic of South Vietnam (the Viet Cong). The FPJMC was chartered for only 60 days, time designated for the completion of the United States withdrawal and the return of the prisoners of war. There was some initial, rather optimistic speculation that the MIA accounting would occur in this 2-month period, although such speculation totally ignored the obvious difficulties, and the tedious process that would be involved even were the former enemies to cooperate to the fullest.

During the course of his television address to the Nation announcing the agreement, President Nixon stated that "within 60 days from this Saturday, all Americans held prisoners of war throughout Indochina will be released. There will be the fullest possible accounting for all of those who are missing in action."<sup>6</sup> To be fair to President Nixon, he did not say that the accounting would take place within 60 days, but the unfortunate juxtaposition of these two sentences, and the lack of any further amplification or clarification, fueled the hopes of those who were praying for a miracle.

If Nixon's words could be interpreted several ways, the same confusion does not apply to Dr. Kissinger's explanation of the return of the prisoners and the MIA accounting given in a press conference the day following the President's television address. Kissinger specified that "the return of American personnel and the accounting of missing in action is unconditional and will take place within the same time frame as the American withdrawal."<sup>7</sup> Not only was this statement highly misleading regarding the specified time interval, but the description of the accounting as "unconditional" would be—continuing to this day—the subject of considerable conjecture and debate, as shall be discussed later in this chapter. When Chairman G. V. Montgomery of the House Select Committee on Missing Persons in Southeast Asia asked the Department of State, in August of 1976, if then Secretary Kissinger had any special information or commitment upon which to base his otherwise erroneous information, he was told that the key word was "unconditional." Denying that there was any special information on this matter, the Department ignored Dr. Kissinger's coupling of the prisoner release with the MIA accounting other than to note that the terms of the Paris Agreement made it clear that a full accounting could well take longer than 60 days.<sup>8</sup>

In fact, the Paris Agreement *did* anticipate that the accounting effort would extend well beyond the 60 days specified for the return of the prisoners of war. Article 10 of the Protocol on Prisoners and Detainees, in addition to tasking the Four-Party Joint Military Commission with ensuring the joint action necessary to implement Article 8(b) of the Agreement—the article dealing with the MIA's and KIA's—also specified that when the term of the FPJMC was up, "a Four-Party Joint Military Team shall be maintained to carry on this task."<sup>9</sup> This was the only mission assigned to the Four-Party Joint Military Team in the agreement or in any of the accompanying protocols, for in all other areas—prisoner return, withdrawal of American forces, dismantling of American bases<sup>10</sup>—all American obligations and responsibilities would be terminated within 60 days. In all other areas of FPJMC concern, and these were many, responsibility would pass to the Two-Party Joint Military Commission—consisting of representatives of the two South Vietnamese parties to the Conference. This parallel organization was formed at the same time as the FPJMC to deal with matters of mutual interest to the

two governments in the South. No expiration date was specified for the Two-Party Commission, as, under the terms of the agreement, the "foreign" parties would be removed from the scene within 60 days, leaving the remaining confrontation solely between the two South Vietnamese parties. The one exception was in regard to the search for the missing in action, thus the Four-Party Team to replace the Four-Party Commission.

The agreement created a third international supervisory body, the International Commission of Control and Supervision (ICCS), consisting of representatives of Canada, Hungary, Indonesia, and Poland. The primary role of the commission was to monitor the truce, and for this purpose South Vietnam was divided into seven truce regions, with a regional ICCS team and Joint Military Commission teams in each region plus 26 locations for local teams of the same types. While the ICCS had numerous specific monitoring responsibilities—such as withdrawal of US forces, dismantlement of military bases (a moot point), and establishing control points through which replacement military supplies would be funneled—the International Commission was given no responsibilities in regard to the accounting for the dead and missing other than the most general provision that the FPJMC, which was to operate in accordance with the principle of consultation and unanimity, was to refer any disagreement to the ICCS. Since the ICCS, in turn, could only report to the Joint Military Commission and, itself, was bound by the rule of unanimity, there was no possibility of resolving substantive disagreements.

### **The French Experience**

In order to better prepare themselves for negotiating with the Communist parties, the American members of the Four-Party Team studied the experiences of the French following the 1954 Geneva Accords. They were to note many similarities in the negotiating techniques of the Viet Minh and their latter-day successors. As the talks progressed, the Americans were also to find striking resemblances to the American experiences with the Communist Chinese and the North Koreans at Panmunjon.<sup>11</sup>

It would also serve the purposes of this study to examine the record of the Viet Minh in their negotiations with the French, because there are clear similarities in the manner in which a humanitarian issue was exploited by the Communists for political

and financial advantage. In the case of the French, the issue was not one of an accounting of their missing in action—an area in which they had virtually no success—but in repatriating to France the remains of French soldiers killed in the war. (One of the marked differences between the French and American experiences in Indochina was that the French had controlled the entire area. The remains involved had been buried by the French, in their own cemeteries in areas that were turned over to Viet Minh control following the Geneva Accords.)

The North Vietnamese evidenced their political use of the graves issue in two ways: (1) by using their rights under the agreement as a subterfuge to proselytize the South, and, (2) by varying the number of bodies they would allow to be repatriated to France, seemingly in direct proportion to the degree in which French policy was “sympathetic” to the North Vietnamese.

Agreement Number Twenty-Four, signed by the French and the Viet Minh on 1 February 1955, covered the search for, locating, disinterment, regroupment, and repatriation of the remains of deceased military personnel of both parties.<sup>12</sup> Under the terms of this agreement, the North Vietnamese would provide information to the French regarding their soldiers' graves in the South, and in the event the French could not locate these graves based on this information, the North Vietnamese could send their own teams to the South. It was soon noted that the North Vietnamese information was very difficult to follow and that Hanoi's objective was to send as many teams as possible into the South Vietnamese provinces during the year immediately preceding the all-Vietnam elections that were called for under the Geneva Accords.<sup>13</sup> The North Vietnamese showed little interest in those People's Army of Viet-Nam (PAVN) graves that were found by the French, but were *not* on the PAVN lists given to the French.<sup>14</sup> The political facet to the Viet Minh's motivations was evidenced by the discovery that the members of these search-and-recovery teams were former high-ranking Communist political cadres in the South who began reestablishing contact with pro-Viet Minh elements. (In 1970 one of these team members turned up as a high-ranking member of the Central Office, South Vietnam, the organization that directed the political and military efforts of the National Liberation Front in the South.<sup>15</sup>)

The second category of political use of the graves issue has been best identified by Ms. Anita Lauve, the foremost American expert on the French POW/MIA experiences arising from the French-Indochina War:

. . . there would appear to have been more than coincidental correlation between the number of remains that the French were able to repatriate and the French government's attitude toward Hanoi's political goals in Vietnam. . . .<sup>16</sup>

To prove this correlation, Ms. Lauve cites the following: in the 2 years immediately subsequent to the agreement, 1,247 French remains were repatriated. The numbers dropped to 38 in 1957 after the French had angered the North Vietnamese by terminating their delegation on the Joint Commission. In 1958, the French withdrew their goodwill mission to Hanoi and the North Vietnamese retaliated by expelling the last French graves registration officer from the North. Only 24 remains were allowed out over the next 3 years, with even this trickle terminated entirely in 1962 when the French balked at paying what they considered to be an exorbitant charge demanded by the Hanoi Government for a North Vietnamese-directed relocation of several French cemeteries. A new Military Graves Mission was allowed to return to Hanoi in 1966, and 307 remains were repatriated that year. This followed numerous French declarations opposing foreign intervention in Indochina, and Hanoi's success in opening a mission in Paris. In 1973, the French established full diplomatic relations with Hanoi, and at the same time resumed diplomatic relations with the South Vietnamese Government. Oddly enough, this action did not immediately spark an increase in the repatriations. The reverse was the case, with but an average of 26 repatriations per year over the period 1972-1976. It has been rumored that the North Vietnamese are contemplating the closure of several French cemeteries which would release significant numbers of remains for repatriation. In any event, the French experience is not a particularly heartening one if it is to be considered a model for American negotiations on a full MIA accounting by the North Vietnamese. During the 6 years prior to the signing of the graves agreement, the French were able to repatriate 9,504 remains; yet, during the more than two decades subsequent to this agreement, they have been allowed to remove only 3,043 remains.<sup>17</sup>

A hypothetical report, attributed to an anonymous State Department official by Dr. Roger Shields, illustrates the cynical, self-serving attitude many perceive in the North Vietnamese treatment of the MIA issue. "The North Vietnamese have a whole warehouse full of remains of American pilots, and they break out a few whenever a congressional delegation comes to Hanoi."<sup>18</sup> Anita Lauve, using a slightly different analogy, came to the same conclusion in analyzing the French experience in regard to the graves. "For the North Vietnamese, the French graves are like a reservoir from which they release a little at a time. If they release everything, they don't have anything more to bargain with."<sup>19</sup>

In addition to the political concessions they sought, the North Vietnamese demanded and obtained considerable financial benefits from the graves agreement. Ms. Lauve concluded that "... there has been a lot of evidence that the French are really being financially milked pretty crudely."<sup>20</sup> The French Government pays the Vietnamese considerable sums of money annually to "maintain" the French cemeteries and it has been estimated that the Vietnamese charge approximately 20 times the actual cost of the very limited services performed. In 1972, for example, the Hanoi Government was paid \$1.5 million, in United States dollars, for the maintenance of 12 small and 1 large cemetery.<sup>21</sup> The North Vietnamese will no longer even allow French diplomatic personnel to visit the cemeteries in order to ascertain their condition firsthand. Some pictures have been obtained, which show the graves overgrown with weeds and the grave-stones in disarray.<sup>22</sup>

### **The Four-Party Joint Military Team (FPJMT)**

How well did the homework by the American members of the FPJMT enable them to conduct meaningful and productive negotiations with the two Communist parties? The answer was that it might have prepared them to more quickly recognize the pitfalls along the path, but it did not allow these hazards to be bridged, and the whole FPJMT experience was, in sum, a negative one.

There was some promise in the beginning. Despite an initial indication that the two Communist parties would tie the degree of their cooperativeness to the political climate—at the first formal meeting of the FPJMT on 4 April 1973, the Provisional Revolutionary Government (PRG) and North Vietnamese spokes-

men warned that the allegations, by repatriated American prisoners of war, of torture and inhuman treatment at the hands of their captors, threatened to interfere with the present negotiations<sup>23</sup>—some progress was made. In early May, the North Vietnamese announced that they planned to invite relatives of some of the Americans who had died in captivity to visit the servicemen's graves in the North.<sup>24</sup> (No such invitations were ever forthcoming.) Several days later, members of the United States delegation on the Joint Team visited Hanoi and were told of 20 American prisoners who had died in captivity, although they were not allowed to visit the cemetery, which was supposedly about 35 miles from Hanoi, due to "insufficient travel time."<sup>25</sup>

From this hardly auspicious start, the Four-Party meetings degenerated into public relations and propaganda polemic bouts, with each of the four parties absenting themselves for long periods. The Viet Cong used the meetings as a forum to present their various proposals for a "true cease fire," and were particularly skillful in getting the most mileage from their weekly press conferences. This understandably disturbed the Thieu Government, and the South Vietnamese placed increasingly severe restrictions on the PRG members of the team in addition to inciting, or at least condoning, several "popular" incidents involving the Viet Cong members. In return, the South Vietnamese Communist side preempted the agenda for a considerable period of the team's existence with demands for priority discussions of delegates' "privileges and immunities."<sup>26</sup>

Henry Kissinger has described the process of negotiating with the North Vietnamese as "great training in masochism,"<sup>27</sup> and the American members of the FPJMT must have shared this frustration as their opposite numbers used excuse after excuse to avoid dealing substantively with the question of an MIA accounting. Throughout, the Communist parties insisted that complete consensus on the operating principles was necessary before any concrete actions could be taken on other questions. Under this guise they attempted to rewrite completely both the previously agreed-on provision of the Paris Agreement pertaining to the FPJMT and the 11 points on delegates' privileges and immunities that had been virtually the only results of the 60 days' work of the Four-Party Joint Military Commission.<sup>28</sup> In essence, they tried to start again on square one.

One of the senior participants on the American side has described the Communist negotiating strategy as one of "dualism" and "linkage." The dualism was exemplified when the Viet Cong and the North Vietnamese would concentrate on a subject related to, but distinct from, the matter under discussion—as when they stressed the erection of monuments and the care of cemeteries rather than discuss MIA's. The second aspect of this strategy was to link one aspect of the agreement to every other one. Under this concept, no part of an agreement can be implemented unless all the details and "modalities" of all other portions are "scrupulously" carried out.<sup>29</sup> (The North Vietnamese had used a similar "all or nothing" ploy with the French over the graves issue. The Viet Minh had long protested that their teams in the South had been unable to begin disinterments as early as had the French in North Vietnam. Yet, when the French pointed out that one-third of the graves on the North Vietnamese lists had been located, the other side announced that they would not begin any disinterments until *all* graves had been located throughout South Vietnam. This position enabled the North Vietnamese to significantly increase their presence in the South, as they could circulate a search-recovery team, then a Disinterment Commission, followed by a Visit Commission, to each of the provinces in which there were North Vietnamese graves.<sup>30</sup>)

By September 1973 it had become obvious that the Communists were going to stonewall on the MIA issue. On 22 September the spokesman for the Hanoi delegation announced that his country would not help in the search for the missing while "political prisoners" remained in South Vietnamese jails.<sup>31</sup> One week later, the American delegation revealed that the Communists had been stressing during the past several meetings that no remains would be returned and no information provided on the missing men until all other provisions of the Paris Agreement had been implemented.<sup>32</sup>

All hopes for cooperation were shattered 3 months later when Communist gunners fired upon an unarmed American team, clearly identified as part of the FPJMT, as they were conducting a previously announced search of a suspected crash site. A United States Army officer was slain as he held up his hands to surrender.<sup>33</sup> As a result of this incident, the United States delegation made its first protest to the International Commission for Control and Supervision, and, in company with its South Vietnamese allies, walked out of the FPJMT meetings.<sup>34</sup>

The Americans returned to the conference table, and in fact stayed in Saigon until that city fell, but nothing further was accomplished in this forum in regard to the question of our men who were missing in action. However, in March 1974 the North Vietnamese did agree to the repatriation of the remains of 23 servicemen identified as having died in captivity in the North. These were the men identified on a 27 January 1973 list published by Hanoi. As the massive influx of men and material from North Vietnam, in clear violation of the Paris Agreement, coupled with the congressional restrictions on military aid to South Vietnam, made the ultimate outcome in Vietnam certain, the North Vietnamese continued to use the missing men to their political advantage. In a letter to Senator Edward Kennedy, dated 21 January 1975, North Vietnamese Foreign Minister Nguyen Duy Trinh admitted that his country held information on the missing, but stated that such information would not be released until the United States forced President Thieu from office and stopped providing military aid to South Vietnam.<sup>35</sup> Ironically, both of these preconditions were substantially met. Hanoi responded to the resignation of Thieu by providing the names of three American pilots who had been killed.<sup>36</sup>

## **AID TO VIETNAM**

### **The Nixon-Pham Van Dong Letter**

The North Vietnamese had given ample evidence that they would not respond to any demand from the United States solely from a humanitarian motive. It appeared that they, like many people and nations, would only react to the carrot or the stick. The whole history of American involvement in the Vietnam war had demonstrated that, for a number of complicated reasons, the United States had been either unwilling or unable to bring sufficient coercive power to bear on the Hanoi Government to influence them to do its bidding. Since it could not, or would not, *force* the Vietnamese to give an accounting of the missing, what steps were the Americans willing to take to pay for such information? Some might suggest that the US withdrawal from Vietnam and its abandonment of the Thieu Government in the South had been payment enough. But the payoff for these actions was the release of American prisoners, and a peace agreement that might allow for the possibility of a "free" Vietnam in the South and a "peace with honor." The Vietnamese are hard

bargainers, and it became clear that Kissinger did not receive a blank check at Paris that would wipe out the years of enmity in one stroke.

The current position of the Vietnamese is that they are not obligated to provide a complete accounting because the United States has not lived up to its obligations to provide reconstruction aid to the Socialist Republic of Vietnam. The United States Government counters that it has no responsibilities under the Paris Agreement—which is a dead letter in view of the massive violations of virtually every article by the Communist parties. What are the merits of these arguments?

The House Select Committee on Missing Persons in Southeast Asia first became aware of some of the complexities in the question of postwar aid when a number of committee members visited Hanoi in December 1975 for discussions with Vietnamese officials. They were told “to their consternation”<sup>37</sup> of an alleged letter, dated 1 February 1973, from President Nixon to Premier Pham Van Dong in which the American President made an “unconditional” promise of reconstruction aid to Vietnam on the order of \$3.25 billion. The existence of such a letter—which the Vietnamese refused to show the Congressmen—was a shock to the legislators, since they had specifically queried Dr. Kissinger in executive session as to the existence of any documents directly pertinent to Article Twenty-One of the Paris Agreement—the article in which the United States pledged to contribute to healing the wounds of war and to the postwar reconstruction of the SRV. Dr. Kissinger had responded that there was only a side codicil which expounded what the United States could do within the Constitution.<sup>38</sup> Neither congressional nor State Department sources could identify such a document for the committee. As shall be shown, this was probably the 57-page document that Kissinger presented to the North Vietnamese when he was in Hanoi in February 1973 in conjunction with the establishment of the Joint Economic Commission which had been proposed in the Nixon letter.<sup>39</sup>

During its brief existence, the Select Committee was unable to obtain a copy of the Nixon letter from the administration, although the North Vietnamese published alleged excerpts in *Nham Dan*, the leading Hanoi newspaper. Chairman G. V. Montgomery telephoned the former President to inquire about his

correspondence with the premier of North Vietnam, and the congressional committee requested a copy of the letter first from the National Security Council and then the Department of State. Both organizations refused to supply the document, citing the principle of executive privilege. On 12 March 1976, Dr. Kissinger met again with the Select Committee, and stressed that the Vietnamese were not given an unconditional commitment on aid, either in the Nixon letter or in the discussions of the Joint Economic Commission that resulted from that letter. Kissinger emphasized that two central principles had always been presented to the Vietnamese: (1) that the United States expected the North Vietnamese to comply with the terms of the Paris Agreement—particularly the MIA accounting and the termination of hostilities in Cambodia and Laos, and, (2) that any aid must be contingent on US constitutional procedures—in other words must gain the approval of the Congress.<sup>40</sup>

Two months following the Kissinger testimony, the Select Committee questioned Under Secretary of State for Political Affairs Philip Habib about the Nixon letter to Pham Van Dong. When scolded by one of the committee members for not advising the committee of this correspondence during the preparatory briefings which were held prior to their Hanoi trip the previous December, Ambassador Habib admitted that he himself had not been aware of the letter at that earlier date.<sup>41</sup> However, he was very emphatic in insisting that there was never an agreement between the United States and Vietnamese regarding aid.

Let me make the answer very specific. There is no agreement, there was no agreement, there never was an agreement as far as I know, and I think I would know at this stage. We have researched it and there is no agreement with respect to the question of aid involved in that letter.

That letter was simply a letter primarily designed to set up a joint economic commission pursuant to Article 21 of the Paris Agreements. The truth of the matter is there was no agreement.<sup>42</sup>

The Nixon/Pham Van Dong letter, and the nature of the American commitment, if any, to supply the reconstruction aid specified in the letter, continues to be an unresolved issue. With the dissolution of the House Select Committee on Missing

Persons in Southeast Asia, its responsibilities have been assigned to a subcommittee of the House Committee on International Relations chaired by Congressman Lester Wolff, the Subcommittee on Asian and Pacific Affairs. Congressman Wolff has also pursued the matter with the former President and with Dr. Kissinger—with mixed results. There appears to be considerable suspicion on the part of some Congressmen and their staff members as to the veracity of those individuals from the previous administration who were involved in this matter.

The text of the Nixon 1 February 1973 letter has since been made public by the United States Government as well as by the North Vietnamese. Because of its prominent position in the matter of aid to North Vietnam—and whether such aid is a *quid pro quo* for an MIA accounting—the significant portions of that letter, and its addenda are quoted: (emphasis added)

The President wishes to inform the Democratic Republic of Vietnam of the principles which will govern United States participation in the postwar reconstruction of North Vietnam. As indicated in Article 21 of the Agreement on Ending the War and Restoring Peace in Vietnam signed in Paris on January 27, 1973, the United States undertakes this participation in accordance with its traditional policies. These principles are as follows:

1. The Government of the United States will contribute to postwar construction in North Vietnam *without any political conditions*.

2. Preliminary United States studies indicate that the appropriate programs for the United States contribution to postwar reconstruction will fall in the range of \$3.25 billion of grant aid over five years. Other forms of aid will be agreed upon between the two parties. This estimate is subject to revision and to detailed discussion between the Government of the United States and the Government of the Democratic Republic of Vietnam.

3. The United States will propose to the Democratic Republic of Vietnam the establishment of a United States-North Vietnamese Joint Economic Commission within 30 days from the date of this message.

4. The function of the commission will be to develop programs for the United States contribution to reconstruction of North Vietnam. . . .

### **Addenda**

Understanding Regarding Economic Reconstruction Program:

It is understood that the recommendations of the Joint Economic Commission mentioned in the President's note to the Prime Minister will be implemented by each member *in accordance with its own constitutional provisions*.<sup>43</sup>

Henry Kissinger has publicly denied that the Nixon letter on postwar aid was part of the Paris Agreement, and Ambassador Habib has vehemently maintained that there was no agreement on aid. Another explanation is advanced by Gareth Porter, a one-time staff consultant to the House Select Committee, and an admitted critic of the Nixon/Kissinger efforts to negotiate a peace in Vietnam. In a recent *Nation* article, based in large measure on a series of talks with an official who participated in the Paris talks and desires to remain anonymous, Porter maintains that the letter resulted from a demand by Le Duc Tho that the United States more concretely spell out its commitment, that the text was negotiated "down to the last detail" by Kissinger and Le Duc Tho, and that the North Vietnamese threatened not to sign the Paris Agreement without such a letter.<sup>44</sup>

Porter's thesis is that the United States was the major contributor to the ultimate Communist victory in South Vietnam by not fulfilling its promise of "unconditional" aid. He maintains that the North Vietnamese and the Viet Cong had virtually accepted the status quo in South Vietnam and were maintaining a purely defensive posture. American aid was to be their reward for this accommodating stance. It was only when the United States made it clear to Hanoi that there were political strings to this aid—primarily the cessation of hostilities in Cambodia, deemed to be a *sine qua non* in Washington's eyes for the viability of the Thieu Government, but also a meaningful accounting of the American MIA's—that the tradeoff became unacceptable to the other side, and they elected to push on to a military victory.

Whether one accepts Porter's logic or not, it is obvious that the United States did attach many political qualifications to any aid, just as it is even more obvious that the North Vietnamese violated the Paris Agreement from the start. It would appear that the Nixon letter, the peculiar codicil that Kissinger brought to Hanoi immediately after the letter was sent, and the negotiations by the American delegation to the Joint Economic Commission talks were largely window dressing—that the administration fully realized that there was virtually no possibility of any significant amount of aid to Vietnam passing the Congress—but that Nixon and Kissinger were willing to dangle the possibility of such aid in front of the Vietnamese in an attempt to obtain concessions from them in other matters. These maneuvers are reminiscent of the concurrent efforts during the Paris talks to use the dismantling of American bases in South Vietnam as a bargaining chip which we had no intention of losing.

### **The Joint Economic Commission (JEC)**

The Nixon letter, its 57-page codicil and the Kissinger/Le Duc Tho negotiations in Paris and Hanoi were kept out of the public scrutiny for some time, but the Joint Economic Commission was not kept secret. On 14 February 1973 an agreement was announced, in both Hanoi and Washington, to establish such a commission—in the form of a communique' on the 4 days of talks between Dr. Kissinger and Premier Pham Van Dong and other high Vietnamese officials. It was specifically mentioned in this communique' that an agreement had been reached on the need for a system to determine the fate of the some 1,300 Americans listed as missing in action.<sup>45</sup>

The JEC talks began in Paris the following month,<sup>46</sup> but were suspended by the United States on 19 April 1973 due to the repeated Communist cease-fire violations in South Vietnam and the deteriorating situation in Cambodia. The United States then initiated a new round of Paris negotiations to try and resolve the growing differences between the two parties. In these talks, the Americans—first headed by Ambassador William Sullivan and later by Dr. Kissinger—tried to pressure the North Vietnamese into halting the Communist insurgency in Cambodia. Porter quotes an American negotiator at the meeting as saying, "We demanded a cease-fire in Cambodia as the price of economic aid. We told them we wouldn't be prepared to go to Congress

with an agreement unless they came through with it." According to this official, this demand was repeated at least 20 times during the 6 weeks of the conversations in Paris.<sup>47</sup> In a letter to Congressman Wolff, former President Nixon recalled that he had sent a message to Dr. Kissinger in Paris ordering him to "hit them hard" on an MIA accounting and withdrawal from Cambodia as conditions for aid.<sup>48</sup>

While Kissinger might have hit them as hard as he could, the result was only a temporary compromise. Both parties agreed to do what they could to promote a settlement in Cambodia—the North Vietnamese having insisted all along that they had very little control over the Cambodian Communists (subsequent events, particularly the 1977-1978 border war between these two Communist neighbors, would tend to corroborate this position). Both agreed to strictly observe the cease-fire in South Vietnam, and resume the Joint Economic Commission talks. These were reconvened on 19 June and progressed quite successfully from the technical level of formulating aid plans. However, there was no progress in resolving the political issues, which was a precondition from the administration's point of view, for any possibility of aid. On 23 July 1973, the two delegations issued a joint statement that "the two parties have temporarily suspended their meetings in order to report to their respective Governments."<sup>49</sup> This "temporary suspension" is still in effect.

### **Does "Unconditional" Mean Without Condition?**

Much has been made of the phrase in President Nixon's letter to Premier Pham Van Dong that the United States would contribute to the postwar reconstruction in North Vietnam "without any political conditions." In its most literal interpretation it would mean that the United States made a binding commitment to the North Vietnamese to provide them several billion dollars worth of aid regardless of how callously the Vietnamese might violate all other agreements, and the United States should, therefore, understand the Vietnamese reluctance to account for the men missing in action as a reprisal for the failure to supply this aid. Many in the Congress appear to view this entire matter through post-Watergate lenses, with a deep-seated distrust in both the veracity and motives of the Nixon administration. These individuals are particularly galled at what they view as the cavalier manner in which Nixon and Kissinger ignored the

Congress throughout the entire discussions of postwar economic aid (although, as shall be shown later, the President did not neglect to remind the *Vietnamese* of the congressional prerogatives in this regard).

After ignoring the seeming contradiction in which the United States refused "unconditional" aid because the other side had not met certain conditions—whether these be complying with the other articles of the Paris Agreement, or a cessation of the Cambodian insurgency—a recent attempt has been made by one of the principals involved to explain the troublesome phrase "without any political conditions." In his appearance before the Wolff subcommittee on 19 July 1977, Dr. Kissinger stated that this particular qualification was placed in the letter to allay a perceived Vietnamese fear that the United States could, in the future, ask them to develop specific projects or bring about certain political results *within their own country* in the light of American requirements. While the former Secretary of State gave no examples, he did make it clear that the phrase was intended by its author—and presumably so understood by the letter's recipient—not to mean that aid would be forthcoming regardless of what the North Vietnamese did with respect to the peace agreement, but rather to guarantee to the North Vietnamese that the United States would not use the aid as a lever to force internal domestic changes.<sup>50</sup> (Kissinger's view that the North Vietnamese knew exactly what Nixon was talking about certainly strengthens Porter's argument that Kissinger and Le Duc Tho negotiated every detail of the letter.)

### **The Fifty-Seven Page Codicil**

When Dr. Kissinger went to Hanoi in February 1973 for detailed discussions of the topics broached in the Nixon letter to Premier Pham Van Dong, he gave the Vietnamese a rather unusual 57-page document that has been referred to as a codicil to the Nixon letter. The document, mainly a collection of briefing "point papers" and collected newspaper and *Congressional Record* articles without particular cohesion or even consecutive pagination, both gives and takes away. The opening article is entitled "US Constitutional Process" and could pass as a two-page summary of a high school civics course explaining the role of the Congress in the economic assistance process. It contains such statements as "it should be understood that the Congress

traditionally authorizes and appropriates considerably less than the amount which the President recommends and requests" and "there has been growing resistance to foreign assistance in the Congress in recent years."<sup>51</sup>

The next section of the document contains extensive descriptions of United States bilateral and multilateral aid programs throughout the world. The study then narrows in on how a program specifically for North Vietnam might be developed, presenting a number of concrete options such as a strictly bilateral agreement ("... it is only fair to say that probably without at least a small mission in North Vietnam, the Congress will not consider that the Executive Branch... has provided for the minimum assurance of the effectiveness of our programs"); an aid program supervised by a Consultative Group for Indochina, with a World Bank representative as chairman and coordinator, a consortium approach; and finishing up with a discussion of Mekong River development activities that might be of interest and benefit to Hanoi.

After this promising shopping list, the document proceeds to throw cold water on the whole idea of aid to Vietnam, beginning with a summary of all the statutes and regulations affecting and restricting trade, travel, and other dealings with North Vietnam. This is followed by a very extensive, and very negative, collection of congressional comments on foreign aid in general ("seldom has one nation done so much for so many and received so little in return"—Senator Byrd) and aid to North Vietnam in particular. The leaders in Hanoi certainly could not have taken much comfort from Representative Hays' statement before the House that "... hell would be a skating rink when I voted any of my taxpayers' dollars to give any aid to that murderous bunch in Hanoi," or Senator Tunney's declaration that he hopes Nixon did not propose certain budget cuts because he envisioned a "bonanza" for North Vietnam. An occasional ray of sunshine could be found in the general gloom, like the newspaper article included on Senator Hugh Scott, in which the Senator is reported to believe that there would not be any difficulty in winning congressional approval of an aid program for North Vietnam.

The final document in this collection is a 1 February 1973 letter from Congressman Jack Kemp to Dr. Kissinger in which the legislator, noting Kissinger's imminent trip to Hanoi, urges that he convey to the North Vietnamese leadership that "any

future assistance in the reconstruction of the North will be directly linked to their good faith efforts in helping account for those of our men who are still missing throughout Indochina."

What were the administration's motives in compiling such a diverse collection of subject matter and presenting it to the Vietnamese? One purpose could have been to make more credible the American offer of assistance in "healing the wounds of war" by outlining, in some detail, various concrete proposals for administering this aid. This part of the paper could have been a "straw-man" for the Joint Economic Commission, hopefully to serve as an incentive for the North Vietnamese to abide by the terms of the Paris Agreement. On the other hand, the possibility of any of these ambitious programs ever coming to fruition, barring a dramatic and unprecedented change of heart on the part of both the Vietnamese and the Congress, was extremely remote, as the major part of the document indicated. Was this material included also to show the credibility of the Nixon administration, a way of saying "we certainly intend to carry out our part of the bargain, but Congress is going to be a real problem"? Indeed, Dr. Kissinger, in discussing this document, has maintained that there was a consistent lack of Vietnamese understanding of the realities of the American political process and this was an attempt to correct this faulty perception. The North Vietnamese would not believe that Congress was not a docile instrument of the administration. In negotiations with the Americans the Hanoi Government's representatives constantly stated that Congress was but a rubber stamp and therefore any protestation to the contrary "was a subterfuge."<sup>52</sup>

It is difficult to accept this position at face value. Regardless of what the Vietnamese might have said, they had long experience in attempting to capitalize on the divisions within the American political environment, and actively courted Representatives and Senators whom they perceived to be against the war. As one of Dr. Kissinger's questioners on the Wolff subcommittee pointed out, foreigners are generally well informed about our constitutional processes.<sup>53</sup> Certainly, the American and Vietnamese political processes are poles apart, yet it seems as intellectually naive to assume that the North Vietnamese are not sophisticated enough to understand the American system, as it would be for Americans to assume to deal with the Vietnamese as if their system were a mirror image of the American system.

Ambassador Francis Underhill, while not having served in Vietnam, has indicated that he found the Malays, Indonesians, Philipinos, and Koreans—in whose countries he has had considerable experience—to have a very comprehensive understanding of our system.<sup>54</sup> This was particularly true in those countries that received American aid, and thus had a vested interest in the American political process. While it could be argued that the North Vietnamese would not be so finely attuned to Washington's political subtleties, since they were certainly not aid recipients, it could also be suggested that they had an even greater incentive than aid in their desire to see the United States end its involvement in Vietnam.

Finally, the letter from Congressman Kemp reemphasized American concern with an MIA accounting. No other issue was tied to any aid effort in the 57-page document—not the observance of the cease-fire in the South, the termination of hostilities in Laos and Cambodia, nor the introduction of additional men and materiel into South Vietnam. "It was always understood that the accounting for the missing in action was one of the most fundamental concerns for the American people and the American Government," recalled Dr. Kissinger in his testimony in 1977 before the Wolff subcommittee, and the failure of the North Vietnamese to supply such an accounting was one of the reasons why the Joint Economic Commission never could come to a final agreement on aid.<sup>55</sup>

#### **LINKING ARTICLE 8(b) WITH ARTICLE 21**

Determining which party to the Paris Agreement first linked the accounting of the MIA's (Article 8(b)) with US assistance in the postwar reconstruction of Vietnam is a little like trying to solve the riddle of the chicken and the egg. The House Select Committee makes much of the argument that the North Vietnamese did not begin to link these two articles until well after their victory in the South, in April-May 1975—in other words, they did not demand that the United States live up to the Paris Agreement until after they had committed a gross violation of that very pact.<sup>56</sup> In a footnote, the committee report does admit that perhaps it was the United States that first linked the two articles, quoting a September 1973 State Department Public Information Series pamphlet which explained the recess in the Joint Economic Commission talks as the result of American dissatisfaction with the other side's failure to live up to

. . . a number of the important terms of the Peace Agreement, including those provisions relating to the accounting for our missing-in-action. . . . We have left no doubt in the minds of the North Vietnamese that we cannot pursue reconstruction in the North in isolation from fulfillment of the other provisions of the Paris Peace Agreement.<sup>57</sup>

The Select Committee did not have access to either a complete copy of Nixon's 1 February 1973 letter to Pham Van Dong, or the 57-page codicil to that letter carried by Henry Kissinger to Hanoi. As Congressman Jack Kemp was not a member of the Select Committee they were probably not aware of his letter—definitely linking aid and accounting—that formed part of the codicil.

The Select Committee's contention that the North Vietnamese did not link American failure to "heal the wounds of war" with their own refusal to implement Article 8(b) until after the North Vietnamese victory in the South can be questioned. As was noted above, in September 1973 a spokesman from the American delegation to the FPJMT complained that the other side had stressed that no remains or information would be provided until all other provisions of the Paris Agreement had been implemented. Certainly this position implies what they were later to state more specifically, as does the explanation given to a congressional fact-finding delegation by the North Vietnamese representative at the FPJMT in early March 1975, that the search for missing Americans could not resume until the Paris Peace Agreement was "scrupulously and strictly implemented."<sup>58</sup>

### **HANOI'S HUMANITARIAN AND LEGAL OBLIGATION**

The two principal American architects of the Paris Peace Agreement—former President Nixon and Henry Kissinger—have both repeatedly stated that, in their opinions, the agreement is a dead letter. The North Vietnamese systematically violated virtually every facet of the agreement save the article calling for the return of the prisoners of war. With the Communist victories in Vietnam, Cambodia, and Laos, most other articles have been overtaken by events. Only the questions of aid for reconstruction and MIA accounting have any currency. The last three American administrations have stressed principally humanitarian reasons—rather than a legal obligation under the Paris pact—for a positive

Vietnamese response on the MIA issue. American leaders have notified the Hanoi leadership that the United States intends to "look to the future," and that it would not be productive to remonstrate over perceived injustices from past agreements. It would seem only logical that this should be a two-way street. If the United States has no obligation to provide reconstruction aid to Vietnam, why are the Vietnamese obligated to provide an accounting of the MIA's? The humanitarian approach avoids this contradiction. The legal argument would only be compelling if one side had fulfilled its half of the bargain while the other side had not. One of the very central figures in this matter—Henry Kissinger—has reportedly made such an allegation.

In his testimony before the Wolff House Subcommittee on Asian and Pacific Affairs in April 1977, the former Secretary of State described the Vietnamese responsibilities regarding an accounting as ". . . an obligation that they have and they should be given no special rewards for providing what American families have been praying for all these years. This is an obligation they have under the agreement, but it is also an obligation they have in common humanity."<sup>59</sup> Later in the same hearing, he reiterated the humanitarian nature of the Vietnamese obligation, but also insisted that they had a *legal* one as well.<sup>60</sup> How could the Vietnamese still have a legal obligation under the Paris Agreement, when we denied our responsibility under Article 21? Certainly they *had* violated the agreement, but they could point to American actions on the base dismantling matter as a violation also.

The answer was provided by Dr. Kissinger in an interview he gave the following month to David Burgess of Georgetown University's Academy of Public Service, who was gathering material for a history of the National League of Families. According to Mr. Burgess, Kissinger stated that the vast amount of American military materiel left in South Vietnam constituted our payments under Article 21, and that this considerable inventory of aircraft, arms, ammunition, armor, and other material—valued as high as \$5 billion<sup>61</sup>—coupled with our "acceptance" of the eventual overthrow of the South Vietnamese Government, were the prices the United States paid for the return of the POW's and an accounting of the MIA's.<sup>62</sup>

On the face of it, such a claim would seem to be an attempt to rewrite history. It would be hard to accept the fact that the overthrow of the Saigon Government was such a foregone conclusion, or that its existence could have been callously negotiated away, especially in view of the strong administration fight to support Saigon against congressional attempts to curtail aid. Yet such a thesis—that such an agreement was made—does fill a troublesome void. In the Congress there has been a persistent suspicion that many aspects of the Nixon/Kissinger efforts to end the war remain hidden from the Congress and the people, and that these efforts were perhaps irregular or improper. The revelations of Watergate, the obvious disdain of both the former President and his Secretary of State for congressional initiatives in foreign affairs, and the dismay felt by the members of Congress who learned first from the Vietnamese of the Nixon/Dong correspondence, have all served to fuel this suspicion. In certain quarters it has gone beyond suspicion. While conducting research for this paper the author was told by a congressional staff member working on the MIA issue: "We are *convinced* that a promise was made [by Nixon to the Vietnamese] and that Nixon and Kissinger have been lying to the Congress for years."

Suspicion and distrust have permeated the relationships of those involved with the missing in action question—between the MIA families and the Government, the administration and the Congress, and certainly between the Americans and the Vietnamese. Gareth Porter, in his book, *A Peace Denied*, recounts an illustrative incident that occurred during the Paris negotiations. The United States and Democratic Republic of Vietnam (DRV) delegations had each typed identical copies of the final text of the agreement. Hours before the agreement was to be signed, the DRV delegation compared the copies and discovered that the signature pages of the English text were not numbered. According to Porter, the Vietnamese were "incensed," and

... they immediately suspected that the United States planned to declare later on that the agreement was void, since the signatures were not part of the agreement, and demanded that the page numbers be typed in. This suspicion was symptomatic of the total distrust with which the DRV delegation viewed Nixon and Kissinger. The American delegation quickly typed the page numbers in.<sup>63</sup>

It is doubtful that the mutual rancor between the two peoples will soon dissipate, and therein lies the basic contradiction blocking a meaningful MIA accounting. The Vietnamese apparently will not provide such information in any volume until the United States removes the restrictions of the war years, such as the trade embargo, the freezing of Vietnamese assets, and the prohibition of economic and technological aid. The conjectured Nixon/Kissinger commitment on aid, if true, would reinforce their obduracy. The United States, on the other hand, has made it clear that none of these relaxations could even be considered without a significant accounting.

Since a dramatic change of heart by either party is unlikely, what are the prospects for the future? The Carter administration is pursuing policies toward both Vietnam and the MIA question that attempt to place each in what the President apparently perceives as a more natural prominence—or relative obscurity. Both have been appreciably deemphasized. Such a reorientation of priorities was bound to stimulate the concern of some MIA families, and it has produced bitterness. However, it can only be hoped that this approach might avoid some of the frustrations and enmity of the past, and ultimately lead to a better understanding of the fate of many of the missing men.

#### ENDNOTES

1. Details of the negotiations leading up to the Paris Agreement can be found in Tad Szulc, "How Kissinger Did It: Behind the Vietnam Cease-Fire Agreement," *Foreign Policy* 15 (Summer 1974): 21-69; Gareth Porter, *A Peace Denied: The United States, Vietnam, and the Paris Agreement* (Bloomington: Indiana University Press, 1975); and Marvin Kalb and Bernard Kalb, *Kissinger* (Boston: Little, Brown & Co., 1974).
2. *New York Times*, 29 January 1973, p. 15.
3. US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Report 1764, 94th Cong., 2d sess., 1976, p. 139.
4. Complete text of the agreement and the four protocols were published in the *New York Times*, 25 January 1973, p. 15ff.
5. *Ibid.*

6. Quoted in US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia. Hearings before the Select Committee on Missing Persons in Southeast Asia: Part 5*, 94th Cong., 2d sess., 1976, p. 187.
7. *Ibid.*, p. 190.
8. *Ibid.*, p. 186.
9. *New York Times*, 25 January 1973, p. 15. When the Four-Party team was eventually formed it took nearly 2 weeks to agree on the exact title of "Four-Party Joint Military Team on Dead and Missing Persons," an experience which at least alerted the American negotiators to the semantic obduracy of the Communist negotiators. See Karl P. Piotrowski, "Negotiating with the Enemy," *Air University Review*, September-October 1977, p. 54.
10. The matter of the large American infrastructure in South Vietnam, without which the South Vietnamese could not effectively counter their enemies is, in many ways, symbolic of all parties' approaches to these "agreements" and was the cause of much bitterness toward the Americans on the part of the North Vietnamese. Article 6 of the agreement specified that all US bases in South Vietnam would be dismantled within 60 days. The Americans negotiated this article with their "fingers crossed behind their backs," in effect, by transferring nominal title to all American facilities to the South Vietnamese prior to signing the agreement.
11. Piotrowski, "Negotiating," pp. 54-55.
12. Complete text in US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia. Hearings before the Select Committee on Missing Persons in Southeast Asia: Part 4*, 94th Cong., 2d sess., 1976, pp. 191-198.
13. Testimony of Anita Lauve in Select Committee, *Hearings: Part 4*, p. 6.
14. *Ibid.*, p. 159.
15. *Ibid.*, p. 153.
16. *Ibid.*, p. 152.
17. *Ibid.*
18. Roger Shields, interview, Washington, DC, 18 November 1977.

19. Lauve Testimony, Select Committee, *Hearings: Part 4*, p. 12.
20. *Ibid.*, p. 9.
21. *Ibid.*, p. 151.
22. *Ibid.*, p. 20.
23. *New York Times*, 5 April 1973, p. 15, col. 1.
24. *New York Times*, 8 May 1973, p. 13, col. 1.
25. *New York Times*, 12 May 1973, p. 3, col. 5.
26. *New York Times*, 31 May 1974, p. 2, col. 1.
27. US, Congress, House, Committee on International Relations, "Stenographic Transcript of Henry Kissinger's Testimony before the Subcommittee on Asian and Pacific Affairs on 19 July 1977," 94th Cong., 2d sess., 1977, p. 15. (Typewritten)
28. Piotrowski, "Negotiating," p. 55.
29. William W. Tombaugh, "Some Thoughts on Negotiating with the North Vietnamese," *National Security Affairs Forum*, Spring/Summer 1975, p. 52.
30. Lauve Testimony, Select Committee, *Hearings: Part 4*, pp. 157-158.
31. *New York Times*, 23 September 1973, p. 7, col. 1.
32. *New York Times*, 30 September 1973, p. 7, col. 1.
33. *New York Times*, 15 December 1973, p. 3, col. 1, and 16 December 1973, p. 27, col. 1.
34. *New York Times*, 17 December 1973, p. 3, col. 1, and 19 December 1973, p. 2, col. 4.
35. *New York Times*, 14 March 1975, p. 1, col. 8.
36. *New York Times*, 23 April 1975, p. 1, col. 8.
37. Select Committee, *Final Report*, p. 114.
38. *Ibid.*, p. 115.
39. *New York Times*, 15 February 1973, p. 1, col. 8, and US, Congress, House, Committee on International Relations, "Kissinger Testimony." During his subcommittee testimony, Dr. Kissinger denied that the Nixon letter was part of the Paris Agreement, since we had already stated our general intention to give "reconstruction" aid and did not want to imply that we would pay any sort of reparations.
40. Select Committee, *Final Report*, pp. 115-116.

41. Select Committee, *Hearings: Part 5*, p. 47.
42. *Ibid.*, pp. 47-48.
43. From text of State Department announcement published in the *New York Times*, 20 May 1977, p. 17, col. 4.
44. Gareth Porter, "The Broken Promise to Hanoi," *Nation*, 30 April 1977, pp. 519-520.
45. *New York Times*, 15 February 1973, p. 1, col. 8.
46. The administration became uneasy about the North Vietnamese compliance with the agreement from the start, such as when evidence was found that surface-to-air missiles (SAM's) had been introduced in the South. According to Dr. Kissinger, the United States went ahead with the JEC talks "to show our good faith" (Committee on International Relations, "Kissinger Testimony," p. 35).
47. Porter, "Broken Promise," p. 520.
48. From text of State Department announcement published in the *New York Times*, 20 May 1977, p. 17, col. 4.
49. *New York Times*, 24 June 1973. Quoted in Select Committee, *Final Report*, p. 118.
50. Committee on International Relations, "Kissinger Testimony," p. 31.
51. This, and the subsequent material in this section, was derived from a copy of the document provided to the author by the staff members of the House Subcommittee on Asian and Pacific Affairs.
52. Committee on International Relations, "Kissinger Testimony," p. 15.
53. *Ibid.*, p. 16.
54. Francis Underhill, interview, Washington, D.C., 6 December 1977.
55. Committee on International Relations, "Kissinger Testimony," p. 20.
56. Select Committee, *Final Report*, p. 119.
57. *Ibid.*, p. 120.
58. *New York Times*, 3 March 1975, p. 1, col. 1.
59. Committee on International Relations, "Kissinger Testimony," p. 40.

60. *Ibid.*, p. 46.

61. *Los Angeles Times*, 31 October 1977, p. 7, col. 1.

62. David Burgess, interview, Washington, D.C., 2 December 1977.

63. Porter, *Peace Denied*, pp. 172-173.

## **The Ford Administration— An Interim**

# 6

Generally speaking, there was little difference between the approaches of Presidents Nixon and Ford toward the MIA issue—the same team was involved. Whatever personal inclinations the new President might have had to adopt a more flexible attitude vis-a-vis Hanoi in this matter, they were soon submerged by the political necessity for Ford to match the hard-line position taken by Ronald Reagan in the latter's bid for the Republican nomination. Even Candidate Carter said the "right things" when speaking about this problem, although he initiated significant, if fairly subtle, changes in policy once in office.

The MIA-related events of the first several months of the Ford administration have been largely covered in the preceding chapter, and consisted principally of the increased Communist intransigence in the Four-Power Joint Military Team negotiations. In early June 1975, North Vietnamese Premier Pham Van Dong publicly offered to normalize relations with the United States. The Premier made no mention of an MIA accounting but did demand that the American Government "seriously implement the spirit of Article 21 concerning the US obligations to contribute to healing the wounds caused by the criminal . . . war of aggression in both regions of Vietnam."<sup>1</sup> A State Department spokesman, in rebuffing Dong, termed this demand "ironic" in view of Hanoi's wholesale violation of the Paris Agreement.<sup>2</sup>

For the next several months, the principal activity on the United States side in the area of missing in action inquiry came from the Congress. On 11 September 1975, the House of

Representatives formed the Select Committee on Missing Persons in Southeast Asia. This committee, chaired by G. V. "Sonny" Montgomery of Mississippi and including Paul McCloskey, Benjamin Gilman, and Henry B. Gonzalez in its membership, was directed to study, investigate, and report on the problems of both civilian and military personnel who were missing as a result of the hostilities in Indochina. The committee vigorously pursued its objectives for 15 months and has published a comprehensive five-volume transcript of hearings as well as a final report. One of the committee's first actions was to seek a meeting with the North Vietnamese to discuss the MIA's. During the preliminary contacts that resulted in such a meeting, the Vietnamese let it be known that they wished to discuss other questions, such as aid, trade, and diplomatic recognition. The committee, while clarifying their limited authority—since they were prevented by the Logan Act from negotiating on behalf of the United States Government—agreed to discuss "matters of mutual interest."<sup>3</sup>

In Paris, several members of the Select Committee, augmented by four Congressmen from other interested committees, met with North Vietnamese Ambassador Vo Van Sung and PRG Charge' d'Affaires Huyng Thanh on 6 December 1975. While the Ambassador pointed out the now-familiar linkage between MIA information and US reconstruction assistance, the meeting was generally an amicable and promising start, with both sides alluding to, as the committee report states, ". . . a bridge of understanding that might be built if each side reciprocated to gestures made by the other."<sup>4</sup> The Vietnamese offered to take the first step by releasing the remains of three pilots who had been lost over North Vietnam during the war, and plans were made to have Chairman Montgomery and several other members of the committee travel to Hanoi later the same month to receive these remains.

The matter of this particular repatriation is interesting, as it illustrates North Vietnamese manipulations of the missing men to suit their purposes. The identity of the three men—a Navy pilot who was known to have been killed in action, although it had been impossible to recover his body, and two Air Force officers who had been listed as missing in action—had been revealed privately in a letter to Senator Edward Kennedy, Chairman of the Senate Judiciary Subcommittee on Refugees, and publicly by the North

Vietnamese in Paris, early in the year.<sup>5</sup> Senator Kennedy requested that the remains of the three men be returned to the United States. On 10 August—just before the question of North and South Vietnam's admission to the United Nations was to be considered by that organization—the North Vietnamese Embassy in Paris notified the State Department that Hanoi was ready to deliver the three bodies.<sup>6</sup> Concurrently with contacting the Government officially, the North Vietnamese had sent a telegram to Cora Weiss, an antiwar activist of long standing and an organizer of Women's Strike for Peace, informing her of their intentions.<sup>7</sup> Mrs. Weiss' association with the issue of American prisoners of war and missing in action had been a long one. During the war, she had been the cochairman of the self-styled "Committee of Liaison with Families of Servicemen Detained in North Vietnam." The Committee of Liaison had been formed by Mrs. Weiss on 15 January 1970, after she returned from a visit to Hanoi, and had the stated purposes of facilitating communications between POW's and their families, and making inquiries on behalf of families regarding the status of their missing relatives.<sup>8</sup> It had been used by the North Vietnamese as the agent for distributing the very limited number of letters they allowed the POW's to send to their families. The families were encouraged to reply through the same channels. Most recently, Mrs. Weiss has served as a member of the "Friendship Delegation," a group of Americans seeking to arrange aid for Vietnam.<sup>9</sup>

When the United States vetoed the bids of the two Vietnams for UN membership, Hanoi withdrew the offer of repatriation. (Contrary to the following year's confrontation, no mention was made of the MIA question in the US veto. The nominal justification for the veto was to invoke the principle of the non-admission of divided countries, citing the example of the two Koreas.) Now, as a gesture of good will, the Vietnamese were again offering to return the bodies of the same three American pilots.

While Chairman Montgomery and the three members of his committee were in Hanoi, just before Christmas, to receive the bodies of the three Americans, they were stunned to learn, from the Vietnamese, of the Nixon letter to Premier Pham Van Dong of 1 February 1973. The Congressman emphasized to the Vietnamese that, in their opinion, the Nixon letter notwithstanding, any form of grant aid for Vietnam was out of the question.<sup>10</sup>

Upon their return to Washington with the American remains, Representative Montgomery and his committee tried to learn the full facts concerning the Nixon letter, as outlined in the previous chapter, but their efforts met with mixed success.

### **SENATOR MCGOVERN'S TRIP TO VIETNAM**

The House was not alone in showing congressional interest in MIA matters at this time. In early January 1976 Senator George McGovern made a trip to Vietnam, visiting both Hanoi and Saigon. His two avowed primary objectives were, first, to pursue the humanitarian questions of the missing in action and the Vietnamese families separated at the end of the war, and second, to evaluate the political future and international role of the SRV.<sup>11</sup> The Senator from South Dakota certainly could not have been considered a hostile guest, for he had been an outspoken critic of US involvement in the Vietnam war for years. Two of his more recent actions exemplify his attitudes. In January 1973 he introduced legislation in the Senate to cut off all funding for the Vietnam war effort, while scoring the bombing of the North as "cruel and insane."<sup>12</sup> Two years later, in addressing a Washington, DC, meeting protesting any continuation of aid to the Saigon Government, he categorized the war as ". . . wrong ten years ago when it was Johnson's war . . . wrong two years ago when it was Nixon's war, and . . . wrong now when it is Ford's war."<sup>13</sup>

It would not be fruitful in this paper to document all of the numerous meetings and communications between the Vietnamese and the many American groups and individuals—representing a wide range of motivation and political ideology—who expressed concern for the MIA's and their families. But it is worth examining the McGovern visit for two reasons: (1) because it illustrates the manner in which the Vietnamese cultivated those influential Americans whom they considered to be sympathetic to their position, or who are known or potential allies, and, (2) because Senator McGovern articulated one of the two dominant contending opinions regarding the proper method to obtain an MIA accounting.

Senator McGovern was well received in both Saigon and Hanoi, and was given access to the very highest officials in both governments. In Saigon he spoke with the Provisional

Revolutionary Government's (PRG) President, Huyng Tan Phat, and its Foreign Minister, Madame Nguyen Thi Binh; while in the North he interviewed Premier Pham Van Dong of the Democratic Republic of Vietnam, as well as the former Paris negotiator and then Foreign Minister, Xuan Thuy.

In all these discussions, the Vietnamese were reasonable, accommodating, and particularly sensitive to the Senator's interest in the humanitarian goals of his trip. When McGovern asked for Premier Pham Van Dong's views on the issues of MIA accounting, reunification of families, and safe return to Vietnam of some Vietnamese evacuated when the Americans departed, he was assured that the Hanoi leadership was "very much concerned with the three points you raised. There is no difficulty with the first two," the Premier continued, adding that he would have to consider the third point, but saw no difficulty in principle.<sup>14</sup> On the specific question of the implementation of Article 8(b) of the Paris Agreement, the Senator was told that the Vietnamese still considered the agreement a binding document. Xuan Thuy proudly proclaimed that "we are very faithful to our signature" and reiterated to McGovern that the MIA investigations were continuing.<sup>15</sup> The Senator concluded that:

Both the DRV and the PRG believe they have a positive obligation to account for missing persons and to return remains. Difficulties in the process of search and identification were cited . . . but I was told repeatedly that the process is continuing and that it will be completed to the best of their ability.<sup>16</sup>

The Senator was also told that the Vietnamese felt strongly that the United States had a responsibility to provide postwar economic assistance to its former enemy in Southeast Asia. McGovern shares this belief. While conveying the assurances of the Vietnamese that they intended to provide the most complete information possible on men missing in action, he was realistic enough to recognize that such disclosures would be highly unlikely without some accommodations on the Americans' part. His report warned that, while the Vietnamese might continue to make gestures to the government or individual Americans,<sup>17</sup> ". . . it does not seem likely that a complete accounting can be had in the absence of a serious reference to what was established in Paris three years ago,"<sup>18</sup> that is, Article 21.

Senator McGovern's conclusion was that the best way for the United States to resolve the MIA issue was by cooperating with the Vietnamese rather than remaining hostile toward Hanoi and Saigon. He felt that the steps the United States had taken— withholding diplomatic recognition, blocking UN membership, the trade embargo, and the freezing of Vietnamese assets in this country—could only serve to insult and offend the very government whose cooperation was absolutely necessary in resolving the MIA cases. In the Senator's eyes, American accommodation with the Vietnamese would not only facilitate an MIA accounting, but would also serve broader international interests, particularly if it would lessen Hanoi's dependence on the Soviet Union and China. He summarized his position in the following manner:

... We must abandon the old concepts of ideological blocs, and begin to evaluate each country individually, accounting for its nationalistic aspirations and its view of its proper role in the world.

Vietnam is an eminently logical place to apply these new perceptions. Wartime rhetoric about a vindictive, bloodthirsty people was tragically wide of the mark. . . . Well educated, highly civilized leaders of . . . Vietnam . . . are anxious to heal both the internal and external wounds of war, and they are determined to retain the independence which they saw as the overriding aim of their struggle. . . . Accommodations there will bear fruit.<sup>19</sup>

#### **TIMID STEPS TOWARD NORMALIZATION AND THE PRESIDENTIAL CAMPAIGN OF 1976**

Between March and August 1976 six messages were exchanged between the United States and the Democratic Republic of Vietnam/Socialistic Republic of Vietnam (the latter name, SRV, was taken by unified Vietnam in late July 1976). On the American side, the communications offered to open discussions with the Vietnamese, but stressed an insistence on a full accounting of the missing men as a *sine qua non* of further normalization. The Vietnamese took an equally hard stand on the US obligations under the Paris Agreement to provide aid, while maintaining that they had been making, and would continue to make, "efforts to relieve the anxiety of those American families whose relatives have died or are still considered missing in Vietnam."<sup>20</sup>

The United States countered with the philosophy that it intended to "look to the future" and did not consider that America had an obligation to provide reconstruction assistance, but rather that the future relations between the two countries should be based on "reciprocal interests." In this, the last Washington entry in the series, dated 19 July 1976, the Department of State proposed that if this basis for a meeting was satisfactory the United States would be prepared to discuss the procedures and a date. The Vietnamese promptly replied, in a letter dated 27 August 1976, that their representative at the meetings would be the counsellor of the SRV Embassy in Paris, and proposed that a meeting site should be somewhere other than the Embassy of either party—to be arranged by each in rotation—and suggested that liaison officials of both sides meet to determine the exact date and site for the first meeting.<sup>21</sup>

No response was forthcoming from Washington, probably because the Vietnamese had given no indication of offering any dramatic breakthrough on the MIA issue, and certainly because, barring such a development, the hint of any rapprochement between the United States and Vietnam was a definite political liability to President Ford in his quest for a White House term in his own right.

When a State Department spokesman disclosed, on 26 March, that the administration was prepared to open normalization of relations talks with the Vietnamese, he added that these talks would include the subject of an MIA accounting.<sup>22</sup> However, Secretary of State Kissinger's message of that same date—the first in the series—in fact made no reference to the MIA's.<sup>23</sup>

If the Kissinger note could have been considered a positive signal to the Vietnamese, it was tempered 2 days later by a negative one when the United States refused to attend a World Health Organization (WHO) meeting in Manila where the agenda pertained to the medical and health needs of the Vietnamese.<sup>24</sup> The Vietnamese response to the first Kissinger note was termed "chilly" by the State Department.<sup>25</sup>

The Ford administration was quickly put on the defensive by Ronald Reagan over normalization of relations with Vietnam, when the President's principal contender for the Republican Presidential nomination charged that the administration had made overtures to Hanoi with the objective of establishing

diplomatic relations. The President denied the charge, countering that Reagan had pulled his accusation "out of the blue," and explained that the primary interest that the United States Government had in talking with the Vietnamese was to gain information on the missing in action.<sup>26</sup>

The incumbent President was careful to give no further ammunition to his political enemies indicating that he was "soft" toward the Vietnamese. His efforts on behalf of the MIA's ranged from the symbolic to the substantive. Campaigning in his home state of Michigan, Ford added his signature to some eleven thousand others on a Veterans of Foreign Wars' petition to be sent to the Vietnamese asking for all available information about the missing.<sup>27</sup> He performed what had become a Presidential ritual by appearing before the annual convention of the National League of Families of Prisoners and Missing in Southeast Asia, there presenting a forceful speech in which he pledged: "I will not rest" until the fullest possible accounting is made.<sup>28</sup> Other candidates were careful not to neglect this audience either. Supportive telegrams from Ronald Reagan and Jimmy Carter were read to the MIA families at the same convention meeting.

The President backed up his words with action when he announced that the United States would again veto the proposed admission of the SRV into the United Nations—this time on the grounds that they were unwilling to account for the American missing. This was the type of pressure that had long been advocated by the families, and one might have expected that it would receive the approval of the vast majority of the American public, as had any hard-line position taken with regard to the POW's and MIA's over the years. The President's position was applauded by most politicians—including Jimmy Carter. Of the prominent political figures of the day, George McGovern was the exception in publicly advocating an accommodation with the Vietnamese as a means of gaining information about the missing men, and he was not running for reelection that year.

Yet there were indications that the mood of the public might be changing on this issue, or at least in the manner that many perceived the MIA issue was being used. These indications came in the editorial reactions of some of the most influential American publications. Some of these responses were not a surprise, as when *Nation* damned both Ford and Carter for subscribing to the "deceptive nonsense" that the Vietnamese were

callously concealing information about the MIA's. According to that magazine, the MIA issue "has become a touchstone for patriotism and a shibboleth of the most idly destructive kind."<sup>29</sup> But even less ideologically committed publications voiced concern. The *Washington Post* suggested that Ford's inflexible stand vis-a-vis the Vietnamese was perhaps a ploy to court the Reagan wing of the Republican Party, and proposed that America might learn more by negotiating with the Vietnamese than by insulting them.<sup>30</sup> The *Los Angeles Times* made the same point—that dialogue and communication would be more effective than force and ostracism—in criticizing both Ford's and Carter's opposition to United Nations membership for Vietnam.<sup>31</sup> When President Ford eventually made good on his promise, and directed that the United States cast its 18th veto in the Security Council, the second time it had blocked the Vietnamese, he was roundly criticized by the *New York Times*.<sup>32</sup> The President did find some support. The *Christian Science Monitor* and the *Wall Street Journal* both agreed that the Vietnamese should provide more complete information on the MIA's before the United States should relent in opposing UN membership for the SRV.<sup>33</sup>

#### **VIETNAM MAKES ANOTHER BID FOR UN MEMBERSHIP**

The Vietnamese initiated their bid for a seat in the United Nations in a very familiar manner—by making a token gesture in regard to the American MIA's. Far from helping their cause, this sort of obvious exploitation of a very sensitive issue in the United States—coupled with the election year political environment discussed above—only served to harden the administration's opposition.

On 1 September 1976, the permanent Vietnamese observer at the United Nations, Dinh Ba Thi, held a press conference in which he urged Washington not to veto the SRV application for UN membership, stressing that United States acquiescence in this matter would improve the atmosphere for bilateral discussions between the two countries, and that such contacts would help solve the question of the American missing.<sup>34</sup> Hanoi had attempted to make a reasonable impression by playing an independent and very moderate role at the recent Conference of Non-Aligned Nations in Colombo, Sri Lanka—largely overlooked in this country—but on 6 September they took a step that was

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THE MISSING MAN. POLITICS AND THE MIA, (U)

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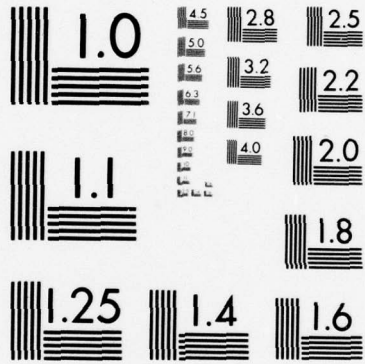
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sure to capture headlines throughout the United States. The Vietnamese Embassy in Paris made public the names of 12 missing American pilots, saying that they had been killed during the war. This notification was coupled with a statement expressing the hope that the United States Government would reciprocate by showing "good will" and taking some concrete action to settle the postwar problems between the two countries.<sup>35</sup> This marked the first occasion since April 1975 that the Vietnamese had released the names of deceased American servicemen. It will be recalled that the earlier incident had involved the three officers revealed to Senator Kennedy. Their actual repatriation had been offered by Hanoi just prior to the previous UN consideration of Vietnamese membership, only to be withdrawn when the United States cast its veto. The only other repatriation of American remains had been in March of 1974 when the Vietnamese released the bodies of 23 Air Force and Navy aircrewmembers. At that time, they had insisted that they had no more bodies of American POW's who had died in captivity.<sup>36</sup>

For the administration, the list of 12 names was "too little, too late" to seriously affect its opposition to the UN bid. While welcoming even this token disclosure, the Government noted that 2,505 Americans were unaccounted for in Southeast Asia, 795 carried as missing in action, with the others killed in action. True, a number of these casualties had occurred in Cambodia and Laos, some were lost at sea, but it was firmly believed by the Department of Defense, the White House, and the families that the Vietnamese held information on many more men than these 12. For example, the North Vietnamese had published photographs of the identification cards of Navy Lieutenant (Junior Grade) Walter Estes II and James Teague. Captions under the cards stated that these men had been captured in Haiphong, yet they had never been included in any listings. A number of other missing men had established radio contact with friendly aircraft after they were on the ground in North Vietnam. Air Force Captain Frederick Meller, Captain John Brucher, Captain William Andres, Navy Lieutenant Commander Milton Vescelius, and Lieutenant James Patterson were among those who had used their portable survival radios to indicate they were alive in enemy territory. None of these names were on this 6 September list.<sup>37</sup> "It is callous and cruel to exploit human suffering in the hope of diplomatic advantage," charged the President, adding that he demanded a full listing of the fates of "hundreds more."<sup>38</sup>

What hopes the Vietnamese might have had of obtaining a diplomatic advantage were temporarily dashed when the United States Ambassador to the United Nations, William Scranton, announced on 13 September 1976, that he would cast his vote against Vietnam's application because of that country's continued failure to provide a full accounting of the MIA's. Vietnamese officials in New York angrily charged that the MIA issue was nothing but a smokescreen to cover the real concern of the President—to win votes in the upcoming election—and they made public the confidential notes between Washington and Hanoi to refute Scranton's charge that they were dragging their feet on this issue.<sup>39</sup>

To their own people, the Hanoi leadership took the same stand. A domestic broadcast maintained that

... the Ford administration's stand ... is created to fit electoral purposes—that is, it is completely suited to individual and factional interests and not to the genuine, immediate and long-range interest of the United States and is by no means inspired by humane feeling toward the US MIA's families as loudly claimed by this administration.<sup>40</sup>

In another program, the Vietnamese citizens were reminded that their government had "repeatedly and clearly shown good will by providing information" on the MIA's, and the United States was chided for not responding to the 27 August 1976 memorandum calling for a liaison committee meeting to set a site and date for renewed diplomatic negotiations on the unresolved issues between the two countries.<sup>41</sup>

Apparently recognizing the pre-election intransigence of the Ford administration, the United Nations Security Council decided to defer its consideration of Vietnam's application for membership until after the US Presidential election. As the campaign drew to a close, President Ford did not soften his position. In a televised debate with Jimmy Carter from San Francisco's Palace of Fine Arts he repeated that his administration would bar the Hanoi Government's membership in the United Nations until it provided a full MIA accounting. In his turn, Candidate Carter criticized the incumbent for not appointing a Presidential commission to seek information on the missing men.<sup>42</sup>

If Ford's rhetoric and actions had been driven by political considerations—as many maintained—then one would have supposed that his administration might have acted differently once the election was lost, and the political pressures removed. No significant changes occurred. On the one hand the United States finally responded to the Vietnamese acceptance of the American offer for negotiations, and on 12 November 1976, US and Vietnamese diplomats met in Paris for the first formal talks since the fall of South Vietnam in early 1975. On the other hand, as promised, the United States cast the lone negative vote in the United Nations Security Council when Vietnamese membership came to a vote on 15 November 1976.

Why did the United States again rebuff the SRV in the United Nations? On the face of it, the matter had a simple explanation. Having declared that Vietnamese membership would not be tolerated without a satisfactory accounting of the MIA's, the American Government had cast its veto when such an accounting was not forthcoming. And yet, at least in their public communique, the Vietnamese seemed far from intransigent on the MIA issue. They stated that Hanoi was "disposed toward an exchange of views on the problems which preoccupy the American side and to meet fully its obligations under Article 8b of the Paris-Vietnam accords."<sup>43</sup> The French, at least, took this as an encouraging sign. Clearly the matter was not going to be resolved overnight. There were complicated questions at issue between the two governments, not the least of which was that of aid to Vietnam, and direct negotiations had only resumed a matter of days before the veto. There were those who had suggested that both Ford and Carter had been pushed into their adamant posture against the Vietnamese by the realities of American politics, that they could not afford to appear "soft" on communism by making a conciliatory gesture toward the former enemy. But did this crowd-pleasing stance benefit the cause in whose name it was made? Many thought not, as was expressed in the editorials discussed above. And the Vietnamese could not resist the temptation to drop the type of hints they thought the American people would want to hear. For example, after meeting with the Vietnamese observer at the UN, Dinh Ba Thi, Congresswoman—and recent, unsuccessful candidate for the Senate—Bella Abzug told a Vietnamese-arranged press

conference in New York that the Vietnamese would be induced to provide an MIA accounting by being allowed to join the United Nations.<sup>44</sup>

The official Hanoi daily newspaper *Nhan Dan* had another explanation for the United States veto. It was an expression of "the rancor of a defeated pirate."<sup>45</sup> A number of knowledgeable observers in this country share this evaluation to the degree that they suspect that bitterness and spite—particularly on the part of Henry Kissinger—played a major role in the United States vetoes of 1975 and 1976 in the United Nations. The former Secretary of State does not like the North Vietnamese. In private conversation he refers to them in "expletive-deleted" terms.<sup>46</sup> Kissinger had reason to dislike the leaders in Hanoi. He felt that the United States—and he personally—was betrayed by the North Vietnamese when they launched their massive invasion of the South and overthrew the Thieu Government, shattering the "peace" for which he and Le Duc Tho had received a Nobel Prize. To compound this sense of betrayal was the increasing evidence that Le Duc Tho personally was heavily involved in the planning of this takeover. As petty as this explanation might sound, it was virtually the unanimous verdict of those present and former government officials interviewed during the course of the research for this study. From 1975 on Henry Kissinger was bitter, disappointed, and terribly angry with the North Vietnamese, and this was probably the root cause of the hostile American attitude.<sup>47</sup>

## ENDNOTES

1. *New York Times*, 4 June 1975, p. 3., col. 5.
2. *New York Times*, 5 June 1975, p. 8., col. 1.
3. US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Report 1764, 94th Cong., 2d sess., 1976, p. 9.
4. *Ibid.*, p. 10.
5. *New York Times*, 23 April 1975, p. 1, col. 8.
6. *New York Times*, 11 August 1975, p. 7, col. 1.
7. *Ibid.*
8. Howard S. Levie, "International Law Aspects of Repatriation of Prisoners of War During Hostilities: A Reply," *The Vietnam*

*War and International Law: The Concluding Phase*, ed. Richard A. Falk (Princeton: Princeton University Press for the American Society of International Law, 1976), p. 349.

9. *Washington Post*, 2 June 1977.

10. Select Committee, *Final Report*, p. 11.

11. US, Congress, Senate, Committee on Foreign Relations, *Vietnam: 1976. A Report to the Committee on Foreign Relations*, by George S. McGovern, committee print (Washington, DC: US Government Printing Office, 1976), p. v.

12. *New York Times*, 5 January 1973, p. 5, col. 1.

13. *New York Times*, 28 January 1975, p. 5, col. 1.

14. Committee on Foreign Relations, *Vietnam: 1976*, p. 6.

15. *Ibid.*, p. 7.

16. *Ibid.*, p. 6.

17. One such gesture was the release of two Americans—missionary James Klassen and Joseph Brickman—who had been detained in Saigon when US personnel were evacuated in April 1975. Senator McGovern had given Madame Binh a list of Americans believed to be still in Saigon, and was told that Klassen and Brickman would be allowed to leave “in the future.” On 2 April 1976 the Vietnamese mission in Paris informed McGovern (note that the Vietnamese went *directly* to the Senator, and did not notify the Department of State) that the two men would be released (*New York Times*, 3 April 1976, p. 9, col. 6). Forty-nine other Americans were not released until August of that year, 16 months after they had been stranded by the fall of Saigon (*New York Times*, 8 August 1976, sec. 4, p. 3, col. 3). For the fate of two other Americans on McGovern’s list, see Chapter VII.

18. Committee on Foreign Relations, *Vietnam: 1976*, p. 8.

19. *Ibid.*, pp. 1-2.

20. US, Department of Commerce, National Technical Information Service (NTIS), *Daily Report: Asia & Pacific*, 14 September 1976, p. K3, quoting Vietnam News Agency broadcast of 1518 GMT (Greenwich mean time), 13 September 1976. The Vietnamese published the entire series of correspondence at the time to refute Ambassador Scranton’s statement that the

United States would bring the MIA issue before the United Nations because of the lack of progress with bilateral contacts between Washington and Hanoi. This disclosure, coupled with the previous publication of President Nixon's 1 February 1973 letter, must have left the State Department extremely wary of conveying anything in writing to the Vietnamese that they did not want to read in the morning newspaper.

21. *Ibid.*, p. K4.

22. *New York Times*, 26 March 1976, p. 7, col. 1.

23. NTIS, *Daily Report: Asia & Pacific*, 14 September 1976, p. K1.

24. *New York Times*, 30 March 1976, p. 3, col. 2. Vietnam's health problems were considerable. A WHO study indicated that malaria, tuberculosis, and venereal disease were rampant in South Vietnam, and that area was one of the few places in the world where leprosy was spreading, and where bubonic plague continues to kill people. (*New York Times*, 21 March 1976, p. 13, col. 2.)

25. *New York Times*, 30 March 1976, p. 3, col. 2.

26. *New York Times*, 24 April 1976, p. 10, col. 3.

27. *New York Times*, 29 May 1976, p. 8, col. 1.

28. *New York Times*, 26 July 1976, p. 6, col. 1.

29. "MIA: The Hearings Ploy," *Nation*, 25 September 1976, p. 260.

30. *Washington Post*, 15 September 1976, p. 20, col. 1.

31. *Los Angeles Times*, 16 September 1976, sec. 2, p. 6, col. 1.

32. *New York Times*, 17 November 1976, sec. 1, p. 30, col. 1.

33. *Christian Science Monitor*, 8 September 1976, p. 28, col. 3; and *Wall Street Journal*, 16 September 1976, p. 24, col. 1.

34. *New York Times*, 2 September 1976, p. 6, col. 1.

35. *New York Times*, 7 September 1976, p. 1, col. 6.

36. *New York Times*, 14 March 1974, p. 3, col. 1.

37. Select Committee, *Hearings: Part 3*, pp. 224-268. The bodies of Estes and Teague were repatriated on 30 September 1977. No word as to the fate of the other men has ever been obtained from the Vietnamese.

38. *New York Times*, 8 September 1976, p. 20, col. 1.

39. *New York Times*, 14 September 1976, p. 1, col. 6.
40. NTIS, *Daily Report: Asia & Pacific*, 27 September 1976, p. K3.
41. *Ibid.*, p. K2.
42. *New York Times*, 7 October 1976, p. 36, col. 1.
43. *New York Times*, 14 November 1976, p. 1, col. 4.
44. Louis Halasz, ". . . And The Veto Stays," *Far Eastern Economic Review*, 26 November 1976, p. 14.
45. Quoted in Nayan Chanda, "Puzzling Blast from Hanoi," *Far Eastern Economic Review*, 26 November 1976, p. 14.
46. David Burgess, interview, Washington, DC, 2 December 1977.
47. Kissinger is not unique in this regard by any means; he was just more influential. The very same officials, in another portion of the interviews, would usually remind me to the effect that, "you've got to remember, the North Vietnamese are rotten bastards." Among those very many Americans who were directly involved in the war, whether in the military, the CIA, State Department, or elsewhere in the Government, it is difficult to avoid the emotional but very real animosity that this frustrating war induced. There are very few McGovern or Abzugs in this crowd. It is the relative lack of such emotional hindrances that has enabled the Carter administration to take a more detached approach.

# President Carter and The MIA Issue

# 7

## THE HOUSE SELECT COMMITTEE REPORT

An event occurred between Jimmy Carter's election and inauguration that has significantly contributed to reducing some of the domestic tensions surrounding the volatile MIA issue. On 15 December 1976, the House Select Committee on Missing Persons in Southeast Asia made public its findings, in the form of a 267-page final report. This committee had been conducting comprehensive examinations of every facet of the issue for 15 months. The major conclusions and recommendations of the committee covered two subjects: (1) the status of the missing men, and (2) the accounting of their fate. These findings are quoted in their entirety.

### STATUS

#### Conclusions

That the results of the investigations and information gathered during its 15-month tenure have led this committee to the belief that no Americans are still being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina.

That current legislation, principally Title 37, US Code, Sections 551-556, adequately protects the rights of the missing persons and their next of kin.

## **Recommendation**

That the military secretaries should immediately begin individual case reviews in the manner prescribed by public law.

## **ACCOUNTING**

### **Conclusions**

That, because of the nature and circumstances in which many Americans were lost in combat in Indochina, a total accounting by the Indochinese Governments is not possible and should not be expected.

That a partial accounting by the Indochinese Governments is possible, and that the Department of Defense has the capability to assess, within reasonable limits, the nature and extent of any accounting that may be forthcoming.

That the most effective way in which an accounting may be obtained from former enemies is through direct governmental discussions with them.

### **Recommendations**

That the Department of State promptly engage the governments of Indochina in direct discussions aimed at gaining the fullest possible accounting for missing Americans.

That the House of Representatives maintain a POW/MIA oversight capability in the International Relations Committee to monitor any direct talks that may take place with Indochinese Governments.<sup>1</sup>

The committee's findings were blunt, harsh and, while very distressing to some family members, realistic. Certainly the Department of Defense was pleased with them. Not only did the body of the report largely exonerate the military from any major sin of either commission or omission in their handling of the missing men and their families, but the committee now recommended that they be given a green light to try and resolve the many remaining cases in a reasonable fashion. Both the

Defense Department and the Department of State had cooperated fully with the committee and had supplied liaison personnel to work directly with the committee staff. Dr. Roger Shields, the Deputy Assistant Secretary of Defense for International Security Affairs, and the official within the Defense Department directly responsible for MIA matters at the time, attributes the quality of the report to the major contribution by his liaison personnel. "It says what we wanted it to say," he commented.<sup>2</sup>

What the report did was to "defuse" the Congress, as well as the public and to a certain degree even the MIA families, as active agitators in the MIA issue. Previous committees, and particularly individual Senators and Representatives, had been very responsive to appeals on behalf of the MIA's or their families—often reacting to what was in fact a minority or even isolated point of view. One government official who had worked in the field for a great length of time remarked that he never ceased being amazed at how quickly Congressmen would respond in this matter on the basis of a very narrow and often limited basis for a request, to the extent of holding hearings and introducing legislation. Now these Congressmen were aware that a group of their peers had made a thorough examination of the issue, and they would be reluctant to challenge the committee's findings without solid evidence.

The report was not popular with the National League of Families, whose spokesman immediately denounced the findings.<sup>3</sup> Some next of kin were to transfer their displeasure with the committee's report to personal animosity toward its chairman, G. V. Montgomery. In typical American black humor fashion he became known as "V.C. Mont-GOMER-cy," with the V.C. standing for "Viet Cong" and the middle syllable of his surname, one of the several derogatory appellations used by GI's in Southeast Asia to describe a Vietnamese.

In addition to the potential for a softened domestic atmosphere that the Select Committee report provided, external developments contributed to the feeling that a fresh perspective might be taken toward Vietnam by the incoming administration. In September 1976 the United States had fought a losing battle to keep the SRV from taking over the former South Vietnamese Government's membership in the World Bank, the International Monetary Fund, and the Asian Development Bank. In early

January 1977, the World Bank dispatched an economic "reconnaissance" mission—headed by an American—for a 3-week study trip in Vietnam. The team traveled throughout the reunified country from Hanoi to the Mekong Delta and reportedly gave the Vietnamese leadership assurances that it would be possible for the Bank to provide long-term, low-interest loans for approved projects. Many of the projects suggested by the Vietnamese seem to be based on the detailed list of aid projects developed by the Joint Economic Commission—the long defunct joint US-Vietnamese organization spawned by the 1 February 1973 letter from Nixon to Premier Pham Van Dong.<sup>4</sup>

Other signals came from the administration itself—or prospective members of that administration. During his confirmation hearings before the Senate Foreign Relations Committee, Andrew Young revealed that Secretary of State Vance might reopen negotiations with Hanoi within 90 days, and that it was his (Young's) hope that the United States would be able to establish normal relations with Vietnam before the question of membership for that country came up again in the United Nations.<sup>5</sup> The State Department was quick to remind Young, and the Nation, that there were a number of substantive issues involved before relations with Vietnam could be normalized—particularly the MIA issue—and to deny that any firm timetable had been established.<sup>6</sup>

The President gave another subtle signal when he broke with what had become a tradition and did not appear before the annual convention of the National League of Families. He did meet with a group of that organization's officers at the White House, where he reiterated his campaign promise to pursue direct negotiations with the Vietnamese to resolve the MIA question. Earl Hooper, the Chairman of the Board of the National League of Families, reported that he was greatly encouraged by the President's words.<sup>7</sup>

### **THE WOODCOCK COMMISSION**

During the campaign, Carter had criticized Ford for his failure to do anything "active" in attempting to bring about an MIA accounting, and specifically promised that he would send a high-level Presidential Commission to Hanoi to spur the Vietnamese on to more serious efforts. True to his word, the new President soon announced the formation of the Presidential

Commission on Americans Missing and Unaccounted for in Southeast Asia. The chairman of the commission was Leonard Woodcock—former United Auto Workers president, and soon to be the chief of the American Liaison Mission to the Peoples' Republic of China—who was joined by a prestigious group: a former Senator, Mike Mansfield; Representative G. V. Montgomery, former chairman of the House Select Committee on MIA's; the Executive Director of the Children's Defense Fund, Marian Wright Edelman; and Ambassador Charles W. Yost, currently with the Brookings Institution. Eleven aides were to accompany the commission to Southeast Asia, among them Roger Shields of the Defense Department, Frank Sieverts from the State Department, and four economic experts. The commission visited Hanoi from 16 to 19 March 1977, followed by a 1-day stop in Vientiane, Laos.

The day prior to their departure, the commission met with President Carter and Secretary of State Vance. In retrospect, the statements by the participants during and following that meeting previewed the findings of the commission, and exemplify the style of the Carter approach to the Vietnamese, and the MIA issue. The President voiced concern about the possibility of obtaining a satisfactory accounting, recognizing "... that information may never be available on many of them [the MIA's]... So we are not unrealistic in our expectations." Woodcock added that he did not "expect the impossible."<sup>8</sup> The chairman has described his instructions in this manner: "We were directed not to apologize for past relations but rather to emphasize the President's desire for a new beginning with the governments of the countries."<sup>9</sup> The President repeated before the press that it was his belief that both countries should look forward rather than backward, and expressed the opinion that very little enmity for the Vietnamese remained in the American people.<sup>10</sup> Whether this was an accurate assessment of public opinion or not, such an attitude does appear to express the views of the President and some of his most influential advisors, according to a senior official, who requested that he not be identified by name. Recounting his full time concentration on academic affairs throughout the 1960's and early 1970's, this individual pronounced, rather proudly, that "the Vietnam war just passed me by." According to this member of the administration, the same thing was true of President Carter, and that fact

supplies much of the strength he has in dealing with the problem of our missing men, and the Vietnamese. He summed it up by saying, "the President has absolutely no guilt feelings about Vietnam." Jimmy Carter is thus able to look at Vietnam in a more accurate perspective, to put it in what he believes to be its proper priority—a low one—and to deal with the problem of the missing in action in a far less emotional fashion than has been the case in the past.

The Carter administration has eschewed both of the previously advocated methods of dealing with the MIA issue—the hard-line approach exemplified by the Nixon/Ford/Kissinger policy that proclaimed a full accounting as the *sine qua non* for any sort of accommodation or cooperation between the United States and Vietnam, and the type of policy advocated by George McGovern, for instance, that calls for an active rapprochement with Vietnam, with concrete indications of goodwill such as trade and economic assistance, as a necessary inducement for an accounting. The Carter approach takes a little from each but has its own unique tone. Hostility is not a part of this plan, and one of the President's goals appears to be the removal of the rancor of the war, both domestically and in Southeast Asia. While continuing to stress to the Vietnamese our interest in obtaining an accounting, the President wants to make it clear that such an accounting is a humanitarian obligation the United States expects them to fulfill, and that this country will offer no incentive other than goodwill. An integral part of this approach is the recognition that the MIA issue was *given* to the Vietnamese and that it might serve American interests now to at least reduce its importance, to try a less heated approach.<sup>11</sup> Certainly in the long run, the United States is more important to Vietnam than the reverse. For a number of economic and political reasons, Hanoi stands to benefit from American goodwill, or at least "benign disinterest." To obtain and sustain this attitude from Washington, the administration expects that the Vietnamese will make a reasonable effort to provide what information they have on the missing men. This new course has not been universally well received—especially by some of the MIA next of kin—and the experience and results of the Woodcock Commission illustrate certain of their apprehensions.

The commission was greeted cordially in Hanoi, and, in the words of its chairman, "was treated with respect and dignity . . . throughout our meetings and other activities, in fact,

there was a conspicuous absence of polemics or harsh rhetoric on either side, despite the recent bitter past."<sup>12</sup> Like the House Select Committee visit of the previous year, the Americans met with the very highest leaders in the Vietnamese Government and Communist Party. Chairman Woodcock conveyed a personal letter from President Carter to Premier Pham Van Dong.

On the specific question of the MIA's, the commission's hosts expressed their intention to cooperate with the United States, and they described the administrative machinery that had been created, stretching from the central to the provincial level, to search for information on the missing. Supposedly the budget for this office (described in a press interview by Vice Foreign Minister Phan Hien as "an ad hoc organism [sic] of Vietnam founded many years ago"<sup>13</sup>) had been recently increased. A long-time irritant to the Americans was removed when the Vietnamese agreed to proceed through diplomatic channels in passing information on the MIA's.<sup>14</sup> Often in the past they had selected the recipient of such information in an attempt to maximize its political impact, as when they sent KIA lists to Senator Edward Kennedy or to Cora Weiss. On the technical level, Representative Montgomery and the commission's MIA experts met with their Vietnamese counterparts, and described the type of information desired while explaining American identification procedures. Some sample case files were turned over to the Vietnamese.<sup>15</sup>

The Vietnamese displayed some very fancy semantic footwork in discussing what they wanted in return for any information they might provide. Their undertaking to cooperate on MIA matters was said to have been stated in unqualified terms, although they then made it clear that, to Hanoi, the subjects of an accounting, aid, and normalization of relations, were "interrelated."<sup>16</sup> They continued to claim that the United States had a legal responsibility to aid Vietnam, citing Article Twenty-One of the Paris Accord, although Chairman Woodcock felt that they had softened the specific linkage between the United States performance in aiding Vietnam and their effort to account for the MIA's.

The most dramatic event occurred on the last day of the commission's stay in Hanoi when the Vietnamese Government turned over the bodies of 12 American servicemen. These servicemen had been identified as deceased by the Vietnamese in September 1976, just prior to consideration of Vietnam's bid

for membership in the United Nations. They also responded to two inquiries that the commission had made. One concerned the fate of a one-time Central Intelligence Agency employee, Tucker Gougglemann, who had returned to Saigon just prior to the American evacuation in an attempt to bring out his adopted children; the second involved an American buried in a cemetery visited by the commission, but who was not identified or acknowledged by the Vietnamese. When queried, they revealed that Gougglemann had died in Saigon in June 1976, and confirmed that there was—as the commission suggested—an additional American in the cemetery. Both remains would be returned, they promised.

In his testimony before the Senate Foreign Relations Committee, Woodcock stated that it was his belief that his commission's visit had fostered a "new and favorable climate for new and improved relations" with America's former enemies in Southeast Asia. Although Hanoi had probably not provided all the information they had on the MIA's, Woodcock thought that a new procedure had been established for the continuing exchange of MIA information, and that the previous dearth of information was probably due to their concentration on returning the remains of those Americans who had perished in captivity. The Vietnamese still expected a significant contribution of American aid, but would be "flexible" about the form this aid would take. They did not belabor the point that such aid was an American obligation under the terms of the Paris Accord.<sup>17</sup> Finally, the Vietnamese proposed that the two governments resume diplomatic talks in Paris to discuss the issues outstanding between Hanoi and Washington.

The administration's response to the Vietnamese gestures was a positive one. Not only did the President accept the invitation for renewed negotiations, but he stressed his opinion that the Hanoi Government had acted in "good faith" in their promise to account for the missing men. When it was determined that one of the 12 remains turned over to the Woodcock Commission was, in fact, that of a Vietnamese rather than an American, the President downplayed the incident, terming it an "honest mistake."<sup>18</sup>

Had the Vietnamese really indicated a more cooperative attitude? Many felt that the President's enthusiasm was forced, and that he had ignored the facts. The 12 remains were not a signifi-

cant breakthrough; they had already been used by the Vietnamese in a blatantly political manner. The information on Gougglemann and the additional grave had only been obtained as the direct result of embarrassing American inquiries, and could be seen as illustrating the Vietnamese lack of candor or even their duplicity in such matters.

Tucker Gougglemann had returned to Vietnam in April 1975. His name had been on the list of Americans known to be in South Vietnam that was delivered to the Vietnamese by Senator McGovern in January 1976. He, and another American civilian—Arlo Gay—had been the subject of a special inquiry by the House Select Committee to Premier Pham Van Dong in August 1976, when the two men had not turned up in the group of American civilians allowed to leave Saigon that month. While the committee never was able to determine the fate of Gougglemann, they were in receipt of information that indicated he had been held in Chi Hoi Prison near Saigon.<sup>19</sup> In December 1975, North Vietnamese Ambassador Vo Van Song assured Representative Montgomery in Paris that North Vietnam held no more American prisoners.<sup>20</sup> Now, in March 1977, the Vietnamese revealed that Gougglemann had died in a Saigon prison in June 1976. Of course the Vietnamese Ambassador could claim veracity in the Gougglemann case on the ground that North and South Vietnam had not yet been officially united in December 1975, so he might not have been including South Vietnamese prisons in his declaration. But there was at least one American in prison in Hanoi as he spoke—Arlo Gay. Gay had been seized in the Delta region of South Vietnam in April 1975, then imprisoned in Can Tho until October 1975, at which time he was moved to Song Tay Prison, near Hanoi. Gay was released on 21 September 1976.<sup>21</sup>

It is this sort of discrepancy, and the demonstrated political use of the POW's and MIA's by the Vietnamese, that has bred the high level of distrust and animosity exhibited by the MIA families and many of the government bureaucrats working in this field. The Carter administration's apparent intention to overlook these discrepancies and applaud what these critics regard as very token gestures on Hanoi's part as steps toward cooperation has engendered considerable bitterness. Roger Shields gave an example of this feeling during the ceremony in Hanoi when the 12 American remains were turned over to Leonard Woodcock. Shields remarked, rather undiplomatically, that the United States

had been vainly urging the Vietnamese for 4 years to account for one of these individuals, since the Department of Defense had rather firm intelligence information indicating Hanoi certainly knew of this pilot's fate.<sup>22</sup>

There is a small but significant number of such cases, cases in which the United States has some type of hard evidence—a propaganda film clip from the Vietnamese themselves, an intercepted radio transmission, a reliable human intelligence source report—revealing that at one time a particular individual was alive in enemy hands. In many of these cases the other side has consistently denied any knowledge of the person. Those disillusioned with the Carter approach stand on the principle that Hanoi has a humanitarian responsibility to account for these men, and that the United States Government should “hold their feet to the fire” until they do.

Such a confrontation is not Carter's style, nor has this approach been particularly successful in the past. When bilateral talks resumed in Paris in May 1977, the United States revealed that it intended to drop its opposition to United Nations membership for Hanoi in return for a Vietnamese promise to intensify efforts to provide information on the MIA's. In discussing these talks, Secretary of State Cyrus Vance made it clear that the United States would pay no war reparations.<sup>23</sup>

A second series of talks was held in early June 1977, during which the Vietnamese turned over a new list of 20 Americans killed in the war. Vietnamese Deputy Foreign Minister Min Phan Hien repeated Hanoi's expectations of the economic aid “promised” by President Nixon, but the chief American negotiator, Assistant Secretary of State for Asian Affairs Richard Holbrook, maintained that congressional and public opinion in this country made any direct aid impossible.<sup>24</sup>

In September 1977, the Socialist Republic of Vietnam was admitted to the United Nations, and the Vietnamese allowed the repatriation of the remains of the 20 servicemen revealed in their June list.<sup>25</sup>

The third meeting of the two parties—and the most recent as of this writing—took place in December 1977, and had the same low key, business-like atmosphere as the others, with neither acrimony nor significant progress on the outstanding issues. Again, Hanoi made some small gestures, such as promising to

release the three American crew members of a yacht captured off the Vietnamese coast on 12 October 1977 for an alleged violation of their territorial waters, and offering to send four Vietnamese technicians to our Central Identification Laboratory for training and indoctrination in techniques used in the positive identification of remains. Both sides termed the talks "constructive" and agreed to meet again at a mutually convenient time and place—as yet unannounced.<sup>26</sup>

While the Carter approach to Vietnam and the question of an MIA accounting is different from that of the previous administration in tone and style, is it so different in substance? Is the Vietnamese response markedly different? Despite the more temperate rhetoric on both sides, a basic confrontation still remains. As they have stressed in each of the bilateral talks, the Vietnamese still want aid, trade, and their frozen assets, which the United States Government now states will be possible when normal diplomatic relations are established. The principal stumbling block in the way of such official recognition remains the MIA accounting issue.

To date, the Vietnamese have returned but 61 American remains, far less than even the most pessimistic estimates of their capability. They have provided virtually no other information on any of the 1,876 men unaccounted for in North and South Vietnam. (This total includes those men carried as missing in action, prisoners of war yet not repatriated, men in whose cases a presumptive finding of death has been made, and those listed as killed in action with body not recovered. It does not include these same categories for Laos, Cambodia, or China.) The Vietnam Commission of American Missing in Action has provided no supplemental data.

As small as their gestures have been, the Vietnamese might suspect that the concession-making has had a decidedly one-sided nature. A member of the Vietnam Communist Party's Central Committee complained to a visiting journalist following the visit of the Woodcock Commission that although the Americans "... have never paid us a single dong, we have 'paid' them with many US prisoners of war and US servicemen's bodies."<sup>27</sup>

The obvious exception to this claim of nonreciprocity is the United States' accedence to Vietnam's bid for membership in the United Nations. Hanoi publicly did not regard this as a particular

favor on the part of the Americans, but rather as only an acceptance of Vietnam's rightful due. The previous vetoes, while reasonably popular with the American public—despite the editorial criticism of several major newspapers—had come under increasing attack abroad. That this foreign criticism would have continued and probably increased was indicated by the fact that an unprecedented 150 nations cosponsored Vietnam's successful membership try. Yet the fact remains that the United States could have again vetoed this effort—out of spite or principle—and did not. For this gesture, it has so far received little in return.

The American demand for an accounting has undoubtedly created a dilemma for the Vietnamese. Just as it is certain that Hanoi could provide information on many more men, it is equally certain that they will never be able to provide an accounting of many of the other cases, for the reasons discussed in Chapter II. Without a significant accounting, diplomatic recognition of Vietnam would be a political liability of considerable magnitude for President Carter, or any other American President. It is extremely doubtful if the Vietnamese could ever account for enough of the men to satisfy the National League of Families.

The families might have anticipated that Jimmy Carter would be particularly sympathetic to, and in attune with, their problems, since he had witnessed a personal tragedy in his own family as the result of the erroneous status of a missing serviceman. In his autobiography, the President describes how his favorite uncle, Tom, was captured at the start of World War II while serving with the Navy on Guam. After 2 years, word was received from the Red Cross that the sailor was dead. Tom's wife eventually remarried before the war had ended. After the war Tom turned up in Japan where he had been kept as an isolated prisoner, working as a member of a train crew. He was terribly ill and underweight but eventually recovered, yet he and his former wife were never reconciled.<sup>28</sup>

There is little chance of a "Tom" being discovered alive in Southeast Asia today. Despite his personal experience with some of the heartbreak that is inevitable in these situations—or perhaps because of it—President Carter has acquiesced in the military services' desires to resume changing the status of their missing members to killed in action as the information, or lack of information, indicates is proper.<sup>29</sup>

Carol Bates, the Executive Director of the National League of Families, described this decision, announced on 16 August 1977, when 712 remained in a missing status, as "deceitful and disgraceful." She characterized the families involved as appalled at the President's action, and maintained that the "... decision to administratively 'kill-off' the remaining POW/MIA's by declaring them all legally dead is the final blow in what has become a long list of broken promises."<sup>30</sup>

The League reopened the status change issue in the Federal courts, but to date the services have been vindicated, and the status changes are continuing.

The Government has maintained that an accounting is not limited to a specific status, and the majority of the men on the lists provided to the other side are of men known to have been killed, but whose bodies could not be recovered. Yet it is hard to escape the conclusion that the MIA's cannot long survive as a dramatic issue capable of having domestic or international impact without men still in a missing status. The momentum built up over the long years of publicity and public concern will sustain some attention to the question, much like the post-Korean war experience. This interest will probably be greater in this instance because many more people were involved for a much longer time. It remains to be seen how persistent the United States Government will be in demanding an accounting, or how forthcoming the Vietnamese will be, as the relations between these two countries stabilize.

## ENDNOTES

1. US, Congress, House, Select Committee on Missing Persons in Southeast Asia, *Americans Missing in Southeast Asia: Final Report*, H. Report 1764, 94th Cong., 2d sess., 1976, p. vii.
2. Roger Shields, interview, Washington, DC, 18 November 1977.
3. *New York Times*, 16 December 1976, p. 1, col. 1.
4. Nayan Chanda, "Vietnam: Breakthrough in Aid," *Far Eastern Economic Review*, 1 April 1977, p. 42.
5. *New York Times*, 26 January 1977, p. 3, col. 4.
6. *New York Times*, 27 January 1977, p. 10, col. 5.
7. *New York Times*, 12 February 1977, p. 1, col. 6.

8. *New York Times*, 13 March 1977, p. 8, col. 1.
9. US, Congress, Senate, Committee on Foreign Relations, *US MIA's in Southeast Asia, Hearings before the Committee on Foreign Relations on the Report of the Presidential Commission on US Missing and Unaccounted for in Southeast Asia* (hereafter called the *Woodcock Report*), 95th Cong., 1st sess., 1977, p. 4.
10. *New York Times*, 13 March 1977, p. 8, col. 1.
11. In late 1976 there were several hints given by the Vietnamese, to French diplomats in Paris, that Hanoi has never fully understood why the United States gave its enemies the MIA bargaining card "on a platter" in the first place, and their fear that it might just as easily take it away. *New York Times*, 14 November 1976, p. 1, col. 4.
12. *Woodcock Report*, p. 4.
13. National Technical Information Service, *Daily Report: Asia and Pacific*, 28 March 1977, p. K1.
14. *Ibid.*
15. *Woodcock Report*, p. 5.
16. *Ibid.*, p. 4.
17. *Ibid.*, pp. 2-3.
18. *New York Times*, 24 March 1977, p. 1, col. 6.
19. Select Committee, *Final Report*, p. 101.
20. *New York Times*, 7 December 1975, p. 22, col. 4.
21. Select Committee, *Final Report*, p. 101.
22. *New York Times*, 19 March 1977, p. 1, col. 2.
23. *New York Times*, 5 May 1977, p. 1, col. 1.
24. *New York Times*, 4 June 1977, p. 1, col. 3.
25. In fact, 22 remains were returned—21 military personnel and Tucker Gougglemann. The 21st serviceman repatriated had been included in a previous list but his purported remains had been determined by the Central Identification Laboratory (CIL) in Hawaii to be those of an unlisted MIA. In that same repatriation, the CIL determined that the remains purported to be Air Force Major Curtis Eaton were, in fact, those of a Vietnamese. Vu Hoang, Director of Consular Affairs in the Vietnam Foreign Ministry and the head of the Vietnamese Commission for American MIA's, reported to Frank Sieverts of the State Department, that his office had since made a major, but as yet

unsuccessful, effort to locate the correct body, based on what they had believed to be the exact burial site. Frank A. Sieverts, "Statement before the Subcommittee on Asia and Pacific Affairs of the House Committee on International Relations, October 27, 1977" (Typewritten), pp. 4-5.

26. *Washington Post*, 21 December 1977, p. 28, col. 1.

27. NTIS, *Daily Report: Asia & Pacific*, 19 April 1977, annex, p. 12.

28. Jimmy Carter, *Why Not the Best?* (Nashville: Broadmoor Press, 1975), pp. 41-42.

29. "MIA/POW Action Report," *Air Force Magazine*, October 1977, p. 16.

30. *St. Louis Post-Dispatch*, 2 September 1977, p. 15.

# 8

## Conclusions

The missing in action issue was not created, in a premeditated fashion, by either the United States or the North Vietnamese. It grew almost imperceptibly due to a series of *individual circumstances* and decisions. The seeds of the dilemma that this question was to become—to both countries—can be found in the status determination and review process of each of the United States military services, in the restrictive casualty regulations, and in the psychological, emotional, and finally political decisions that all worked to expand the ranks of the missing. Most pressures worked in the direction of placing men in a missing status who, realistically, should have been declared KIA. Added to this inflated base was the crucial turn of events whereby a man was *not* declared dead after 1 year in a missing status without information indicating he might be alive as the Missing Persons Act required. Thus, although the war was to last for 9 years, virtually no men were removed from the MIA ranks, and when the Peace Accord was signed, 1,392 American servicemen were carried as either missing in action or were listed as prisoners of war but had not been acknowledged as such by the Vietnamese, Laotians, or Cambodians. Another 1,113 were known to be dead, but their bodies had not been recovered.

The MIA question became an issue as an adjunct to the problem of Vietnamese mistreatment of American prisoners of war. In 1969, Secretary Laird convinced President Nixon to publicly challenge the leaders in Hanoi for their failure to abide by

the international conventions governing POW's. The issue became a popular one, and this very popularity served to sweep along the MIA's with the POW's. It was very difficult to differentiate between the two categories. In 1969, it was perceived—correctly as it turned out—that the other side had not identified all of their captives. When the United States made a public issue of the prisoners and missing, there was an incentive to maximize the pressure on the Vietnamese by presenting as large as possible a contingent of men unaccounted for. With the increasing mobilization of the families, led by their activist members and encouraged by the Government, there was a tendency to want the families' frustration and anger directed at the country's enemies rather than have these same emotions turned against the Government, as would result from presumptive findings of death. The military services, somewhat unintentionally, created and nourished the expectations of the families of the missing.

These circumstances were ultimately to have considerable impact, both domestically and on United States relations with Vietnam. The effective inflation in the numbers of MIA's would tend to restrict the Vietnamese willingness to cooperate in providing an accounting, since it seems clear that they could supply data on only a fraction of the cases at issue, and would be reluctant to engage in an accounting that would put them at a propaganda disadvantage. The unrealistic expectations of the families have led to both bitterness and disillusionment on their part. A minority of the MIA families have become dedicated to the principle of an accounting regardless of any other considerations. This minority, and a number of allied "concerned citizens," have taken over the direction of the most prominent POW/MIA organization, the National League of Families of Prisoners and Missing in Southeast Asia. As the League has narrowed in its constituency it has become more strident in its views. This has occurred at a time when the Carter administration has been engaged in an effort to deemphasize the missing in action issue and normalize relations with Vietnam. There is a direct correlation between the actions of the Government and the pronouncements of the League.

Both the United States and Vietnam have used the MIA issue for political ends. The preceding chapters are replete with examples of the calculated manner in which Hanoi has offered

*The men and their families. Combat personnel should*

partial accounting information in an effort to obtain political or economic concessions, or to reward steps toward these goals.

The United States use of the issue was far less blatant or calculated. It would appear justified to conclude that the POW/MIA issue, before the prisoner repatriation, was used—at least to a degree—to mobilize support for the war, to place this country's enemies in a bad light, and to attempt to redirect or fend off some of the domestic criticism of the war. After the return of the POW's, the MIA issue was used to justify hostile political actions taken against the Vietnamese—most notably President Ford's veto of UN membership for Vietnam.

→ The thesis of this study is that the development of the MIA issue has been, and continues to be, inimical to the best interests of the United States, of the missing men, themselves, and of their families. Looking first at the serviceman and his family, it is clear that the Government has a responsibility to both these parties. Just as the soldier, sailor, airman, or marine entering combat is comforted by the knowledge that his family will be provided for should he perish in the country's service, he should also be assured that his family will not be placed in a limbo status for years should his death be undocumented. In the Vietnam war, the United States Government prolonged the grief of the MIA family, while substantially increasing the benefits paid to the MIA wife compared to the widow. These inequities do not cancel each other out, nor is either one justified. The unprecedented length of time men have been maintained in a missing status has put unique strains on many surviving family members. It has exposed them to frustrations and temptations of considerable magnitude and has interrupted the natural healing process of grieving.

→ The matter of the missing men has worked against the best interests of the United States in a number of ways. First of all, it is an issue over which this Government has little control, and as such, reduces American flexibility in dealing with Vietnam. The issue will remain an impediment to the normalization of relations. Also, By creating expectations and demands that could never be met, the United States has caused a bitterness toward the Government by a small but significant number of American citizens. Finally, in the course of attempting to resolve this issue, an American President made promises of an economic commitment → a U.S.

*promised*

→ that he knew could not be met. This action unnecessarily complicated future American-Vietnamese relationships, while reducing the stature of the Presidency and the credibility of American promises. ✕

The Vietnam war, although a limited one for the United States, approached a total war for the Vietnamese. Suffering and losses were undoubtedly widespread throughout that country. The blame for these adversities has been placed on America, and particularly on the aviators who were the instruments of much of this misfortune—among them the missing men. It would seem highly optimistic to think that the Vietnamese, motivated by compassion, would make an extraordinary effort to ease the anguish of even 2,500 American families.

Whether there will ever be an adequate accounting of the men missing in Southeast Asia is extremely doubtful. There never was one in any previous conflict. The Government did the families—and therefore the lost men—a tragic disservice by encouraging the belief that there would be such an accounting in this war.

## **Abbreviations Used in the Text**

BNR	body not recovered
CIL	Central Identification Laboratory
CO	commanding officer
DRV	Democratic Republic of Vietnam
FPJMC	Four-Party Joint Military Commission
FPJMT	Four-Party Joint Military Team
ICRC	International Committee of the Red Cross
ICCS	International Commission of Control and Supervision
JEC	Joint Economic Commission
KIA	killed in action
MIA	missing in action
NOK	next of kin
NVN	North Vietnam
PAVN	People's Army of Viet-Nam
PNOK	primary next of kin
POW	prisoner of war
PRG	Provisional Revolutionary Government
RIO	radar intercept officer
SAM's	surface-to-air missiles
SRV	Socialist Republic of Vietnam
UN	United Nations
VIVA	Voices in Vital America
WATS	Wide Area Telecommunications Service
WHO	World Health Organization

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