

# The International Status Of Bangladesh

(Article written on the 10th January 1972)

*(Note from the Editor: As from the date of writing, various countries have granted recognition to Bangladesh. Though some factors in the Bangladesh problem have changed, this essay provides an interesting study of the birth of this state in the light of rules of Public International Law).*

— by EUGENE MONTANARO —

The question of the international status of Bangladesh seems to be a problem which, besides embracing different aspects of international law, is also permeated with international politics, financial issues, and the racial and religious tensions of the Indian subcontinent. And while we are here concerned with the legal principles relevant to the problem it does not seem right to disregard the underlying realities — especially the political realities — of the Bangladesh question.

When Pakistan became independent its territory was geographically divided into two wings completely separated from each other by Indian territory. Yet now the forces of nationalism bolstered up by armed intervention on the part of India seem to have brought about the secession of the East wing — Bangladesh — from the northern country of Pakistan. *De facto*, East Pakistan appears to have disappeared to become Bangladesh. Thus when Sheikh Mujibur Rahman returned to Dacca he was welcomed as the leader of the new state of Bangladesh. But is Bangladesh a state in the international law sense?

The requirements of statehood in international law appear to be the following: a permanent population; a defined territory; a government enjoying the habitual obedience of the bulk of the population; a capacity to enter into external relations with any other states.

As to the first requirement nobody in his right senses would say that Bangladesh lacks a population. Nor is there reason to believe that this population is any sense nomadic. The striking feature here is that this population is in any sense nomadic. The

striking feature here is that the population of Bangladesh tends to swell in numbers day by day with the repatriation of those Bengalis who had previously taken refuge in neighbouring India. But otherwise the population is a fairly stable and is certainly not the equivalent of a wandering tribe. So that the first factual characteristic of statehood — a permanent population — seems to be present in Bangladesh.

The second regular requirement of statehood is a defined territory. Territory is of course vital; its absence would not entitle us to speak of an active and stable government in Bangladesh. Now at the moment of writing Pakistan still insists on the unity of the country and still claims the territory of Bangladesh. But on the other hand there seems to be no reasonable prospect of Pakistan reasserting its authority over the Bangladesh territory. And this seems to bring us to the heart of the problem, namely, the requirement of a government which is in effective control over the territory of Bangladesh and which enjoys the habitual obedience of the majority of Bengalis.

We know that in Bangladesh there is at the present time an administration

formed by the Awami League and led by Sheikh Mujib as Prime Minister. It was this same political body which victoriously swept the board in last year's election in East Bengal at a time when East Bengal still formed an integral part of Pakistan. And with the outright majority such as the Awami League then gathered, Sheikh Mujib's administration might at first sight seem to offer Bangladesh a firm and stable government. But on closer examination the pattern which emerges from the Bangladesh situation does not appear to be all that smooth. At the moment of writing Indian troops are still present in Bangladesh; these troops have stayed on in Bangladesh following the most recent round in the series of Indo-Pakistani armed conflicts. There are also rival guerrilla forces present in Bangladesh. India had after all intervened to aid the Mukti Bahini, an independent guerrilla force fighting for a free Bangladesh. And in this connection, the presence of the Bihari Muslims in Bangladesh may also be the cause of some embarrassment and friction especially since the Baharis appear to have strong Muslim ties with the concept of Pakistan. In such circumstances it is relevant to consider the extent to which Sheikh Mujib's administration is a government in Bangladesh. Does this administration have clear authority and has it established effective control over Bangladesh? Do law and order in Bangladesh depend on the continued presence of Indian troops? The answers to these questions really depend on the factual realities of the situation. But perhaps it is only a matter of some time before Sheikh Mujib's administration can remove all doubts and satisfy one and all that his administration is in fact the lawful government of Bangladesh.

Finally we come to the requirements of a capacity to enter into external re-

lations with other states. Does Bangladesh have such a capacity? Here Bangladesh is as yet at a disadvantage. Whenever part of an existing state breaks away in an attempt to form another independent state, third states tend to be reluctant to enter into any relations with it before they have granted it recognition. Thus it would seem that it is only through recognition that Bangladesh will be able to acquire a capacity to enter into external relations with existing states. But here again there is a further obstacle for with the appearance of a new entity the granting of formal recognition tends to become a controversial issue. In such circumstances it is not unknown for such states to evaluate the factual situation in a manner which best suits their political and national interests.

Now before recognition may be granted to the government, as distinct from the state of Bangladesh, international law would appear to require that that government must enjoy the habitual obedience of the bulk of the population, that it must manifestly control the territory over which it claims sovereign rule, and that it must have a reasonable expectancy of permanency. And at the moment of writing it is not yet clear whether Sheikh Mujib's administration satisfies these requirements to the full. But this is not to equate the concept of recognition with the requirements of statehood. In respect to our problem the two concepts are closely related in that states are not likely to enter into relations with the Bangladesh before they have granted it recognition and hence probably Bangladesh will not fully satisfy the requirements of statehood before a certain number of states have granted it recognition. However, the legal significance of the recognition of Bangladesh is in itself a separate issue, an

issue about which there are two principal theories in international law, the declaratory theory and the constitutive theory. According to the constitutive theory it is the act of recognition alone which creates statehood. According to the declaratory theory, once the four conditions of statehood are satisfied, a state exists as such prior to, and independantly of, recognition. The better approach is perhaps to adopt the declaratory theory and also to say that recognition is a legal act; for if we embrace the constitutive theory and then go on to say that recognition is a political act we would really be making nonsense of the four characteristics of statehood.

When we come to apply the appropriate legal principles to the Bangladesh situation we find in the first place that, as far as the four essential characteristics of statehood are concerned, it is still difficult to establish whether Bangladesh already possesses a fully stable government. In such circumstances recognition by the outside world may not be immediate and hence

states are not likely to be hustled into relations with Bangladesh. In view of these difficulties we cannot really say that Bangladesh has already attained statehood in international law. But on the other hand it is clear that the two former wings of the old Pakistan cannot be reattached in any organic political form. Bangladesh, it appears, has come to stay. Presumably if the Indian troops were to be withdrawn from Bangladesh and if Sheikh Mujib's administration were then to show that it can still stand on its own the major obstacles would have to be removed. Perhaps the only other outstanding problem would be the normalizing of relationships between Bangladesh and its former mother country-Pakistan. But only time can provide a solution to these problems. In the meantime it appears that the exact legal status of Bangladesh is as yet undetermined. Perhaps the most we can say by way of a conclusion is that it is an entity which is on its way to becoming a state in the international law sense.