International law, as it has developed, has been pre-eminently the law governing relation between the states called sovereign, even though it has come to govern certain other relations as well.¹

This law gradually developed through more than four hundred years, during which territorial political authorities succeeded in replacing the political links of feudalism and defying the universal pretensions of both the Holy Roman Empire and the Roman Catholic Church. It is true that the rules and principles of that international growth of the idea of law of the seventeenth century have their matrix in those which may be found to have been applied in relations among the rulers or cities of Christendom in the preceding centuries. But during that period of European political history, the claims of princes and municipalities to independence had to come in conflict with assertions of universal authority by Popes and Emperors, and even contemporary legal doctrines do not fail to reflect such conflicts.² European politics and thought still left unresolved a variety
of elements of different ultimate authorities which came to appear contradictory and were ultimately resolved with the survival of only those consistent with the international law of sovereign states.

The conception of state sovereignty has played a great part not only in the growth and development of our present-day international relations but also in the scientific treatment of international law. Sovereignty, in its meaning of an absolute, uncontrolled state will, ultimately free to resort to the final arbitrament of war, is the quicksand upon which the foundations of traditional international law have been built up. As was re-affirmed by the Permanent Court of international Justice in the Eastern Carelia Case (1923), the principle of the independence of States is one of the cornerstones and fundamental postulates of international law. The position has been admirably summed up by Judge Huber in the Palmas Case (1928) between the Netherlands and the United States of America: "Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of any other State, the functions of a state. The development of the national organisation of
states during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the state in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations."

The effect of such an attitude is to accept the concept of state-personality as a basic postulate without investigating what sociological reality lay behind it. Thus Hall in his treatise on "International Law" says, "Primarily international law governs the relations of such of the communities called independent states as voluntarily subject themselves to it." According to Hall, the marks of an independent state are that the community constituting it is permanently established for a political end, that it possesses a defined territory, and that it is independent of external control. It is a postulate of these independent states which are dealt with by international law that they have a moral nature identical with that of individuals, and that with respect to one another they are in the same relation as that in which individuals stand to each other who are subject to law. They are collective persons and as such they have rights and are under obligations.
Such a theory reduces international law to a formal science which fails to adequately weigh the significance of the deep and profound changes in the positivist theory - its limitations. The positivists, the strongest and faithful champions of such a theory, assume it as a logical concept that the will of the state is necessarily the sole source of law.

Prof. Laski thinks that the idea of absolute sovereignty in international law is a philosophic one. It has sought to justify the positivist theory by arguing that the state has an absolute moral value beyond which we cannot go.

Dr. Lauterpacht, now a Judge, International Court of Justice, in his "The Function of Law in the International Community", points out how within the community of nations the essential feature of the rule of law is put in jeopardy by a rigid adherence to the conception of the sovereignty of states which deduces the binding force of international law from the will of each individual member of the international community.

This is the reason why any enquiry of a general character in the field of international law finds itself at
the very start confronted with the doctrine of state sovereignty. For the theory of sovereignty of states reveals itself in international law in two expression of state-sovereignty in international law. first, as the right of the state to determine what shall be for the future—the content of international law by which it will be bound; secondly as the right to determine what is the content of existing international law in a given case. Thus according to the first aspect, a state is not bound by any rule unless it has accepted it expressly or tacitly. The practical implications of such a view in the field of international legislation have been far-reaching, because of its insistence on the requirement of unanimity. The second aspect connotes that the state is the sole judge of the existence of any individual rules of law, applicable to itself. Thus the jurisdiction of the international tribunals is generally said to be based on its voluntary acceptance by the states as a self-imposed concession, as a token of confidence and friendship. The principle has been re-iterated by the Permanent Court of International Justice in a number of judicial pronouncements. Thus in the Eastern Carelia case it was observed that "it is well-established in international law that no state can, without its consent, be compelled to submit its disputes with other states either to mediation or to arbitration, or to any other kind of pacific settlement."
Thus the classic structure of international law is based upon the twin principles of the absolute independence of states in the international sphere and their voluntary subjection to law.

The right of independence of states as it has developed since the time of Grotius has become a postulate, rather than a principle, one of the fundamental assumptions of individualistic system of international law.

The position has been summed up categorically by the Permanent Court of International Justice in the Lotus case, "International law governs relations between independent States. The rules of law binding upon states therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."

From the standpoint of international law, sovereignty is thus regarded as signifying the independence of a State from other States. In other words, sovereignty is really regarded as a sum of powers, a collection or aggregate of governmental faculties, the possession of which will entitle
the bearer to recognition in a sovereign capacity. Indeed we shall see that the nature of international relations forbids us to emphasise the absoluteness of any one State at the expense of the others; since no one community can be regarded as wholly independent of the other members of the society of nations. The idea of sovereignty in international law has been a relative one. There are degrees of completeness in the possession of the essential rights of statehood.

This right of independence has two aspects: internal independence and external independence. Broadly speaking, the right of "internal independence" creates a general presumption of the supreme authority or jurisdiction of the state to control all persons or property within its territorial domain. But it is the "external independence" which is the principal test of the possession by a state of a separate international personality. Sovereignty in this connection may be understood to be the independent personality of the state in its relations with other members of the international community.

Thus there are some writers who point out the two distinct sides to the problem of sovereignty namely the international or external and the internal. Thus Wheaton discovered an internal sovereignty, "which is inherent in the people of
any state or vested in its ruler by its municipal constitution or fundamental laws\textsuperscript{10}, and on the other hand an external sovereignty "which consists in the independence of one political society in respect to all other political societies."

A similar distinction is made by other thinkers e.g. Pradier-Fodere, Heffter, Ullman and notably by Georg Meyer and Rehm.

Woolsey however draws a distinction between independence" and "sovereignty". Hall in his "Treaties on International Law" also finds two classes of rights belonging to the State, namely "independence" and "sovereignty"\textsuperscript{11}

Jellinck however protests vigorously against the idea of external and internal sovereignty, declaring that what is called external sovereignty is merely a reflex of the internal supreme power and that the two sides of the state's activity cannot thus be divided. Holzendorff also points out that the external and internal sovereignty are in practical unity and stand in reciprocal relation.

But whatever may be the views of such theorists, there is no doubt that the obvious limitations and shortcomings of such a doctrine of sovereignty in the international sphere would have been revealed much earlier. But during these years international lawyers have carefully built up round it doctrines which though derived from it have been largely
responsible for perpetuating the original theory.

Of these, the first is that international law has nothing to do with internal changes in the structures of a state.\textsuperscript{13} This in turn creates obligation for states to refrain from interfering with the internal affairs of another state unless some 'vital interest' of the intervening state is involved. The principle thus was accepted as the pivot upon which the European State system was based prior to the outbreak of the first world war and could offer greater chance of working without serious strain in a stable and static international society where legal equality coincides with roughly equal political potentiality and the member states remain fairly satisfied with the territorial distribution. Thus in the absence of any super-state, of any international League or Society of Nations, the States System of Europe depended upon an equipoise, a balance of power, so adjusted that each state could keep what it already possessed, and that no one state or group of states should be able to co-erce and despoil the rest.\textsuperscript{14} Thus for years, when the vigorous members of the European State\textsuperscript{s} could find an outlet for expansion in colonial enterprises outside the continent of Europe, the European system went on existing happily. Each state could keep what it had and hence lived at peace with his neighbours.
and consumed or exchanged the fruits of his labour. But when there are no longer new fields of colonial enterprise, this halcyon period is over, and international law is confronted with the delicate task of finding a workable machinery of peaceful change brought about by the redistribution of territories.

Another basic principle of international law is the doctrine of the equality of states, although it can hardly be denied that the doctrine has undergone gradual modifications, specially in more recent times, since the establishment of the League of Nations. So long as the idea of a universal community remained alive, the Holy Roman Empire claimed allegiance from all Christian rulers of Western Christendom. But the rise of national states and the Protestant Revolution largely undermined and the Thirty Years' War gave a final deathblow to the lingering idea of a universal community. Thus the equality of states came into prominence as a result of the notion of sovereign states emerging triumphant after the Treaty of Westphalia (1642). The equality of the German States-members of the Holy Roman Empire was recognised by the Treaty of Osnabruck, one of the three treaties that made up the Peace of Westphalia. Thus it was provided that "there be an exact and reciprocal equality amongst all the Electors,"
princes and states of both religions ..." (Art V). The doctrine was given a theoretical basis by the naturalist school led by Pufendorf and Vattel. No doubt, the spark which set ablaze the long train of this doctrine could be found in the theory of Thomas Hobbes. Since men are by nature equal and have the same rights and obligations, states which live in a state of nature, are likewise to be governed by the principles of the Law of Nature. Thus the idea of an original equality of men in the supposed state of nature was readily translated into the international sphere. But Hobbes' analogy between men in the state of nature and states was incomplete; it was only half an analogy. Whatever equality we might assume in men with some appearance of reality, the same cannot be assumed so naively of states. It seems that Hobbes' anthropomorphic conception of the state ("because states, once instituted, put on the personal properties of men") could easily make him slip from sound logic and land him into obvious paradoxes.

Pufendorff (1632-1694) is more cautious in introducing the idea of equality in the international sphere. His primary concern was to safeguard the internal independence of small states against the larger. Hence he wrote, "If a king finds himself strong enough to defend his crown easily, I do not see why he should allow precedence to another from whom he has nothing to fear and whose protection he has no need to
seek. All those who are free are free equally; and superiority of strength or wealth gives no prerogative.\textsuperscript{13} Vattel, by adopting their reasoning arrived at the metaphysical Obscurantism of the doctrine. "Since men are by nature equal, and their individual rights and obligations the same, as coming equally from nature, nations which are composed of men and may be regarded as so many free persons living together in the state of nature, are by nature equal and hold from nature the same obligations and the same rights. Strength or weakness in this case counts for nothing. A dwarf is as much a man as a giant is; a small republic is no less a sovereign state than the most powerful kingdom."\textsuperscript{19} The great influence of Vattel in the science of the Law of Nations is, as Prof. De Lapradelle has justly pointed out, due to the fact that he projected upon the plane of the law of nations the great principles of legal individualism. This is what makes his work important, what accounts for his success and likewise measures his shortcomings.\textsuperscript{20}

It should however be pointed out that even without resorting to analogies from the human "state of nature", the theory would have arrived at the same conclusion, because once we recognize that there is no superior authority above the entities known as states, it is but logical to consider these states as possessing an equal voice in all legal matters.
Kelsen however thinks that if the phenomena of law are interpreted according to the hypothesis of the primacy of national law, only that state can be presupposed to be sovereign whose legal order is the starting point for the whole structure. He thinks legal pluralism as logically impossible because the sovereignty of the 'ego' can hardly be reconciled with the sovereignty of the 'tu'. However, the different theorists may proceed from the sovereignty of different states, each theorist starts from the initial hypothesis of the primacy of his own national legal order and hence the picture of the world of law would depend upon what state is made the basis of the interpretation. Kelsen's analysis leads him to the conclusion that the equality of states can be maintained only if we do not pre-suppose them as sovereign entities, but base our interpretation of legal phenomena upon the primacy of international law.

It may not be completely out of place to observe in this connection that until recently there has been a fair agreement among international lawyers as to the meaning of the concept. By equality of states, they meant legal equality which should not be confused with political equality. Just as individuals within a state enjoy "the equal protection
of the laws, irrespective of their physical, mental and financial inequalities, similarly legal equality of states was accepted in spite of the enormous differences between states as a result of their natural inequality.

Oppenheim's formulation of the consequences of this legal equality conforms more to the traditional enunciation of the doctrine. According to him, legal equality means:

(1) Whenever a question arises which has to be settled by consent, every state has a right to vote, but to one vote only.

(2) Legally, although not politically, the vote of the weakest and smallest state has as much weight as the vote of the largest and most powerful.

(3) No state can claim jurisdiction over another.

(4) The courts of one state do not, as a rule, question the validity or legality of the official acts of another state in so far as those acts purport to take effect within the sphere of the latter state's own jurisdiction.

Dickinson confines equality to the "equal protection of the law or equality before the law", but he is not prepared to accept "equal capacity for rights." Brierly also takes a similar view. International law,
the learned author thinks, does not treat all the states as equal in spite of their obvious inequalities. In fact states are not only politically unequal, but they often also have unequal rights in law. All that the theory suggests is that the rights of one state, whatever they may be, are as much entitled to the protection of law as the rights of any other, that is to say, it merely denies that the weakness of a state is any excuse in law for disregarding its legal rights.25

Kelsen also thinks that equality does not mean equality of duties and rights, but rather equality of capacity for duties and rights. Equality is the principle that under the same conditions states have the same duties and the same rights. The states are "equal" in the eye of international law in the sense that they are equally subjected to international law and international law is equally applicable to the state, but not in the sense that these duties and rights are equal. It can hardly be denied that the principle of equality thus understood is but a tautological expression of the principle of legality.

Kelsen, maintains that the principle of equality as formulated by Oppenheim and most of the writers on international law, means the principle of autonomy of the states as subjects of international law.26 But this autonomy is not an absolute and unlimitable, but a relative and limitable autonomy which international law confers upon the states.27
Lande, in an article published in Political Science Quarterly (1947), while tracing the history of the development of the doctrine, pointed out that although the doctrine of the equality of states fell into disrepute from the Congress of Vienna, (1814-1815) to the Franco-Prussian War (1870-71), it again came into bold prominence in the period from 1871 to 1914.

The Permanent Court of Arbitration in the 'Norwegian Claims' case (1922) re-affirmed the principle that "international law and justice are based upon the principle of equality between States". But the problem of equality of states in international law has been raised because of the two factors, viz:

(1) states are not factually equal, their power differs.
(2) States have feelings and the psychological factor or more properly the prestige factor cannot be ignored in international politics.

The doctrine of equality of states has been championed by smaller states and their spokesmen who see in it a safeguard against encroachments by the greater powers. So long as the international
community lacks any form of internationally democratic organisation, there was perhaps no other safeguard to which the smaller powers could appeal. But with the growth and development of international organisations, it may be possible that the function of equality as a legal and political principle may be fulfilled by a doctrine of community interest and the safeguards of the international organisation may protect the legal interests of all subjects of international law, whether states or individuals.

What is required for our present-day international society is the adaptation of the legal principle of equality of states to the principle of equality of subjects of the law, whether states or individuals.

Another important principle underlying the traditional approach to international law is that it is generally a law between sovereign states and as such individuals, citizens of various states can properly be said to have no rights and duties under international law. The individual is thus completely swallowed up in the personality of the state. The problem has assumed greater complexity because at times we import the term "subjects" and "objects" into the sphere of international law without always taking into account the differences in the practical application of the term.
Spiropoulos analyses the meaning of "subjects" in relation to international law. "A subject of the law," says he, "is one to whom the rules of a juridical system are immediately addressed, that is to say, one who is directly qualified or obligated by the rules of a juridical system."

When Grotius wrote his famous treaties in 1625, states were not invested with such a character of absolute sovereignty which became their distinguishing feature after a century. International law was then based upon the fundamental principles of the law of nature and was binding upon the Christian princes as well as their subjects. But when the personality and sovereignty of the state was substituted for the that of the prince, the individual was generally relegated to an obscure position and the state as a corporate person engaged greater attention as the proper subject of rights and duties in international law.

The logical implication of such an approach is that the individual is not a subject or person in international law and as such has no rights and duties under it. Secondly such a view predicates that the individual being an object in international law can be benefitted or restrained by such law only in so far and to the extent it makes it the right or duty of states to
protect his interests or to regulate his conduct within their respective jurisdictions through their domestic laws. Thus according to this theory, the individual must look to states in these respects.

Men have no standing whatsoever as men under this law. Hence it should be borne in mind that if the individuals as stated above are as a rule not subjects but objects of the law of Nations, then nationality is the link between them and the Law of Nations. Only nationals of states can normally enjoy the benefits from the existence of the Law of Nations and these persons are protected as objects of this law against countries other than their own. Thus individuals who do not possess any nationality cannot claim any protection and redress under international law since there is no state to take up his case.

The present-day international law suffers from its own defects and imperfections. International law is still regarded as law between states, although doubts have been raised as to the juridical and philosophical soundness of this traditional basis. The individual has been one stage removed from the application of international law, the legal jargon being that he is not a "subject" of the law but only an object. International law
affects him only through the medium of the state.

The concepts of alienage and citizenship have been devised because of the simple reason that the individual has no legal significance from the standpoint of international law save as he is related to one state through the bonds of citizenship or nationality and thus stands in relation to other states in the role of alien. The responsibility of the State for injuries to an individual is owed under international law to another state and not to the individual. Thus there is no responsibility if the injured individual is stateless, i.e. has no nationality. To explain the legal basis of responsibility to another state, international law for some two centuries has made use of a fiction invented by Vattel that a state is injured through the injury of its citizen.34

Such a view might tend to create a sense of irresponsibility of the State to the individual in international law and this dangerous and intoxicating immunity recent criticism has on occasions been grossly abused.

Moreover such a theory has been largely responsible for retarding the growth and development of a proper consciousness of the international society. On the other hand by
refusing to grant proper status to the individuals for whose well-being the states exist, it has brought increasing complexities and difficulties in international intercourse by creating horizontal groupings on an international scale.

Thus there has welled up through the years a growing criticism of this conventional approach. Duguit, Krabbe, Kelsen and others have called into question the philosophical and juridical basis of the concept. 35

Sir John Fischer Williams has said that "it is obvious that international relations are not limited to relations between states." 36 The traditional nature of international law was keyed to the actualities of past centuries in which international relations were inter-state relations. The actualities have changed and the law also is changing.

Formerly the sovereign State was an iron cage for its citizens from which they were obliged to communicate with the outside world, in a legal sense, through very close-set bars. Yielding to the logic of events, the bars are beginning to open. The cage is becoming shaky and will finally collapse. Men will then be able to hold free and untrammelled communication with each other across their respective frontiers. 37

The logic of such a system of international law which builds up its structure upon the basic postulate of absolute
sovereignty of states leads us to the conclusion that in the absence of universal and comprehensive machinery for the pacific settlement of international disputes, war is the ultimate arbiter of international destiny. Thus each state is guided by considerations of its own self-interest and can agree only to such limitations as do not conflict with its own self-interest. In such a state of international life, "the state has no determined function in a larger community..... Moral relations presuppose an organised life, but such a life is only within the state, not in relations between states and other communities."38

Thus so long as States are sovereign and there is no central authority existing above them to enforce compliance with International Law, war can hardly be avoided. Thus conceived, the right of a state to make its place-prior to war as an ultimate means of self-help and after the Pact of Paris had, until the year 1928, a recognised place in international law. So clearly was the right to make war recognised that the chief test of the distinction between a sovereign and semi-sovereign state was whether the latter had a "right to declare war". A state which did not possess such a right could not claim the first rank.39
Hence war came to be regarded as a natural function of the sovereign state and a prerogative of its uncontrolled sovereignty. Hyde, writing in 1922 admitted that "it always lies within the power of a state to gain political or other advantages over another, not merely by the employment of force, but also by direct recourse to war." Oppenheim in his "International Law" (Vol II) has analysed how the institution of war served two contradictory functions in international law prior to the Pact of Paris. It was a means of self-help in defence of a legal right and at the same time it fulfilled the function of adapting the law to changed conditions in the absence of any international legislature.

No doubt there may be dangers implicit in such an attitude which raises disregard of the law to the authority of a legislative function in the higher interest of the international law by maintaining intact the supremacy of the rule of force over the rule of law in international society. Thus prior to the General Treaty for the Renunciation of War of 1928, the admissibility of war as an instrument both for enforcing and for changing the law constituted the principal defect of the law of nations. Although in time of peace states were rigidly bound to respect
the existence, the independence of other members of international society, the states by availing themselves of their unlimited right to declare war, could acquire the right to treat their neighbours thus attacked as a veritable "caput lupinum" to the point of legally permissible annihilation through conquest and annexation. Thus the legal admissibility of war showed how unreal was the border-line between law and lawlessness, between the duty to let live and the right to extinguish. It showed that law obtained only so long as states were willing to tolerate it and that it was left to them to divest themselves of the most fundamental of all duties by one legally authorised arbitrary act.

Thus international lawyers instead of treating war as a breach of international order, had to accept the fact of war and were busy to mitigate its effect by elaborating rules for its proper conduct.

So long as war remains an institution in international law, neutrality as a status remains the obverse aspect of the nature of war as a legal relation. In a sense the traditional concept of neutrality is a product of international anarchy thriving only under the dogma of sovereignty of states. Thus the concept of neutrality is but the logical corollary
of the concept of unbridled sovereignty of states. The term neutrality is derived from the Latin "neuter". Neutrality thus has been described as the attitude of impartiality adopted by third States towards belligerents and recognised by belligerents, such attitude creating rights and duties between the impartial states and the belligerents. Neutrality has been defined as "the juridical situation of states that do not take part in hostilities," and a neutral as "a state which during the existence of a war is not a belligerent in that war." Neutrality thus in its traditional sense was regarded as the legal position of a state which remained aloof from a war between two other states or groups of states while maintaining certain rights towards the belligerents and observing certain duties prescribed by customary law or by international conventions or treaties. In fact the status of neutrality had to be recognised and accepted in an international system which sanctioned war as a legal procedure to which individual states might have recourse for the protection of their national interests and in which the community of nations assumed no responsibility for the maintenance of law and order and recognised no obligation to distinguish between the merits of the claims made by the contending parties.

In fact war and neutrality may be said to depend on the free will or choice of the sovereign states. But it is not to be expected that neutrality as a legal institution
should have existed among the nations of old. It should be however remembered that the civilised nations of antiquity recognised no right of a nation to remain at peace while other states engaged in warfare. Whoever was not an ally was an enemy - no intermediate status was admitted to exist. But while it is obviously impossible that nations should be wholly unaffected by hostilities between other states to which they are bound in its ties of race, religion, friendship or commerce, yet the right of every state or nation to remain at peace has long been recognised as one of the attributes of sovereignty. The laws of neutrality probably had their source in the practical ability of non-participants in a war to insist on certain rights and on the corresponding practical ability of belligerents to impose some duties. It is only at the time of Grotius that neutrality came to be recognised as an institution in international law, although it was only in a stage of infancy and took a long time to reach its present stage. It was not until the eighteenth century that theory and practice alike recognised the duty of neutrals to remain impartial and that of belligerents to respect the territories of neutrals.

The concept of neutrality in customary law has been closely connected with the acceptance of the view that the binding force of international law derives only from the
The glaring gap in the effective validity of positivist theory of international law can be further demonstrated by the law of recognition as expounded by this dominant school of thought. Indeed nowhere is the brand of positivism current in the science of international law more offensive than in its application to recognition of States. Just as in accordance with the traditional view of the function of war, the states are left to their free discretion, to avail themselves of the unlimited right of war, to assail the very existence of other states, similarly according to the positivist theory of recognition, states are free to decide, according to their unfettered discretion and by consulting their own interests only, whether another community shall enjoy the rights of sovereignty and independence inherent in statehood.

The orthodox constitutive view which deduces the legal existence of new states from the will of those already
established dates back to Hegel, one of the strongest champions of the absolute sovereignty of the state in the international sphere. States, according to him, enter into legal relations with one another in conformity with their own will by virtue of the act of recognition. Such a view, no doubt, is the outcome of the conception of international law as a loose "law of co-ordination" based on agreement as distinguished from the overriding command of a superior rule of law. Subsequently this constitutive theory of recognition came to be regarded in the hands of Triepel and Anzilotti, as based on a contract proper.

In fact this categoric assertion of sovereignty cannot but insist upon the formal character of consent as the basis of international law. Thus one of the oldest and fundamental corner-stones of the positivist theory is the sanctity of treaty obligations, "Pacta Sunt Servanda", that agreements solemnly undertaken must be fulfilled. Even from the earliest times, the principle was respected by the different states not only as a matter of legal duty between the parties to the treaty but as a matter of common concern to the whole community of states. The Greeks regarded the rule of good faith in regulating the conduct between different states as part of the universal law;
to the Romans it was part of the "jus gentium" common to every tribe and people. Grotius in his "De jure belli ac pacis", says "For not only is each separate state held together by good faith, but also that greater society of which the states are the members." Aristotle speaks truly when he says that if good faith has been taken away, "all intercourse between men becomes impossible". From the time of Grotius down to recent years, different writers have drawn heavily upon this rule in governing the contractual relations between states.

It was generally recognised by philosophers, theologians and jurists that unless reliance could be placed upon the pledged word of a state, the fabric of the international society would be imperilled and law itself would disappear from the sphere of international intercourse.

The formal character of consent was so much insisted upon that the conclusion of a treaty even under duress does not affect the validity of a treaty. So long as war is recognised as a legal institution, it can hardly be denied that there are few peace treaties which have not been concluded under the express or implied threat of violence by the victor in the event of any disagreement. The conception of "voluntary" character of peace treaties became the standard argument in
the hands of later writers for considering them as binding obligations. Thus Hall, laid down the proposition in clear terms: "In International Law force and intimidation are permitted means of obtaining redress for wrongs and it is impossible to look upon permitted means as vitiating the agreement, made in consequence of their use, by which redress is provided for." Lawrence also is of opinion that the fact that treaties of peace "were extorted by force is no good plea for declining to be bound them."55

It is but natural that the general principle of good faith of treaties would be put to severe strain under the paradoxical situation thus presented. Vattel argued with much subtlety that these treaties should be regarded as the prudent choice of the sovereign when his country is confronted with the alternative of complete destruction. Grotius also recognised the validity of such treaties but regarded them an exception to the general principle of "equality" in the making of treaties. 56

Thus international law has long recognised the principle that the state as an international person can freely contract with other states. The principle was affirmed by the Permanent Court of International Justice in the Wimbledon case.
Case (1923) and in two subsequent Advisory Opinions:

"The Court declines to see in the conclusion of any treaty by which a state undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the Sovereign rights of the state, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of state sovereignty."

This freedom of contract is so pushed to its logical conclusion, that even a sovereign state is permitted by treaty to divest itself of its sovereignty and assume the status of a dependent state, such as an international protectorate or a colonial protectorate without any vestigo of international personality.

The paradox of applying the principle of good faith to treaties of peace signed under duress became flagrantly conspicuous in the conclusion of the Treaty of Versailles. The German delegates, in signing the treaty, entered a formal protest against its terms: "Yielding to overwhelming force, but without on that account abandoning its view in regard to the unheard-of injustice of the conditions of peace, the government of the German Republic therefore declares that it
is ready to accept and sign the conditions of peace imposed by the Allied and Associated Governments". Thus Germany had to accept the treaty under military pressure, and she recognised no obligation of good faith in the execution of it. Chancellor Hitler demanding a general revision of the treaty on May 17, 1933, asserted that decisions had been taken which "in their injustice and lack of logic bore the seeds of fresh conflicts."58

Thus in such cases, there is hardly any moral justification for the principle of "pacta sunt servanda." The sanctity of treaties of an unequal type ultimately rests on the power to enforce their stipulations.

In fact the existing rules of International Law presuppose an international society whose permanent and official contacts, in peace, are essentially confined to diplomatic relations, while economic relations are private, apart from certain protective State functions.59

Thus the classic principles of international law were built upon individualistic and atomistic foundations. The ideal of independent, untouchable man in sovereign existence inspired the peoples of the Western world. Consequently, the state became a watchman to guarantee the
sovereignty of man and society endowed the individual with many rights but few obligations. In the spirit of the times, rules of international law were formulated to protect national sovereignty. The principle of equality of states, of non-intervention, the rule of unanimity became the basic postulates and assumptions in the intercourse of nations. The guarantees that separated states from each other became the basis and foundation of international law. It was evolved, in fact, to strengthen national as opposed to international communities. Like the legal attribute of equality, the function of sovereignty as a legal concept was to protect the state in a world devoid of any alternative to self-protection. With the growth and development of international organisation and law, the need for such a concept of sovereignty will be less and less.

Sovereignty in the sense of exclusiveness of jurisdiction in certain domains may be as Jessup points out, a usable and useful concept, just as in the constitutional system of the United States, the forty eight states are sovereign. But sovereignty in its traditional sense of ultimate freedom of national will unrestricted by law is not consistent with the principle of community interest or interdependence of the different nation-state and of the status of the individual as a subject of international law.
These postulates of traditional concept of sovereignty reached an extreme form at a time when interdependence and the need of co-operation among obsolete nations have grown rapidly. Thus the actual conditions for their applicability were dwindling while they nevertheless continued to exercise their separating effect. The further they progressed, the more anarchonic they became, not from the standpoint of power politics but from that of the international conditions actually prevailing and from that of desirable organization.

It will be our task to see how the postulates upon which the classic structure of international law based on the principle of state sovereignty is built, are not merely irreconcilable with the facts of our present-day international life, but they also contradict the whole tendency of the evolution of international relations in our time. We are being rapidly driven to the point where, once we assume the sovereignty of the state, we have to infer the impossibility of those international institutions which the facts themselves are compelling us to establish.