

1174

PS

PS	FILE	SUBJ.
JAN 74	DATE	SUB-CAT.

101

In June 1973, Henry Kissinger signed a communiqué which pledged that all "civilian detainees" would be released.

Filmstrip 69

SLIDE

SOURCE: White House. CAPTION: Signing of the joint communiqué on Vietnam in Paris, June 13, 1973. It was signed by Henry Kissinger (background), Nguyen Luu Vien, representative of the Government of the Republic of Vietnam (left), Le Duc Tho, representative of the Government of the Democratic Republic of Vietnam (foreground), and by Nguyen Van Hieu, Minister of State of the Provisional Revolutionary Government of the Republic of South Vietnam (right).

TEXT

The joint communiqué signed in Paris on June 13, 1973 by Henry Kissinger and Le Duc Tho detailed means of strengthening the Vietnam ceasefire agreement. With regard to prisoners, it said:

Section 8

(b) All the provisions of the agreement and the protocol on the return of captured personnel shall be scrupulously implemented. All Vietnamese civilian personnel covered by Article 8(c) of the agreement and Article 7 of the protocol on the return of captured personnel shall be returned as soon as possible. The two South Vietnamese parties shall do their utmost to accomplish this within 45 days from the date of signature of this joint communiqué.

(c) In conformity with Article 8 of the protocol on the return of captured personnel, all captured and detained personnel covered by that protocol shall be treated humanely at all times. The two South Vietnamese parties shall immediately implement Article 9 of that protocol and, within 15 days from the date of signature of this joint communiqué, allow national Red Cross societies they have agreed upon to visit all places where these personnel are held.

(Text of communiqué reprinted in the New York Times, 6/14/73, p. 18)

The January 27, 1973 Peace Agreement had provided for civilian detainees in a general way. The two South Vietnamese parties pledged themselves to "do their utmost" to resolve the question within 90 days after the ceasefire went into effect (Article 8C). The accords define "civilian internees" as "all persons who, having in any way contributed to the political and armed struggle between the two parties, have been arrested for that reason and have been kept in detention by either party during the period of hostilities." (Article 7 of the Protocol on Prisoners)

Yet since the signing of the Peace Agreement, General Thieu has announced that he will free only 5081 "Communist criminals" and as of October 1973, only about 1630 of these prisoners had been released. South Vietnam's jails still hold tens of thousands of political prisoners.

U.S. Legal Responsibility for Prisoners

The U.S. has responsibility for prisoners not only because it signed the Peace Agreement and communiqué, but also through international law. Many of the people now in prison were first arrested years ago by U.S. advisers or troops who turned them over to the Saigon government. Under international law, whoever arrests people has responsibility for their treatment. If these prisoners were tortured, as most of them probably were, the legal responsibility rests with the United States. This responsibility is spelled out in the Geneva Convention of 1949:

Geneva Convention Relative to the Treatment of Prisoners of War
12 August 1949

(Short reference: Geneva—Prisoners of War)

Article 12.

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

(In the Name of America, Clergy and Laymen Concerned About Vietnam, Dutton, 1968, p. 56)

Congressman Paul McCloskey, in hearings in July 1971, noted that the U.S. has acknowledged its continuing responsibility for civilian prisoners:

I quote from a letter of December 7, 1970, from Ambassador Rinestad, U.S. mission to an international organization in Geneva, Switzerland, and he is referring to article 3 of the Geneva Convention of 1949, with respect to civilians captured by U.S. forces in the Republic of Vietnam.

It refers to the fact, and I quote:

With respect to South Vietnamese civilians captured by U.S. forces and transferred by them to the Republic of Vietnam, the U.S. Government recognizes that it has residual responsibility to work with the Government of the Republic of Vietnam to see that such civilians are treated in accordance with the requirements of article 3 of the Convention.

The United States and the Government of the Republic of Vietnam are working together to insure fulfillment of their responsibilities.

Let me read to you what article 3 provides.

It provides as a prohibited act, with respect to the capture of civilians, it prohibits the passing of sentences and the carrying out of executions without previous judgment pronounced by a regular constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(1971 Hearings on U.S. Assistance Programs in Vietnam, pp. 65-6)

USARV Form 364 (190-2) RCS exempt IAW Para 39H AR 335-5		PART II STATUS	
1. NAME: (Last-Middle-First) <i>MAI TY</i>		2. RANK: <i>Hamlet Guard</i>	
3. ORGANIZATION: <i>Hamlet Guard</i>		4. SN/ID NO: <i>277126</i>	
5. STATUS: (Transcribe from Part II) <i>Pow</i>		6. DOB (Day-Mo-Yr): <i>2-9-1937</i>	
7. <input type="checkbox"/> NVA <input checked="" type="checkbox"/> VC <input type="checkbox"/> Other		CAPTURING FORCE: <input type="checkbox"/> FVMAF <input type="checkbox"/> RVNAP	
9. PLACE OF CAPTURE: <i>AT 847 569</i>		10. DATE OF CAPTURE: <i>17 0500 SEP 68</i>	
11. CAPTURING UNIT: <i>D 15</i>		12. PHYSICAL CONDITION: <i>FAIR</i>	
13. RELIGION: <i>None</i>		14. SIGNATURE OF DETAINEE: <i>CHU KY</i>	
15. REMARKS:		1. INTERROGATING OFFICER'S DETERMINATION OF STATUS: a. Innocent Civilian <input type="checkbox"/> *d. Civil Defendant <input type="checkbox"/> b. Prisoner of War <input type="checkbox"/> **e. Doubtful Case <input type="checkbox"/> c. Returnee <input type="checkbox"/>	
SIGNATURE OF INTERROGATING OFFICER: <i>Sgt. R.F. Withli</i>		TYPED OR PRINTED NAME: <i>Sgt. R.F. Withli</i>	
UNIT: <i>B 17T</i>		DATE: <i>19-9-68</i>	
*2. IF d ABOVE IS CHECKED, SJA/SLO WILL COMPLETE THIS SECTION: a. Concur <input type="checkbox"/> c. Referred to Tribunal <input type="checkbox"/> b. PW Status Granted <input type="checkbox"/>		SIGNATURE OF SJA OR SLO:	
TYPED OR PRINTED NAME:		DATE:	
**3. IF e ABOVE IS CHECKED, SJA/SLO WILL COMPLETE THIS SECTION: a. PW Status Granted <input type="checkbox"/> b. Referred to Tribunal <input type="checkbox"/>		SIGNATURE OF SJA OR SLO:	
TYPED OR PRINTED NAME:		DATE:	
4. ACTION BY TRIBUNAL: (If Applicable) a. PW Status Granted <input checked="" type="checkbox"/> b. Civil Defendant <input type="checkbox"/>		SIGNATURE OF SJA OR SLO:	
TYPED OR PRINTED NAME:		DATE:	

USARV Form 364 (21 Dec 66)

When an American soldier captured Mai Ty he filled out form 364, reproduced on this page. In this 1968 US ARMY PHOTO, a Vietnamese National Policeman signs form 364 transferring the prisoner into his custody. But if Mai Ty, like so many others, is still in prison, the legal responsibility for her treatment remains with the United States.



8-324