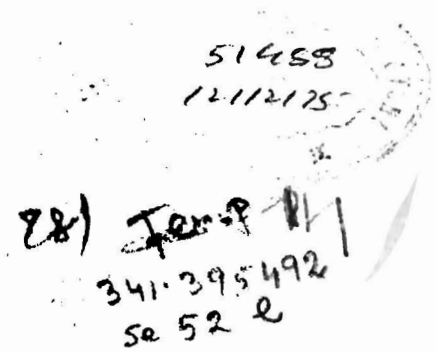

INAUGURAL SPEECH

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It is proper that the International Law Association in its Calcutta Centre has decided to sponsor a Seminar on Bangladesh and International Legal Norms. Being primarily an organisation dedicated to research in law in its application to international problems—International Law Association can discuss the topics chosen for discussion with a scientific objectivity. I have the pleasure in inaugurating the Seminar in which distinguished lawyers and scholars are expected to participate and I beg to convey my thanks to the organisers for inviting me to inaugurate the seminar.

The subjects chosen for discussion are—

i) War Crimes, Genocide and Crimes against Humanity

ii) Bangladesh and Norms of Self determination

iii) Bangladesh and New Bearings on Principles of Recognition.

The subjects are interesting and provocative and throw up a challenge to students of international law to explore new angles and new areas in international legal norms, and I am confident the participants in the Seminar will accept the challenge and will not hesitate to define boldly their concepts of international legal norms in the context of the behaviour of national communities and their Governments, in recent times, when the world was faced with a calculated and naked genocide and flagrant violation of human rights and fundamental freedoms on an unpreeedented scale in Bangladesh. International law can have life and content if there is an international community conscious of its rights and obligations. When we talk of world conscience we think of a world community. International or world community is still now a dream concept and naturally our concepts on international behaviour are in the process of formation. Authors of treatise on international law are still now engaged in modelling the international law on concepts of domestic or municipal laws. Even there—the world is dividing itself into two, if not more blocks—with different ideas about the social base and laws are getting different orientations. The world jurists (I doubt whether such a community exists) are therefore engaged in evolving certain conventions of common minimum agreement for the purpose of regulating human behaviour in international relations. Perhaps a move in the right direction is discernible when we find in many countries and states in their codified laws they are

absorbing in a limited way some of the international conventions, and if this process continues international law may find a base in municipal laws of the countries of the world.

United Nations—which unfortunately for the weaker nations and oppressed nations—has become the cockpit of political manoeuvres of big powers failed to meet the challenge of invasion on human rights which took place in Bangladesh. There is no other international forum where oppressed humanity in Bangladesh could appeal for succour and protection. It is indeed a matter for pride and glorification for us—that India staked its own existence for the cause of human freedom. One of the questions that will come up for discusion in this Seminar will be—did India violate international code of conduct when she sent her troops into Bangladesh in defence of human rights ? Was the slaughter, rape and killings going on in Bangladesh—at the hands of an army of occupation an internal affair of Pakistan so much so that the rest of the world has to keep its eyes and ears sealed ? Could India and should India have had her border sealed so that the victims of oppression in Bangladesh could not cross the border to save them from annihilation ? Was she acting consistent with international legal norm in opening her border and giving shelter to the oppressed people in Bangladesh and to the people of Bangladesh who rebelled against the oppressive regime ? Pakistan was politically 'a State' consisting of two parts geographically constituting two countries inhabited by peoples racially and culturally constituting different ethnological groups. If one such part—numerically a minority but controlling the army and administration starts a process of exploitation and extermination—has the people inhabiting the other part a right to fight for self-determination and freedom from exploitation and annihilation ? What is the answer in International law when the oppressed people in a country rises in rebellion against the oppressors from another country—even though the two countries had agreed at one time to form politically a State ? This is one aspect the learned participants in the Seminar will have to dwell upon in the course of their discourse.

In the context of the facts of recent history which I need not recount, had not the people of Bangladesh right of secession from Pakistan, the political state of which it was a component ? The Awami League had secured overwhelming confidence of the people in the election which was conducted under the aegis of the then military rulers. They went to the people and asked for their suffrage on definite issues of self-determination and obtained the mandate of the people. The political dialogue between the representatives of the people and the military rulers failed, and a planned calculated orgy of genocide and destruction were let loose on the people. The people's representatives declared independence and formed a people's government on the soil of their country—not a Government in exile, not an emigré government. What was the status of that Government in International Law, even though the capital and certain other parts of the country

were under forcible occupation of the Army of the Western wing of Pakistan ? When India accorded recognition to the new State and its Government did India act in accordance with International legal norms ? Could the act of according recognition to the new State and Government of Bangladesh by India be treated as interfering in the internal affairs of Pakistan ?

To what extent again may the theory of non-interference in the internal affairs of a state be stretched ? Principle of non-interference is linked up with the question of sovereignty of a State ? What again is the proper and correct definition of sovereignty according to the modern concept of a State, if people in the State do not enjoy fundamental human rights and freedoms ? Where does sovereignty lie if right of men to government by consent is negated by violent usurpation of power ? Right of man to political freedom and to government by consent is now sanctified by the Universal Declaration of Human Rights.

Linked up with that question perhaps another question may be pertinently raised. Had Pakistan, at the time the army of the Western Wing was in occupation of the—Eastern Wing—a legally constituted Government ? We are told that the Pakistan Supreme Court had recently ruled that assumption of power by Yahya Khan was not constitutional. Whenever a military junta seizes power by a coup and keeps the people under control on gunpoint—should such usurpation of power by force by a military junta be recognised in International Law ? If only the will of the people can be the basis of authority of a Government and rule by tyranny cannot be given a sanctum in International Law, it appears to follow logically that the people have a right to throw out the usurper and for that purpose seek assistance from other countries and nations. When therefore India sent her troops at the request of the Government and people of Bangladesh could her conduct be branded as an act of aggression against Pakistan. If in any event India was morally justified, could she be legally wrong ? Is not International legal norm founded on fundamental morality and moral values ?

The most provocative topic for discussion in this Seminar, however, is the topic of War Crimes, Genocide and Crimes against Humanity. Crimes against humanity is the genus and war crimes and genocide can be taken to be species of that genus. The subject is vast and is intrinsically connected with questions of fundamental morality. A philosopher may rightly ask—if war as a means of settlement of issues between States and peoples cannot be eliminated—can commission of war crimes be prevented ? War itself is a crime against humanity. When we talk of laws or customs of war do we not indulge in legalistic quibbles ? In this Seminar, however, we are going to discuss the subject with an objective approach. Taking war as an inevitable evil—nations have endeavoured to evolve certain common norms of international behaviour in war and peace and since the Hague Conventions of 1907 if not earlier, human endeavour to lay

down rules and conventions to control beastiality in men which is aroused in war or armed conflicts have never ceased. The various landmarks in that continuous process of civilising the brute in men will be found in the Hague Conventions, the Geneva Protocol and Conventions, the Nuremberg Charter and the various resolutions and declarations adopted by the United Nations Organisation. The learned participants in the Seminar will naturally recount them in the course of the discussions... I am only pinpointing some of the basic issues for discussion.

Is war crime properly and adequately defined ? In the context of the recent happenings in Bangladesh does it require to be restated ? The Nuremberg Charter has tried to define war crimes and also give a more or less exhaustive categorisation of persons who are liable to be hauled up for war crimes. The crux of the whole concept appears to be to give protection to the non-combatant civilian population. But with the modern technique of warfare it is becoming wellnigh impossible to draw the line, when extensive aerial bombing with heavy explosives are being resorted to as is happening in Vietnam today, or a blockade of a country's ports, waterways and roadways with a view to starve a nation from all supplies is being applied. We are having undeclared wars, racial strife, civil wars, political risings, sudden coups and seizure of power—all resulting in armed conflicts in a big or small way. Is it possible to evolve a common charter seeking to protect human rights in all such contingencies ? In the context of the events in Bangladesh from before March 25th, 1971 and even after the surrender of the Pakistan Army most of the crimes against humanity committed by the Pakistan army and its collaborators more aptly fall within the ambit of Genocide as defined in the various Articles of the Genocide Convention of 1948, and to me it appears the definition of Genocide is well-conceived. The problem does not lie in definitions but how to evolve a procedure for bringing the criminals against humanity to trial, to establsh with the concurrence of nations a Court or forum for trial whose writs and decisions will be binding on nations. The tragedy lies in leaders of States and nations talking in high-flown language about human rights, but violating all conventions and rules of civilised behaviour without the least compunction when their mundane interests clash with fundamental laws of human behaviour.

The question of prisoners of war and the Geneva Conventions of 1949 will be pertinent issues for your discussion. The prisoners of war in the Bangladesh War surrendered to the joint command of the Indian and Bangladesh Army —though for reasons of expediency the prisoners had to be shifted to camps in India and are now in the custody of the Government of India. Law appears to be settled, if we can talk of any international convention being settled law, that the prisoners of war are entitled to protection and humane treatment during their custody but they are not immune from trial for war crimes, crimes against humanity

and Genocide—if charges on those heads can be substantiated against them. If the people and Government of Bangladesh have evidence to substantiate charges and they set up a tribunal to try them—neither the Government of India nor the Government of Pakistan can raise any objection. The issue of trial for war crimes and genocide is not a political issue to be decided by political discussions between parties. The issue is of much deeper significance and international community in their own interest must recognise that crimes against humanity are not negotiable commodities and even Pakistan is bound to agree to a trial. It also appears to be reasonably settled, though the Nuremberg trial appears to be the only precedent, that the crimes having been committed on the soil of Bangladesh—the people and Government of Bangladesh will be acting within their rights to set up their own Tribunals in their own country to try the criminals. It will be entirely their domain to nominate the Tribunal and the only requirement that binds them is to ensure fair trial and fair opportunities of defence. The principles of natural justice must be fully observed. Laws of Extradition cannot be invoked to impede transfer of the prisoners from India to Bangladesh—if and when summons will issue from the Tribunals which may be set up in Dacca, because these crimes are not political crimes and conditions or existence of extradition treaties are irrelevant for the purpose. In my view —if the people and Government of Bengladesh, on evidence collected by them, are satisfied prima facie that certain prisoners of war are liable to be tried—the Government of India cannot sit on judgment over their decision, and on requisition from the Tribunals that may be set up in Bangladesh the Government of India has to forward the prisoners of war for trial before the Tribunals.

The world powers should not intervene and raise any false issue of 'peace' to prevent the proposed trials—as such precedents of condonation of heinous crimes against humanity will spell disaster to the concept of and growth and development of international conscience, which alone can save humanity from utter damnation. Peace flows from human behaviour not from political barterings.

In conclusion may I also suggest a proposition for your consideration. Law of Crimes is directed against men who violate law. In modern concept of Law of crimes, corporations and Association of persons are also amenable to penal laws. In International law—if leaders of—States and Governments instigate or connive at crimes against humanity by their armies or officers or men—why should not a 'State' be treated as a person and be made answerable? I know these are problems which are beset with practical difficulties. But we are concerned with establishment of International Legal Norms and why should not we declare that crimes against International Laws are committed not only by men but by States and Governments as well, and a State—the Government of which abetted the commission of war crimes or

crimes against humanity whether in aid of war or to serve other political ends, should be amenable to the penal jurisdiction of International Law. After all International Law is nothing more than a reflection of International conscience. The problem of international crimes lies not so much in defining the crimes but in evolving a procedure for trial and punishment. Whatever procedure may be evolved cannot be made effective without the voluntary concurrence of the nations. There should not be much difficulty in deciding the locus of the trial. This can follow the ordinary rule of law viz., the locus of trial will be the locus of the crime and it will be within the right of the State or States where the crimes were committed to set up the machinery for trial. Though a principle of universality of jurisdiction in the matter of International Crimes appears to have gained recognition—it is my personal view that the recognition of such a principle is fraught with risks of unscrupulous seizure of alleged war criminals to serve political ends. There is of course a recognised procedure in ordinary criminal law that if a subject of a State commits a crime abroad he can be tried in the State if found within the limits of the State. As in all crimes—mens rea is an essential ingredient in international crimes and plea of superior order is not available for defence. As yet, to my knowledge no concept of absolute crime has found recognition in international law. Some thoughts should be bestowed on this aspect so that States may be made amenable to the penal jurisdiction of International Law for crimes committed by their armies or subjects. No complexity also ought to arise about constitution of the Tribunals. The victims of the crimes have undoubted right to set up their own tribunals, and it is for them to satisfy the test of fair trial by selecting proper personnel in the Tribunals. It is not necessary that judges constituting the Tribunals should be recruited from other or neutral countries, nor is it necessary to internationalise the Tribunals.

These crimes—whether called war crimes or genocide or crimes against humanity are primarily crimes committed against civilians or in excess of rules of war, and it should also be recognised that these trials need not be held by military Tribunals. So far as crimes of Genocide are concerned trial need not or does not depend upon war or cessation of hostilities. Such Crimes, constituting attempts to exterminate a civilian population, are crimes irrespective of war or political hostility. Some critics have raised questions, as to whether, according to the Geneva Convention of 1949, India can detain the prisoners of war even after the cessation of hostilities. The Geneva Convention requires repatriation of prisoners of war after cessation of active hostilities. It is always a question of fact whether there has occurred cessation of active hostilities. The armed conflict ceased because of unilateral declaration of cease fire on the part of India, but since then there has been numerous

instances of cease fire violations, and war-like postures of Pakistan have not ceased. In my view India is justified in detaining the prisoners of war pending conclusion of a peace treaty. I also do not agree with some critics —whose criticisms appear to be politically motivated—that India has no right to transfer the prisoners of war, against whom there may be prima facie evidence of war crimes or genocide, to the custody of the Government of Bangladesh. I do not find any legal impediment in the way of India making over the prisoners charged with genocide or war crimes, and it is also not correct to say that because the prisoners are lodged in camps in India— they are not prisoners of war who had surrendered to the joint command of Indian and Bangladesh Army and as such in the de jure custody of both the Governments. Moreover Bangladesh Government has declared unequivocally their adherence to the Geneva Convention and even though the Government of Bangladesh has been constituted recently—Bangladesh as a component unit of the erstwhile State of Pakistan can legitimately claim that no formal accession to the Geneva Convention is even needed to lend assurance to their adherence to the Geneva Convention, and on this score also there cannot exist any impediment in the way of India transferring those prisoners of war who are wanted for trial to the de facto custody of Bangladesh. As I have already observed—Pakistan being a signatory to the Geneva Convention is legally and normally bound to accede to the demand of Bangladesh that prisoners of war and their collaborators be tried before the Tribunals to be set up by the Bangladesh Government in accordance with the legal norms of fair trial and India is under a legal obligation to make those prisoners available for trial in Bangladesh.

LEGAL BASIS OF THE PROPOSED TRIAL OF PAKISTANI MILITARY PERSONNEL FOR GENOCIDE AND CRIMES AGAINST HUMANITY COMMITTED IN BANGLADESH

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The Captioned subject raises questions of far-reaching importance in the field of International Law relating to armed conflicts. In every case of war-like operation or of armed conflict, whether such conflict be of an international character or of the nature of a civil war, questions about the extent to which a Military Officer can properly and legitimately exercise his powers and the circumstances in which an exercise of such powers would result in what are known as crimes in International Law are questions which have always engaged the attention of students of International Law.

As an illustration one may take note of a case which happend soon after the First World War. It was announced that General von Tesmé had been arrested for the execution of 112 inhabitants of Arion at the beginning of the German invasion, and that General Liman von Sanders had been brought before a court martial at Constantinople charged with having ordered the massacre of Armenians and Syrians during the war. It will be seen that such charges do raise serious and important questions relating to a military officer's personal responsibility for his crimes.

It is true that as a general rule a military officer discharges his duty under the direct authority of the sovereign power of the State; he either carries out orders received from his commander or formulates orders of his own under such discretion as may be conferred on him by his commander; in either case he is the instrument through which the sovereign authority acts. International Law takes note of this position. By the Law of Nations and articles of war which form a part thereof, a military officer is not personally responsible for acts legally committed by him in the exercise of military duty; but the fact of his being a military officer will not relieve him from liability for his crimes.

The problem has to be considered from two aspects viz.,

(a) What is the source and extent of the officer's power i.e., how and by what law is his action controlled; and

(b) Is the alleged offence a violation of the law governing the case ?

Observations of M. Talleyrand made as long ago as 5th December, 1806, is as true today as it was when first published ;

> War is not the relation of man to man but the relation of State to State, in which private individuals are only enemies by accident and not as men nor as members of subjects of the State ; and the law of nations does not allow that the right of war and of conquest from which it is derived should be applied to peaceable and unarmed citizens ; to dwellings and private property ; to the merchandize of commerce ; to the warehouses where it is stored ; to the wagons that transport it ; to the unarmed boats that convey it on the rivers and on the sea ; in a word to the persons or property of private individuals. It is to this law born from the civilization which has favoured its progress that Europe is indebted for the maintenance and increase of its property even amidst the frequent wars that have divided it. (Moniteur Universal, December 5, 1806)

Modern warfare is waged only against armed forces of the enemy. Unless those fighting bring themselves within the ordinarily recognised definition of a soldier they render themselves liable to be treated as bandits or outlaws and to be summarily tried, condemned and shot ; but in no case does the conduct of a private individual authorise or justify the military authority of an enemy to maltreat or kill non-combatants, or make reprisals or retaliate against an organisation or group to which the individual may belong, out of motives of bitterness and revenge. Even the uniformed soldier when made a captive is entitled to be treated as a prisoner of war ; the un-uniformed private individual who wages war, and is captured, is entitled at least to be tried before he is condemned.

The armed forces have, pending hostilities, authority to do whatever the laws of war permit ; conversely, they have no right to violate those laws and transgress them with impunity. Should they do so they are to be treated on a level with bandits and outlaws and thereby be deprived of the protection which the laws of nations and the articles of war extend to justifiable warfare. This is the reason why violent and unnecessary cruelty and wanton destruction of life and property are condemned as crimes and are punishable as such by Judicial Tribunals irrespective of the fact whether the offender was an officer or soldier acting under the dominion of his sovereign. It cannot be stressed too strongly that military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, maiming or wounding except in fight ; nor of torture, nor extortion of confessions.

In this context it may be useful to take note of one important historical fact :

On April 24, 1863 by the direction of President Lincoln, General Orders No. 100 were issued containing Instructions for the Government of Armies of the United States in the Field. These instructions were prepared by Professor Francis Lieber, to whom lasting credit is due for one of the best, if not the best, embodiment of the laws and usages of war ever written. These instructions contained amongst others the following passage :—

> Martial law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not military law ; it is the abuse of the power which that law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honour, and humanity virtues adorning a soldier even more than other men, for the reason that he possesses the power of arms against the unarmed.

The influence of this declaration is to be seen in the attempts which ultimately were successful in 1899 in producing a code acceptable to nearly all the members of the family of nations who were either assembled at The Hague Peace Conference or accepted the principles formulated and adopted at the Conference. The work of the Conference was sub-divided and distributed among Commissions, the questions relating to improvements in the system of the laws and customs of land warfare and rights and obligations of neutrals being sent before the Second Commission presided over by the then Belgian Minister of State. In opening the proceedings the President of the Commission observed as follows :—

> Even yesterday a Military Chieftain might say : what is the law of Nations. A mass of rules locked up in the head of jurists. I do not recognise their force. Today we may reply : These rules have been sanctioned by your Government, which is henceforth bound by its signature. They must be obeyed.

Two Articles of the Convention which are significant are Articles XLVI and XLVII. Article XLVI provides that family honours and rights, individual life and properties as well as religious conviction and liberty, must be respected. It further provides that private property cannot be confiscated. Article XLVII categorically prohibits pillage.

The Convention defines the limit of military authority in a hostile territory and sets forth in clear and unmistakeable terms, the rights of private individuals and private property. The Convention not only became a part of the law of nations, but became a law of all the nations acceding thereto, and bound their military commanders when within the territorial limits of any one of the contracting powers, while it cast its protection over the lives

of non-combatants and secured from destruction and confiscation, their property. The Hague Convention of 1899 was a law of the land in these countries to which it applied and prescribed a rule by which the rights of private citizens or subjects therein should be determined.

The Hague Conventions constitute formal recognition by the International Community of certain basic principles of International Law of War. One of such principles is that the Government established over the enemy's territory during its military occupation may exercise all the power given by the laws of war to the conqueror over the conquered, but is subject to all the restrictions which that code imposes. The conqueror is obliged by the laws of just war to spare those who lay down their arms, who ask for quarter, or who lie wounded and helpless—to put such to death is to commit murder. And those who commit it ought to die in the hand of hangman and not of the soldiers. (*Vide* Phillimore : International Law, iii, p. 156).

As Halbeck in his Book on International Law, Vol.2 page 662 puts it :

> It is of little consequence whether the conqueror's Government be called a military or a civil Government ; its character is the same, and the source of its authority the same. In either case it is Government imposed by the laws of war, and so far as it concerns the inhabitants of such territory those laws alone determine the legality or illegality of its acts.

The *Supreme Court* of the United States has observed that the laws of war, as established among nations have their foundation in reason and they tend to mitigate the cruelties and misery produced by the scourge of war (*Vide 67 U.S. 667*). It necessarily follows that the exercise of military power where rights of citizens are concerned must never be pushed beyond what the exigency of the situation requires. For instance where death or injury to the person results from the illegal exercise of naval or military authority, or from acts done by naval or military authorities without jurisdiction, it would seem that the responsible parties are liable to criminal proceedings, whether the offence be committed within or without the realm.

In *Ex parte Milligan* (*71 U.S. i, 124*) it was argued that in a time of war the Commander of an armed force has the power within the lines of his military district to suspend all civil rights and their remedies and subject citizens as well as soldiers to the rule of his will ; and in the exercise of his lawful authority cannot be restrained except by his superior officer. This contention was summarily repelled by the Court with the following observations :—

> The statement of this proposition shows its importance for if true republican Government is a failure there is an end of liberty regulated by law. Martial law established on such a basis destroys every guaranty of the

Constitution, and effectually renders the Military independent of and superior to the Civil power—the attempt to do so which by the King of Great Britain was deemed by our fathers such an offence that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together ; the antogonism is irreconcilable and in the conflict, one or the other must perish.

The Hague Conference of 1899 was followed by a further Conference in 1907 where conventions were signed prohibiting resort to certain methods of waging war, prescribing humane treatment of persons and similar matters. Many of the prohibitions had been enforced long before the date of the Convention ; but since 1907 they have certainly been crimes punishable as offences against law of war ; yet the Hague Convention nowhere designates such practice as criminal nor is any sentence prescribed nor is any mention made of a Court to try and punish offenders. For many years past however Military Tribunals have tried and punished individuals found guilty of violating the rules of land warfare laid down by this Convention (A.J. 41 (1947) p. 218).

A significant development of this branch of International Law is reflected in the four Geneva Conventions of 1949 which provide uniformly that in the case of an armed conflict not of an international character occurring in the territory of one of the parties to the Convention each party to the conflict shall be bound to apply as a minimum, certain humanitarian provisions of a fundamental character. The most significant of these provisions as contained in Article 3 forming part of Chapter I which contains the general provisions which are common to each of the four Conventions, lays down that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms or are otherwise incapacitated shall in all circumstances be treated humanely without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria. The Conventions prohibit, with repect to such persons, murder, mutilation, cruel treatment, torture and generally violence to life and person (Oppenheim, International Law, Vol. II, 7th Edition, Art. 59(a), p. 210).

It is true that the armed conflict which eventually led to the disruption of the State of Pakistan was not "war" within the meaning of International Law. To be war, the contention must be between States. Thus the contention between the raiders under Dr. Jameson and the former South-African Republic in January 1896 was not war. Nor is a contention with insurgents or with pirates a war. A so-called civil war need not be war from the beginning and may not become one at all, in the technical sense of the term, in international law. On the other hand, to an armed contention between a

suzerain and its vassal State the character of war ought not to be denied, for both parties are States although action of the vassal may, from the standpoint of constitutional law, be rebellion. Again, an armed contest between one or more member-states of a Federal State and the Federal State itself must be considered as war in international law. Thus the war of Secession within the United States between Northern and the Southern member-states in 1861-1865 was real war. (Oppenheim, op cit., Vol. II, 7th Edn. Art. 56, pp 203-04).

On the other hand *civil war* in the proper sense of the term exists when two opposing parties within a State have recourse to arms for the purpose of obtaining power in the State or when a large portion of the population of a State rises in arms against the legitimate Government. Such a civil war need not be, as has been seen, a war from the beginning, nor become war at all, in the technical sense of the term, but it may become war through the recognition of the contending parties or of the insurgents, as a belligerent power.

Be that as it may from the point of view of the question under discussion there is hardly any distinction between "war" and "civil war" so far as the obligations of contending parties under the Geneva Conventions are concerned. As has already been seen, the Geneva Conventions of 1949 provide uniformly that in the case of armed conflict *not of an international character* occurring in the territory of one of the parties to the convention each party to the conflict shall be bound to apply as a minimum certain humanitarian provisions of fundamental character.

It may be interesting briefly to notice the difference in the scheme respectively of the Hague and Geneva Conventions. The Hague regulations are limited to safeguarding merely a few fundamental human freedoms and even those in a fragmentary manner. For instance, according to Article 46 the Occupying Power's duty to respect family honour and right and the lives of persons as well as religious convictions and practices is affirmed. Article 44 directs that the population of occupied territories may not be forced to furnish information on the army of the other belligerent or its means of defence. According to Article 52 requisitions in kind and personal services must not involve the inhabitants in the obligation to take part in military operation against their own country.

The inadequacy of these and other provisions of the Hague Rules became apparent during the First World War. But unfortunately nothing of significance happened until the Geneva Conventions of 1949, except perhaps the draft convention submitted by the International Committee of the Red Cross to the Tokyo International Conference on Red Cross of 1934.

In the interest of more effective protection of civilian population of occupied territories, the Hague Rules were strengthened by the Geneva Convention IV in four ways :—

(i) Existing obligations were made more articulate and spelled out in greater detail. This is evident from a comparison of paragraph 1 of Articles 56 of the Hague Rules with Article 27 of Geneva Convention of 1949 ;

(ii) The number of prohibitory rules was extended and, correspondingly, the catalogue of protected freedoms e.g., taking of hostages and the deportation of protected persons from occupied territories were expressly prohibited.

(Articles 34, 49 of Geneva Convention IV of 1949).

(iii) Positive duties were imposed on the occupying power, e.g., new clauses were introduced on the protection of children, the supply of food and medicaments to the population etc.,

(Articles 50, 55 and 56 of Geneva Convention IV of 1949).

(iv) Geneva Convention IV of 1949 incorporated a machinery in ensuring the aplication of the convention.

(Articles 31, 39, 42-4, 60, 62, 65, 66, 77, 86-7) (Further Articles 9 and 11, 12, 30, 71, 72, 74, 76, 140, 143 of Geneva Convention IV of 1949).

On the special subject of "Genocide" a short historical background may be of interest. In the course of evidence before the International Military Tribunal of Nuremberg it appeared that "at any rate in the East, the mass murders and cruelties were not committed solely for the purpose of stamping out opponents of or resistance to the German occupying forces. In Holland and the Soviet Union these crimes were part of a plan to get rid of native populations by expulsion or annihilation, in order that their territories can be used for colonisation by Germans" (Cmd. 6946 (1946) page-52).

As early as September 1939 the defendant Keitel, who was the then Chief of the German High Command, told the witness that the "Polish intelligentsia and nobilities were to be liquidated". (Ibid -page -91)

In its judgment (1946) the Tribunal limited itself to a mere outline of the macabre techniques used in the German death factories, also termed "extermination institutions". (Ibid -page 94)

It has already been seen that the German attempt to exterminate particular ethnic groups was a clear violation of Article 46 of the Hague Regulations of 1899-1907 which enjoined the occupying power to respect, inter alia, the "lives" of persons in occupied territories. Soon after the Second World War the General Assembly of the United Nations sponsored the Genocide Convention of 1948. In Geneva Convention IV of 1949, the High Contracting Parties specifically

agreed that each of them was prohibited from taking any measure which would lead to the extermination of protected persons in their hands.

(Article 32 Cmd. 550 (1958) page-232).

It is to be noted that the Charter of the International Military Tribunal established by the United Kingdom, United States of America, French Republic and the Soviet Union had already formulated certain international norms or heads of crimes in international law viz., "crimes against peace, "war crimes" and "crimes against humanity". The last category of crimes included murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war, or prosecution on political or religious grounds in execution of or in connection with any crimes within the Tribunal, whether or not in violation of the domestic law of the country. The Tribunal's Charter was part of the executive agreement concluded by four major Allied Powers—mentioned above, on 8th August, 1945, which, inter alia, specified the procedural and substantive rules to be applied ; but its roots went back at least to the joint declaration of Roosevelt, Churchill and Stalin issued at the Moscow Conference in October 1943 which contained a pledge in the following language :

At the time of the granting of any armistice to any Governmet which may be set up in Germany those German Officers, and men and members of the Nazi party who are responsible for, or have taken a consenting part in the atrocities and massacre and execution, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of those liberated countries and of the free Government which will be erected therein, and that those whose offences had no particular geographical location will be punished by a joint decision of the Government of the Allies.

(See Robert K. Woetzel, The Nurgmberg Trial in International Law, page—3).

This appears to be the background of the charges which were framed against the 22 defendants before the International Military Tribunal and which anticipated the Genocide Convention of 1948.

Under the Genocide Convention, the wilful killing of protected persons is one of the contraventions singled out as 'grave" breaches" of the Convention. The significance of this classification is that, in relation to crimes in this category, each Party to the Convention is bound, first, to enact, if necessary, adequate criminal legislation for the effective punishment of persons directly or indirectly responsible for such acts and, secondly, to bring them to trial or—but only "in accordance with the provisions of its own legislation"—to extradite them to another Party, provided that "it has made out a prima

facie case. Any of these breaches of the Convention also amounts to a "war crime" in the strict sense of the term".

Schwarzenberger—International Law, Vol. II, page 215).

Under the Tribunal's Charter, "crimes against humanity" covered inhumane acts committed against civilian population, provided two provisos were fulfilled. First, such acts had to be committed in the execution of, or in connection with, "war crimes" in the strict sense or "crimes against peace". Secondly while 'crimes against humanity" might overlap with "war crimes" in the strict sense and "crimes against peace", they were intended to constitute an auxiliary category. So long as a regular conection between "crimes against humanity" and the other two types of war crimes under the Charter existed, the Tribunal's jurisdiction regarding "crimes against humanity" extended to crimes committed in time of peace and against German nationals or State-less persons. Whether such acts were lawful under any particular local law was irrelevant. (See Cmd. 6946 (1946) page -60 et seq.).

The object of this category of "crimes against humanity" was to make more readily amenable to the Tribunal's jurisdiction acts of persecution and extermination of whole groups of civilians, The Nuremberg Tribunal singled out inhumane action against particular groups : political opponents of the Nazi regime, "useless eaters" that is, aged, insane and incurable people, and ethnical minorities such as the Jewish population in countries under the sway of the Axis Powers. (Cmd. 6946 (1946) page—60 et seq. page 100).

It is to be noted that both the Nuremberg and the Tokyo Tribunals held that formulation of crimes under their Charters was merely declaratory of existing international customary law. Whether and how far this particular view is well founded is a larger question which does not strictly arise in the context of the present article. Having regard to the Four Power Protocol of October 6, 1945 it is possible to contend that the contracting parties who were the authors of the Charters of the International Military Tribunals were anxious to avoid any misinterpretation of their intention as having codified a generally applicable rule of international customary law. (See Schwarzenberger, op cit., pages 497-8).

It is needless to stress that the decision of the Nuremberg and Tokyo Tribunals have great persuasive value and so has the decision of the Court of Israel in the Eichmann Case to be noted presently, and that they will have considerable influence on the decisions of any military or other Tribunal which may be set up in Bangladesh or elsewhere for trial of Pakistani Military Personnel or prisoners of war for crimes against humanity perpetrated by them in Bangladesh. There is, in our view, a very strong legal basis for such trials both in customary international law well as in the—Conventions and Charters affirming

and declaring, if not codifying, such law as noted above. It is necessary at this stage to give some further consideration to the Genocide Convention and incidentally to take note of the origin of War Crimes Tribunals.

It is interesting to note that the defence of "superior orders" has never been accepted as valid by War Crimes Tribunals. As long ago as 1474 it was urged by the defendant in the celebrated Breisach Trial that as an officer in the employment of the then Duke of Burgundy from whom he had received his commission and his orders he had no right to question the orders which he was charged to carry out and that it was his duty to obey. But the Tribunal rejected this plea on the ground that to accept the defence put forward by and on behalf of the defedant would be contrary to the law of God and that his crimes were established beyond doubt. Accordingly the Tribunal found the accused guilty and condemned him to death.

This trial may be said to be the precursor of the later international war crimes trials. At the time when the trial took place Burgundy was not at open war with her enemies but the acts of cruelty which were committed by the defendant Peter Von Hagenbach, the officer of the Duke of Burgundy, were still held to be such as deserved punishment. The ratio of the Tribunal's decision very probably was that the concerned crimes fell into the category of what in the language of modern International Law would be termed "crimes against humanity" rather than technical "war crimes".

It is not necessary, neither is it possible within the short compass of the present article, to trace the gradual evolution of this aspect of International Law or of the Tribunals for their enforcement since the 15th century. It would be sufficient for our present purpose to take note of the fact that the crime of "genocide" was defined in the Convention for the Prevention and Punishment of the Crime of Genocide adopted by the United Nations General Assembly on 9th of December 1948 and "Crimes against humanity" and "War Crimes" were defined respectively in the Charter of the International Military Tribunal and in Control Council Law No. 10.

According to the Advisory Opinion of the International Court of Justice on the Genocide Convention[1] the principles underlying the Convention are "principles which are recognised by civilised nations as binding on States even without any conventional obligation" and that the Convention was intended to be "universal in scope"[2].

[1] Reservations to the Convention on Genocide : I. C. J. Reports 1951, P. 15 ; (1951) 18. International Law Reports p. 364, at p. 370.

[2] Ibid at p. 370.

The Advisory Opinion of the International Court of Justice while dealing with the question of the faculty of High Contracting Parties to make reservations to the Genocide Convention indicated the views of the Court about the origin of the Convention. According to the Court the origin of the Convention shows that it was the intention of the United Nations to condemn and punish genocide as "a crime under international law" involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations. (Resolution 96(1) of the General Assembly, December 11, 1946). The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognised by civilised nations as binding on States, even without any conventional obligations. The second consequence is the universal character both of the condemnation of genocide and of the co-operation required "in order to liberate mankind from such an odious scourge" (Preamble to the Convention). The Genocide Convention was therefore intended by the General Assembly and by the Contracting Parties to be definitely universal in scope. It was in fact approved on December 9, 1948, by a resolution which was unanimously adopted by fifty-six States.

The objects of such a Convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a Convention that might have this dual character to a greater degree, since the object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a Convention the Contracting States do not have any interests of their own; they merely have, one and all, a common interest, viz., the accomplishment of those high purposes which are the *raison d 'ętre'* of the Convention. Consequently, in a Convention of this type one cannot speak of individual advantages or disadvantages to State or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide by virtue of the common will of the parties, the foundation and measure of all its provisions. (*Vide* (1951) 18 International Law Reports, p. 364, at pp. 370-371). Therefore there was no doubt that genocide was recognised as a crime under International Law. Ex tunc, and accordingly jurisdiction over it was universal. Although Article 6 of the Charter of the International Military Tribunal expressly assigned jurisdiction either to the State on whose territory the crime was committed or to International Tribunals, it did not exclude universal jurisdiction. The Convention had two aspects; (a) —the confirmation of certain principles as established rules of

customary International Law ; and (b), the determination of Conventional obligations between the parties for the future. Article 6 established a compulsory minimum, which did not affect the existing jurisdiction of States under customary International Law.

Further, according to the International Military Tribunal crimes against humanity and war crimes (as defined in Article 6 of the Charter of the International Military Tribunal) were "the expression of International Law existing at the time of its i.e., the Tribunal's creation,[3] while the United Nations Military Tribunal at Nuremberg in the Justice Trial[4] said that the I.M.T. Charter must be deemed to be declaratory of the principles of International Law in view of its recognition as such by the General Assembly of the United Nations.

It is interesting to note that the penal jurisdiction of States over "foreign offenders" is not limited by any prohibition of retroactivity. The International Military Tribunal had observed that the maximum "nullum crimen sine lege" is not a limitation of sovereignty, but is, in general, a principle of justice[5]. In respect of these crimes generally recognised as violations of the basic principles of humanity and the rules of law, the plea of retroactivity has been rejected by the International Military Tribunal and by Municipal Courts. (See Attorney General of the Government of Israel—Vs—Adolf Eichmann, 36, International Law Reports. Part VI, page-5 et. seq.,).

In the context of the present discussion the Eichmann Case is of interest from more than one point of view. In the Eichmann Case there existed the necessary "link" between Israel and the crimes defined in the Law ; a "crime against the Jewish people" postulated an intention to extinguish the Jewish people in whole or in part ; and the connection between the Jewish people and the State of Israel constituted an integral part of the law of Nations proclaimed by the Declaration of the Establishment of the State of Israel in 1948, the United Nations General Assembly Resolution of November 29, 1947, calling for the—establishment of a Jewish State in Palestine, and its subsequent recognition. The place of extermination included those Jews living at that time in Palestine, and was one of the causes of the establishment of the State ; half of its citizens were recent immigrants from Europe and had lost relatives in the massacre there. The following quotation from the summary of the Eichmann Case as appearing in the 36th Volume of the International Law Reports page 12, has in our view an important bearing on

[3] In re Goering and others — Annual Digest, 13 (1946) p. 203 at p. 207.

[4] In re Altslötter and others (Justice Trial) Ibid 14 (1947) p. 278.

[5] Loc. Cit. at p. 208.

the conceivable pleas which may be raised against the jurisdiction of the Bangladesh Government to set up Tribunals for the trial of Pakistani Army Personnel for crimes against humanity :

> It was irrelevant that the State of Israel did not exist at the date of the commission of the crime in question ; the protective principle confers jurisdiction in respect of interests existing at the date of the enactment of the law—in this instance the defence of the Jewish people by the punishment of those responsible for the massacre. A new State may try crimes committed even outside its territory before its establishment where, inspite of a change of sovereignty over territory, there exists a continuity of law ; the Nazi and Nazi Collaborators (Punishments) Law may be regarded as filling the gap in the laws of Mandatory Palestine, protecting interest existing then, since the Mandate itself constituted international recognition of the Jewish people. A still broader principle was applicable to genocide : the right of the injured group to punish offenders is derived directly from the crime committed against them, and only its want of sovereignty denied it the power to punish ; if the injured group of people thereafter achieved political sovereignty in any territory it may exercise such sovereignty for the enforcement of its natural right to punish the offender who injured it. In any event, no specific rule of international Law has been shown denying the power of Israel to try the crime in question.

It is to be noted that the Nazi Collaborators (Punishment) Law was enacted by the Israeli Parliament in 1950.

In view of the above formulation of the relevant legal position in International Law it can hardly be doubted that crimes against humanity are recognised as crimes in International Law. It also follows that principles of International Law form part of the National Law or the Common Law of Bangladesh. It appears to us that there exists a close similarity between the essential jurisdictional facts in the two cases. Indiscriminate massacre of non-combatant Bengalees and their persecution on a gigantic scale forcing no less than ten million people to take refuge in India, wanton destruction of private property in Bangladesh without any justifying military necessity, all go to furnish the necessary link between the crimes and the territory of Bangladesh. We venture to think that any legislation that may be passed by the Legislature of Bangladesh formulating charges against Pakistani Army Personnel or prisoners of war and setting up a machinery for their trial will not be in conflict with the prevailing principles and practice of International Law.

It cannot be seriously contended that the perpertators of the crimes against humanity could not have a criminal intent (*mens-rea*) because they

did not and could not know that what they were doing was a criminal act. In that view of the matter any contention which may be raised that a law which may now be enacted giving reality to the dictates of elementary justice and providing for trial and punishment of the concerned offenders would conflict, by reason of its retroactive application, with the rules of natural justice, would be without substance. It is interesting to note that in the Eichmann Case a contention was raised that the law of Israel, by imposing punishment for acts done outside the boundaries of the State and before its establishment, against persons who were not Israeli citizens, and by a person who acted in the course of duty on behalf of a foreign country, conflicts with International Law and exceeds the powers of Israel Legislature. The Court felt no difficulty in rejecting the contention. The Court held that from the point of view of International Law, the power of the State of Israel to enact the law in question or Israel's right to punish is based, with respect to the offences in question, on a dual foundation ; the universal character of the crimes in question and their specific character as intended to exterminate the Jewish People.

Similar considerations arise out of the diabolical acts of cruelty perpetrated with the utmost ruthlessness and in utter disregard of all the norms prescribed by customary and conventional International Law, prompted mainly by motives of retaliation and revenge and having no connection whatever with any justifiable military necessity. The immunity of non-combatants from direct attack is one of the fundamental rules of the International Law of War and non-combatants are not, under existing International Law, a legitimate military objective. (Oppenheim, op. cit., Vol II, pages 524, 525).

The universal character of the crimes committed by the offending Pakistani Military personnel is beyond question. Equally beyond question is the avowed and deliberate intention of such Military Personnel to exterminate the Bengalees who form a distinct ethnic group. It is unnecessary to recapitulate the happenings in the eastern wing of Pakistan (now Bangladesh) between March and December 1971. They are a matter of common knowledge. An analysis of these happenings, particularly those during the crucial period of 16th to 25th March 1971 and what followed thereafter reveals a well laid sordid and callous strategy of perfidiousness and deception unparalled in history. As the Manchester Guardian puts it "while he (Yahya Khan) negotiated with Mujib, his generals planned carnage". A more flagrant and deliberate violation of the norms of International Law of War built up by the International Community down the ages through so much blood and agony, is difficult to imagine.

Some Jurists have commented that the Eichmann trial has created a

dangerous precedent although they have at the same time conceded that the Jerusalem Court could not perhaps have any authoritative guidance from the International Community. (See the Article of D. Lasok entitled "The Eichmann Trial" in the International and Comparative Law Quarterly Vol. II, Part 2, page 355). To this view we respectively demur. It appears to us that there was sufficient legal basis on which the decision of the Court could be, as indeed it was, based, in the available legal literature and the precedents and practice of Intetnational Tribunals.

May 19, 1972

Mr. B. Das
Chairman, ILA, Calcutta Centre,
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Calcutta - 19

REPORT ON SEMINAR

A two day Seminar was held by the International Law Association Regional Branch (India), Calcutta Centre, in collaboration with the Ramakrishna Mission Institute of Culture on May 19 and 20, 1972 at the Institute premises. The subject was *Bangladesh and International Legal Norms.*

Mr. Ajit Kumar Datta, Advocate, Supreme Court of India, inaugurated the Seminar at 4.30 p.m. on Friday, May 19th, at the Vivekananda Hall and Mr. B. Das read a paper on :

Legal Basis of the Proposed Trial of Pakistani Military Personnel for Genocide and Crimes against Humanity Committed in Bangladesh

Registration and distribution of Papers prepared for the Seminar as well as printed *Background Material* specially arranged to encourage effective participation took place at the inaugural meeting. Tea was served to members and guests.

The sessions on Saturday, May 20th, were held from 10 a. m.—1 p. m. with a coffee break, and, in the afternoon from 2 p. m.—5 p. m. Lunch was served to members and participants at the Guest House of the Institute.

The morning session on *War Crimes, Genocide and Crimes against Humanity* was held in the Conference room of the Institute, Mr. Ajit Kumar Datta presiding.

Mr. Datta initiated the discussion by raising a number of pertinent questions having a practical and legal significance for the international community in the context of the developing norms of international law. He emphasized that war crimes, genocide and crimes against humanity were not political crimes and, therefore, laws of extradition could not be invoked to prevent transfer of prisoners of war from India to Bangladesh. He further stated that the conditions or existence of extradition treaties were irrelevant for the purpose. The international community in its own interest, and in accordance with the dictates of natural justice, must realize that crimes against humanity are not negotiable commodities over which there may be political bartering on the basis of a peace preserving formula. The problem of international crimes lay not so much in definition as in evolving a procedure for trial and punishment. He was of the view that the locus of the trial

should be the locus of the crime in accordance with the ordinary rule of law. While the principle of universality of jurisdiction had been recognized in international crimes, Mr. Datta warned against such a procedure which could possibly end up in seizure of alleged war criminals for political ends.

Mr. Subrata Roy Chowdhury, Barrister-at-Law,* was the chief commentator in the morning session. Due to the inclement weather others on the panel, Professors Subimal Mukherjee and John Broomfield were unable to attend. Pressure of unforeseen circumstances prevented Mr. Tapas Banerjee (also on the panel as announced earlier) from attending the sessions. Effective participation by members and guests was possible as the text of the Genocide Convention (1948) had been circulated in advance. The Geneva Conventions (1949) were also available by courtesy of the International Committee of The Red Cross to aid the discussions but the ICRC is in no way associated with the views expressed at the seminar. Mr. Roy Chowdhury analyzed the Geneva Conventions (1949) and the Genocide Convention (1948) in their application to the crimes committed by Pakistani Military Personnel in violation of international law in Bangladesh and now held as prisoners of war in India. He particularly pointed out that in article VI of the Genocide Convention the forum for such trials was the state where the crime was committed which need not necessarily be a contracting party to the Convention. He further emphasized the universality of jurisdiction over crimes of Genocide. Analyzing and comparing the provisions of the Geneva Conventions (1949) and the Genocide Convention (1948) Mr. Roy Chowdhury pointed out that there was no conflict between the two in regard to the extradition of Pakistani prisoners of war from India to Bangladesh ; even if there was any such conflict the Genocide Convention (1948) having the character of *jus cogens* 'that is norms with which treaties must not conflict' must prevail over the Geneva Conventions. Moreover, no question of repatriation of Pakistani prisoners now in India can arise under Articles 118 and 119 of the Geneva Conventions until and unless (1) India is reasonably certain that Pakistan has no intention of resuming hostilities against her ; and, (2) until the proposed trials and period of punishment if any has expired. Numerous points were raised in the course of the discussion by members and guests which were adequately dealt with by Mr. Roy Chowdhury and Mr. Ajit Datta. It may here be pointed out that Mr. B. Das's paper on Friday had already referred to the Eichmann case which had an important bearing on pleas which might be raised against the jurisdiction of the Bangladesh Goverment to set up tribunals for the trial of Pakistani Army personnel. It was appreciated that

* Author of The Genesis of Bangladesh : A Study in International Legal Norms and Permissive Conscience, published by Asia Publishing House, Bombay, 1972.

the protective principle had been given due weight and the right of the injured group to punish offenders is derived directly from the crime committed against them. Thus it was irrelevant that the State of Israel did not exist at the date of the commission of the crime in question.

In a lively speech in the morning session Mr. J. P. Mitter, Barrister-at-Law, emphasized that the trials should be held for war crimes and genocide in Bangladesh and that such crimes were within the scope of the general principles of law as recognized by civilized nations. The morning session concluded at 1 p. m. with a vote of thanks to the chair.

The afternoon session convened at 2 p.m. in the Conference room, Mr. B. Das, Chairman, International Law Association, Calcutta Centre presiding. The Hon'ble Mr. Justice S. C. Ghose read a paper on *Bangladesh and Norms of Self-determination* in which he discussed the concept of self-determination and its application to Bangladesh in the manner following : (1) Definition of self-determination ; (2) Historical development of the idea of self-determination up to 1919 ; (3) Support of the idea of self-determination under international law ; (4) Self-determination in the form of Dominion status as evolved by the rulers of Great Britain ; (5) Partition of India—Birth of India and Pakistan ; (6) Norms of self-determination-Application of these norms to Bangladesh.

The principle of self-determination was recognised in the UN Charter and had evolved into a right to self-determination in resolutions adopted by the UN General Assembly in 1960, Res. 1514 (XV) and Res. 1541 (XV) and Declaration of 1970, Res. 2625 (XXV).

Justice Ghose raised the vexed question of whether the right of secession should be included within the concept of self-determination. While it is admitted that ethnically different peoples subjugated to alien rule must be free to govern themselves, no state he added would be willing to a accept the principle that a section of its own people be given the right to secede. However, transition from a colonial status to independence he stated is not regarded as secession in whatever manner it is achieved. Colonialism indeed is regarded as permanent aggression.

Justice Ghose affirmed that the legal or legitimate source of governmental authority must be the consent of the governed. It is not only a birthright of dependent or colonial peoples to achieve independence or self-determination but a right of all peoples to govern themselves through the media of their own choice. The right to self-determination in his view was thus abnegation of all governments who are not representatives of the governed, be it a foreign ruler, a military dictator or even a minority ruling over the majority by force.

The rule of the majority with adequate constitutional safeguards for the minority should indeed be the desired form of government.

Mr. Arun Kumar Dutt spoke on the significance of UN resolutions in determining the right to self-determination. Mr. Amalendu Dey of the Department of History, Jadavpur University spoke on the Lahore Resolution (1940) in the context of the aspirations of the people of East Bengal, now Bangladesh. Professor Nirmal Basu Ray Choudhury, Head of the Department of Political Science, Presidency College, Calcutta emphasized the political content of self-determination in its application to Bangladesh.

The second paper in the afternoon session was presented by Dr. Anil Chandra Banerjee, Guru Nanak Professor of Indian History, Jadavpur University, on *Bangladesh and New Bearings on Principles of Recognition.* Dr. Banerjee's paper was divided into three parts : (1) The first part explained the proposition that India's recognition of Bangladesh on December 6, 1971, was a striking departure from the usually accepted principles of International Law relating to the recognition of new States emerging as a result of armed struggle against existing states. The factual validity of the Indian view of the legitimacy of the Bangladesh Goverment was examined in some detail ; (2) The second part of the paper was devoted to explaining the classical principles of recognition of new States These principles view the issue of recognition primarily—if not solely—in the light of the 'dignity' and interest of the 'mother-State' ; these are not to be offended in the interest of the community struggling for liberation ; (3) The third part stressed the urgency of fresh thinking on the subject of recognition in the light of India's bold deviation from the classical principles. It was argued that the interest of the *peoples*, rather than the interest and 'dignity' of existing *States*, should be the chief criterion for the recognition of new States. International Law should no longer refuse to accept the 'will of the Nations' as the only rational test. Mr. Subrata Roy Chowdhury, Mr. Ajit Kumar Datta and others participated in the discussions.

Mr. B. Das, Chairman, thanked members and guests who participated in the Seminar and the Ramkrishna Mission Institute of Culture for providing all the facilities The afternoon session concluded with a vote of thanks to the chair.

June 22, 1972
7, Ballygunge Circular Road,
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Sd./ Basanti Mitra
Honorary Secretary

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