

Prisoners in the Bangladesh War: Humanitarian Concerns and Political Demands*

I. Introduction

The early months of 1973 saw the end of American involvement in the Vietnam War and the release of approximately 600 American prisoners of war. Particularly since the start of the Nixon administration, the alleged mistreatment of U.S. prisoners and the conditions of their return had become major political and emotional issues. The United States deplored Communist failure to abide by Geneva Convention standards and encouraged other nations and private citizens to put pressure on the Communists to insure prisoner protection.

At the same time that American diplomatic efforts were being expended on behalf of 600 prisoners of war, an estimated 90,000 Pakistani civilians and soldiers were taken prisoner in the brief war with India and Bangladesh in December 1971. These prisoners were held for over 20 months amidst general unconcern in the United States and around the world. While their release is welcome, the fact of their detention coupled with the Vietnam POW experience, gives cause for concern in the international legal community.

This article will examine the treatment of Pakistani prisoners of war under international law. The December 1971 conflict and its aftermath will be examined to shed light on the legal and political claims of the three parties to the dispute: India, Pakistan, and Bangladesh. Also relevant is the role of other nations and private groups in advancing humanitarian treatment of one group of victims of war, captured military personnel.

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†See also the case of *Pakisteen v. India*, I.C.J., 7 INT'L LAW. 727 (July 1973) and 919 (Oct. 1973), and in *Case Comments, infra.*—Editor

II. The Background of the Prisoner Problem

In retrospect, neither the fact nor the outcome of the December 1971 war on the subcontinent was a great surprise. Pakistan itself had always been an improbable union of differing geographic territories and ethnic stocks.¹ The West Pakistani domination since independence had left East Pakistan as a virtual colony. Continuing conflict with India left the West Pakistanis facing two opponents on the subcontinent.

Events came to a head with the calling of free elections in 1970. The numerically superior East Pakistanis voted overwhelmingly for the Awami Party of Sheikh Mujibur Rahman and gained legislative control of the country. Faced with this unexpected loss of control, President Yahya Khan refused to yield power. The legislature never met. Sheikh Mujib in March 1971 issued a call for East Pakistani (hereafter Bangladesh) independence.

The West Pakistani Army responded with savage attacks on the population of Bangladesh. While estimates vary, it is undisputed that from March to December of 1971, Pakistani troops slaughtered civilians by the tens of thousands and drove hundreds of thousands of refugees across the Indian border.² World reaction to one of the major human rights affronts of the century was virtually non-existent.

By December, the stream of refugees, the massacres of fellow Bengalis, and old military scores with Pakistan prompted an eager Indian military response to a Pakistani attack in the west. In two weeks, India had humbled its old adversary on the Eastern front and the independence of Bangladesh was a reality. The Pakistani forces in the east surrendered on December 16. Consistent with earlier statements of adherence to the Geneva Prisoner of War Convention, Indian General Manekshaw promised: "personnel who surrender shall be treated with the dignity and respect to which soldiers are entitled, and I will abide by the provisions of the Geneva Conventions."³ The Surrender Document itself reflected this statement and the fact that prisoners would be repatriated upon the signing of a peace treaty.⁴

Early reports indicated that prompt repatriations would occur.⁵ Bangladesh and Indian officials counted between 80,000 and 90,000 Pakistani

¹For background material on the December 1971 War, see Nanda, *A Critique of United Nations Inaction in the Bangladesh Crisis*, 49 DENVER L.J. 53-56 (1972).

²Sheik Mujib estimated 3 million deaths, New York Times (hereafter NYT), January 24, 1972, p. 1 col. 5. Pakistan President Bhutto has estimated no more than 60,000 deaths, NYT, March 26, 1972, p. 7 col. 1.

³NYT, December 16, 1971, p. 16 col. 6.

⁴NYT, December 17, 1971, p.1 col. 5.

⁵NYT, December 26, 1971, p.12 col. 3.

prisoners.⁶ In addition a large number of Pakistani civilians were prevented from leaving Bangladesh. Pakistan reported about 600 Indian prisoners⁷ and a substantial Bengali population stranded in the west. By the end of December, however, it was becoming increasingly evident that a prompt and complete exchange of prisoners was unlikely. Primarily at issue was the trial of Pakistani soldiers for war crimes committed during the reign of terror from March to December.⁸

The fledgling Bangladesh government pressed strongly on the point as publicized accounts of the atrocities began to suggest their massive scope.⁹ After several days of vacillation, India sided with Bangladesh, recognizing that war crimes trials were proper and implying that repatriation would await the resolution of the war crimes issue.¹⁰ As the debate continued, India began relocating all prisoners in internment camps in India.¹¹

The freeing of Sheikh Mujib by Pakistan¹² and his return to Bangladesh did not spur rapid agreement on the prisoners and other issues. While token releases of sick and wounded¹³ and the eventual freeing of all 600 Indian prisoners did occur, the great majority of Pakistani prisoners remained in Indian camps. In the early months of captivity, treatment was reported in conformity with humanitarian rules, and Pakistani popular indignation remained submerged. However, as the months accumulated to more than a year, reports of ill treatment grew. So did the significance of the issue in Pakistani politics.

Sheikh Mujib soon made clear his willingness to press for war crimes trials. He cited three million deaths and in March 1972 spoke of 1,500 Pakistanis against whom charges were contemplated.¹⁴ Included were the two generals in charge of eastern operations. An Indian-Bangladesh 25-year mutual aid pact signed the same month agreed to "fully cooperate" in trying those "responsible for the worst genocide in recent times."¹⁵ A separate provision conditioned prisoner release on Pakistani recognition of the new state of Bangladesh.

By midsummer, when President Bhutto and Indira Gandhi met at Simla for peace talks, the issues were somewhat better defined.¹⁶ Pakistan was increasingly viewing return of its prisoners as the significant issue. Bargain-

⁶NYT, December 29, 1971, p. 7 col. 1; NYT, January 11, 1972, p. 11 col. 6.

⁷NYT, January 11, 1972, p. 11 col. 6.

⁸NYT, December 27, 1971, p. 1 col. 6.

⁹See generally, *id.*; NYT, December 28, 1971, p. 3 col. 1.

¹⁰NYT, December 28, 1971, p. 3 col. 1.

¹¹NYT, December 29, 1971, p. 7 col. 1.

¹²NYT, January 9, 1972, p. 1 col. 8; NYT, January 10, 1972, p. 10 col. 1.

¹³See e.g., NYT, February 26, 1972, p. 7 col. 1.

¹⁴NYT, January 24, 1972, p. 1 col. 5; February 21, p. 4 col. 8; March 19, p. 1 col. 7.

¹⁵NYT, March 19, 1972, p. 1 col. 7.

¹⁶NYT, May 6, 1972, p. 2 col. 4; June 29, p. 3 col. 4.

ing chips were its control over Bengalis detained in West Pakistan and desirous of leaving for Bangladesh, its power of recognition of Bangladesh, and its ability to settle long standing differences with India. India viewed a settlement of the Kashmir dispute subcontinent arms race as its fundamental objective. Its major bargaining points were its recently demonstrated military might and control of the prisoners.

Bangladesh continued to stress war crimes trials, and recognition by Pakistan as its major objectives. Implicit in the recognition concern was uneasiness over possible Pakistani efforts to resubjugate the new nation. Partial control over the prisoners, India's support, and a generally sympathetic world community were the new state's strongest assets.

The Pakistan-India summit made encouraging progress in improving relations between the two old antagonists. Troop withdrawals and a gradual normalization of relations were called for.¹⁷ The prisoner issue remained unresolved in large part because of its linkage with the war crimes and recognition issues. This impasse continued for over a year despite increasing public attention.

Differences were finally resolved in late August, 1973. Hard diplomatic bargaining between Pakistan and India, rather than humanitarian concern, paved the way to a settlement. A December, 1972 agreement resolved many of the Kashmir issues. An April, 1973 proposal by India and Bangladesh for coordinated prisoner return led to July, 1973 talks in Rawalpindi. One month later an eleven-day negotiating session was capped by a prisoner agreement.¹⁸ India agreed to release the prisoners. Bangladesh, through the Indian negotiators, agreed to abandon plans for war crimes trials. Bengalis stranded in Pakistan and a number of civilians stranded in Bangladesh were authorized to go to their country of choice. Recognition of Bangladesh by Pakistan appeared to be forthcoming.

III. The Legal Standards

Few areas of the international law of human rights are as well defined as that concerning treatment of prisoners of war. The 1949 Geneva Convention Relative to the Treatment of Prisoners of War¹⁹ expanded the coverage of prior Conventions of 1929²⁰ and 1907.²¹ Its ratification by the

¹⁷NYT, July 3, 1972, p. 1 col. 8.

¹⁸Washington Post, August 29, 1973, p. 1 col. 8.

¹⁹The Prisoner of War Convention appears at T.I.A.S. 3364 (12 August 1949). (hereafter cited as GPW).

²⁰Convention concluded at Geneva on July 27, 1929, relative to the treatment of prisoners of war.

²¹Hague Convention No. IV, Respecting the Laws and Customs of War on Land, 36 Stat. 2277, T.S. 539 (18 October 1907).

great majority of the nations of the world probably makes its major principles part of customary international law. Humanitarian prisoner treatment was recognized as part of customary law during the post-World War II war crimes trials.²²

There can be no doubt that the Geneva Convention applied in the December 1971 war. In several respects, its applicability was much clearer than in Vietnam. Both India and Pakistan were Convention signatories of long standing.²³ India, Pakistan and Bangladesh all assured the International Committee of the Red Cross in December 1971 that they were bound by the Convention.²⁴ Lastly, the December 16th surrender agreement specifically provided for Geneva Convention applicability.²⁵ Unlike Vietnam with its gradations of guerilla fighters, it is undisputed that all captured Pakistani soldiers were entitled to treatment under the Convention.²⁶ Further, India, unlike North Vietnam, has not taken reservation to Convention Article 85. This article provides continuing Convention treatment to persons convicted of pre-capture offenses, most notably war crimes.

The 143 articles of the Convention broadly assert a goal of humanitarian treatment within the framework of military control. Captured prisoners are the responsibility of the state capturing them and not of individual soldiers.²⁷ While in captivity, prisoners are to be provided with adequate food, shelter, clothing,²⁸ medical care,²⁹ communication with the outside world,³⁰ and religious and cultural opportunities.³¹ Coercive interrogation is impermissible³² as are harsh labor conditions.³³ Discipline is accorded to the military law of the captor nations.³⁴ But lengthy sections on disciplinary and judicial punishments require many elements of due process.³⁵

Several sections mandate or encourage the return of prisoners prior to the end of active hostilities. Section 118 calls for complete repatriation

²²See e.g., III, Law Reports of Trials of the War Criminals (Anton Schosser, et al. 1945), 17-19, 96; see the subsequent codification of the Nuremberg Principles adopted by UNGA Res., 5 UNGAOR, Supp. 12, UN Doc. A/1316 (1950).

²³India ratified the Convention, 9 November 1950; Pakistan, 12 June 1951.

²⁴NYT, December 14, 1971, p. 17 col. 2.

²⁵NYT, December 16, 1971, p. 16 col. 6.

²⁶GPW, Arts. 2 and 4.

²⁷GPW, Art. 12.

²⁸GPW, Arts. 25-28.

²⁹GPW, Arts. 29-32.

³⁰GPW, Arts. 69-77.

³¹GPW, Arts. 34-38.

³²GPW, Art. 17.

³³GPW, Arts. 49-57.

³⁴GPW, Art. 82.

³⁵GPW, Arts. 99-108.

“after the cessation of active hostilities.” In order to insure obedience to the Convention, several neutral inspection approaches are recognized. Most prominent is the protecting-power concept, relying on a neutral nation to protect the interests of a belligerent’s war prisoners.³⁶ More often used are the services of the International Committee of the Red Cross,³⁷ long the special protector of the Geneva Prisoner Convention. In addition, the role of other humanitarian organizations is specifically recognized.

IV. The Claims of the Parties

A. *Pakistan*

The fundamental Pakistani claims was for the immediate release of all prisoners.³⁸ Secondary or compromise claims involved the humane treatment of its prisoners and the release of all prisoners of war save those actually charged with war crimes.

As noted, GPW Article 118 calls for prisoners to be “released and repatriated without delay after the cessation of active hostilities.” Pakistan contended that the December 16, 1971 surrender marked the end of “active hostilities.” They cited the surrender terms, adoption of the Geneva Convention, with the specific understanding that prompt repatriation would follow surrender.³⁹ The major alternative discussed by the truce negotiators was a cease fire with Pakistan allowed the opportunity to withdraw its troops.⁴⁰ This was rejected by the Indians.

By its language, Article 118 makes clear that a formal peace treaty or settlement of all differences between combatants is not a precondition to prisoner release. The earlier language of the Hague Regulations of 1907 that called for repatriation “after the conclusion of peace” illustrates the intent of separating military from diplomatic considerations.⁴¹ In situations of guerilla war or long-term low-level conflict, it may be as difficult to specify an end to “active hostilities” as it would be to point to a “conclusion of peace.”

Yet the Pakistani situation appeared a rather clear case. The war reached a definite military conclusion, a formal surrender was signed, fighting stopped, and the losing party changed governments. In addition,

³⁶GPW, Art. 8.

³⁷GPW, Art. 125.

³⁸President Bhutto has told UN Secretary General Waldheim that the return of the prisoners is the “fundamental and most important” issue on the subcontinent. NYT, February 8, 1973, p. 3 col. 3.

³⁹NYT, December 16, 1971, p. 16 col. 6; December 28, 1971, p. 3 col. 1.

⁴⁰NYT, December 16, p. 1 col. 8.

⁴¹Hague Convention IV, Annex Article 20.

the Pakistanis freed not only the handful of Indian prisoners, but the imprisoned leader of Bangladesh. Certainly by any fair definition, "active hostilities," meaning the December declared war, and the previous months guerilla incursions, had concluded by mid-December 1971.

The Pakistani position toward the war crimes issue was somewhat uncertain although gradually shifting to apparent opposition to any trials. Even Pakistani officials conceded that significant and unnecessary killings of civilians occurred and that some war crimes trials might be proper.⁴² However, Pakistan clearly preferred to try its soldiers. While Pakistan did not push the issue, it probably would have been receptive to an early return of all but the 1,000 (later 195) suspected war criminals. Possibly, Article 109's provision for direct repatriation "of able-bodied prisoners of war who have undergone a long period of captivity" could have provided the legal peg on which to hang a pre-1973 release agreement without inflaming the war crimes issue. Pakistan might also have agreed to lift any emigration restriction on Bengalis detained in their country.

Unlike the Vietnam War, only limited concern was raised over prisoner treatment. At least one Western report was positively laudatory of Indian compliance with the Geneva Convention.⁴³ Other evidence indicated increasing complaints of inadequate living conditions, medical treatment and protection against brutality.⁴⁴ Overall grave breaches of the Geneva Convention appear to have been rare. Doubtless it will be some time before the full story of treatment in the camps is known.

B. *India - Bangladesh*

A variety of claims were asserted by the victors in the December war to justify their continued retention of the 90,000 Pakistanis. While certain issues were unique to one party, India's continued willingness to tie its claims to those of Bangladesh⁴⁵ makes it appropriate to consider both nation's claims together.

1. THE RIGHT TO RETAIN PRISONERS UNTIL PEACE IS ASSURED

In different contexts, both India and Bangladesh spoke of an insistence on a firm peace prior to prisoner return. Mr. Karim, Bangladesh Permanent

⁴²NYT, March 26, 1972, p. 7 col. 1.

⁴³See e.g., Washington Post, February 10, 1973, p. 15 col. 1 (Columnist Tom Braden account of a prisoner-of-war camp visit).

⁴⁴Washington Post, March 5, 1973, p. 23 col. 2 (letter from M.I. Butt, Pakistan Embassy Information Minister citing ICRC reports of overcrowding, poor hygiene, spreading disease and abuse of prisoners); NYT, February 6, 1973, p. 3 col. 4.

⁴⁵NYT, February 7, 1973, p. 14 col. 4. Mrs. Gandhi reportedly told Secretary General Waldheim that any solution satisfactory to Bangladesh would be satisfactory to India.

Observer to the United Nations, noted in February 1973 that Pakistan talked of eventual reconquest. He cited a draft Pakistani Constitution that spoke of reclaiming "East Pakistan."⁴⁶ Indian sources expressed concern over new weapons shipments to Pakistan from China, and referred to the prisoners as "four-and-a-half divisions of trained troops."⁴⁷

In terms of the Geneva Convention, the Indian and Bangladesh portion was that no "cessation of active hostilities"⁴⁸ occurred until August 1973. In essence, this approach makes meaningless the repatriation provisions of the Convention. Threats of war have existed throughout the post-independence history of the subcontinent. Similar situations exist in the Middle East and in Indochina. Yet despite continuing political differences and the possibility of future military action, prisoners of war were returned after the stated end of hostilities. Any other approach might subject prisoners to a lifetime captivity. As a matter of international law, the India-Bangladesh position must be rejected.⁴⁹

2. THE RIGHT TO RETAIN PRISONERS FOR TRIAL AS WAR CRIMINALS

This issue was initially raised by Bangladesh shortly after the conclusion of the December war, and pressed by them until August 1973. India consistently expressed a willingness to support their ally on the matter. Both countries asserted a right to hold *all* prisoners until a satisfactory solution to the problem of war crimes trials was reached. No legal argument was advanced to support this position. Rather, a mixed legal and political justification diverted focus from the real issues.

It is undisputed that in the wake of the post-World War II war crimes trials, and codification of the Nuremberg principals,⁵⁰ a right to try individuals for war crimes and crimes against humanity exists. These precedents also authorized Bangladesh, the wronged state, to exercise jurisdiction over the war criminals. The Geneva Convention authorizes trials under the military law of the captor power.⁵¹ Article 85 need not have blocked any fundamental objective of Bangladesh.

The Article provides: "Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even

⁴⁶NYT, February 16, 1973, p. 34 col. 3.

⁴⁷Washington Post, January 18, 1973, p. 22 col. 8.

⁴⁸GPW, Art. 118.

⁴⁹Professor Levie reached a similar conclusion in his pre-settlement review of the impasse. Levie, *Legal Aspects of the Continued Detention of Pakistani Prisoners of War by India*, 67 AM. J. INT'L L. 512 (1973).

⁵⁰See, note 21, *supra*.

⁵¹GPW, Art. 82.

if convicted, the benefits of the present Convention.” Opponents of this provision at the 1949 drafting sessions regarded it as impermissible to extend humanitarian protections to an individual whose acts had shown his unwillingness to be bound by humanitarian principles.⁵² Reservations were taken by the Communist bloc nations on this account. Article 85, however, only assures continued Convention application.

The judicial sanctions provision of the Convention make clear that offenders against international law may be confined in jail facilities,⁵³ or executed upon proper conviction by a military court.⁵⁴ Bangladesh would have been constrained only to the extent of providing a fair trial,⁵⁵ providing notice to the Pakistani government,⁵⁶ and delaying any death sentences for six months.⁵⁷ This would have added Bangladesh desires for a full airing of atrocities. The repatriations section of the Convention also allows further detention of prisoners “against whom criminal proceedings for an indictable offense are pending,”⁵⁸ Their detention may be continued through trial and completion of their sentence.

The frequent Bangladesh expression of its legal right to have war crimes trials was therefore quite correct. It was also quite irrelevant as far as the vast majority of Pakistani prisoners were concerned. At most, Bangladesh stated about 1,500 prisoners were possible suspects.⁵⁹ The number was since reduced to about 200. Surely after several months time it was no great problem to divide the 90,000 prisoners into three groups—those against whom clear evidence of war crimes existed, a diminishing group of suspects against whom further information was needed, and the vast majority against whom there exists no evidence of violations. The latter group at a minimum should have been repatriated immediately under international law.

3. THE RIGHT TO CONDITION PRISONER RETURN ON DIPLOMATIC RECOGNITION

Bangladesh also took the position that it would neither begin war crimes trials nor return the prisoners until Pakistan formally recognized its status as a nation. Recognition by Pakistan does make more difficult any subsequent Pakistani effort at reconquest in addition to boosting Bangladesh

⁵²See, II Trial Record of the Diplomatic Conference of Geneva of 1949, 319 *et seq.*

⁵³GPW, Art. 108.

⁵⁴GPW, Arts. 100 and 101.

⁵⁵GPW, Arts. 99–108.

⁵⁶GPW, Arts. 104 and 107.

⁵⁷GPW, Art. 101.

⁵⁸GPW, Art. 119.

⁵⁹NYT, March 19, 1972, p. 1 col. 7; March 30, 1972, p. 3 col. 1.

national prestige. The question remains whether this justified a refusal to release the prisoners for almost two years.

As on other issues, a possible Bangladesh argument of not being bound by the Convention fails upon examination of the record. During the war, representatives of Bangladesh stated their adherence to the Convention precepts.⁶⁰ After the war, Bangladesh became a formal Convention signatory. Nothing in the Convention requires diplomatic relations between belligerents as a precondition to Convention application. To the contrary, Articles 2 and 3 seek to give a broad scope to the types of armed conflicts entitled to Geneva Convention protections. Again, political convenience cannot repeal the clear language of Article 118.

4. THE INDIAN POSTURE

India's position during much of the controversy was to maintain that it was a joint captor with Bangladesh and bound in part by her wishes.⁶¹ To some extent, this was a convenient ploy for advancing Indian interests in the name of friendship for Bangladesh. On the other hand, the expense of keeping 90,000 prisoners and the growing international and internal⁶² embarrassment indicated that Indian and Bangladesh interests diverged as the impasse lengthened.

Convention Article 12 discusses the transfer of prisoners between detaining powers. Transfers may only be made to another Convention party which has shown its willingness to comply with the Convention provisions. Once transfer is effected "responsibility for the application of the Convention rests upon the Power accepting [the prisoners]." Further, the party transferring the prisoners has a duty to correct any Convention violators called to its attention or reclaim the prisoners.

The application of Article 12 to the Indian situation is not totally clear. Most of the prisoners probably were at all times under control of the Indian Army from surrender to arrival at the Indian detention camp. Thus, talk of transfer is irrelevant. The lesser number of prisoner held by forces of Bangladesh at one time probably benefitted by transfer to Indian authority.

However, in both situations, India had the responsibility for Convention compliance including repatriation and humane treatment. Theories of joint

⁶⁰NYT, December 14, 1971, p. 17 col. 2.

⁶¹Washington Post, January 18, 1973, p. 22 col. 5.

⁶²*E.g.*, the comment of Times of India correspondent Ajit Bhattacharjea: "The benefits likely to be secured by forcing Pakistan to recognize Bangladesh, say this year instead of next, are hardly big enough to justify detaining 90,000 men for so long." NYT, February 6, 1973, p. 3 col. 4.

responsibility were essentially rejected by the Convention drafters.⁶³ In any event, joint responsibility would simply require both India and Bangladesh to meet humanitarian standards. To excuse violations by Bangladesh because of their non-control of the prisoners, and Indian violations because of compliance with the co-captor's illegal wishes, would obviate the great purpose of the Geneva Convention.

V. Some Conclusions and Suggestions

Depending on one's perspective, the Geneva Convention either worked very well or very poorly in the Bangladesh conflict. The mere fact that 90,000 troops of a despised enemy were treated in generally humane fashion and eventually returned to their homeland is a tribute to the Prisoner of War Convention. On the other hand, the refusal for almost two years to repatriate the Pakistanis has struck a serious blow to an essential element of humane prisoner of war policies. Despite appealing political arguments, both India and Bangladesh were without legal justification for their policies. Further, their actions, in the wake of widespread concern over violations of the laws of war in Indochina, call into question the continuing validity of the Geneva Conventions.

The failure of the United States to take a stronger stand on the subcontinent prisoner question was most disappointing. Article 1 of the Geneva Prisoner Convention commits all Convention parties (of which the United States is one) "to respect and to ensure respect for the present Convention in all circumstances." Article 129 makes clear each signatory's responsibility to encourage prosecution of Convention violators. Compared with the inactivity of other Convention signatories, the United States record is less blameworthy. However, the world position of the United States coupled with its recent prisoner experiences in Vietnam would seem to demand a greater degree of concern.

The American involvement in the subcontinent war with its clear tilt toward Pakistan might have made suspect any initiative on the prisoner of war question. Certainly, though, more neutral nations and international organizations might have been encouraged to stress Geneva Convention violations. Alternatively, the United States might have demonstrated its humanitarian bona fides by supporting the Bangladesh position regarding the legitimacy of war crimes trials.

The following American approach would have mixed sound politics with the promotion of human rights. President Nixon might have simultaneously proposed to the leaders of India, Pakistan and Bangladesh, the following:

⁶³See, Final Record, *supra*, note 50 at 437 *et seq.*, 563; III Final Record 272.

The United States recognizes that serious human rights deprivations have taken place on the subcontinent. Killings in Bangladesh, continued confinement of Pakistani prisoners, and limitations on the emigration of minority group members from Pakistan and Bangladesh disturb all persons. However, to deny human rights in one area because of denials in other areas is to jeopardize the objective of all humanitarian treatment.

Therefore, the United States suggests the following actions: (1) Immediately upon agreement, India and Bangladesh will release a percentage of all prisoners of war held, with attention being given to first release of the sick and the inmates of badly overcrowded camps. (2) The United States, together with other nations, shall, within six weeks, offer a list of distinguished and impartial judicial figures to serve as judges of trials of the major war criminals designated by Bangladesh.⁶⁴

Bangladesh, India and Pakistan shall each have a limited number of peremptory challenges to the judicial selections. (3) Within the same six week period, Bangladesh shall supply a final list of prisoners to be subject to trial. (4) At United States' expense, the panel of distinguished jurists shall be assembled in Bangladesh to hear evidence and render judgment on the major accused. Minor war criminals, generally those not in a position of command or accused of isolated violations of the laws of war, may be tried by the courts of Bangladesh. Provisions of the Geneva Convention for fair trials shall be observed in all cases.

(5) Upon submission of the International tribunal and the list of accused, all other prisoners shall be promptly repatriated. At the same time, Pakistan and Bangladesh will allow emigration of any minority group members in their country.

Whether as proponent or merely supporter of such an initiative, the United States would have contributed to the international human rights movement. Ideally, the two humanitarian objectives of prompt prisoner release and the trial of war criminals should have proceeded separately after December, 1971. Political reality, however, almost inevitably forced a linkage of the two issues. The proposed American initiative would have accepted this fact. But in return it would have advanced international standards in both the prisoner repatriation and war crimes areas. The August, 1973 settlement advanced neither. One can only hope that such disappointments will not discourage future international cooperation in the human rights field.

⁶⁴Bangladesh sources in March 1972 were reportedly agreeable to the participation of foreign jurists in the war crimes trials. NYT, March 30, 1972, p. 3 col. 1. Certainly, this would add legitimacy to the trials and prove a healthy precedent for further enforcement violations of the laws of war.