



The Negotiation Institute

TO FORM A MORE PERFECT UNION

The Struggle and Negotiation of Bangladeshi Independence

In my long career as a litigator and negotiator, few accomplishments have made me more proud than my work in behalf of the emerging nation of Bangladesh in the early 1970s. When Pakistan jailed the leader of the Bangladeshi's independence movement, I applied pressure on the U.S. State Department to free him. When the nation needed peace, I helped stop U.S. shipments of arms into the region. When its people needed food, I helped secure relief from the United Nations. And when the nation needed legitimization, I helped it gain admission into the U.N.

Working for the Common Good

Early in 1970, I had made more than a million dollars in legal fees as a result of a successful anti-trust action brought against the telephone company by an association of burglar-alarm companies.

Since the Federal Government had a personal income tax rate of 90% at that time, I wanted to minimize my income for the rest of the year. I figured that most of the fruits of my labor would go to someone else anyway. So I faced a choice: I could continue to work in the private sector and turn over 90% of what I earned to the Federal Government; or I could forfeit 100% of my earnings by devoting my talents to a good cause for free. Without hesitation, I chose the latter--and started looking for clients who needed my legal services *pro bono* (for those of you not practicing law, the means "for the good" or "you don't get paid.")

One morning, I received a call from an associate of mine, Albert Blaustein, a Rutgers University law professor who has published a compendium of the world's constitutions, more than 20 volumes of them. Blaustein wanted to know if I had heard of the atrocities committed in an area of Pakistan known as Bangladesh, the site of a government-sponsored slaughter that had already claimed the lives of nearly 100,000 people (the number of victims would eventually rise to more than 200,000). The struggle of the Bangladeshi people for independence from Pakistan had erupted in an outright war in March 1971.

I told Professor Blaustein that I had read about the Bangladesh situation and was as horrified by the news as he was. The Awami League, a political party that sought political power in Pakistan with the ultimate goal of securing independence for Bangladesh (East Pakistan), had won 167 of the 169 seats allotted to East Pakistan in the Pakistan parliament in December 1970. This gave the Awami League a majority in the Pakistani parliament, which had 313 members. However, rather than relinquish power, the ruling Pakistan People's Party had sent military troops into East Pakistan in an attempt to subdue the people and crush any popular uprisings. The massacre of citizens that followed--the Pakistani military lined up students and other protesters in the universities and slaughtered them--had outraged the people of the world.

"What was the United States government doing about it?" I asked Blaustein. At my request, he checked into it and found out that the Nixon Administration's State Department, headed by Secretary of State Henry Kissinger, had not only failed to take a stand against the Pakistani government, but was turning a blind eye to illegal arms shipments from the U.S. to that country. Pakistan, our government insisted, provided a much-needed buffer against the Soviet Union--and maintaining good relations with a nation that the Nixon Administration regarded as a friend and ally outweighed the importance of opposing the genocide going on in that country.

I was appalled, both by the massacre itself and by our government's silent acquiescence to this tragedy. So

I decided that I would get involved, working together with Blaustein to help the people of Bangladesh.

(As a side note, although I had read of these atrocities, in my ignorance, I had no idea of where Bangladesh was. So after I got off the phone with Blaustein, I went into my partner's office and asked him where it was. Richard wasn't very helpful, because he said he thought the Bangladesh people were the ones in charge of the Bengal lancers that made the Charge of the Light Brigade. Of course, that was completely wrong: The Bengal lancers had to do with the Crimean War.

I called the State Department myself to complain about the U.S. stand (or lack of a stand) regarding the Pakistani atrocities and about the U.S. arms shipments to the area. The State Department officials claimed that they had no idea that arms were being shipped from the U.S. to Pakistan--in violation of an agreement signed by the United States and 11 other nations to stop all arms shipments to the area in an attempt to avoid any escalation in the fighting. The State Department officials with whom I spoke made it clear that they had no intention of taking any action to investigate and halt these shipments. What our friends from Bangladesh needed was concrete proof--and an advocate.

Enforcing the Arms Embargo--Personally

Professor Blaustein and I asked our new friends and clients from Bangladesh to keep their eyes and ears open. In late June 1971, they informed us that they had heard that the *Kaptai*, a 10,000-ton Pakistani freighter docked at Pier 36 in New York, was carrying munitions and preparing to set off for Pakistan. Such a shipment marked a clear violation of a Presidential Order issued by Richard M. Nixon on March 25, 1971 that prohibited the granting of a license to any munitions ship bound from a U.S. port to the area of the Pakistani conflict.

My firm immediately filed a complaint with the American authorities in charge of the New York Harbor. The authorities, however, insisted that this shipment was *purchased* before the March 25 signing of the Presidential Order authorizing the arms embargo. Since that would have meant that the shipment was legal, the ship would be allowed to leave port.

Suspicious of the government's stand regarding the *Kaptai*, my firm immediately filed a lawsuit in the Federal Court of Manhattan, asking for a restraining order to prevent the ship from leaving New York Harbor and requesting a full inspection of the cargo, dates of purchase, and licenses pertaining thereto by the U.S. customs commission.

Immediately after our filing, we were contacted by the U.S. Attorney General's office. They reassured us that of course the United States had no intention to assist anyone in violating the law. Told that someone from the office would get back to us in a day or two to discuss a satisfactory resolution of the case, we had every reason to believe that since the matter was now in court and the U.S. Attorney General (John Mitchell) was on the case, the matter would be quickly resolved. Not so.

The government was using a negotiating tactic that I call *feinting* in an attempt to deter us from further action. In negotiations, someone who employs the strategy of feinting presents the *appearance* of wanting to move toward a mutual goal or a resolution of conflict. The negotiator who feints hopes to forestall any action by the opposing side and put the opponent off guard long enough to accomplish some other end that surely would have met with resistance had it been done openly.

In this case, the "day or two" of stalling by the government gave the Pakistani shipping company--desperate

to hide what was really going on--time to move the *Kaptai* out of New York Harbor. (Although the local newspapers reported on July 2 that the ship was on its way to Pakistan, in actuality the *Kaptai* had merely been moved across the river to Hoboken, New Jersey.)

Although the government's feinting had indeed caught us off guard, the ploy of moving the ship out of New York failed miserably. Upon learning of this surreptitious move, I immediately filed a writ of *mandamus*--which requires public officials to file detailed reports to the court showing that they are fulfilling the duties of their jobs--against the New York Harbor Master. (As it later turned out, it was the Harbor Master himself--the government official in charge of monitoring shipments transported into and out of New York Harbor--who had ordered the ship to "hide" in New Jersey.)

But someone in the government had failed to do his or her homework properly. Hoboken, although certainly not part of New York, was nonetheless part of New York Harbor. So sneaking the ship across the Hudson River did not at all remove it from the jurisdiction and control of the New York Harbor Master. Through our legal action, we soon discovered the location of the ship.

At this point, we decided that we needed to apply another level of pressure in our negotiations to halt this arms shipment. Unsure of how we would fare in the judicial courts, we determined to try the issue in the "court of public opinion" as well.

After pinpointing the location of the *Kaptai*, my firm tipped off the New York television stations. With several news crews and a team of customs inspectors in tow, we headed straight for the Hoboken pier to find the evidence needed to show that the U.S. was in fact shipping arms to Pakistan. The story appeared on that night's evening news broadcasts--with my partner shouting, "Unveil the cloak of secrecy!"--bringing new awareness not only of the illegal shipments themselves, but also of the entire Bangladesh situation.

In the wake of all the publicity that followed this "raid," the arms shipment was halted and the cargo confiscated as contraband. Although we had begun this adventure in a court of law, the court of public opinion had made it completely unnecessary to pursue any further legal action. We had won a significant battle that would help Bangladesh win the war.

S.O.S.: Save Our Sheikh

The day after the publicity broke on the halting of the arms shipments to Pakistan, about 20 Pakistanis from the secessionist province of Bangladesh suddenly arrived at my office. These were the cream of the intellectual crop of Bangladesh: lawyers, judges, everything. Among them were all of the natives of Bangladesh who had served in the Pakistani delegation to the United Nations. To protest the killings going on in their province, they told me, they had resigned from the United Nations as a group.

These ex-Pakistani delegates to the U.N. had come together to thank me for stopping the arms shipments and to ask me--again, on a *pro bono* basis since they had no money with which to pay me--to represent Sheikh Mujibur Rahman (also known as Sheikh Mujib), the leader of Bengal's Awami League and the revolutionary leader of the 75 million people of Bangladesh. So I asked them to tell me about him.

In March 1971, Sheikh Mujib had addressed more than one million people of Bangladesh, calling for a peaceful and constitutional settlement of the differences between East Pakistan (later Bangladesh) and West Pakistan. In urging a settlement, Sheikh Mujib had outlined four conditions for peaceful coexistence:

- The lifting of martial law by the Pakistani government
- The return of Pakistani soldiers to their barracks
- A public inquiry into the Pakistani armed forces massacre of the citizens of East Pakistan
- The restoration of power to the elected representatives of the people

These conditions apparently enraged the Pakistani government, which launched a massive attack on the University of Dacca, a massacre that claimed the lives of hundreds of thousands of students, teachers, and unarmed civilians, on March 25, 1971 (the same date on which President Nixon signed the arms embargo against Pakistan).

That same day, the Pakistani army arrested Rahman and took him into custody in West Pakistan. Despite the efforts of several prominent jurists from both Great Britain and Ireland, the Pakistani government had forbidden all access to Sheikh Mujib since the date of his arrest. The Bangladeshis who came to us for help, however, had received reports from Pakistan that Rahman was currently being tried by a secret military tribunal. Recognizing such a secret military trial as a flagrant violation of human rights, our firm immediately petitioned the Pakistani government seeking permission to be active participants in any trial of Sheikh Mujibur Rahman. In order to do this, of course, we would have to gain access to Sheikh Mujib, so our firm also requested permission to interview him. At the very least, we hoped to be allowed to act as observers at any trial of the Sheikh.

We soon received word from the Pakistan Mission to the United Nations that our request for entry into Pakistan and participation in the trial had been passed on to that nation's Consulate-General. But while waiting for word from the Pakistani Consulate, our clients returned with the news that Pakistan was not even going to try Sheikh Mujib, but planned simply to kill him outright. They desperately asked us to do something quickly

I immediately got in touch with Albert Blaustein and asked him to get a message through to the U.S. Department of State: that if Pakistan killed this man, there would be no possibility for peace in the region for 200 years--and that it was up to the U.S. to do something to try and stop the execution. Not only did Blaustein get the message through, but he actually brought back an answer from the State Department: five days. Well, I didn't have any idea what that meant, and I told my Bangladeshi clients as much. But I asked that they remain patient and wait, as the State Department had urged us to do. When the five days had passed, Pakistan suddenly released Sheikh Mujib, announcing that there would be no trial. The diplomatic pressure we had helped create had worked.

Men Without a Country

Though the ex-delegates to the U.N. had been concerned first and foremost with the life and safety of their sheikh, they also worried about their own lives. Unfortunately, their mass resignations from the Pakistani delegation to the United Nations had created another problem for them. In giving up membership in the U.N., they had relinquished their diplomatic immunity. Now Pakistan was demanding that they be returned home--and they all knew this meant a death sentence.

I quickly came up with a plan to stall the extraditions. I told them all that as "retired" civil servants, they were entitled to government pensions. "They may be able to kill you," I told them, "but they can't cut you off from your pensions." If I were to sue Pakistan for these pensions, I could attach their airlines and their bank

accounts and everything else that they owned in the United States until the suit had been satisfactorily settled.

Well, of course, the lawyers among them quickly understood my strategy and were delighted that I planned to undertake this effort on their behalf. However, I never even needed to file suit. As soon as we made our intentions known to Pakistan, the government's lawyers got in touch with me. We had a Mexican standoff--so we both agreed to walk away: I would not seek to attach Pakistan's assets in the U.S. and they would not seek to have my clients extradited. Eventually, after the fighting ended, my clients did return to Bangladesh--where all of them became high officials in the new government.

Moving Beyond "You Started It!"

The war in Bangladesh ended quickly once neighboring India invaded Pakistan. India had captured a great many Pakistani prisoners of war and turned them over to the new government of Bangladesh. These prisoners included all of the troops whose slaughter of the citizens of Bangladesh had started the conflict.

Shortly after the fighting ended, the new Bangladeshi president, Sheikh Mujib (who now recognized me as his lawyer), sent me a diplomatic pouch in which he asked for my advice on how to conduct war-crimes trials. In considering the best solution for the new nation of Pakistan, I recalled an article I had read in the December 1969 issue of Psychology Today. The article had described the effectiveness of unilateral gestures in pushing forward stalled negotiations--specifically, in reference to the way President John F. Kennedy had handled the aftermath of the Cuban Missile Crisis.

The Cuban Missile Crisis in November, 1962 had brought the cold war to a head: Neither the United States nor the Soviet Union trusted each other. Even proposals to thaw the chilly atmosphere were met with distrust, with the side receiving the proposal invariably regarding it as some kind of trap or a devious way for the other side to achieve a strategic advantage in the arms race. President Kennedy set out to thaw this atmosphere of distrust through a series of unilateral gestures--symbolic actions taken in an attempt to show the other side one's willingness to meet the other side's needs in a negotiation. Though unilateral gestures do not demand any reciprocal acts from the other side, they do offer the other side the opportunity to return these gestures in kind.

In June, 1963, just eight months after the Cuban Missile Crisis, President Kennedy announced that the United States would no longer conduct nuclear tests in the atmosphere. Was this a major step forward? Not really, since the advent of underground nuclear testing and the superiority of United States nuclear technology and weaponry made above-ground testing unnecessary. Nonetheless, this largely symbolic gesture initiated a series of reciprocal gestures that helped thaw--for a time--the cold war atmosphere that had built up to the Cuban Missile Crisis.

Just one day after President Kennedy's announcement, the Soviet delegate to the U.N. announced that his country would no longer block a proposal to send observers to war-torn Yemen. The United States immediately responded by approving the restoration of Hungary to full status in the U.N.--a proposal the U.S. had rejected for seven years. Within a week, Soviet Premier Nikita Khrushchev had announced a halt in the production of strategic bombers. (Like Kennedy's initial announcement about atmospheric nuclear testing, this was merely a symbolic gesture, since the Kremlin had planned to phase them out anyway.) Just 10 days after Kennedy's initial gesture, the Soviets accepted a U.S. proposal for a White House-Kremlin hotline. In August, the nuclear test-ban treaty was signed, formalizing the unilateral gesture President Kennedy had made eight weeks earlier. For months thereafter, an atmosphere of reciprocal international

accommodations prevailed in U.S.-Soviet relations.

Might a similar strategy help improve the relationship between Bangladesh and Pakistan? I sent the incisive article about the value of unilateral gestures to Sheikh Mujib along with a startling suggestion. Now, I knew that these prisoners of war (I think there were 30,000 to 35,000 of them) had murdered hundreds of thousands of people in Bangladesh--and Sheikh Mujib had witnessed these atrocities with his own eyes. Nonetheless, I asked Sheikh Mujib to consider the unthinkable: letting all of these prisoners go free. Nothing like this had ever been done in the aftermath of a civil war--especially in such an eye-for-an-eye, tooth-for-a-tooth culture. Yet I asked him to consider what affect such a gesture would have on the attitude of various countries throughout the world toward Bangladesh.

The sheik was a consummate politician and he quickly recognized the value of such a dramatic gesture. The small fact that I planted the idea of an alternative to the War Crimes trials can not in any way detract from the courage, foresight, and creativity of Sheikh Mujib, who accepted my proposal, nurtured it, and made it grow. As a result, every nation in the world recognized them, respected them, and did whatever they could to help them. It was a masterful move on the part of the sheikh. With one gesture, he had changed the climate of a stalled, defensive negotiation and nurtured a new atmosphere of respect and trust.

I later heard Mujibur Rahman speak to the Asian Society in New York. Dramatically rubbing his fingers together as though dropping grains of sand to the floor, Sheikh Mujib ironically claimed of the prisoners of war, "I let them slip through my fingers." Maybe so. But by letting them go, he had created a favorable impression that dramatically improved his nation's standing in the world community.

Letting Free Enterprise Take Hold

Not long after Bangladesh gained its independence, I represented the new nation before the United Nations in an appeal to obtain food for its starving people. The United Nations officials in New York responded with concern, care, and compassion.

U.N. officials soon advised me that they had set aside a certain amount of rice for immediate shipment to Bangladesh. Although I appreciated the organization's helpfulness and generosity, the amount of rice they had reserved seemed to me inadequate to serve the dire needs of the starving Bangladeshis.

After sincerely thanking the U.N. officials who had brought me the good word, I delicately brought up my reservations. Why, I asked, had they so severely limited the quantity of rice they were delivering to Bangladesh?

The answer, I was sadly informed, was the problem of getting the rice distributed to the people who needed it. The United Nations relief agency had calculated how much food ships could transport up the Ganges River into Bangladesh--and had limited the supply of rice based on those calculations. It made more sense to deliver only the amount of rice they felt certain would reach the starving Bangladeshis than to see a vast amount of rice rot on the docks of Chittagong, where the mouth of the Ganges met the Bay of Bengal.

I was appalled. By putting this cap on the amount of rice they would send to Bangladesh, I argued, the United Nations was condemning a large portion of the population of Bangladesh to death by starvation. I urged the U.N. to double the amount of food they planned to ship, insisting that no matter what their figures showed, a way would be found to get the food to those who so desperately needed it. At last the U.N. relented, agreeing to ship twice as much rice as they had originally planned.

The food soon arrived in the ports of Bangladesh, but it did not decay at the docks as the U.N. had feared. The U.N. had not miscalculated the shipping capacity in the region--but they had grossly underestimated the will of the Bangladeshi people. In reaching its estimate, the U.N. had taken into account only the major ships available in the region. But the Bangladeshis did not limit their vision to major ships. Once the food arrived in the harbor, everything and anything that could float--from major transport ships through small fishing boats to rafts--was put into service. From that point until all the rice was delivered, every craft on the Ganges was dedicated to the same cause.

It just shows what can happen when freedom and free enterprise are allowed to take hold. By thinking outside of the box (at least outside of the box that had constricted the U.N.'s thinking) and taking initiative, the Bangladeshis had made the most of the U.N.'s aid--and had rescued hundreds of thousands of their fellow citizens from starvation.

Boiled Rice

The U.N. shipment of rice to Bangladesh was only the first of many attempts to relieve the starving nation over the next several years. Bangladesh chartered a series of freighters from the United States to transfer much-needed rice to its shores. Unfortunately, not all of these later shipments met with as great success as the first one did.

On one such rice shipment, the freighter's boiler exploded, which not only disabled the ship in the middle of the Indian Ocean, but destroyed most of its highly valued cargo of rice. The Bangladesh government quickly retained our firm to negotiate a settlement with the company that had insured the ship and its cargo.

My clients regarded the explosion and the destruction of the ship's precious cargo as a catastrophe that threatened the lives of millions of Bangladeshis. Desperate to relieve the nation's starving population, the Bangladesh government needed to settle the claim as quickly as possible: The sooner we resolved the matter, the sooner the government would obtain the funds needed to purchase another cargo of rice to deliver to its people.

Unfortunately, to the insurance adjuster assigned to the case--a rather sedate, somber man--this explosion was just one of many marine accidents he was responsible for investigating. He was by no means aggressively opposing efforts to negotiate a settlement of the claim; he simply wasn't moving fast enough to serve the needs of my desperate clients.

How did I light a fire under the insurance adjuster? With the use of humor. Well-timed, properly selected, and used sparingly, humor can often help overcome any negative feelings held by the other party in a negotiation, thereby generating a new, more positive climate. Well, the climate certainly needed changing here.

In filing the claim for damages on behalf of my clients, I pointedly--and in great detail--described the exact damages done to the ship's cargo. When the boiler had exploded, I explained, hot water had leaked out, flooding the entire ship, including the cargo hold. In effect, the explosion had cooked most of the rice on board. In addition to asking for monetary compensation for these damages, I therefore also suggested that they send out a shipload of raisins: At least that way, my clients could make rice pudding.

By employing humor in writing the claim, I had changed the climate of the negotiation dramatically. In our

next telephone conversation, the adjuster's mood had shifted from sourness to hilarity. He claimed that he hadn't laughed so much in twenty years--and certainly not while on the job. The strategic use of humor had gotten the adjuster's attention and made a very favorable impression--encouraging a man trained to be sober and skeptical to trust me and my clients. As a result, he moved quickly and positively to settle the Bangladesh government's claim.

No Sale

In 1973, while still representing the Bangladesh government, our firm was asked by several of the ministries responsible for the new nation's agricultural development to locate and negotiate a suitable contract for the purchase of one-man tractors. The Bangladesh government planned to introduce American-made one-man tractors in approximately 60 agricultural co-ops and see how they improved production.

We soon located a major American manufacturer who was definitely interested. But the company adhered to a rigid sales contract, with preset and inflexible terms and conditions regarding payment. Unless and until the Bangladesh government accepted its terms, the American manufacturer short-sightedly refused either to demonstrate the product or to discuss the matter further. This company, like so many other American businesses we have observed, confined their objectives solely to short-term goals: what they could get immediately, the profits they could add to *this quarter's* bottom line.

While letters and telephone calls were going back and forth between our offices, the tractor manufacturer, and the Bangladesh government, a Japanese company got wind of the possible sale. Showing a long-range vision that the American company sadly lacked, this Japanese company within several days had sent a one-man tractor and a demonstrator/salesperson to each of the 60 Bangladesh agricultural co-ops--with no strings or other conditions attached. Needless to say, the Japanese company made the sale. Later attempts by American and other foreign companies to sell agricultural machinery in Bangladesh were totally unsuccessful. The farmers of Bangladesh had become familiar with the Japanese machines, they knew how to operate them, and they could not see any reason to change.

All too often, American companies--obsessed with bottom-line, what-have-you-done-for-me-lately thinking--limit the objectives of their negotiations to the short term. Yet in doing so, they overlook the significant--and often hugely profitable--long-range objective of building future relationships and potential customers. How much smarter it would be in many cases to defer immediate gain--with an eye toward the larger payoff in the future.

A Bridge Too Late

In the days when the Bangladeshi members of the Pakistan delegation to the U.N. had first sought our help, these clients took refuge in my office. They were afraid to leave because they didn't want to risk arrest and extradition, so they spent a lot of time just sitting around my office.

They were extremely grateful to us both for our hospitality and for representing them *pro bono*. One time, they asked how they could ever thank us for all we were doing for them. One of my associates joked that those who had helped win the American Revolution--George Washington, for example, or Tadeusz Kosciuszko--had later had bridges named after them. Our guests took this joke seriously, however, promising that as soon as they got a chance to do so, they would name a bridge after our law firm the Nierenberg, Zeif, and Weinstein Bridge.

When my wife and I visited Bangladesh in 1975, one of the former delegates rushed up to us and apologized

for not yet keeping their promise. "You know, Gerry," he explained, "we haven't named the bridge yet, because all of the bridges that we now have are temporary structures. Once we have a permanent structure, though...."

Unfortunately, you won't be able to see the Nierenberg, Zeif, and Weinstein Bridge the next time you go to Bangladesh. The plans for the dedication of a bridge to our firm ended with the shocking assassination of Sheikh Mujib—just five days after my wife and I left Dacca.

The Accidental Revolution

On August 15, 1975, Mujibur Rahman (Sheikh Mujib), who had become the founding president of Bangladesh in 1971 and had assumed dictatorial powers during a later economic crisis, was assassinated. During our visit, the President had remarked that, as the George Washington of his country, he had only friends around him, no enemies. Everyone loved him, he insisted. And though that may have been true, his nephew *had* made enemies, most dangerously among the young officers of the Bangladeshi army.

Five days after we left Dacca, a General in the Bangladesh army was passing by the White House (the presidential palace of Bangladesh) and noticed that no guard was stationed in front of the entrance. The General went inside to try to find out what the problem was.

The General found a group of disgruntled junior officers having a heated discussion. When the General asked why no one was guarding the entrance, the officers let loose a series of complaints about the President's nephew. The officers were especially incensed about the nephew's insulting behavior toward their wives in an episode at an officers' club.

The General gave the young officers a chance to air out their grievances and felt certain that their complaints could be settled to everyone's satisfaction. The general promised the officers that he himself would approach Sheikh Mujib and relay their complaints to him. But just then, the President's nephew appeared on the White House balcony above them carrying a gatling gun. No one knows who fired first, but in the fury that quickly ensued, all of the occupants of the White House were assassinated, ripped apart by the guns of the young officers.

Rahman might have remained President of Bangladesh for years--or even decades--to come. But as a result of this "accidental revolution," he was violently overthrown (as was Zia ur-Rahman, who succeeded Mujibur Rahman as President of Bangladesh and was assassinated six years later). Despite the violent end met by our friend and client, our firm remained a friend of the Bangladesh government for decades to come.