

## MEMBERSHIP OF BANGLADESH IN THE INTERNATIONAL LABOUR ORGANISATION

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The emergence of Bangladesh as an independent state was one of the most important events in the history of South Asia, after the end of British rule from this region. Before its emergence as a sovereign independent state, Bangladesh was part of British India and then part of Pakistan, known as East Pakistan. Hence, in order to discuss the membership of Bangladesh, in the International Labour Organisation (hereinafter referred to as the ILO), we must first go back to India's membership in the ILO in 1919, followed by Pakistan's membership after 1947.

The International Labour Organisation was established by virtue of part XIII of the Treaty of Versailles.<sup>2</sup> At the first plenary session of the Paris Peace Conference, a Commission on Labour was set up to inquire into the conditions of employment, to consider the international means necessary to secure common action on matters affecting conditions of employment and to recommend the form of a permanent agency to continue such inquiry and co-operation with and under the direction of the League of Nations.<sup>3</sup> The Commission's report was discussed in some detail in the British Empire Delegation and it was agreed that the model of the Covenant of the League of Nations should be followed for the membership of the Labour Organisation. A plenary session of the Conference accepted this view and authorised its Drafting Committee "to make such amendments as may be necessary to have the Convention conform to the Covenant of the League of Nations in the character of its membership and in the method of adherence."<sup>4</sup> Accordingly Article 387 of the Treaty of Versailles provided:

The original members of the League of Nations shall be the original members of this organisation, and thereafter membership of the League of Nations shall carry with it membership of the said organisation.<sup>5</sup>

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<sup>2</sup> For text of the Treaty, see, ILO, Official Bulletin, Geneva 1919, Vol. I, p. 332.

<sup>3</sup> Wheare, K. C., "The Empire and the Peace Treaties 1918-21 ", in The Cambridge History of British Empire, Cambridge 1959, Vol. III, p. 660.

In order to explain India's membership in the ILO we need to discuss India's membership in the League of Nations. India's membership in these organisations is of special interest since it was at that time not a sovereign state nor a self-governing territory, but a part of British Empire.

The First World War had a profound effect on the attitude of His Majesty's Government towards India. Before 1917 the composition of the Imperial Conference was confined to the members of His Majesty's Government and the Governments of the Dominions. But in view of her war effort, India was represented at the special war Conferences of 1917 and 1918 and in the Imperial War Cabinet. The Conference of 1917 expressed the view that India should be represented at all future conferences. A resolution of the Imperial War Conference, 1917, referred to the Dominions as "autonomous nations of an Imperial Commonwealth" and to India as "an important portion of the same".<sup>6</sup>

The decision that India should be represented at all future Imperial Conferences, the great assistance rendered by her during the war, the resolution just quoted above, all had influence on the next step in the evaluation of her international status. Thus, when at the Paris Peace Conference special representation was given to the four chief Dominions.<sup>7</sup> In the British Empire delegation, the same treatment was accorded to India.<sup>8</sup>

In the very first meeting of the League of Nations Commission of the Peace Conference, President Wilson proposed amendment to Article VI of the Hurst-Miller Draft regarding membership of the proposed world organisation and suggested that the Covenant should contain the following: "only self-governing states shall be admitted to the membership in the League; Colonies enjoying full powers *of* self-government may be admitted"<sup>9</sup>

The debate on Wilson's proposal covered a wide range of issues. His amendment had admitted the self-governing colonies but India had been left out. Lord Robert Cecil emphasised the special position of India and asked that India's claim for membership should be recognised. He argued:

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<sup>4</sup> Ibid., at p. 661.

<sup>5</sup> See above note 2, at p. 332.

<sup>6</sup> Report of the Indian Statutory Commission, Vol. V, London 1930, p. 1634.

<sup>7</sup> Australia, Canada, New Zealand and South Africa.

<sup>8</sup> See above, note 6, at p. 1634.

<sup>9</sup> Miller, D. H., The Drafting of the Covenant, New York 1928, at p. 157.

The President's (Wilson) amendment admits self-governing colonies; but what about the Indian Empire? She mobilized a million men and made a valuable contribution to the Allied armies . . . If the League of Nations were to employ words, which would arbitrarily exclude India, it would be taken by those people as bitter insult. I am free to tell you that there is a spirit of unrest abroad in India of a serious character. The British Government is trying just as rapidly as possible to advance India into a self-governing colony; and for any thing to happen which would exclude India would be unfortunate indeed.<sup>10</sup>

President Wilson admitted that it was indeed hard to define self-government and stated:

For myself I have great admiration for India's performance. The spirit she has shown is fine. Nevertheless, the impression of the whole world is that she is not self-governed.<sup>11</sup>

The difficulty in admitting India, President Wilson pointed out, was that if India were admitted on any principle, that principle would have to be extended to other dependent territories, such as Philippines. At the same time he argued that it would be unwise to admit territories like the Philippines to the League.<sup>12</sup>

At this stage General Smuts, Prime Minister of South Africa, intervened in the discussion and pointed out that it was unnecessary to discuss India's case in such detail for "the Covenant itself takes care of India"<sup>13</sup> He cogently argued that India could become a member of the League by virtue of her being a signatory to the Peace Treaty (which also included the Covenant of the League of Nations) independent of any condition which might be laid down concerning subsequent members and it would not affect her.<sup>14</sup>

While President Wilson hesitated as to the membership of India, he did not finally object, as Miller observes, "no one else seemed to care."<sup>15</sup> In this manner, in a fit of virtual absent-mindedness, India became a member of the League of Nations and an anomaly in international law was created.<sup>16</sup>

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<sup>10</sup> Ibid., at p. 164.

<sup>11</sup> Ibid., at p. 165.

<sup>12</sup> Ibid., at p.166.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Ibid., at p.165.

<sup>16</sup> Sethi, L. R., "India In the Community of Nations" in Canadian Bar Review. Vol. 14, 1936, p. 40.

It must always be remembered that India was an original member and not an admitted member of the League. This is not just a distinction without a difference; it was of practical importance in the case of India. Original members acquired membership in the League under Article I, paragraph I of the Covenant. This paragraph did not prescribe any specific qualification for membership. It merely admitted that "the original members of the League shall be those of signatories which are named in the Annex to the Covenant". India was so named and therefore was an original member of the League. Mr. David Hunter Miller summed up India's membership in the League of Nations as "an anomaly among anomalies."<sup>17</sup> And it was indeed so. It was a striking paradox without parallel that India enjoyed, in theory at least and as a matter of course, the sovereign rights of the Dominions, notwithstanding the fact that it had not reached a condition of complete autonomy even in its internal affairs.

Thus, being a member of the League of Nations India became a member of the International Labour Organisation under Article 387 of the Treaty of Versailles in 1919. In spite of being a political dependency of Britain, India's membership of the League and the ILO was indeed the first step towards elevating its international status in the assemblies of the world.<sup>18</sup> It can be argued that India's admission to the League and to the ILO was the nature of a reward for the assistance it provided in the First World War to the Allies.<sup>19</sup> It also has been said that British Government was motivated by selfish interest, when she struggled for India's membership in the ILO, for this would secure the collateral support of India for Britain in her struggle for leadership at Geneva.<sup>20</sup>

Until 1947, India continued to be a member of the ILO under British colonial rule. But the Indian Independence Act, 1947 passed by the British Parliament on 12 July, 1947 which provided that from the fifteenth day of August, 1947 two independent Dominions were to be set up in India, to be known respectively as India and Pakistan.<sup>21</sup> The Indian Independence Act

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<sup>17</sup> See, Miller, D. H., *supra* note 9, at p. 493.

<sup>18</sup> See, Dhyani, S. N., International Labour Organisation and India, New Delhi 1977, p. 121.

<sup>19</sup> See, Puri, M. M., India in the International Labour Organisation, The Hague 1958, p. 29.

<sup>20</sup> See, Dhyani, S. N., *above* note 18, at p. 122.

<sup>21</sup> For the Indian Independence Act, 1947, see, The Public General Acts and the Church Assembly Measures of 1947, Vol.1, Chapter 30, London 1947, pp. 236-255.

raised questions of far-reaching implications from the viewpoint of international law. The Act had brought about the division of British India into two Dominions, India and Pakistan. In the case of the division of India, there was no act of international law to which India was a party in her international capacity. Nor was there anything in the Act even remotely suggesting that the Dominion of India was a continuation, pure and simple, of India's juristic personality. On the contrary, it is manifest from the provisions of the Act that the territory of British India in its entirety had been partitioned between two Dominions. There was no express or implied reservation in the Act that the juristic personality of India would continue. Hence, it could reasonably be argued that India had ceased to exist in international law and its place had been taken by the Dominions of India and Pakistan.

However, before the date set for this change (15 August, 1947), the Secretariat of the United Nations was obliged to consider the legal consequences with regard to membership and representation in the United Nations. In substance the following questions were raised: a) Did the division of India result in the extinction of the member state? Was it, in legal effect, a 'dismemberment' or merely a succession or breaking away of a part of state? b) What consequences did the constitutional change and the transfer of sovereignty had on the status and representation of the Member State? c) What was the status of the new state of Pakistan? Did it succeed to the rights and obligations of a member under the charter? These questions were answered in a brief legal opinion of the Assistant Secretary-General in charge of the Legal Department which reads as follows:

From the viewpoint of international law, the situation is one in which part of an existing state breaks off and becomes a new state. On this analysis, there is no change in international status of India; it continues as a state with all the treaty rights and obligations, and consequently, with all the rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new state; it will not have the treaty rights and obligations of the old state, and it will not, of course, have membership in the United Nations.

In international law, the situation is analogous to the separation of the Irish Free State from Great Britain, and of Belgium from the Netherlands. In these cases, the portion which separated was considered a new state; the remaining portion continued as an existing state with all the rights and duties which it had before.<sup>22</sup>

The opinion did not analyse the facts in the Indian situation but merely drew attention to what it considered the analogous situation involved in

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<sup>22</sup> United Nations Press Release PM/473, 12th August, 1947.

the separation of the Irish Free State from Great Britain, and Belgium from the Netherlands.<sup>23</sup> It could be argued that the analogy of the Irish Free State would be inapplicable since it came into existence as a result of a treaty concluded by Great Britain in 1921. This was an act of international law done by Great Britain in her capacity as an international person, and there was nothing in the Act to prejudice the continuance of her international personality.<sup>24</sup>

The position was entirely different in the case of India. The Dominion of Pakistan did not set itself up as an independent state by virtue of an agreement with India. There had been no act of international law to which India had been a party and which was the source of independence of the Dominion of Pakistan. The situation would have been totally different if India had become a Dominion before the partition and had thereafter agreed to the succession of those areas which were included in the Dominion of Pakistan. Similar results would have followed, if before the passing of the Indian Independence Act, 1947 India had with the approval of the British parliament, concluded a treaty with the seceding areas for the constitution of a separate state. However, that was not the case. Two separate Dominions had been created by virtue of a Statute of the British Parliament and not by an international agreement to which India was a party.

Whatever criticism may be centred against the legal opinion of the Secretariat, nevertheless India and Pakistan had considered themselves the problem of the devolution of the international rights and obligations, and arrived at an agreement. The agreement was promulgated by the Governor-General in the Schedule to the Indian Independence (International Arrangements) Order, 1947 which provided *inter alia*:

2 (a) Membership of all international organisations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India. b) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organisation as it chooses to join.<sup>25</sup>

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<sup>23</sup> Schachter, O., "The Development of International Law Through the Legal Opinions of the United Nations Secretariat", in British Year Book of International Law, Vol. 25, 1948, p. 102.

<sup>24</sup> Sen, S. D. K., "The Partition of India and Succession in International Law", in Indian Law Review, Vol. 1, 1947, p. 197.

<sup>25</sup> For the Text of the Agreement see, The Gazette of India Extraordinary, 1947, pp. 911-12.

Under these provisions it is significant that Pakistan did not succeed to the membership of international organisations or the rights and obligations attaching to such membership but had to apply to become a member of any organisation it chose to apply. Thus, it did not become a member of the UN or the ILO, nor did it succeed to the rights and obligations attached to India by reason of its membership in those Organisations.

However, Pakistan applied for membership in the UN immediately on 15 August, 1947 and in accordance with the provisions of the Charter was admitted to the United Nations. Similarly on 29 October, 1947, the Foreign Secretary of Pakistan applied for the membership in the ILO under paragraph 3 of Article 1 of the ILO Constitution.<sup>26</sup> The Foreign Secretary in his letter stated:

Pakistan hereby formally accepts the obligations of the Constitution of the International Labour Organisation in accordance with paragraph 3 of Article I of the Constitution of the Organisation and solemnly undertakes fully and faithfully to perform each and every of the provisions thereof . . . I am to state that the Government of Pakistan recognises that the obligation resulting from the International Labour Conventions ratified by India prior to 15 August, 1947 continue to be binding upon Pakistan in accordance with the terms thereof.<sup>27</sup>

Hence, in accordance with paragraph 3 of Article 1 of the Constitution of the ILO, Pakistan became a member of the Organisation on 31 October, 1947, the date of the receipt of the above communications.<sup>28</sup>

In one sense, the admission of Pakistan to the ILO was not one of admission of a new member. Until 15 August, 1947 Pakistan and India continued as one entity. On 15 August they agreed to constitute themselves into two sovereign states. One chose to continue to call itself by the old name of India, which had applied to the whole of the country and the other elected to call itself by the name of Pakistan. Inasmuch as Pakistan had been a part of India, it was in effect under the latter name, a signatory to the Treaty of Versailles and an original member of the ILO. Therefore, it can be argued that Pakistan was not a new member of the ILO, but a co-

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<sup>26</sup> Article 1(3) of the ILO Constitution reads as follows: "Any original member of the United Nations and any state admitted to membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter may become a member of the International Labour Organisation by communicating to the Director General of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organisation".

<sup>27</sup> ILO, Record of Proceedings, ILC, 30th session, Geneva 1947, p. 529.

<sup>28</sup> *Id.*

successor to a member State which was one of the founders of the Organisation.

In 1971, East-Pakistan<sup>29</sup> in the name of Bangladesh declared itself independent and after a war of liberation achieved its independence in the same year.<sup>30</sup> Within a short time of its independence, on 30.5.1972, Bangladesh applied to the ILO for membership under Article 1(4) of the ILO Constitution through its foreign minister Mr. Abdus Samad Azad.<sup>31</sup> Under Article I, paragraph 3 and 4 of the ILO Constitution, the procedure for admission of new members differs according to whether a state is, or is not, a member of the UN. In the former case a country may become a member of the organisation merely by communicating to the Director General its formal acceptance of the obligations of the Constitution, while in the latter a country is admitted by a two-thirds majority vote of the International Labour Conference. Since the People's Republic of Bangladesh was, at that time, not a member of the UN, its admission was to be governed by paragraph 4 of Article 1 of the Constitution of the Organisation.<sup>32</sup>

In its letter of 30 May, 1972 the Government of Bangladesh communicated to the Director General of International Labour Office the formal acceptance by that Government of the obligations of the Constitution of the ILO. In the same letter the Government of Bangladesh recognised that the People's Republic of Bangladesh would remain bound by the obligations of the international labour Conventions which were in effect for its territory at the time of its declaration of independence.<sup>33</sup>

In accordance with prescribed procedures, the Selection Committee of the ILO appointed a sub-committee of two Government members, two

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<sup>29</sup> The State of Pakistan comprised two parts, i.e., East Pakistan and West Pakistan.

<sup>30</sup> For independence of Bangladesh see, Chowdhury, S. R., The Genesis of Bangladesh, London 1972; Chowdhury, A. K., Independence of East-Bengal, Dhaka 1984; Zaheer H., The Separation of East Pakistan: The Rise and Realization of Bengali Muslim Nationalism, Karachi 1994.

<sup>31</sup> See supra note 27, 57th Session, Geneva 1972, at p. 301.

<sup>32</sup> Article 1(4) of the ILO Constitution reads as follows: "The General Conference of the ILO may also admit members to the organisation by vote concurred in by two thirds of the delegates attending the session, including two thirds of the Government delegates present and voting. Such admission shall take effect on the communication to the Director General of the International Labour Office by the Government of the new member of its formal acceptance of the obligations of the Constitution of the organisation".

<sup>33</sup> See supra note 27, 57th Session, Geneva 1972, at pp. 301-302.



employers' members and two workers' members to examine the application. After consultation with the duly accredited representative of the People's Republic of Bangladesh the sub-committee recommended to the Selection Committee that the People's Republic of Bangladesh should be admitted to membership.

Thereafter, the report of the Selection Committee concerning the application of the Government of Bangladesh for admission to membership of the ILO was presented to the Conference by its Chairman, who commended the resolution for adoption. The report was then open for discussion in the Conference.<sup>34</sup> The discussion began with the Government delegate of Pakistan who declared that his Government had not recognised the authorities in Dhaka and his president Mr. Z. A. Bhutto was making serious and determined efforts to find solutions to the problems facing Pakistan and the other peoples of the South-East Asian continent. In these circumstances, he requested the Conference to kindly appreciate that his delegation was unable to associate with the Resolution.<sup>35</sup> The Government delegate of the Libyan Arab Republic endorsed the statement made by the Pakistani delegate and proposed to postpone consideration of this matter until the General Assembly of the United Nations had taken a decision on the Bangladesh issue.<sup>36</sup>

The Government delegate of Turkey made the following observation on the issue:

I should like first of all to state that the Turkish Government has no objection to the admission of Bangladesh to the organisations belonging to the United Nations family. Nor does it question, in principle, its admission to the ILO. Nevertheless, the matter we have to settle now is essentially a political issue, and its implications, with no doubt whatsoever, go far beyond what is within the competence of the ILO.

My Government has always held the view that matters relating to admission into the UN system, where such admission may have political implications should be a matter to be settled by the General Assembly of the United Nations, which by its very nature is the political forum *par excellence* of this inter governmental system.

Consequently the Government delegation of Turkey believes that the question of admission of Bangladesh as a member state of organizations

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<sup>34</sup> Ibid., at pp. 421-422.

<sup>35</sup> Ibid., at p. 422.

<sup>36</sup> Ibid., at p. 424.

in the United Nation system should first of all be subject to a decision by the General Assembly of the United Nations.<sup>37</sup>

Despite the observations made in the Conference by the Government delegates of Pakistan, the Libyan Arab Republic and Turkey; the Government delegates of Australia, Belgium, France, India, Japan, New Zealand, USSR and Yugoslavia all recommended the admission to membership of the People's Republic of Bangladesh. The Government advisers of Poland and Venezuela and the employers' delegate of India and workers' delegate of Canada also supported the admission of Bangladesh.

When the discussion was over, the President of the 57th Session of the International Labour Conference proceeded to a record vote on the adoption of the resolution submitted by the Selection Committee. The result of the vote was as follows: 313 votes in favour, 0 against, with 53 abstentions, The resolution was therefore adopted on 22 June, 1972 and consequently the People's Republic of Bangladesh became a member of the ILO.

Now the question arises whether Bangladesh's immediate application for membership was motivated by a wish to respond to labour issues promptly or by a desire to confirm its standing as a sovereign nation-state? As mentioned earlier, at the time of application for membership, the Government of Bangladesh notified to the ILO that it would remain bound by the International Labour Conventions which were in effect for its territory at the time of declaration of independence.<sup>38</sup> From this statement can we conclude that the Government really wished to respond to labour issues promptly? Irrespective of the then Government's attitude about labour issues, at this juncture we may take the view that in applying for membership and committing itself to abide by the Conventions which were in force at the time of declaration of independence, the then Government was motivated by a desire to confirm its standing as a sovereign nation-state. The above contention concretises through the statement, which the Director General of the International Labour Office registered with the Secretariat of the UN. It reads as follows:

Part of the regular procedure of admission of new states to the ILO is a declaration by them to the Director General that they recognise that they continue to be bound by the obligations arising from the provisions of the International Labour Conventions which their predecessors have made

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<sup>37</sup> Ibid., at pp. 423-424.

<sup>38</sup> Ibid, at pp. 301-302.

applicable to their territories.<sup>39</sup>

In the case of International Labour Conventions — which presuppose that their contracting parties will be members of the ILO — membership has been used by the organisation as a means of bringing about succession to Labour Conventions. Beginning with Pakistan in 1947, a practice has grown up under which every newly independent state makes a declaration recognising that it continues to be bound by obligations entered into in respect of its territory by its predecessor.<sup>40</sup> This practice, initiated through the Secretariat of the ILO in its early stages, had few exceptions. Sri-Lanka,<sup>41</sup> Vietnam<sup>42</sup> and Libya<sup>43</sup> preferred to declare that they would give early consideration to the formal ratification of the Conventions. But the practice has now become so invariable that it has been said to be almost inconceivable that a new state should ever in future become a member without recognising itself to be bound by the Labour Conventions previously applicable in respect of its territory.<sup>44</sup>

This prompts the conclusion that the hasty application made by Bangladesh for membership in the ILO may well have been motivated by its desire to achieve international recognition and acceptance rather than to respond to the labour issues promptly. Further, it is also apparent that given the nature of colonial rule and Pakistani rule, the then Government of Bangladesh had no scope to express its concern about the appropriateness of the obligations which it undertook without any reservations and further could not give any thought of renouncing any of the ILO Conventions which were in force at the time of independence as it could be detrimental to her membership and even could make it impossible.

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<sup>39</sup> Yearbook of International Law Commission, Vol. II, New York 1962, p: 122.

<sup>40</sup> Yearbook of International Law Commission, Vol. II, Part I, New York 1974, p. 179.

<sup>41</sup> ILO, Official Bulletin, Vol. XXXI, No.3, 1948, p. 223,

<sup>42</sup> *Ibid*, Vol. XXXIII, No.5, 1950, pp. 248-51.

<sup>43</sup> *Ibid*, Vol. XXXV, No.2, 1952, p. 85.

<sup>44</sup> See, United Nations Conference on Succession of States in Respect of Treaties, United Nations 1979, Vol. III, p. 10.

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