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CUBAN MISSILE CRISIS: HOW THIRTEEN DAYS CHANGED THE WORLD

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Throughout her Negotiation and Mediation course at the University of California, Irvine School of Law, Professor Carrie Menkel-Meadow¹ instructed her students to be prudent, diligent, creative and cooperative negotiators. This note is based on an assignment from Professor Menkel-Meadow's course and is thus subject to inherent limitations in its scope.

As a renowned national and international expert in alternative dispute resolution (ADR), Professor Menkel-Meadow facilitated the growth and frequency of use of ADR in the United States since the late 1970s and early 1980s,² and has continued to develop this field of study to present day.³

This note focuses on three concepts that make a negotiator effective: (1) necessity of strategic and thorough preparation before negotiations; (2) use of framing and establishment of reputation during negotiations; and (3) flexibility in resorting to facilitated mediation. My analysis of these concepts is discussed through the thirteen days of negotiations

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1. Professor Menkel-Meadow is a founder of the dispute resolution field. *Carrie Menkel-Meadow*, UCI LAW, <https://www.law.uci.edu/faculty/full-time/menkel-meadow/> [https://perma.cc/845B-828Y] (last visited Apr. 5, 2019). In addition to a plethora of other awards, the first-ever Award for Outstanding Scholarly Work, presented by the American Bar Association's Dispute Resolution section, was presented to Professor Menkel-Meadow, who was lauded as a "tireless, prolific and influential researcher and writer" who put forth the transformative idea of "lawyer as problem solver" twenty-five years ago. *Id.* Published in dozens of books and articles, Professor Menkel-Meadow has also taught at some of the most prestigious legal institutions in the United States and worldwide. See Carrie Menkel-Meadow, Curriculum Vitae, <https://www.law.uci.edu/faculty/full-time/menkel-meadow/menkelmeadowCV.pdf> [https://perma.cc/X3PZ-BHWE] (last visited Apr. 5, 2019).

2. See generally Carrie Menkel-Meadow, *Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the 'Semi-formal'*, in REGULATING DISPUTE RESOLUTION: ADR AND ACCESS TO JUSTICE AT THE CROSSROADS 419 (Felix Steffek et al. eds., 2013).

3. See Menkel-Meadow, *supra* note 1.

between President John F. Kennedy (JFK) and Soviet Premier Nikita S. Khrushchev (Khrushchev) during the 1962 Cuban Missile Crisis. This paper is divided into two major components. First, I will analyze the United States' initial contemplation in response to evidence of the Soviet Union's construction of offensive-weapon bases in Cuba. Then, I will analyze the correspondences between JFK and Khrushchev leading up to the United Nations-based mediation sessions.

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INTRODUCTION

It is important to recognize the existence of dozens of considerations and factors leading up to the October 1962 negotiations between JFK and Khrushchev. Due to the nature of this paper, I am unable to provide an exhaustive synopsis of every relevant consideration affecting both parties during this international conflict. Furthermore, this Note takes a somewhat oversimplified approach to the multi-lateral aspect of international negotiations; I excluded mention of JFK's and Khrushchev's advisors (such as Robert Kennedy), foreign ministers, military commanders, and other relevant parties directly involved in the behind-the-scenes strategy making processes.

Although there is a voluminous amount of sources available regarding the Cuban Missile Crisis, the inherently complex nature of international disputes—e.g. the effects on the global perception of a state's foreign policy, image, and strength—are also largely omitted from this Note. As such, this Note's narrow scope is geared towards the procedural, tactical, and analytical elements of the thirteen days of negotiations between JFK and Khrushchev. The main sources guiding my discussion are: *The Cuban Missile Crisis, 1962*;⁴ *Reflections on the Cuban*

4. THE CUBAN MISSILE CRISIS, 1962 (Laurence Chang & Peter Kornbluh eds., 1992).

Missile Crisis;⁵ *Cuban Missile Crisis, 1962*;⁶ *The Great Negotiations*;⁷ *Negotiation: Processes for Problem Solving*;⁸ *Getting to Yes*;⁹ and *Art of the Deal*.¹⁰

INITIAL CONTEMPLATION

Prepare Well for Negotiations

On October 16, 1962, JFK along with the National Security Advisor McGeorge Bundy and other top advisors (collectively, The Executive Committee of the National Security Council (ExComm)), received images of Soviet medium-range ballistic missile bases under construction in Cuba.¹¹ ExComm faced a difficult decision of how to respond to the Soviet Union's actions. Although ExComm and JFK contemplated various options, my analysis focuses on two possible responses to the pending threat emanating ninety miles from U.S. soil: (1) eliminating the bases through air and ground strikes; or (2) instituting a blockade on Soviet ships carrying weapons to Cuba.¹²

The deliberations between JFK and ExComm in choosing an adequate response to Soviet actions in Cuba best resemble conducting substantive legal research prior to a negotiation. Specifically, preparing for a negotiation by carefully analyzing the parameters of the issue allows a party to approach conflict resolution in an effective and anticipatory manner, likely yielding better results.

Strike: Factual Background

ExComm unanimously recognized the need to eliminate the Soviet missile bases from Cuba, because the bases posed a high risk to the U.S. national security.¹³ JFK and his advisors initially approached accomplishing this need by contemplating an air strike because: (1) it would include the element of surprise since the Soviet Union was not aware of the United States' knowledge of the bases; (2) there was a sense of urgency to act because the bases were not yet operational; and (3) the air strike would quickly alleviate the *immediate* Soviet threat in Cuba.¹⁴ Additionally, conducting an air strike would illustrate the strength of the United States in the

5. RAYMOND L. GARTHOFF, *REFLECTIONS ON THE CUBAN MISSILE CRISIS* (2d ed. 1989).

6. TIM COATES, *THE CUBAN MISSILE CRISIS, 1962: SELECTED FOREIGN POLICY DOCUMENTS FROM THE ADMINISTRATION OF JOHN F. KENNEDY, JANUARY 1961–NOVEMBER 1962* (2002).

7. FREDRIK STANTON, *GREAT NEGOTIATIONS: AGREEMENTS THAT CHANGED THE MODERN WORLD* (2011).

8. CARRIE MENKEL-MEADOW ET AL., *NEGOTIATION: PROCESSES FOR PROBLEM SOLVING* (2d ed. 2014).

9. ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN*. (3d ed., 2011).

10. DONALD TRUMP, *THE ART OF THE DEAL* (1987).

11. *THE CUBAN MISSILE CRISIS, 1962*, *supra* note 4, at 77.

12. *Id.* at 78.

13. *Id.* at 79.

14. *Id.*

international arena as a major superpower. Once the option of an air strike was on the list of possible United States responses, ExComm began further deliberations, engaging in a fuller analysis of the implications and consequences of military action.¹⁵ Air Force officials stated the air strike would need to be massive against Cuba rather than a surgical one, and at best, it would only eliminate 60-90 percent of the missiles in Cuba.¹⁶ Furthermore, an air strike would: (1) potentially upset U.S. allies because there would not be enough time to consult them; (2) bring about a maximum communist reaction in Latin America;¹⁷ and (3) serve as irrevocable action on United States' behalf. Robert Kennedy (RFK) stated the air strike:

[W]ould represent a sneak attack on a small nation with all the memory of Pearl Harbor . . . destroy[ing] the U.S.'s moral position and alienat[ing] friends and allies. The whole post-war effort of trying to organize the combined strength of the Free World would be in shards and tatters.¹⁸

Another one of JFK's considerations was the lack of knowledge about the Soviet Union's perspective on these developments.¹⁹

Strike: Analysis

Although it is difficult to determine the full Zone of Possible Agreement (ZOPA) guiding this situation, some oversimplified ZOPA options include: U.S. inaction; U.S. use of military force; and any strategies falling in-between the two options. The possible Worst Alternatives to a Negotiated Agreement (WATNA) of an air strike include: responsive Soviet military actions in Berlin or Turkey; loss of American allies around the world; rising support of communism in Latin America; aggravation of relations between the Soviet Union and United States; and ultimately, a nuclear war. Conversely, the Best Alternative to a Negotiated Agreement (BATNA) to a U.S. air strike involved the Soviet Union to dismantle their offensive weapons in Cuba after communications and negotiations.²⁰

ExComm's initial consideration to conduct an air strike on Cuba echoes Donald Trump's approach to resolving conflicts. Specifically, Trump suggests: "The worst thing you can possibly do in a deal is seem desperate to make it. The best thing you can do is deal from strength, and leverage is the biggest

15. *Id.* at 78–80.

16. STANTON, *supra* note 7, at 167.

17. THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 99.

18. *Id.* at 122.

19. STANTON, *supra* note 7, at 171 ("[JFK] had recently read Barbara Tuchman's book *The Guns of August*, which cataloged the errors that led to the start of World War I, and the risk of catastrophe from one side misinterpreting the other's signals haunted him. [JFK stated:] 'We were not going to misjudge . . . or precipitously push our adversaries into a course of action that was not intended or anticipated.'").

20. For a more in-depth discussion about the effects of multi-party dispute resolution on calculating the ZOPA, WATNA, and BATNA, see Carrie Menkel-Meadow, *Introduction & Coda, in* COMPLEX DISPUTE RESOLUTION: VOLUME II: MULTI-PARTY DISPUTE RESOLUTION, DEMOCRACY, AND DECISION MAKING (Carrie Menkel-Meadow, ed. 2012).

strength you can have . . .”²¹ Furthermore, a Trumpian strategy to resolving conflicts includes fighting back:

[F]ight back very hard. The risk is that you’ll make a bad situation worse . . . but my experience is that if you’re fighting for something you believe in—even if it means alienating some people along the way—things usually work out for the best at the end.²²

As such, Donald Trump would have likely encouraged and advocated for the option of military intervention in the Soviet construction of offensive-weapon bases in Cuba. He would have likely argued that the United States obtained leverage by covertly discovering the Soviet Union’s activities and should have utilized this leverage to “fight back” against the threat to its national security by conducting an air strike on Cuba. Donald Trump’s approach likely would not have entailed major considerations for the U.S. allies or for alienating Latin America. It would have likely incited more conflict, possibly resulting in a third world war or even a nuclear war. Certainly, Trump’s advice is contextually tied to the business and real estate realms and may not be applicable here. Nevertheless, in *Negotiation: Processes for Problem Solving*, Professor Menkel-Meadow would drastically disagree with such a power-hungry, isolationist negotiation mindset regardless of context.

At such an early stage of the Cuban Missile Crisis, the United States was truly unaware of the Soviet Union’s actual motives, desires, and interests. The likelihood of the United States learning these unknown variables about the Soviets after an air strike would drastically decrease. Converse to Donald Trump’s approach to conflict resolution, Deborah Tannen would likely discourage the air strike on Cuba because “opposition does not lead to truth when an issue is not composed of two opposing sides but is a crystal of many sides. Often the truth is in the complex middle, not the oversimplified extremes.”²³ Professor Menkel-Meadow would likely support Deborah Tannen because “[b]inary, oppositional presentations of facts in dispute are not the best way for us to learn the truth; polarized debate distorts the truth, leaves out important information, simplifies complexity and often obfuscates rather than clarifies.”²⁴ Professor Menkel-Meadow’s lessons of negotiating through a collaborative and creative approach to problem solving—involving innovation and preservation of relationships—directly conflict with the decision of utilizing military force in Cuba and with Donald Trump’s approach to conflict resolution.

21. TRUMP, *supra* note 10, at 37.

22. *Id.* at 41.

23. MENKEL-MEADOW ET AL., *supra* note 8, at 14 (quoting DEBORAH TANNEN, *THE ARGUMENT CULTURE: MOVING FROM DEBATE TO DIALOGUE* 3–4, 8, 10 (1998)).

24. *Id.* (quoting Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 WM. & MARY L. REV. 5, 6–10 (1996)). Andrea Kupfer Schneider’s article also illustrates that an adversarial approach to conflict resolution is far less effective than true problem solving, or even cautious problem solving approaches. *Id.* at 132 (quoting Andrea Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143, 171–75 (2002)).

Although ExComm balanced the United States' national security with potential detrimental consequences of an air strike, two additional factors greatly weighed against its decision to use military force: (1) an "air strike was drastic and irrevocable action";²⁵ and (2) the air strike would not resolve anything because the Soviet Union could continue shipping weapons to Cuba. Professor Menkel-Meadow's in-class discussions best categorize the former consideration: "It is always easier to escalate than it is to deescalate a situation."²⁶ Furthermore, an air strike would not only aggravate the Soviet Union and Cuba, but it would also be an extreme reaction to a situation with numerous unknown variables. Professor Menkel-Meadow would likely discourage the air strike option also because it is not wise to be "the hammer that hits every nail it sees . . . [instead], successful negotiations require thorough analysis."²⁷ The Cuban situation "was too volatile for such an escalation, and [JFK] wanted to give the Soviets a chance to back down before taking irrevocable action."²⁸

In spite of Secretary of the Treasury Douglas Dillon's, Theodore Sorensen's ("Sorensen"), and CIA Special National Intelligence Estimate's ardent support for the air strike²⁹, ExComm decided to forego any advantages of a surprise air strike. Instead, ExComm elected to make a public statement, send nonencrypted communications to U.S. military bases, and place a blockade (also referred to as "quarantine") on Soviet ships.

Blockade/Quarantine: Factual Background

Sorensen's written report of ExComm's available options, dated October 20, 1962, stated that the graduated strategy of implementing a blockade "is a more prudent and flexible step which enables [the U.S.] to move to an air strike, invasion or any other step at *any time it proves necessary*, without the 'Pearl Harbor' posture."³⁰ Sorensen also wrote that the blockade is "the step least likely to precipitate general war while still causing the Soviets—unwilling to engage our Navy in our waters—to back down and abandon Castro."³¹ ExComm believed that although a blockade would not automatically achieve the United States' goal of eliminating Soviet weapons from Cuba, it would "not begin with sudden death, and it was a first step, not a last."³² In his correspondence to JFK on October 17, 1962, the U.N. Ambassador, stated that "talking with K[hrushchev] would afford a chance of

25. THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 79.

26. Professor Carrie Menkel-Meadow, Negotiations Lecture at University of California, Irvine School of Law

27. *Id.*

28. STANTON, *supra* note 7, at 168.

29. THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 116–18, 128–32, 134–43.

30. *Id.* at 133 (emphasis added).

31. *Id.*

32. STANTON, *supra* note 7, at 168.

uncovering his motives and objectives far better than correspondence thru the 'usual channels.'"³³

Some ExComm proponents of the air strike thought the blockade decision was not a strong or adequate response to seemingly offensive Soviet actions. In response to these concerns, ExComm's decision to implement the blockade was accompanied with a public announcement, indicating United States' knowledge of the Soviet developments in Cuba, and nonencrypted communications to U.S. bases around the world. Upon JFK's speech addressing the nation on October 22 (analyzed in the second part of this Note), nearly all "U.S. military forces worldwide increased their alert status to Defense Condition ("DEFCON") 3 . . . [and] U.S. nuclear forces were placed on an even higher alert footing, DEFCON 2, only one step away from DEFCON 1," which meant war.³⁴ These communications were strategically sent as nonencrypted messages in order to ensure the "Soviet intelligence would not mistake the seriousness of the U.S. military preparations to wage nuclear war."³⁵ It is also important to mention that before informing Khrushchev and the world of its decision, the United States informed the United Nations of the Soviet missile developments in Cuba—an analysis of the United Nations' involvement is included in the Negotiation and Mediation Section below.

Blockade/Quarantine: Analysis

ExComm's decision to place a blockade on Soviet ships carrying military equipment to Cuba can best be categorized as an action to: (1) keep the parties at the negotiation table; (2) decrease the likelihood of detrimental consequences; and (3) afford the negotiation counterpart an opportunity to voice his demands and/or concerns. This approach best mirrors the concepts from Professor Menkel-Meadow's course—specifically, concepts highlighting cooperative or collaborative (over competitive) methods of negotiations. Professor Menkel-Meadow and Kenneth Thomas believe:

There are those who *compete* (or seek to maximize their own self-interest, even at the expense of others), those who *cooperate* (seeking to work with the other side to find some middle or compromise grounds) . . . and those who *collaborate* (by seeking to work for joint and mutual gains for all parties, without unnecessary harm to others or needless compromise or giving in).³⁶

Whereas a U.S. air strike would be a classical decision to compete with the Soviet Union, the U.S. decision to place a blockade on Soviet ships contains elements of cooperative and collaborative schools of negotiation.

33. See THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 119.

34. *Id.*

35. *Id.*

36. MENKEL-MEADOW ET AL., *supra* note 8, at 9 (citing Kenneth Thomas, *Conflict and Conflict Management*, in HANDBOOK OF INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGY (Marvin V. Dunnette ed., 1976)) (emphasis in original).

ExComm's blockade decision also accomplished several negotiation tactics articulated by Roger Fisher and William Ury.³⁷ Specifically, the United States utilized a problem-solving mindset, which allowed it to ask questions, test assumptions, and maintain relationships—not only with the Soviet Union but also with U.S. allies. By not “striking first and asking questions after,” ExComm created an opportunity to bargain over positions as opposed to interests (analyzed further below in my analysis of the communications between JFK and Khrushchev). ExComm analytically created a strategic and open first step towards negotiating the elimination of offensive-weapon bases in Cuba. Professor Menkel-Meadow suggests that “unearthing a greater number of the actual needs of the parties will create more possible solutions because not all needs will be mutually exclusive.”³⁸ In light of the many unknown variables guiding the Soviet Union's intentions, accomplishing the “unearthing [of] a greater number of the actual needs” would have been difficult with an immediate air strike on Cuba.³⁹ As such, ExComm's blockade decision allowed the United States to invent an option for possible future mutual gain.⁴⁰ This would allow ExComm to learn the Soviet Union's needs, demands, deal points, and deal killers in future negotiations while preventing the alienation of U.S. allies and maintaining the American moral character. Additionally, the blockade option would allow the parties to keep talking—one of Roger Fisher's tools in negotiations.⁴¹

Professor Menkel-Meadow also believes better solutions to conflict are those with minimal transaction costs.⁴² The U.S. decision to place a blockade on Soviet ships, increase DEFCON levels, and make a public announcement had fewer transaction costs than the air strike option. Implementing a blockade served as a statement of the United States' dissatisfaction with Soviet actions, while sending nonencrypted communications—increasing DEFCON levels throughout U.S. military bases—further strengthened the United States' position. In fact, Peter T. Coleman and Saul Alinsky would likely support the tactical maneuver of increasing DEFCON levels through nonencrypted communications because they believe that the perception of power matters in a negotiation.⁴³ Saul Alinsky writes: “Power is not only what you have but what the enemy thinks you have . . .”⁴⁴ Regardless of the United States' desire to engage in an all-out war, these communications served as a crafty method of conveying the United States' readiness and willingness to stand by its position.

37. See generally FISHER ET AL., *supra* note 9.

38. MENKEL-MEADOW ET AL., *supra* note 8, at 125 (quoting Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 795 (1984)).

39. *Id.*

40. See generally FISHER ET AL., *supra* note 9.

41. *Id.*

42. See MENKEL-MEADOW ET AL., *supra* note 8, at 127 (quoting Menkel-Meadow, *Toward Another View of Legal Negotiation*, *supra* note 36).

43. *Id.* at 266.

44. *Id.*

Thus, the United States engaged in a thorough analysis of the situation by analyzing its options, viable Soviet responses to each option, and, most importantly, the likelihood of the United States achieving its goals through each course of action. This degree of negotiation preparation placed the United States in a position to better understand Khrushchev's desires while retaining control of the further negotiations.

COMMUNICATIONS BETWEEN JFK AND KHRUSHCHEV

Frame Your Position, but Remain Open to Mediation.

This part of the paper focuses on JFK's and Khrushchev's negotiations tactics through their written communications to one another, and the importance of mediation.

Announcement/Quarantine

On October 22, 1962, JFK wrote a letter to Khrushchev and made a televised announcement to the United States, officially implementing the blockade through Congressional acquiescence.⁴⁵ The letter briefly mentioned previous discussions between JFK and Khrushchev in Vienna and outlined the position of the United States. JFK's televised announcement to the nation not only solidified the topics of his correspondence to Khrushchev in greater detail but also strategically increased transparency of the situation by informing the world about Soviet actions in Cuba. JFK's decision to make this announcement resembles Professor Menkel-Meadow's former University of California Los Angeles Law student's decision to waive confidentiality in a settlement, foregoing a higher settlement amount, merely to shed light on a specific issue. This way, if the Soviet Union preemptively conducted a military strike on mainland United States, JFK would have had the United States' position and events leading up to the attack on record for the world to know.

Douglas Stone believes that the "primary task [in difficult conversations] is not to persuade, impress, trick, outwit, convert, or win over the other person. It is to express what you see and why you see it that way, how you feel, and maybe who you are."⁴⁶ As such, JFK's announcement indicated that the United States saw recent Soviet activity in Cuba directly conflict with previous Soviet promises that the "military equipment sent to Cuba [be] designed exclusively for defensive purposes."⁴⁷ These inconsistencies made the United States feel deceived, forcing JFK to announce, "The United States of America nor the world community of nations can tolerate deliberate deception and offensive threats on the part of any

45. See THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 148–54.

46. DOUGLAS STONE ET AL., DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST 185 (1999).

47. See THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 150–54.

nation”⁴⁸ Furthermore, JFK painted an image of who the United States was by concluding his announcement with mention to the “character and courage” of the nation, “vindication of right” instead of “victory in might,” and never choosing the path of “surrender or submission.”⁴⁹

Post-Quarantine

The next four communications between JFK and Khrushchev illustrate each leader’s attempts to persuade the other leader of his position while preserving his reputation.⁵⁰

October 23

Khrushchev’s response to JFK’s televised announcement claimed the United States’ blockade on Soviet ships was a “serious threat to peace and to the security of nations[,] . . . violat[ing] the United Nations Charter and international norms.”⁵¹ Khrushchev stood his ground, claiming that the Soviet missiles in Cuba were “intended solely for defensive purposes.”⁵²

Professor Menkel-Meadow believes that in addition to substantively preparing for negotiations, good negotiators could also “base [their] argument on good policy, a principle to be upheld, or general custom in that type of business,” setting seemingly objective criteria for the negotiation.⁵³ Additional methods of bolstering an argument include framing and analogy.⁵⁴ In fact, psychologists, management consultants, and communications experts agree that “framing” establishes “a stable coherent cognitive structure that organizes and simplifies [complex realities].”⁵⁵ Here, Khrushchev framed himself as a helping ally, contextually providing Cuba with defensive weapons following the Bay of Pigs invasion. He further appealed to general international customs and principles of the United Nations in an attempt to suggest the United States was the aggressor, and that the blockade should be lifted. In fact, framing the weapons in Cuba as either offensive or defensive was a crucial, foundational argument in each leader’s communications. By framing the weapons as offensive, JFK illustrated the need for mitigating measures in light of Khrushchev’s earlier promises not to supply offensive weapons to Cuba. Conversely, Khrushchev’s framing of the weapons as defensive allowed him to argue a lack of wrongful actions by the Soviet Union.

JFK framed most of his correspondences by adhering to reason in attempts to mitigate the severity of the situation while “cheerleading” for a non-violent resolution to the crisis. JFK’s same-day response to Khrushchev’s letter illustrated

48. *Id.*

49. *Id.*

50. *See* THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 156, 161–64, 173.

51. *Id.* at 156.

52. *Id.*

53. MENKEL-MEADOW ET AL., *supra* note 8, at 108.

54. *Id.*

55. *Id.* at 109.

his concern that the leaders “show prudence and do nothing to allow events to make the situation more difficult to control than it already [was].”⁵⁶

October 24 and October 25

In a responsive October 24 correspondence, Khrushchev claimed JFK was “not declaring a quarantine, but rather [was] setting forth an ultimatum and threatening that if [the Soviet Union does] not give in to [JFK’s] demands, [the United States would] use force.”⁵⁷ Khrushchev then pled for empathy and reason by asking what the United States would do if such an “ultimatum” was presented to it, implying that the Soviet response was perfectly rational. “Consider what you are saying!” Khrushchev wrote, “And you want to persuade me to agree to this!”⁵⁸ He attacked JFK’s use of reason, claiming the United States was the unreasonable and irrational party. Lastly, Khrushchev framed his position through an appeal to general principles as his main source of authority: “International law exists and universally recognized norms of conduct exist. We firmly adhere to the principles of international law and observe strictly the norms which regulate navigation on the high seas, in international waters.”⁵⁹

In addition to framing his position, Khrushchev also utilized his reputation in his correspondence. Professor Menkel-Meadow believes that reputation is important when negotiating, or expecting to negotiate again, with the same counterparts or adversaries.⁶⁰ In support of this notion, Catherine Tinsley further notes that in a negotiation context “a player’s reputation is embodied in the beliefs of others about the strategy that the player will use Thus, game theorists tend to define a person’s reputation as another’s expectation of how that person will behave.”⁶¹ Tangentially, although Daniel L. Shapiro suggests “emotions can hinder the ability of negotiators to reach a wise agreement,” using emotions could possibly affect the other party’s expectation of how the emotional negotiator will behave in the future.⁶²

In his October 24 correspondence, Khrushchev adhered to his reputation of being a strict, abrasive, emotional and possibly erratic leader. Previously, in 1956, at a Polish Embassy in Moscow, Khrushchev told the Western ambassadors, “We will bury you!”⁶³ In 1960, at a Plenary Meeting of the United Nations General Assembly, Khrushchev notoriously took off his shoe and pounded it on the desk in protest at

56. See THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 161–62.

57. *Id.* at 163–64.

58. *Id.*

59. *Id.*

60. MENKEL-MEADOW ET AL., *supra* note 8, at 254.

61. *Id.* at 255 (quoting Catherine H. Tinsley et al., *Reputations in Negotiation*, in THE NEGOTIATOR’S FIELDBOOK 203, 204 (Andrea K. Schneider & Christopher Honeyman eds., 2006)).

62. Daniel L. Shapiro, *Emotions in Negotiation: Peril or Promise?*, 87 MARQ. L. REV. 737, 738 (2004).

63. KHRUSHCHEV’S “WE WILL BURY YOU,” <https://www.cia.gov/library/readingroom/docs/CIA-RDP73B00296R000200040087-1.pdf> [<https://perma.cc/796U-CCTX>] (last visited May 21, 2019).

a speech by a Philippine delegate. Khrushchev's reputation for being emotional, illustrated in his use of exclamation marks in his correspondences to JFK, strategically created an air of mystery and unpredictability about the Soviet mentality and actions. Juxtaposed with JFK's calm and collected correspondences and demeanor, Khrushchev's erratic leadership persona could partially explain why JFK's calculations with ExComm regarding the United States' response had to be carefully deliberated.

In his October 25 responsive correspondence, JFK continued to portray the United States' position as one of reasonable necessity. He reiterated his perception of the crisis while hoping that the two superpowers would "take necessary action to permit a restoration of the earlier situation."⁶⁴ Utilizing his reputation for using reason in these negotiations, JFK successfully conveyed a strong Western front without aggravating the situation or provoking the Soviet Union in any way.

Negotiation and Mediation

The next five October communications between JFK and Khrushchev focused on outlining each leader's desired outcomes, finding common ground in seeking peaceful relations, and most importantly, agreeing to send representatives to mediation sessions with the United Nations.⁶⁵ In these communications, Khrushchev initiated the first official offer by proposing to remove the weapons from Cuba and make a pledge to the United Nations to do so in return for United States' removal of similar weapons from Turkey and making a promise not to attack Cuba. Khrushchev wrote that U Thant, the Acting Secretary General of the United Nations, "to some degree has assumed the role of a mediator" and that the Soviet Union "consider[s] that he will be able to cope with this responsible mission, provided, of course, that each party drawn into this controversy displays good will."⁶⁶

Professor Menkel-Meadow believes mediation is a wholesome and efficient conflict-resolution mechanism. Specifically, mediation is inclined to: improve participation and self-determination (each party retaining control over the process and the outcome); result in a better outcome while generating creative problem solving (including forward-looking strategies in developing options and optimal outcomes); and foster relationships and build bridges between parties.⁶⁷ Leonard Riskin⁶⁸ further distinguished the different types of mediators: e.g. the facilitative mediator is one who "assumes the parties are intelligent, able to work with their counterparts, and capable of understanding their situations better than . . . the

64. See THE CUBAN MISSILE CRISIS, 1962, *supra* note 4, at 173.

65. *Id.* at 185–88, 197–99, 223–25, 226–32.

66. *Id.* at 197–99.

67. MENKEL-MEADOW ET AL., *supra* note 8, at 544–47.

68. Leonard Riskin is a scholar in the field of negotiation, mediation, and alternative dispute resolution.

mediator.”⁶⁹ Furthermore, a facilitative mediator assumes that his “principal mission is to enhance and clarify communications between the parties in order to help them decide what to do.”⁷⁰

Throughout the mediation process, U Thant facilitated this dispute resolution by “sen[ding] appeals and messages, relay[ing] proposals, offer[ing] reassurances, advanc[ing] the ‘non-invasion for missiles’ formula that formed the basis of the final agreement, shuttl[ing] to Cuba to mollify Castro, and help[ing] secure a verification agreement.”⁷¹ Reconciling the United States’ fears of the Soviet weapons being located in Cuba with Soviet fears of the United States engaging in military combat with Cuba, Thant urged the Soviets to dismantle their missiles immediately in return for an American guarantee not to invade Cuba. Since Thant advocated this idea publicly—utilizing the benefits of public decisions mentioned above—it became the basis for the final agreement days later. Furthermore, to quell Soviet concerns regarding U.S. missiles in Turkey, Thant encouraged JFK to make a secret commitment to Khrushchev to remove said missiles.⁷² Acting as the facilitative mediator during the Cuban Missile Crisis, Thant was able to “quickly grasp the . . . issues, . . . respond to the dynamic of the situation, [and] help the parties realistically evaluate his proposals to determine whether they address[ed] the parties’ underlying interests.”⁷³ By engaging in the mediation sessions, the two global superpowers of the time were able to retain their perceived positions of power. Conversely, reaching a deal outside of mediation may have appeared as a superpower’s concession and thus submission of power—an outcome desired by neither the United States nor the Soviet Union.

CONCLUSION

Through my analysis of the first thirteen days of the Cuban Missile Crisis, it is evident that prior to negotiating, the best action a party can take is adequate, thorough and strategic preparation. Analyzing the potential ZOPA, WATNA, and BATNA while remaining cognizant that certain factors may not yet be evident, creates a solid foundation for future negotiations. Although framing a position, adhering to relevant authority, and creating and maintaining a reputation during negotiations could help move negotiations forward, resorting to the authority of a mediator should always remain an option—especially, in complex matters with sophisticated, strong parties. Even though the Cuban Missile Crisis was not fully resolved within these thirteen days, by engaging in further mediations, the United

69. Leonard L. Riskin, *Mediator Orientations, Strategies and Techniques*, 12 ALTERNATIVES 111, 111–13 (1994).

70. *Id.*

71. A. Walter Dorn & Robert Pauk, *Unsung Mediator: U Thant and the Cuban Missile Crisis*, 33 DIPLOMATIC HIST. 261, 262 (2009).

72. *See generally id.*

73. MENKEL-MEADOW ET AL., *supra* note 8, at 546.

States was able to avoid potential global catastrophe. JFK himself, regarding the mediation sessions, stated: “U Thant has put the world deeply in his debt.”