Chapter - VIII.

RECENT DEVELOPMENTS LIMITING STATE-SOVEREIGNTY IN INTERNATIONAL RELATIONS.

In the context of the present stage of international society, it is clear that the legal conception of independence has nothing to do, as Judge Anzilloti pointed out in the Austro-German Customs Unions case, with the numerous and constantly increasing states of 'de facto' dependence which characterises the relation of one country to other countries.¹

In fact the utility of traditional approach towards state sovereignty has been seriously undermined and the fundamental postulates upon which such a theory was anchored have been rudely shaken by the emergence of recent developments in the last half-a-century. The new cycle of civilization ushered in by science and technology has offered an unprecedented challenge involving a terrifying problem of adjustment. It has engendered a growing conviction that human society itself can hardly afford the cost of any war. Peace-loving people have
now begun to seriously think that since war has hitherto been the final sanction in all disputes in international relations, such relations should come to an end, in the sense that communities or states hitherto distinct must cease to have a separate and independent existence, in the same way in which the warring states or principalities of the Dark Ages were incorporated into the larger units within which the royal peace was maintained.  

The post-war period thus has shown more clearly the hollowness of national sovereignty, legal and political, the main symbol of the national state, in a world where the factors responsible for the amazing rise and expansion of nation states are fastly disappearing with the onrush of newer forces. As surveyed in a previous chapter, the new ideology of the Renaissance which emancipated the individual from the bonds of a static, religious and feudal society and imbued him with a new consciousness of his own powers, combined with the advance of modern technology and greater concentration on the economic organisation and development of society gave the modern Western State most of its authority and power. The vast disparity of military and economic power and the consequent inability of all except a few states to conduct and regulate their own affairs in real as distinct from nominal independence, have made us alive to the grave
and bitter implications of such developments in international relations. Thus, although there are fifty to sixty "sovereign" states which still make up the political map of the world, only a few "Super States" enjoy the attributes of real sovereignty. Any serious student of international events can hardly fail to notice how the inequalities of space, man-power and productive resources have destroyed the traditional concept of sovereignty for all but a few nations. The First World War and specially the Second World War have clearly shown how difficult it is for the smaller states to maintain their precarious neutrality in the event of a global conflagration like the ones that have taken place within our recent memory. The smaller States, for the imperative necessity of self-preservation, should be compelled to seek wider international alignments. The economic expression of this lack of real national sovereignty is the Marshall Aid programme; its political and military expression is the Atlantic Pact which seeks to co-ordinate the political and military measures of the member-states. The Communist States of south-eastern Europe, who strongly advocate national sovereignty, are in reality controlled by such super-national organisations as the Cominform or align themselves by defence pacts with the Soviet Union.
The chances of survival for the smaller states within this oligarchy of the greater Powers depend largely upon the interest the international aristocracy may have in the maintenance of their independence and separate existence. This explains why the independence and permanent neutralisation of Switzerland came to be demanded by the "general interest" of Europe. Again the direct interest of the great Powers in Europe in their mutual exclusion from domination and control of the Low Countries of Europe has served as the political guarantee of independence of countries like Netherlands and Belgium on the Atlantic fringe. Thus the history of the smaller powers clearly demonstrates that their existence as smaller states will not be seriously affected so long as they are not in a position to act contrary to the vital interests of the greater power on whose good will they are largely to depend.

In fact the development of world-politics, in recent years has called into question the utility of traditional thinking in terms of state sovereignty. The glaring disparity of manpower, of industrial and technical resources has, in the present age of aerial warfare and technical weapons, widened this inequality between great and small powers. "The
conquest of Belgium and Holland, in the last war required only a few days, in the future it may take only a few hours."

Thus the differences in the status of quasi-colonial relationship between states of different orders have become increasingly marked and have resulted in a sort of stratification in the international society establishing quasi-colonial relationship between states of different orders. "There is little disagreement that such relations involving loss of sovereignty on the part of the subordinate partners exists between the Soviet Union on the one hand and a number of so-called satellites on the other. It is however, often considered politically injudicious to call attention to such relations between countries outside the Soviet Sphere."  

Yet no serious student of current international relations can fail to discern the fact that one of the reasons for the political uneasiness which manifests itself in so many countries is the growing realisation that even their policy to-day is something which largely has gone or is gradually going outside the control of their own governmental institutions. Even many of the European countries were found wanting in adequate resistivity against this new
development and became its victim so much so that the best 
way to amend the American Constitution was to have the 
American President elected by European voters. Though 
expressed as a joke, this represents a real political truth 
because American decisions come to affect even the intimate 
day-to-day matters which are the concern of these national 
governments.

The development of the concept of neutrality between 
the two world wars and particularly after the second world 
war also affords a further interesting 
concept of 
neutrality 
study for our present analysis.

The experience of the two World Wars has amply 
demonstrated that the substantial aspect of the traditional 
law of neutrality which centres round the neutral rights 
of commerce and intercourse generally has become obsolete 
to a large extent. In modern war in which the military and 
economic aspects of the national effort are inextricably 
intertwined, the concessions which the belligerent is in 
the position to make to neutral commerce are very narrowly 
circumscribed. Indeed "it is, as yet, difficult to visualise 
the nature of the principle which, in modern war, may be 
capable of effecting a compromise between the claims of
neutral commerce and those of the belligerent determined to apply the economic measures which he considers essential for emerging victorious in the struggle in which his existence is at stake.7

The Covenant of the League of Nations, we are told, put an end to the principle of the traditional law of neutrality. Article 10 of the League Covenant created obligation for the Member States "to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League". Thus it was impossible for a member of the League to stand aside and take no part in the common defense of the victim of an act of aggression.8 According to Art II of the Covenant, "any war or threat of war, whether immediately affecting any of the high contracting parties or not", is a matter of concern to the whole League and the League was authorised to take "any action that may be deemed wise and effectual to safeguard the peace of nations." Art 16 of the Covenant provided that a member of the League which resorted to war in violation of its obligations of peaceful settlement was "ipso facto" held have committed an act of war against all other members of the League and the latter were pledged to discontinue trade and financial relations with it. Thus Article 16
made it seem that neutrality, at least for League members, was no longer possible in the traditional sense. It was said that: "The idea of neutrality of Members of the League is not compatible with the other principles that all the Members of the League will have to act in common to cause their covenants to be respected." 9

Yet it would be inaccurate to assume that the Covenant had totally abolished neutrality. In wars between Members of the League which were not commenced in disregard of the obligations of the Covenant, the relations between the belligerents and other Members of the League were governed by the accepted rules of neutrality. 10

By the end of the second World War, however, there appeared to be an even greater revulsion from the concept of neutrality than there had been earlier. 11 There has been a notable shift in the traditional basis of the concept of neutrality. Thus in his suggestion for a world organisation, Prof. Brierly wrote ".... though the obligations which states undertake will probably not be uniform, there seems to be a minimum obligation which every state may fairly be required to accept, and having accepted may be expected to honor. This would be a negative undertaking, a promise at least not to assist any state found under the agreed procedure"
to be an aggressor, and not to impede the action of other states taking more positive steps for enforcing the law. The details of such a minimum obligation would require careful consideration, but at the least it would mean that every state would be bound to deny to an aggressor the rights that neutrals have traditionally been expected to accord to belligerents. It would not be tolerated that any state which had agreed to enter the system even with limited obligations should supply, or allow its nationals to supply, an aggressor with the kind of assistance that neutral Swiss factories or neutral Swedish mines have been affording the aggressor in this war."

The Charter of the United Nations, we are assured, marks the end of neutrality as a legal system. No doubt the Charter does not expressly mention the effect of its provision upon the traditional law of neutrality, but the inconsistency between the new and the old law was too obvious to require specific mention. Thus according to Art I, paragraph I, one of the primary purposes of the United Nations is "to maintain international peace and security and to that end to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace." "These words
established the principle of the so-called Security." Article 2(5) provides: "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action." Article 2(6) provides: "The Organisation shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security. "Chapter VII of the Charter provides for the "effective collective measures" for its detailed implementation. As Kelsen points out, "we speak of collective security when the protection of the rights, the reaction against the violation of law, assumes the character of collective enforcement action." 

According to the learned Professor, "as to the obligations stipulated by Article 2, paragraph 5 ...... it makes the status of neutrality incompatible with membership in the Organisation. If by Article 2, paragraph 6, the obligation of paragraph 5 is imposed also on non-Members, no non-Member state can, with reference to its duties of neutrality or its status of permanent neutralisation refuse to give assistance to an enforcement action taken by the United Nations against a Member or non-Member State." No doubt such an attempt of
the Charter to apply to states which are not contracting parties to it must be characterised as revolutionary. 15

There are many who think that the position of neutrality under the Charter resembles in some ways that under the Covenant; while the Charter has affected in a decisive way the right of the Members of the United Nations to remain neutral, it has not substantially abolished their right to neutrality either in wars between Members of the United Nations or in wars between non-Members or between Members and non-Members.

Still the Charter has made a great advance by introducing the principle of collective responsibility of the Member states thus greatly undermining the traditional concept of neutrality which presupposes international anarchy of sovereign states.

The matter was further discussed in the United Nations itself. On September 23, 1947, the General Assembly referred to the Sixth (Legal) Committee a draft declaration on the Rights and Duties of States submitted by Panama. Sections 19 and 20 of that draft provided as follows:
(§ 19). Co-operation in the Prevention of Acts of Force. It is the duty of every State to afford the Community of States every kind of assistance in whatever action that community undertakes, and it should abstain from rendering assistance to any State against which the community is conducting preventive or coercive action.

(§ 20). It is the duty of every State to take, in co-operation with other States, the measures prescribed by the competent organs of the Community of States in order to prevent or put down the use of force by a state in its relations with another State, or in the general interest.

No doubt the Draft Declaration does not represent positive international law, but the fact that many states took the view that there was a duty binding on third states to refrain at least from aiding a state against which international action is taken does represent a divergence from the traditional concepts of neutrality in a very important respect.

It is true that the existence of neutrals has been justified on the ground of experience - that they serve as mediators, listening posts and moral examples. In the present state of international relations where the United Nations does not necessarily command the power of all or its Members in an action, there may still be such a role for nations not fully engaged, as the Korean experience seems to indicate.
Yet it cannot be denied that the actual position of neutrals has been on the decline since the first World War and if the United Nations grow stronger, it must continue to decline. The closer the international organisation approaches to universality, the greater will be the pressure to prevent interference with its decisions and the less possible will it be to maintain the traditional position of neutral or even non-participant states asserting their sovereign rights.

While theorists are demanding that doctrine of sovereignty has become out of fashion, the national communities have come to recognise increasingly the claims of other nations upon them and the need for a larger degree of mutual accord.

Thus inspite of the dark clouds gathering in the international horizon, there are certain promising developments. One such, in the sphere of international relations is the growing co-operation among nations in the "economic, social, cultural, educational and health fields". Indeed the effective promotion of these interests may not be possible for the individual states; in such cases the need for co-operative action may be imperative to promote such interests.

Thus the dangerous situation of international tension existing and the risks confronting the whole human race from
the outbreak of global war to which destructive power of all types of armaments including nuclear and thermonuclear weapons would be employed have incited the attention of all nations to the terrible consequences that would follow if such a war were to break out. It is now growingly realised that universal disarmament is an absolute necessity for the preservation of peace and that effective international control should be established and maintained to implement the prohibition of the deadly weapons of destruction.

Even apart from this it is now increasingly felt that the fullest development of mankind's potential requires worldwide co-ordination of political, economic and social affairs. The authority of individual states does not extend far enough to regulate the many matters which now affect the well-being of their populations. International co-operation to-day cannot be limited to armament regulation or a world police force. It must attack sources of tension, including economic and social problems.

Thus Governments to-day have been forced to extend planning and co-ordination to the international level. The complex interdependence of industrial planning on international level makes such a development inevitable. Planning on solely a national basis has been inadequate to meet the responsibilities of national governments.
President Eisenhower, in his inaugural address has rightly observed, "No free people can for long cling to any privilege or enjoy any safety in economic solitude. This basic law of interdependence, so manifest in the commerce of peace, applies with thousand fold intensity in even of war."  

Thus in spite of the rumblings of conflict in the political arena, such co-operation in the social and economic field has been possible not only from a perception of the greater efficacy of co-operative over isolated action but also because there is some common interest unifying the different nations which brings men together, makes them translate their sense of oneness into co-operative activity.  

The Atlantic Charter expressed the desire to "bring about the fullest collaboration between all nations in the economic field with the object of securing for all, improved labour standards, economic advancement and social security." The Declaration of the United Nations of January 1, 1942 expressed the same desire. The foundation of the United Nations Organisation is based on the need for the re-organisation of the world on a basis of co-operation and friendship in economic as also in political affairs. The United Nations Organisation therefore not only undertook the function of adjustment and
settlement of international disputes by pacific means, but also prescribed for itself the other functions the purpose of which was to prevent the breach of peace by promoting international co-operation in various fields.

The growing disillusionment of the success of a general international organisation such as the League of Nations or the United Nations Organisation also turned the attention of the people more and more towards this "functional" aspect of international collaboration.

It was growingly realised that unless a sense of intellectual and moral solidarity of mankind can be engendered, any scheme of world organisation to prevent the scourge of war would be illusory. The Constitution of the U.N.E.S.C.O. in its preamble declared, "Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed .... A peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world and ..... the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind."20

Thus in framing the Charter greater emphasis was laid on functional international co-operation. In the Preamble
of the Charter, the United Nations expressed their determination to "promote social progress and better standards of life in larger freedom" and "to employ international machinery for the promotion of the economic and social advancement of all peoples." The Charter proclaims as one of its purposes the achievement of "international co-operation in solving international problems of an economic, social, cultural or humanitarian character ...."21

The main organ for the performance of this function is the General Assembly assisted by the Economic and Social Council. The General Assembly under Art 13 Economic and Social Council paragraph 1(b) has been entrusted with the task of initiating studies and making recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational and health fields.

The Economic and Social council has to work under the authority of the General Assembly in whom the responsibility for the discharge of these functions shall primarily rest. In fact the Council lacks any real executive authority. Its essential and useful function lies in the co-ordination of the activities of these specialised agencies.

The post-war developments of international relations has shown how this trend towards co-operation among nations
has extended its ramifications into different spheres of international life. The different agencies like the International Labour Organization (I.L.O.), Food and Agricultural organization (FAO), the International Bank for Reconstruction and Development (I.B.R.D.) International Monetary Fund (I.M.F.), International Trade Organization (I.T.O.), the United Nations Educational, Scientific and Cultural Organization (U.N.E.S.Co) are significant developments with wider potentialities as manifestations, however imperfect, of a "world-wide effort for the achievement of peace, plenty and freedom."

No doubt in a world sharply divided into power blocs, such co-operation touches only the fringe of international tensions. Where "functional" co-operation affects matters of national economic or social policy, it comes up even more acutely against the basic political difficulties which have impeded the progress of the United Nations Organisation.

The problems involving "national honour" and "vital interests" are those which the states are reluctant to submit to agencies of international organization. The states are not yet prepared to deal with questions of armaments, colonies, security or territorial claims in the same manner as they
deal with questions of postal service, weights and measures
or sanitation or telegraphy.

The NATO of which we had occasion to discuss earlier
and the Schuman plan are significant developments of the
new international phenomenon.

The fundamental proposition of the Schuman plan is
that the nations of Europe should
surrender their sovereign power over
their coal and steel industries to a
supranational body.

No doubt political considerations weighed largely in
the creation of the Schuman plan. The immediate impetus might
come from France's fear of the resurgent power and indepen­
dence of Germany and the concern of many Europeans that the
prospective end of Marshall plan aid would eliminate one
of the main cohesive forces in Western Europe.

But whatever may be the political considerations behind
such plan, it cannot be denied that the European coal and
steel Community envisaged under the plan is organized on
the principle of a single market. It is based upon the plan
is organized on the principle of a single market. It is
based upon the conviction that if sovereign governments sought
to achieve their objectives by inter-governmental agreements
whose operations were in the hands of the sovereign governments
themselves, the agreement would be modified or terminated whenever their operation pinched any of their adherents at a sensitive point. The pain of shifting from national markets to common international markets is to be shared by all the nations concerned. But the most significant point is that it recognizes that such an inter-national co-operation cannot succeed unless the states surrender to a large extent their sovereign power of shaping future events in the development of these arrangements.

Thus one can hardly fail to discern the emergence of a sufficient degree of community of interests in different spheres of international life which made such progress in functional approach possible. The rapid development of international inter-course has made it clear that the world in which the sovereign state could live in splendid isolation has given way to a world where these states must have to live in co-operation for the pursuit of common interests which transcend the national frontiers. The ability to make independent political decision by the sovereign state has to a great extent been lost. Unless the states retreat to earlier conceptions of self-sufficiency and independence which would run counter to the whole technological and economic development of recent times, they must have to surrender some of their governmental functions to these international organisations which can give directions to the organs of the domestic government.
In almost every instance, the member states have made significant departures from their traditional patterns of behaviour. They have, in effect, surrendered a portion of their sovereignty and power to an international body over matters which were so long regarded as within the exclusive competence of their "domestic jurisdiction". Even the rigour of the doctrine of state equality and action by unanimity has been largely attenuated by the adoption of the principle of majority votes by the member states. Thus problems which were formerly discussed in terms of "national honour, prestige and sovereignty are now gradually transferred from the sphere of "politics" to the domain of "administrative problems". An anarchic and individualistic system of relationships in which each state pursues its own interests is replaced by an organization through which all co-operate to serve the common interests.

In this connection, it may not be completely out-of-place for us to see how far this unbridled sovereignty of sovereign right over currency which has gained traditional recognition in restricted and qualified international law has been restricted and qualified by the impact of newer circumstances in international life.
The institution of money we know, has been the product of the 'jus cudendae monetae' belonging to the supreme power in every state, and there was no question of a sovereign nation's absolute rights on its own territory. "It is indeed", as the Permanent Court of International Justice said, "a generally accepted principle that a state is entitled to regulate its currency".

In fact, money, like tariffs or taxation has been regarded as the concern of each state and falls "essentially within the domestic jurisdiction of the state" within the meaning of Article 2(7) of the Charter of the United Nations. Thus currency is a jealously guarded attribute of national sovereignty and each nation-state insists upon having its own national currency and determining its value as it pleases by its sovereign decision.

This unfettered right of each state to deal with its own currency has been so much upheld that all monetary obligations whether they are expressed in domestic or in foreign currency, are subject to the principle of nominalism. Thus a debt expressed in the currency of any country involves an obligation to pay the nominal amount of the debt in whatever is legal tender at the time of payment according to the law of the country in the currency of which the debt
is expressed (lex monetae), irrespective of any fluctuations of the value of that currency in terms of sterling or any other currency, of gold or of any commodities which may have occurred between the time when the debt was incurred and the time of payment. Thus in Adam's case, certain bonds issued by an American Railway Company were held by a British subject who suffered a huge loss due to the issue of greenbacks and consequent depreciation of the dollar. The American-British Claims Commission, established under the Treaty of 5 May, 1871, to which the matter was referred, held that 'the matters alleged in the memorial do not constitute the basis of any valid claim.'

But this sovereign right of the state to control its own currency system has not always been unqualified and international law has engrafted certain exceptions to the rule. Thus if a country introduces monetary legislation with the avowed purpose of injuring foreigners, it will amount to an international delinquency. When after 1918, Poland introduced in the newly acquired Western provinces a rate of exchange of 1 mark = 1.2 zloty for the conversion of mark debts into Polish currency, the German courts refused to apply the new rate as it aimed at injuring directly the interests of the German. Similarly the Swiss court refused to recognise a German statute of 1936 abrogating the gold clause in certain
cases on the ground of discrimination against foreigners. But it is with the Articles of Agreement of the International Monetary Fund concluded in 1944 at Brettonwoods, that an era of international monetary co-operation has been inaugurated. If one analyses the agreement of the International Monetary Fund as also such multi-lateral treaties as the Convention for European Economic Co-operation and the General Agreement on Tariffs and Trade, adopted at Geneva in 1947, one can hardly fail to discern that over a large field it is no longer possible to describe money as a matter solely or even essentially falling within the jurisdiction of the state. Thus the International Monetary Fund imposes obligations upon its member-states not to change its currency's par value at its discretion nor to engage in or permit its fiscal agencies to engage in, any discriminatory currency arrangements or multiple currency practices except as authorized by the Agreement or approved by the Fund. (Article VIII Section 5). It is but logical consequence of these principles, that both the International Monetary Fund and the Convention for European Economic Co-operation condemn exchange restrictions "which hamper the growth of world trade."
It is now increasingly realised that if we maintain scores of different national currencies, each an instrument of sovereign national policy, no amount of banking acrobatics can ever keep them balanced, as each sovereign nation will be guided more by considerations of its own national economic interests than by the necessity of international monetary stability. 

Thus the traditional respect for the absolute sovereignty of states over its own currency has been seriously undermined by its substantial restriction over a wide field in the modern age of economic interdependence when most questions which appear on the face of it to be essentially domestic have become truly international.

The recent attempts made by the International Law Commission for the codification of Arbitral Procedure - the Law of Arbitral Procedure also demonstrate how far the traditional concept of state sovereignty has been affected by the progressive development of international law in this respect. No doubt the International Law Commission preserved the basic features of the traditional law of arbitral procedure in their draft. Thus according to established law and practice, international arbitration
is a procedure for the settlement of disputes between states by a binding award on the basis of law and as the result of an undertaking voluntarily accepted. It is also of the essence of the traditional law of arbitral procedure that the arbitrators chosen should be either freely selected by the parties or at least that the parties shall have been given the opportunity of a free choice of arbitrators. The same principle of free determination by the parties applies to the competence of the arbitral tribunal, the law to be applied and the procedure to be followed by the tribunal. All these features of the traditional law of arbitral procedure have been made in the draft prepared by the International Law Commission.

Yet the Commission has proceeded in a distinct way by way of developing international law with regard to certain safeguards for securing the effectiveness, in accordance with the original common intention of the parties, of the undertaking to arbitrate. Thus in the first instance, when an undertaking to arbitrate is invoked by a party, the other party may maintain that the subject matter of the dispute is not covered by the obligation to arbitrate. Article 2 of the draft makes that result legally impossible by providing for a binding decision of the International
Court of Justice on the disputed question of the arbitrability of the dispute. Again in the event of any failure on behalf of the parties to make provision for the effective constitution of the arbitral tribunal, Article 3 of the draft is intended to meet these contingencies by conferring upon the President of the International Court of Justice the power to make the necessary appointments. Article 10 of the draft includes detailed provisions for the drawing up of the compromis by the arbitral tribunal in cases in which the parties have failed to reach agreement on the subject. The draft further contains provisions for the obligatory jurisdiction of the arbitral tribunal with regard to counter-claims arising directly out of the subject matter of the dispute.

Thus although the Commission has not departed from the principle that no state is obliged to submit a dispute to arbitration unless it has previously agreed to do so either with regard to a particular dispute or to all or certain categories of future disputes, the draft as prepared by the Commission went far beyond the scope of arbitral procedure and contained substantive provisions contrary to the notion of arbitration as conceived in traditional international law based on state sovereignty. Thus the draft tended to impose
on Contracting States an obligation to arbitrate even when the Parties were unable to agree on the *compromis* so that no definite undertaking to arbitrate had been entered into.

It was further pointed out by some members of the Commission that the draft purported in many instances to make the arbitration effective where there was an absence of will by the parties and that by unduly extending the powers of arbitral tribunals it tended to transform those bodies into a kind of super-national court of justice. They also pointed out that the draft, by making provision in several places for the intervention of the International Court of Justice in arbitral procedure, was making every arbitration case subject to the supervision and jurisdiction of that Court. Even while not agreeing fully with the views of such members, it may be submitted that the general tendency of the draft is to abandon certain substantial rights of states in favour of arbitral tribunals and thus to undermine the traditional concept of state sovereignty on which the classical international law was anchored.

The recent developments in the doctrine of "continental shelf" and specially the deliberations of the International Law Commission on the subject have brought to the forefront a problem which cannot be satisfactorily explained or solved by exclusive reference to the traditional concept of state-sovereignty.
Essentially, the problem which has arisen in connection with the continental shelf raises not only the question of applying existing international law but also of adapting it to a situation which at the beginning of the twentieth century was not considered to be within the realm of practical possibility.

The term "continental shelf" as used in the draft refers to the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of the territorial sea, to a depth of two hundred metres. Article 2 of the draft prepared by the Commission provides that the coastal state exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources. Thus the draft confers upon the coastal state all rights necessary for and connected with the exploration and the exploitation of the natural resources of the continental shelf. But the article excluded control and jurisdiction independently of the exploration and exploitation of the natural resources of the sea-bed and sub-soil. The coastal state may exercise control and jurisdiction over the continental shelf with the proviso that such control and jurisdiction should be exercised solely for the aforesaid purpose. Thus it should be noted that the principle of sovereign rights of the coastal state as formulated by the International Law
Commission is in no way incompatible with the principle of the freedom of the sea.

Some of the principal articles in the Draft prepared by the International Law Commission on the continental shelf are devoted to the provision of safeguards of the freedom of the seas in relation to the sovereign rights of the coastal State over the continental shelf. Thus articles 3 and 4 of the draft lay down that the rights of the coastal state over the continental shelf do not affect the legal status of the superjacent waters. In a sense, these articles are self-explanatory. For the articles on the continental shelf are intended as laying down the regime of the continental shelf only as subject to and within the orbit of the paramount principle of the freedom of the seas and of the air space above them.

Moreover, in the view of the Commission, the exclusive rights of the coastal State cannot be exercised in a manner inconsistent with existing rights of nationals of other States with regard to sedentary fisheries.

Almost the same considerations apply to the sea-bed. Although the sea-bed is subject to the sovereign rights of the coastal state, for the purpose of the exploration and
exploitation of its natural resources, the principle of the freedom of the seas and its legal status must be respected, in that sphere, inasmuch as the coastal state must not prevent the establishment or maintenance of submarine cables by nationals of other states.

Thus although the doctrine of continental shelf is based on the legitimate interests of states to extend the sphere of its territorial sovereignty, it must be conceded that in the development of the doctrine by the International Law Commission, the requirements of the international community have not been lost sight of. It may seem at the first sight that the Grotian idea of the freedom of the high seas is losing the paramountcy which, generally speaking, the survived fairly well down to the present day, but on a closer scrutiny, it can be reasonably urged that there is little or nothing in the properly conceived notion of the freedom of the high seas which stands in the way of such developments. The proposition is further strengthened by the fact that the hydrogen bomb tests conducted by the United States off the Pacific islands, held by it under Trusteeship Agreement with the United Nations have been criticised and condemned by persons from high quarters as contravening customary public international law of the sea which allows
freedom of the seas and its attendant corollaries, freedom
of navigation and freedom from interference with the lawful
pursuit of maritime industries.36

The question of fisheries, under the title of Resources
of the Sea, has also been under considera-
problem of
fishing
tion by the International Law Commission
as part of the general topic of the regime
of the high seas. The Commission adopted at its 210th meeting
three draft articles covering the basic aspects of the
international regulation of fisheries. Article 3 of the draft-
provides that States shall be under a duty to accept, as
binding upon their nationals, any system of regulation of
fisheries in any area of the high seas which an international
authority, to be created within the framework of the United
Nations, shall prescribe as being essential for the purpose
of protecting the fishing resources of that area against
waste or extermination. Such international authority shall
act at the request of the interested state.

The main aspect of these drafts go much beyond the
existing law. The existing position of international law
is, in general, that regulations issued by a State for the
conservation of fisheries in any area of the high seas outside
its territorial waters are binding only upon the nationals
of that State. Secondly, if two or more States agree upon regulations affecting a particular area, the regulations are binding only upon the nationals of the States concerned. Thirdly, in treaties concluded by States for the joint regulation of fisheries for the purpose of their protection against waste and extermination, the authority created for the purpose has been as a rule, entrusted merely with the power to make recommendations, as distinguished from the power to issue regulations binding upon the contracting parties and their nationals.

It will be clear that the articles as adopted by the Commission make a distinct contribution to the progressive development of international law by curbing the exclusively sovereign power of the State in this respect. Thus Article A imposes upon States the "duty to accept, as binding upon their nationals, any system of regulation of fisheries in any area of the high seas which an international authority, to be created within the framework of the United Nations, shall prescribe as being essential for the purpose of protecting the fishing resources of that area against waste or extermination". Moreover, it is provided there that "such international authority shall act at the request of any interested State"—i.e., whether a coastal or any other State.

In fact, through the entire branch of international law relating to the extension over the continental shelf
limitation of sovereign power. Performing as a constant theme the phenomenon of limitation of sovereignty in various spheres and directions.

According to the traditional doctrine and practice, the principles of international law governing state responsibility were concerned itself with international law governing state responsibility. The responsibility directly or indirectly incurred by the state which was regarded as the only subject capable of having obligations of this kind, Judge Guerrero explicitly developed this idea which he considered to be fundamental to the notion of international responsibility. Indeed the identity of the author or authors of the act or omission which caused the injury was regarded immaterial because only the state can incur the international responsibility arising from the act or omission and be under the international duty of furnishing the reparation due in respect of the damage or injury. The individual, according to this view is not a subject of international rights, the only subject of international rights is the State which "in taking up the case of one of its nationals, ..... is in reality asserting its own right, the right to ensure in the person of its nationals respect for the rules of international law."
As Dunn has pointed out the denial of international status to the individual has caused government officials in claims cases, to "gravely overemphasise the importance of the political relations of states at the expense of the activities of men as human beings."\(^39\)

But the situation is however no longer so simple to-day. Responsibility is one of the consequences of the violation or non-observance of an international obligation. Its imputability therefore depends fundamentally on the subject or subjects of the obligation. Traditional theory and practice in this matter, we have seen, have developed as part of a system of international law under which the state is the only subject capable of having international obligations. Under the present system, however, the state is no longer the sole subject upon which international law directly imposes obligations. The individual is also a direct subject — sometimes the only one — of some international duties.\(^40\) Thus under the existing system, the individual is more and more regarded as the subject of international duties, a fact which might have some bearing on the allocation of responsibility that has hitherto been attributed entirely to the state. Thus Prof. Lauterpacht has expressed the opinion in this connection that, "intrinsic­cally, there is nothing — save the traditional doctrine on
the question of the subjects of international law - to prevent the tortious responsibility of the state from being combined, in the international sphere, with the responsibility of the organs liable for the act or omission in question.\(^4\)

Thus the traditional notion of international personality of states has undergone far-reaching transformation and hence the International Law Commission has included state responsibility as one of the topics for codification consistent with certain basic postulates of contemporary international law.

Indeed the traditional concept of international responsibility has to be re-examined in the light of the new approach to human rights. One of the fundamental trends of contemporary international law is the protection of the legitimate interests of man.

Thus the embodiment in international law of the principle of the duty to respect the rights of man suggests new complications. The topic formerly known in international law as "the responsibility of states for injuries to aliens" might be transformed into "the responsibility of states for injuries to individuals."

Another sphere in which the principle of state sovereignty has so long found its dogmatic assertion is that of nationality.
Indeed the division of the world into a number of sovereign states has created the problem of nationality. Nationality, as Makarov points out, has existed as long as there been States, because "during all periods of the history of mankind, States whatever may have been their form, had a personal substratum; people belonging to the state (Staatsvolk) have always been a sociological prerequisite of existence of the State itself, and this prerequisite had to be also juridically defined." So long as the individuals are as a rule not subjects but the objects of the law of nations, "nationality is the link between them and the Law of Nations. It is through the medium of their nationality that individuals can normally enjoy benefits from the existence of the Law of Nations." Thus from the juridical point of view, nationality may be considered as the legal relationship between the state and the individual and also as part of the individual's status from which flow certain rights and duties. It is the "link", as Prof. Schelle points out, "between subjects of law whether individuals or groups (juristic persons, in the classic legal sense) and a state's legal system from which they derive their status."

Thus the right of states to view nationality as being essentially within their domestic jurisdiction has been
considered as one of the cornerstones of international law. Mr. Politis, the Chairman of the conference for the codification of International Law, in his opening speech before the First Committee, pointed out that "the delicacy of our task lies in the fact that nationality from whatever standpoint it be viewed, is by nature, essentially a political problem. It is a matter that comes within the exclusive jurisdiction of each state, since under International Law, states are at liberty to settle nationality questions in the manner they consider most consonant with their own security and development." Mr. Rundstein, the Rapporteur of the Sub-Committee of the Committee of Experts for the progressive codification of international law, also thinks that questions of nationality are exclusively within the domain of the internal legislation of individual states. "It is indeed the sphere in which the principles of sovereignty find their most definite application ....... There is no rule of international law, whether customary or written, which might be regarded as constituting any restriction of or exception to, the jurisdiction referred to above." Mr. J. Gustavo Guerro made it clear that the Committee "asserted the general principle that each state has exclusive competence to determine under its laws who are its nationals, and that these laws should be recognised by other states." These principles were
incorporated in Article 1 of the Convention on certain questions relating to the conflict of nationality laws thus: "It is for each state to determine under its own laws who are its nationals. This law shall be recognised by other states." 46

Thus Nationality belonged and still is claimed to belong to the "domaine réservé". The development of international law has not been such as to prescribe for states the conditions on which they may confine their nationality upon natural persons. 47

But the desirability of imposing limitations upon the exclusive jurisdiction of states to legislate in the field of nationality has generally been recognised and attempts have been made from time to time to define such limits as are recognised by international law. The question of limitations upon the discretionary power of states to legislate on the matter came up before the Permanent Court of International Justice in the "Dispute limitation upon the power of the state to legislate on nationality

between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco (French Zone) on 3 November 1921 and their application to British subjects. The Court observed 48 that "the question whether a certain
matter is or is not solely within the jurisdiction of a state
is an essentially relative question: it depends upon the
development of international relations."

The outcome of such efforts has been of little practical
effect, because of the rigid insistence of the sovereign
states to maintain exclaves jurisdiction in this sphere; still
these attempts indicate the trend of the development of
international law towards intervening in certain exceptional
circumstances, when a state abuses its rights. Makarov thinks
that there are two existing limitations upon the discretionary
power of states to legislate on nationality; the prohibition
to naturalize persons against their will and the duty of
annexing states to grant their nationality to the inhabitants
concerned in case of territorial changes. In the Report of
the Sub-committee submitted to the committee of Experts for
the Progressive Codification of International Law, 49
Mr. Rundstein, the Rapporteur, observed that "while maintaining
the thesis that questions of nationality belong, in principle,
to the exclusive jurisdiction of individual states, it is
admitted that this thesis is neither inflexible nor self-
evident. Questions of nationality are often regulated by
international conventions, which prove that the supposed
exclusivity of jurisdiction may be abrogated at the will of
individual states."
It will be pertinent here to examine the various attempts made from time to time for widening the scope of the humanitarian conventions for the protection of war victims.

The Geneva Conventions for the protection of war victims clearly demonstrate how the different nations were prompted by the desire to struggle against war which now threatens to annihilate the human civilisation. Their aim is to safeguard respect for the human person, the fundamental rights of man and his dignity as a human being.

M. Max Petitpierre, President of the Swiss Confederation and Chairman of the Geneva Conference rightly stressed that "the idea of the Red Cross will not be fully understood unless it is seen that, beneath its superficial appearances, it should be interpreted as being, above all, a condemnation of war."\(50\)

We shall see how far these noble objectives could be fulfilled in a world of sovereign states which still value their own state interests more than the interests of mankind.

It is significant to note that the Hague Conventions of 1907 are not generally applicable unless all the parties to the conflict have been also parties to the convention.\(51\)
Article 2 of the Geneva Conventions 1949 deals with the application of the provisions of the conventions in wars between states.

Paragraph 1 of the Article provides that the particular convention shall apply to all cases of declared war or any other armed conflict between Contracting Parties, "even if the state of war is not recognized by one of them".

Under Paragraph 3, the provisions of the convention can be applied in a multipartite war as between Contracting Parties, even though all of the parties to the conflict may not have been parties to the convention. Even in the case of non-Contracting Parties, the provisions of the convention will be applicable if the parties accept and apply its provisions.

The extent to which claim to the unbridled sovereignty of states had to be compromised and surrendered will be more clear from a study of the history of Article 3 of the Convention.

There was a lot of heated controversy over the adoption of Article 3 which provides for the application of the conventions to armed conflicts which are not of an international character.
Three broad approaches were suggested for the solution of the controversy.

1) that the conventions should be applicable in all cases of internal armed conflicts;

2) that they should not be applicable in any such conflicts;

3) that they should be applicable only when the conflict had reached certain proportions and presented certain characteristics.

Many of the participating countries in their zeal to protect the power of their national government were reluctant to part with their right to put down rebellion within its borders and to punish insurgents in accordance with its penal laws. In such a state of affairs, it is but natural that a compromise had to be effected.

Again in the adoption of Art 8 of the convention, large differences of opinion between the participating countries cropped up.

Art 8 provided for the Protecting Powers "whose duty it is to safeguard the interests of the parties to the conflict." It is further provided that the High Contracting Parties must facilitate "to the greatest extent possible" the work of the representatives or delegates of the Protecting
Powers.

It will be pertinent to note that the Soviet Delegation at the Geneva Conference sought to provide that the Protecting Power or its delegates "may not infringe the sovereignty of the State or be in opposition to state security or military agreements."

But the proposal was rejected as it would prevent the Protecting Power from carrying out its functions.

As the report correctly stated, "It is accepted in international law that a commitment always involves, by force of circumstances, a certain restriction of the freedom of action of the state which has entered into it .....", although the signature of a Convention itself constitutes a manifestation of its sovereignty.

The Geneva Conventions 1949 started from the hypothesis that law is a primordial element of civilisation; but at the same time it was felt that how difficult is the task of realising this ideal so long as the different nations persist in their hot pursuit for the golden dear of national sovereignty.

Still the Geneva Conventions of 1949 form a significant milestone in the recognition of the individual as a subject in international law. It is a clear recognition of the
principle that individuals may have rights under international law even when they are in armed conflict with the state through which alone they could be linked up with the same in the past. Thus the individuals may claim the protection of international law even when they are deprived of protection under state law.

Thus it is submitted that the Geneva Convention is an innovation which, is in accordance with the general trend of international law at the present time towards recognising that the "question of the observance of fundamental human rights has ceased to be one of exclusive domestic jurisdiction of states."

The Draft Code of offences against the peace and

Draft Code of offences against the peace and security of mankind prepared by the International Law Commission also makes a significant departure from the traditional positivist approach that "states alone can be subjects of international law."

The Draft Code\textsuperscript{55} provided in its first article that "offences against the peace and security of mankind, as defined in the code, are crimes under international law, for which the responsible individuals shall be punished." Article 3 of the draft code
provided that "the fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offences defined in the code." Article 4 further provides that "the fact that a person charged with an offence defined in the code acted pursuant to an order of his Government or of a superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order."

The Draft Code closely following the principles of international law recognised in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal and formulated by the International Law Commission, sought to incorporate in the code the principle that "Crimes against international law are committed by men and not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." Thus Principle I says that "any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment." The general rule underlying the principle is that international law may impose duties on individuals directly without any interposition of internal law. The International Military Tribunal for the trial of the major war criminals also observed, "that
International law imposes duties and liabilities upon individuals as well as upon States has long been recognised. Principle 2 lays down that "the fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law."

Thus the principle that a person who has committed an international crime is responsible therefor and liable to punishment under international law, independently of the provisions of internal law implies what is commonly called the "supremacy" of international law over national law. The Tribunal considered that international law can bind individuals even if national law does not direct them the rules of international law as shown by the following statement of the judgment: "... the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state." 

Under the traditional law, the full acceptance of the illegality of war would have led to the conclusion that the state which waged war would be guilty of an illegal act;
under the current development it is the individual who is held to have committed an internationally criminal act.

As international organisation develops and is perfected, it may be assumed that collective force will be used in case of necessity to restrain states or other groups in advance, but the punishment after the event will be visited on individuals and not on the group.

Consistent with the recent trends in international law, the International Law Commission was invited by the General Assembly of the United Nations to "study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions" and to "pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice." Mr. Alfaro, one of the special rapporteurs thought that the creation of an international criminal jurisdiction vested with the power to try and punish persons who disturbed international public order was desirable as an effective contribution to the peace and security of the world.

The Committee established in accordance with General Assembly resolution to prepare "one or more preliminary
draft conventions and proposals relating to the establishment and the statute of an international criminal court" prepared a draft Statute for an International Criminal Court which it presented in its report.

In the Committee's discussions, some members felt that at the present stage in the development of international organisation any attempt to establish an international criminal court would meet with insurmountable obstacle. Indeed the problem arises out of the difficulties inherent in any arrangement under which individuals are made directly responsible before an international organ, while the traditional principles of state sovereignty are maintained.

But we are told that it is in the field of the recognition of fundamental human rights that a healthy reaction against the old-time conception of state-sovereignty can be felt in a decisive and pronounced way.

It is inherent in the concept of fundamental rights of man that those rights inhere in the individual and are not derived from the state. This philosophy is as old as the struggle for human rights and human dignity. "The doctrine of inherent rights as expressed in the American Declaration of Independence, in the first American constitutions and in the French Declaration of the Rights of Man was not an original invention. It put to revolutionary use the accumulated
power of what had been for a long time the backbone of the doctrine of the law of nature on which James Otis, Samuel Adams, Jefferson and the other Fathers of the Revolution leaned so heavily.  

The early writers on international law believed that natural law applied to the individual and the state alike. Jurists of the sixteenth century like Victoria thought that if a State refused to respect such rights of either aliens or subjects, other states may be permitted to make just war on it. Thus Spain had to make war on Mexico to protect the rights of Spanish missionaries. After the Peace of Westphalia, jurists like Vattel clearly took the side of the sovereign state. But writers of the nineteenth century again championed the cause of human rights by recognising that aliens were entitled to the protection of their government in the enjoyment of fundamental rights defined, not by the law of the state in which they resided, but by an international standard. It was further recognised that nationals of the state, the victims of treatment which "shocked the conscience of mankind" could be protected through the humanitarian intervention of other states. Moreover, states by increasing number of treaties undertook the obligation of protecting defined rights of aliens, aborigines, workers, women, and others who are likely to be the victims of arbitrary treatment. Thus under traditional international law,
there were examples of obligations which states assumed limiting the general freedom which they possessed in regard to the treatment of their own nationals. Familiar instances can be found in the various minorities treaties. Thus in 1933, a declaration of the Eighth Conference of American States asserted that "any prosecution on account of racial or religious motives which makes it impossible for a group of human beings to live decently is contrary to the political and juridical systems of America".

With Universal Declaration of Human Rights on December 10, 1948, "the General Assembly", we are told, "wrote a page of history and helped to shape the future of all mankind". "A great satisfaction should permeate the thoughts of all men," said Eleanor Roosevelt, "for the great documents declaring man's inherent rights and freedom which in the past have been written nationally, are now merged in an international, universal Declaration.".

It is argued by many that the Declaration of Human Rights is devoid of any element of legal obligation. Thus according to them, the Declaration is in its basic character "not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal
obligation. It is a declaration of basic principles of human rights and freedoms to serve as a common standard of achievement for all peoples of all nations." Hudson suggests that any view that the relevant provisions of the charter imposes upon the Members of the United Nations the legal obligation to respect human rights and freedoms may have the effect of disintegrating the charter. At the first session of the International Law Commission in 1949, Prof Hudson, the Chairman of the Commission after referring to the provisions of Article 13(1), 55(c), 76(c) and 62(2) of the Charter, reiterated the same view that "Member States had not, by signing the Charter, assumed a legal obligation to treat persons under their jurisdiction with respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion. They had merely agreed to promote international co-operation to that end." At the 218th meeting of the Economic and Social Council the representative of the United Kingdom stated, "The Declaration was a statement of ideals, to which it was hoped all peoples would aspire, but not an instrument legally imposing obligations on any state. It fell far short of being an adequate Bill of Rights for the purposes of the United Nations." Kelsen also thinks that the "resolution of the General Assembly on Human Rights has no legal effect whatever."
The Declaration, he points out, is not addressed to the "Members" or to "States" or to the "governments," but "to every individual and to every organ of society". The Declaration aims at a "common standard of achievement for all peoples and all nations." Prof. Schelle however did not share the Chairman's view. He "felt that recognition of fundamental human rights constituted a true legal obligation under positive law." Prof. Brierly agreed with the Chairman that to hold that the states are under a duty to respect human rights and fundamental freedoms would "mark a revolutionary change in international law, since it brought into the domain of international law a matter which hitherto had been one of purely domestic jurisdiction - the treatment by a state of its own nationals." But the learned Professor had to concede that "there was some reason for saying that the change had in fact taken place. There were the Nuremburg principles and there was the implication in the Charter that respect for human rights within a state was an important element in securing peaceful and friendly relations with other states. It could well be argued that international law to-day did impose a duty on states to respect the human rights of their nationals." 73

According to Jessup, 74 it is already the law, at least for Members of the United Nations, that respect for human
dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, a treaty to which they are parties. It may be that the expansion of this duty, its translation into specific rules may require further steps of a legislative character. It is only in the early stages of the international development of the protection of human rights, that enforcement of these rights may be left to the national state, subject to a review by an international authority.

No doubt the Charter does not create nor contemplate any legally authorised and effective machinery through which these human rights can be protected. Thus when at the conference at San Francisco, the suggestion was made that the Charter should ensure not only the "promotion" but also the "protection" of human rights and fundamental freedoms, it was discarded as it was thought that such a right of the United Nations to impose actively upon the Members the observance of human rights and freedoms would go beyond what the United Nations could successfully accomplish and thus would defeat its own purpose.75

The General Assembly of the United Nations has been entrusted with the function of "initiating studies and making recommendations" for the purpose of "assisting in the realization of these human rights and fundamental freedoms".76
The Economic and Social Council also has been endowed with the power of "making recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all." But these organs are deprived of any executive and legislative power of binding decision. It is significant to note that the Security Council, the most powerful organ of the United Nations is not the normal instrument for the protection of these rights and freedoms unless their violation results in situations or disputes which might lead to international friction or endanger the maintenance of international peace and security or constitute a threat to peace.

But it would be a facile generalisation to hold that these provisions are mere embellishment of a historic document. Dr. Lauterpacht thinks that "any construction of the Charter according to which Members of the United Nations are, in law, entitled to disregard and to violate - human rights and fundamental freedoms is destructive of both the legal and moral authority of the Charter as a whole." According to the learned Professor, there is a mandatory obligation implied in the provision of Article 55 that the United Nations "shall promote respect for, and observance of, human rights and fundamental freedoms," or, in the terms of Art. 13, that the Assembly shall make recommendations for the purpose of
assisting in the realisation of human rights and freedoms.
"There is a distinct element of legal duty in the undertaking expressed in Art 56 in which "All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55." Mr. Quincy Wright also thinks that Art 56 of the United Nations Charter imposes obligation upon the Members of the United Nations. This construction gains support from the legislative history of Article 56. The Dumbarton oaks Proposals did not contain any such article. It originated at San Francisco in a proposal that:

"All Members pledge themselves to take separate and joint action and to co-operate with the organisation and with each other to achieve these purposes." Thus a threefold pledge for separate action, for joint action and for cooperation with the organisation was clearly intended.

Mr. Brunet, however, while giving an interesting history of that Article suggests that neither Art 56 nor any other Article of the charter imposes any express legal obligation to respect human rights and freedoms.

It is interesting to note that a Canadian Court has cited the Preamble and Articles 1 and 55 of the Charter as among the evidences of public policy of the Dominion which
justified the court in holding void a restrictive covenant on land which forbade the sale of land "to Jews or persons of objectionable nationality."

No doubt the Declaration of Human Rights contains no provision concerning international legal remedies in the event of any breach of these rights. It is for this reason that the representative of Australia made the suggestion at the 218th meeting of the Economic and Social Council, that although in the Charter, an obligation was laid upon the Assembly to promote the realisation, to enforce human rights, there must be an international tribunal for such enforcement.

But although the Charter fails to provide any effective machinery for the enforcement of its obligations, it does not for that reason alone impair the legal character of these obligations. It may be interesting at this stage to point out that the Soviet Delegate abstained from voting as he thought that the Declaration "ignored the sovereign rights of democratic States" and made for "interference in the internal affairs of states."

But whatever may be the legal character of these

Human Rights — a revolution of ideas

obligations, their far-reaching importance lies in the revolution of ideas they have brought in the realm of international law by according to the individual a
recognised and accepted position in the international legal system.

Indeed the problem for present-day international law has been to develop an interpretation of the relation between territorial sovereignty and human rights which would be acceptable, not only in theory but in practice, to all nations. No doubt the conflict between state sovereignty and human rights has been sought to be solved by introducing the conception of "domestic jurisdiction" by which a sovereign state's discretion to make and enforce law can extend to any matter whatever except insofar as this discretion is limited by obligations binding the state under customary or conventional international law. But it should be borne in mind that the interpretation of such obligations is never a domestic question but should be arrived at in an international proceeding. The issue of the extent to which Members of the United Nations have undertaken such obligations by the U.N. Charter may be a question of treaty interpretation, but that they have undertaken some such obligations, especially by Articles 56 and 73 of the Charter, seems unquestionable.

Thus no serious student of international law can fail to notice the slow but steady changes in the international society and law. The development of majority rule, in international organisations we have seen, is one of the
important changes that are taking place. It will be also interesting here to note that the U.N. Charter has made numerous provisions which recognise that the treatment of the individual citizen is no longer a matter solely of the domestic concern and that the denial of fundamental human rights to a citizen can no longer be "shrouded behind the impenetrable cloak of national sovereignty". 25

The essence of a Bill of the Rights of Man implies a limitation upon the exercise of the absolutely sovereign power of the state. The proposal for an international tribunal or a European Court of Human Rights, or any other Commission of human rights whether on a regional basis or otherwise implies in-effect the substantial surrender of unbridled sovereignty of the omnipotent state in as much as the proposed authority will have the power to review legislative acts of sovereign parliaments or to investigate and review judicial decisions of the highest municipal tribunals. In fact in a system of judicial review by international courts the decisions of which are legally binding, a portion of national sovereignty will be vested in those persons comprising the tribunal.

This possibly was mainly responsible for the objection raised by the Mexican representative to the recognition of
the right of petition to the United Nations when the subject came up for discussion in the Third Committee of the General Assembly in 1948 in connection with the Declaration of Human Rights. The Mexican Representative apprehended that "in the present stage of the international community, its inclusion might not yet be opportune, particularly because it might appear to set a form of international jurisdiction above the sovereign jurisdiction of states. The creation of a "supernational body would become necessary, but that was contrary to Article 2 of the Charter. The whole conception, indeed, was not in accordance with the Charter, which referred only to the promotion of respect for human rights, but nowhere made their protection obligatory. In present circumstances that protection could only be a matter of national legislation."86

Yet it must be realised that if the Bill of Rights is not to be a mere empty phrase, it cannot be effectively brought about without surrendering some attributes, both substantial and formal, of the sovereignty of the signatory states.

In so far as Members have assumed international obligations in respect to human rights, it can be reasonably contended that the interpretation, application and enforcement
of these obligations have now ceased to be a matter essentially within the competence of the domestic jurisdiction of the Member States. Messrs. Goodrich and Hambro also endorse the view that "the rule of international law that a matter ceases to be within the domestic jurisdiction of a state if its substance is controlled by the provisions of international law, including international agreements, has been accepted."87

Dr. Malik, of Lebanon, has rightly observed, "This is the first time, the principles of human rights and fundamental freedoms have been worked out authoritatively and in precise detail. I am fully justified now in assuming that this is what my government must have pledged itself to promote, achieve and observe when it signed the Charter. Therefore the present Declaration will serve as a potent critic of existing practice in so far as this practice does not measure up to its standard."

The Declaration of the Rights of Man, in spite of its imperfect procedural machinery, serves as a milestone towards the recognition of the individual as a subject of the international commonwealth and marks a decisive step in the constitution of the Federation of the world which should be the primary political goal of humanity. In-as-much as such recognition and protection of the rights of man implies a sacrifice of the sovereignty of the Member States in its vital
aspect, it clearly demonstrates the limits and possibilities of the integration of our present-day international society. Whatever may be the future pattern of such a world society based on continued recognition of the Rights of Man, it has to curb the pretensions and aberrations of the claim of the omnipotent sovereign state that they represent an enduring and indispensable form of political association.