Hall in a passage quoted with approval by the Judicial Committee of the Privy Council in 1934, observed, "Looking back over the last couple of centuries, we see international law at the close of each fifty years in a more solid position than that which it occupied at the beginning of the period. Progressively it has taken firmer hold, it has extended its sphere of operation, it has ceased to trouble itself about trivial formalities, it has more and more dared to grapple in detail with the fundamental facts in the relations of States."  

For any one trained in the Austinian tradition, the nature of international law embodies a conception which is, at its best, confusing and at its worst exasperating. It is never law in their sense and it often seems to come dangerously near to being "as imposture, a simulacrum of law, an attorney's mantle artfully displayed on the shoulders of arbitrary power."

Law according to such theorists, is regarded as a body of rules for the regulation of the conduct of men, whose
formal as distinguished from historical source of validity lies, in the last resort, in a precept imposed from outside.

When applied in the sphere of international relations, this essential feature of law has to face severe strain because of the conception of state sovereignty which deduces the binding force of international law from the will of each individual member of the international community.

It cannot be denied that International Law of to-day is built upon the foundation of State Sovereignty and its primary task is to jealously guard this apparently priceless possession. The traditional theory has been succinctly stated in Lauterpacht's Oppenheim:

"International Law is based on the assumption that there exists an international community embracing all independent states and constituting a legally organised society. From this assumption there necessarily follows the acknowledgement of a body of rules of a fundamental character universally binding upon all the members of that society."^2

Thus the theory of the sovereignty of states finds expression in the field of international law in two ways, 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. 3

As a logical corollary of the doctrine of state-sovereignty
the principle of the independence of states has been accepted
as one of the corner-stones of present-day international law.

Thus the Permanent Court of International Justice in
the famous 'Lotus' case observed: "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 in 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 achievement of common ends.
Restrictions upon the independence of states cannot therefore
be presumed."

In the absence of any superior international authority,
the states reserve to themselves the exclusive right to
determine what are essentially within the domestic jurisdiction
of any state. Thus issues like armaments, access to raw
materials and markets, questions of migration are regarded
as reserved subjects which every sovereign state may treat
at its own discretion.

A number of convenient rules such as the principle of
self-preservation or self-defence or the "clausula rebus sic stantibus" have been devised to preserve the traditional right of the sovereign state in all matters of vital importance.

It cannot be denied that so long as the principle of consent which is a corollary of the independence of states reigns supreme, it retards the growth and development of international law along rational and scientific lines.

The Permanent Court of International Justice emphasised in its Advisory opinion on the 'Eastern Carelia case' (1923) "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 optional character of international arbitration and of the judicial settlement of international disputes, which are the result of the principle of state sovereignty and consent have choked the growth of international law through Courts and Tribunals.

This uncompromising claim of the sovereign state has been largely responsible for some of the existing deficiencies and imperfections of the present-day international...
law. The elimination of important issues from the purview of obligatory judicial settlement is the principal manifestation of the generally recognized rule of present-day international law, according to which, in the absence of an express agreement to the contrary, a state is under no duty to submit its disputes with other states for judicial determination. This rule is, in turn, one of the three principal modes of expression of the doctrine of sovereignty in the international sphere. The sovereign state does not acknowledge a central executive authority above itself; it does not recognize a legislator above itself; it owes no obedience to a judge above itself. Thus the alleged fundamental difference between two categories of disputes: legal and political, justiciable and non-justiciable are but the legal expression of the claim of the sovereign state to be independent of law in matters of "vital interest." The proper sphere of international law as it exists to-day has been pointed out by Anzilloti thus:

"The interests protected by international law are not those which are of major weight in the life of states. It is sufficient to think of the great political and economic rivalries to which no juridical formula applies, in order to realize the truth of this statement. International law develops its true function in a sphere considerably circumscribed and modest, not in that in which there move the great
It may not be an accurate statement from the point of view of the actual content and scope of international law as it exists to-day. The major questions of the existence of states and their rights as members of the international community certainly form the subject-matter of existing international law. But it cannot be denied that major questions of international relations are still regarded as pertaining to the domain of politics and not of law.

Although the States accept the obligation of submitting disputes to adjudication, it is hedged round by a number of elaborate provisions which reduce it to an empty formula devoid of any legal obligation.

According to Article 92 of the U.N. Charter, the International Court of Justice shall be "the principal judicial organ of the United Nations." But the Charter does not obligate the Members to submit legal disputes to a tribunal. It expresses only a wish that legal disputes be submitted to the International Court of Justice. Even for the exercise of the compulsory jurisdiction of the International Court of Justice, disputes
may be brought before the International Court of Justice only with the consent of the parties to the dispute. This results from Article 36 paragraph 1 of the Statute, which runs thus, "The Jurisdiction of the Court comprises all cases which the parties refer to it and all matter specially provided for in the Charter of the United Nations or in treaties and conventions in force."

Arguments are frequently adduced that international society has not yet passed beyond the stage of primitive community and hence international law which is intended to regulate the conduct of the member-states of such a society must necessarily be weak law.

The difference between municipal law and international law, we are told, is primarily due to the different stages of development which has been reached. International law, according to them, is law at an earlier stage than the law of a well-ordered modern state and as Dr. Figgis pointed out, the obedience which states render to it to-day is probably "more regular and less reluctant than was the obedience six centuries ago paid to the Common Law by any decently placed medieval feudatory."
According to Prof Kelsen, the difference between national
and international law is only a relative
difference; it consists primarily in the degree
of centralization or decentralization.
National Law is a relatively centralised legal order. Interna
tional law compared with national law, is a more decentra
lised legal order. The community constituted by this law has
no central government, no court, no administrative organs.
The far-going decentralisation of general international law
manifests itself in particular in the fact that no special
organs exist to execute the sanctions against the delinquent.

A rule of law is a hypothetical judgment making a
coevasive act, forcible interference in the sphere of interests
of a subject, the consequence of a certain act of the same or
another subject. The coercive act which the rule of law
provides as the consequence is the "sanction" which is regarded
as a reaction of the legal community against the delict.

International law may be regarded as law in this sense
if the co-evasive act of a state is permitted only as a
reaction against a delict and if such reaction can be inter-
preted as a reaction of the international legal community.

Prof. Kelsen would liken international law to primitive
law and the legal order imposed by it to the primitive legal.
international law whether primitive law. order. According to the learned Professor, "in its technical aspects, general international law is a primitive law, as is evidenced among other ways by its complete lack of a particular organ charged with the application of legal norms to a concrete instance. In primitive law, the individual whose legally protected interests have been violated is himself authorised by the legal order to proceed against the wrong-doer with all the coercive means provided by the legal order. This is called self-help. Every individual takes the law into his own hands. Blood revenge is the most characteristic form of this primitive legal technique. Prof. Kelsen thinks that the general international law characterised by the legal technique of self-help can be interpreted in the same manner as a primitive legal order characterised by the institution of blood revenge. The international person whose right has been violated is authorised to react with reprisals or war against the international person who is responsible for the delict.

The analogy of primitive community is neither apt nor desirable. In fact modern states are not primitive communities and any attempt to construe the relations between modern States as governed by the law of primitive peoples would involve us in patent contradictions. Prof. Brierly also
thinks that the international society of to-day is not, except in the matter of its law, which reflects the weakness of the international social consciousness, at the primitive stage.

Although the present-day international society has not yet been brought under a rule of law still the desire and struggle for a law which is impartial and objective is as old and persistent as the desire of those who hold the power to free themselves from such rule and use the law as an instrument of domination. But at times, the latter tendency becomes dominant, for all law is administered by man and the most objective principle of law becomes tainted by the purposes of those who administer it.

Thus the framers of the League of Nations were no doubt inspired by the principle that in the international community, pacific settlement of dispute should be the responsibility of the community and that a community should make its collective judgment prevail as against the arbitrary judgment of its individual member.

But the Covenant of the League of Nations did not however come up to such expectations. Any careful study of the League Covenant will reveal how the sharp edges of the Wilsonian phrases have been worn down.

No doubt the High contracting Parties in order to promote international co-operation and to achieve international peace
and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, agreed to in the Covenant of the League of Nations.\(^{12}\)

Yet the League showed scrupulous respect for national sovereignty and laid special emphasis on such sovereignty by adopting the principle of unanimity respect for state sovereignty rule.\(^{12}\)

Article 38 of the Statute of the Permanent Court of International Justice gave the sources of international law in the following hierarchical order:

1) International conventions, whether general or particular, establishing rules expressly recognised by the contesting states.

2) International custom, as evidence of a general practice accepted as law.

3) The general principles of law recognised by civilised nations.
4) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case "ex aequo et bono", if the parties agree thereto. The supremacy of state sovereignty is thus writ large in these sources of international law.

Professor Huber rightly points out that "international law, the structure of which is not based on any superstate organisation, cannot be presumed to reduce a right such as territorial sovereignty, with which almost all international relations are bound up, to the category of an abstract right, without concrete manifestations."

In fact the League was not intended to be a Super-state. It is composed of sovereign states, who of their own free will signed the covenant. By so doing they do not form a new state, a new sovereign body. They merely dedicate themselves in their individual activities to a new political way of life.

At the opening session of the Assembly in September 1920, the President of Switzerland, as host, felt it necessary to
"affirm once more that the League of Nations is not and never will be a superstate which will absorb the sovereignty of states or reduce them to tutelage."

The League of Nations thus though a product of the conditions of our time, is politically impotent. It is really an instrument of co-operation. It is a standing agency facilitating common action by states animated by the co-operative spirit. It cannot function by its own momentum. As soon as the spirit of sociability and solidarity wanes, the League becomes an inanimate organisation.

The United Nations Organization suffers from the same infirmities which characterised the League of Nations. No doubt this post-war organisation reasonably raised the hope that it will develop among the world powers a greater realisation of the need for a wider social consciousness.

A larger number of lesser international interests have now been brought within the fold of law and the nations show faithful respect for the observance of these rules. But on a careful scrutiny it can be noticed that the interests regulated by these rules are not the determining factors of national policy. The States are still unwilling to submit their "vital national interests" to arbitration or judicial settlement. Thus in a sense
international law is very largely non-social law, because it leaves fundamentally opposed interests to adjustments by resort to force. Hence compared with national law, international law has a very modest range. It contains nothing about the burning questions as to the raw materials of the world, economic policy, density of population, immigration and emigration and the other incendiary subjects of international politics.

If international rules, as Westlake thinks, are to be made with due care that they shall not restrict liberty more than is necessary, that they shall be suited to the cases which most commonly arise, and that reciprocity in their application shall be possible, then it is clear that the facade of the international system, though imposing, its foundations cannot but be weak.

Before we proceed to ascertain the real nature of international law, we should have a clear idea about the legal character of the rules of conduct in a society. Law's external nature may express itself either in the fact that it is a precept created independently of the will of the subjects of the law or that it is valid and continues to exist in respect of the subjects of the law independently of their will. The fact that the source of law is in its creation external to those bound by it may often be concealed behind the phenomenon
of customary law not only in primitive communities, but also in modern societies. But there is little ambiguity about the external character of law when it is ascertained and enforced by courts.

It must be confessed that so long as international society remains at the present stage of its development, it lacks to a great extent that feature of the external character of law which consists in its being created independently of the will of those who are subject to it.

There are extremist champions of state sovereignty who are even willing to go to the extent of denying the existence of international law. According to them the relations of States are governed by neither moral nor legal rules, but by laws regulating the mutual relations of physical forces. Thus according to Hobbes, "Though there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, kings and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators ........." It is in this sense that Hobbes identifies law of nature with the law of nations. "The same law, that dictateth to men that have no civil government, what they ought to do,
and what to avoid in regard of one another, dictateth the same to commonwealths, that is to the conscience of sovereign princes and sovereign assemblies." These theorists in their zeal to support their political theory of the state, are, by their own logic, driven to such a negative attitude towards international law.

Austin: Jurists of the Austinian school placed international law on a different footing. The essential characteristic of positive law is that it is a body of rules enacted by a determinate legislative authority and enforced by physical sanctions. Law is thus regarded as a 'command' and implies a political superior and political inferiors. Judged by this standard, international law is not positive law at all, but a branch of positive morality.

We are told that the trouble with international law is not that it is not law, but that there is not enough of it. Both in theory and practice, nations consider themselves bound by the rules of international law. Sometimes they will break the rules, just as individuals do in their own communities. But even the most flagrant law breaker among nations will not deny that there is an international law; it will argue either that there is no rule to govern the case or that the rule means something different.
Oppenheim. Oppenheim does not deny the legal character of international law but is of opinion that international law, by its very nature, is necessarily a weak law analogous to that obtaining among primitive communities. In fact if international law is intended to govern the relations of sovereign states, these defects must remain so under the penalty of its own extinction, for "there is not, and never will be a central authority above the several states."

"Thus in the present circumstances, it is inevitable that the Law of Nations must be a weaker law than Municipal Law, as there is no international Government above the national ones which could enforce the rules of International Law in the same way as a national Government enforces the rules of its Municipal Law."  

The evangelist international lawyer may derive much inspiration from Westlake who thinks that the controversy whether international law falls within the domain of law or morality can be solved if we decline "to treat the law of the land as the only proper kind of jural law, for then, while keeping law distinct from morality, we shall not encourage an undue attribution to international law of the characters only appropriate to the law of the land."  

It is significant to note that Westlake himself admitted the dangers of such a method of approach. "If we give the
name of law to anything which we so discover in a remote state of society before we have fixed in our minds what we mean by that name, we beg the question, and have no security that our language has any consistent or therefore useful sense."^{21}

There are others who hold that the analogy with municipal law is neither decisive nor helpful. The analogy with municipal two are based on different principles. Municipal law we are told is based on the principle of subordination i.e. subjection of persons to legal rules, imposed irrespective of their will, whereas international law is a law of co-ordination in which rules of law owe their existence to obligations voluntarily undertaken.

Thus Hatshek defines international law as a legal system based on co-ordination, ^{22} a "legal order based on the recognition of states as equal subjects of international law."

Walz. Walz also bases his construction of international law on the theory of co-ordination, but he admits that these rules once established are binding upon the states independently of their will. On closer analysis, the whole theory is reduced to a difference in the "process of positivation" (i.e. of creation) of rules of law. But the reason why international law is regarded as "a law of a specific stamp strongly
differing from municipal law" is to be sought in the rigid adherence of these theorists to the absolute sovereignty of the state.

Prof. Zimmern asks the question "where are we to look for the rules and obligations of International Law"? The learned Professor thinks that "we can not find them embodied in the habits or the will, still less in the affections of a society. If we wish to discover where it is enshrined we must search the libraries."

"International law, in fact," according to Prof. Zimmern, is a law without a constitution. And since it is not grounded in a constitution, it lacks the possibility of natural growth. Unconnected with a society, it cannot adjust itself to its needs. It cannot gather itself together by imperceptible stages into a system."

In fact if we analyse the rules of international law, as they existed prior to the first world war, one can hardly fail to discern that many of these rules were not the outcome of the experience of the working of a world society. These rules generally arose out of contacts between a number of self-regarding political
units - stars whose courses, as they moved majestically through a neutral firmament, crossed one another from time to time. The trend of development of international law points out how these rules came into existence as a means for regulating external contacts rather than as an expression of the life of a true society.

The doctrine of state sovereignty we have seen, seeks to build up a law of nations upon the consensus of sovereign states, just as the individualistic theory of law tries to get an analogy from dual human being with his inalienable rights of man by the fiction of social contract. In both cases, the solution was sought in the thought of self-obligation. But in both cases, on closer scrutiny, the seeming self-obligation seems to be obligation from without. Thus Richard Thoma has pointed out "By self-obligation, one may explain everything, except only this, that if there is to be a law of nations there must be obligation from without by virtue of which the free self-absolution from the allegedly free self-obligation would be violative of the law."

In fact, from the standpoint of the dogma of sovereignty, consistency requires the denial of the legal nature of the law of nations. If we take the concrete individuality of the state as our starting point, logical analysis leads not to the law of
nations but to the anarchy of states. For "anarchical law" is a contradiction in itself; a "law of co-ordination" is conceivable only on the basis of a law of subordination, as in private law, and not as a legal order topped by no higher order, like the law of nations. Just as anarchism in its extreme form - in Max Stirner - denies even the binding force of contracts, so the dogma of sovereignty, by recognising the "clausula rebus sic stantibus" leads at least to a considerable loosening of the obligation of international treaties.

In fact the conception of the law of nations as an anarchical law of co-ordination presupposes the simultaneous existence of a plurality of sovereign states. But the difficulty involved in such a proposition has been pointed out by Kelsen, "the state in as much as it is declared sovereign, i.e. taken for absolute and presupposed as supreme legal entity, must be the sole legal entity; that is ....... the sovereignty of the one state excludes the sovereignty of any other state and therewith excludes any other state as a sovereign community." Thus the sovereignty of the one state would immediately exclude that of the other and thus destroy itself as a universal legal principle. Each state is thought of as sovereign for the
area of its dominion, but an absolute claim of validity for a limited area of validity is a **contradictio in adjecto**. The reason why not every individual sovereign legal order raises the claim to rule over the entire globe is only this, that it stops at the state boundary by virtue of wise self-limitation, and not that at such boundary another legal order bade it stop — for if it had to give way to that it would of course not be sovereign. Hence the picture of the group of states that the dogma of state-sovereignty offers is not that of a legal community of subjects of law who are mutually obliged to recognise one another. Rather it is that of an arena full of beasts of prey each of whom claims to remain sole master of the place, but unable to destroy or drive out one another, growling and snarling they pass by one another for a while.

These inherent contradictions and imperfections have been largely responsible for much confusion among international lawyers. Thus Jellinek's attempt to construe international law as a specific law of co-ordination with the help of the theory of self-limitation has resulted in the precarious nature of international obligations and is often regarded as the very negation of law and a glorification of force. Jellinek himself admitted that the logical conclusion of his theory would be that "the community of States is of a purely anarchical nature, and international law, originating from an unorganised authority and possessing accordingly no overriding authority may properly be described as an anarchical law."
Kaufmann pressed the idea of a law of co-ordination to its extreme consequences. According to Kaufmann, in a world of competing physical forces represented by other States, the essence of the State is power and the basis of international relations is the competitive struggle of states.

Like Jellinek, Triepel also accepts the view that the state can become bound by a rule of international law only by its own voluntary submission to it. But he rejects the theory of self-limitation as being juridically impossible. Triepel's theory addresses itself directly to the question how a Sovereign State may create international legal obligations for itself, and yet be powerless to destroy them once created. The basis of the obligatory force of international law, according to him, is to be found in the common will of states which by means of "agreement" (Vereinbarung) constitutes a common will resulting from a combination of wills.

Triepels' theory recognises that international law owes its origin to an agreement and not to an imposed law, but it does not deny categorically the creation of a legal power over states. Thus the difference in the theories of Jellinek and Triepel is more than formal. Kelsen's suggestion that Triepel's doctrine is merely a paraphrase of the theory of self-limitation misses the important difference between the two viewpoints.

In a sense Triepel's theory is an unsurpassed intellectualisation of practice under the conventional theory of
international law; but it is not a proof that international law is "law". The accommodating twist which the theory seeks to give to the definition of international law must, to be effective, be accompanied by a twist of the definition of "law" itself. Yet it cannot be denied that his theory marks the transition from a purely contractual to an objective basis of international law by admitting the objectively binding force of the law-making agreement.

J. Haesaert adopts in effect a mixture of the "autoleminationist" and "Vereinbarung" theories but hardly overcomes the difficulties obvious in such an approach. Anzilloti rejects both the theory of self-limitation and that of a common will of states. The theory of self-limitation is inadequate to explain why the individual state imposing obligation upon itself by its voluntary will cannot subsequently dissolve then. The theory of a common will of states raises the question of the "vis obligandi" of the common will of states which cannot be solved by purely empirical considerations, but requires a juristic foundation. The existing rules of international law, in spite of all its imperfections, according to Anzilloti, reflects its true character. The establishment of any power over states would, according to him, mean the very extinction of international law. The view that states are bound by those rules which they have expressly accepted reflects the extreme
positivist view. But the modern positivists commit a lamentable mistake when they in their zeal to attach decisive importance to the freedom of states not to accept new obligations, disregard their subjection to rules undertaken either expressly or impliedly. Thus whether we adopt the view of Verdross and Kelsen and accepted by Anzilotti that the rule "pacta sunt servanda" is an original hypothesis which is incapable of juridical proof, or whether, like Cavaglieri we see in it a rule of customary international law, it cannot be denied that the rule in its actual operation confronts the State independently of its will. Thus the rule, in its essence, constitutes a command i.e. a rule existing independently of the will of the parties. 26

Lauterpacht. Dr. Lauterpacht thinks that the hypothesis of "pacta sunt servanda" has proved a beneficent transition from a doctrine of international law based on the will of sovereign states to a doctrine of the law of nations based on law's impersonal sovereignty.

In fact International law in our present-day world is in a state of transition. Many principles which were generally regarded as valid during the period between the two world wars demand a fresh evaluation and reconstruction with the emergence of new circumstances.
affecting the international life.

The problem had become all the more complicated because of the rise of the U.S.S.R. with her new social system and ideology. Hence our present enquiry would be incomplete without an examination of the Soviet theory of state sovereignty and international law.

The Soviet theory insists on the principle of unlimited sovereignty of the state as essential to the relationship between the state and international law. No doubt sovereignty as a temporary tactical stand is intelligible and indeed necessary for a group of governments regularly finding themselves in the minority.

To undermine sovereignty in the present context of international life is, according to Mr. Vyshinsky, "nothing but an ideological preparation for a country's political surrender to a more powerful state and its economic might."

According to the Soviet theorists, so long as the Soviet State is encircled by capitalist states, it is destined to act as the "world master of the classical doctrine of sovereignty" and any limitation of sovereignty would be incompatible with the interest of the Soviet State.
Consistent with the unshakable dogma of sovereignty of state, the Soviet Government rejects the solution of international problems by a majority vote of the states concerned; it therefore insists on the principle of unanimity, thus refusing to allow the settlement of disputes by a majority decision of an international tribunal.

It should be remembered that the concept of international law in Soviet Theory has changed with the evolution of Soviet international policies during the years between the end of the Civil War and the beginning of the second war. 27

The earlier Soviet theorists asserted the alleged impossibility of co-operation between states of differing social structures. Thus Andrei Y.Vyshinsky in his "The Law of the Soviet State" spoke of the interest of "representatives of imperialism" in "veiling the serfdom of weak nations by the dominant classes of powerful nations." 28

Vyshinsky Korovin also while pointing to the rule which international law played in the second World War, observed: "In the final analysis it must be admitted that there is not and cannot be such a code of international law as would be equally acceptable to the cannibal and his victim, to the aggressor and the lover of freedom, to the "master race" and its potential "slaves," to the champions of
the sanctity of treaties and to those who would treat pacts as "scraps of paper," to the advocates of humanising and abolishing war and to the proponents of totalitarian war, to those who "value every tear of a child," to quote Dostoyevsky, and to those who try to build a third or any other empire on a foundation of women's corpses and children's skulls.29

There are others whose views often bear comparison with the statement often made that "there is a plurality of communities of International Law and that a fundamental change in the social structure of a state results in its losing the status of a subject of International Law within that international community to which it formerly belonged.30

In international society, there are conflicts, including class conflicts and that present-day International Law is not a system free of all contradictions and able to answer any issue arising without ambiguity. Marxists may explain the latter fact by saying that International Law has grown historically under changing social circumstances, so that its different elements represent distinct trends in international relations.

Yet the reality of International Law is indisputably recognised by contemporary Soviet theory, and regarded as based upon (1) the economic interdependence of the States
(2) the interweaving of their international relations and their mutual political dependence (3) the influence of public opinion.

Korovin. Korovin uses the doctrine of sovereignty as a purely political principle, that is to say, as the postulate that the legal power of the state should not be restricted. He does not favour the idea of the establishment of a world state, as such an enterprise would be "quite removed from reality" because it would involve the abolition of the sovereignty of states.

The logical conclusion of such a concept of sovereignty is the pluralistic construction of international law which seeks to explain the validity of international law by the will of the state for which this law claims to be valid.

Such a view presupposes the primacy of national over international law and discards the idea of one unified international law, valid as 'a unique legal order' for all the States of the world.

Korovin expressly admits that custom and treaties are the sources of international law, but he accords treaties the primary and custom the secondary or subsidiary source.
Such an attempt to minimise the importance of custom as a source of international law can be explained by the fact that the binding force of customary law may run into conflict with the sovereignty of the state as conceived by the Soviet theory.

It should be remembered that this doctrine of relationship between custom and treaties has not always been accepted by other Soviet theorists. Thus Pashukanis recognises without any reservation both the sources as equally important.

In an article "The Second World War and International Law," published in 1946, Korovin defines international law "as the sum-total of legal norms guaranteeing international protection of the democratic minimum." In a sense, this definition approaches one general international law i.e. a legal order binding upon all the states of the world. But he restricts this definition for the "coming period of history". Although he advocates a doctrine of two different international law, they are not valid at the same time, but the one follows the other.

But for the International Law of the transitional period, Korovin and other Soviet theorists including even Pashukanis who became later one of the main critics of Korovin, evolved an interpretation which was a compromise between antagonistic
classes. Thus he assumed that a community of ideology such as might exist between members of identical classes in various countries was a necessary basis of International Law. 37

But the apparent inconsistencies of such a theory was admitted by Korovin himself as early as 1929. Later in 1935, Pashukanis in his new book, started the theory that International Law is more an instrument in the struggle between rival states including those of differing economic and social systems than an expression of a common ideology. 38

Josef L. Kunz commenting on the Soviet theory of international law writes "Although Bolshevism pretends to be politically progressive, the Soviet theory of international law is characterised by an outspoken reactionary tendency. This tendency manifests itself in the fact that the theory is obstinately keeping to that concept of an absolute sovereignty of the individual state which modern theory of international law is more and more rejecting. The Soviet theory - as Korovin says - identifies the cause of Soviet Russia with that of sovereignty." 39

From the very beginning, the Soviet conception of State sovereignty in International Law was identified with the political principle of national self-determination. But this
identification, it must be remembered, may not be correct from the standpoint of strict legal theory.

It is very often pointed out that the conditions for the real independence of smaller nationalities have disappeared and that if they are not integrated into larger units, they may simply be forced into practical dependence on their strong neighbours such as the U.S.A. or U.S.S.R.

The Soviet theory answers that even if such integration into some larger unit has become inevitable, the recognition of State Sovereignty and self-determination must precede the choice which the smaller states may have to make as to the system for which they are willing to waive their "sovereign" rights.

It may be objected that such a view is likely to result in the perpetuation of a plurality of international systems linked together, at best, by agreements on collective security and commercial intercourse.

To this the Soviet theory answers that, during a period of historical transition, this is the only alternative to a chain of world wars unavoidable if each system attempts to establish universality upon its own specific foundations.

If the basis of international law is the inter-dependence of states, it must be admitted that international law
basis of international law can be said to be based upon the very necessity of its existence. The same forces which have been responsible for the growth of civil society among men and of several national groups have prompted states to recognise the need of developing a law to govern the mutual relations of states 'inter se'.

Preamble to The Preamble of the Charter of the United Nations gives expression to these varied forces that have brought about such a close interdependence of the various countries of the world, thus necessitating the emergence of a new international law.

Phillimore expressed it in a way which reflects the true Christian interpretation of the natural law: "To move, and live and have its being in the great community of nations is as much the normal condition of a single nation, as to live in a social state is the normal condition of a single man. From the nature of states, as from the nature of individuals certain rights and obligations towards each other necessarily spring: these are defined and governed by certain laws."41

According to Professor Westlake, "when international law is claimed as a branch of law proper, it is asserted that there is a society of states sufficiently like the state
society of men, and a law of the society of the states sufficiently like state law, to justify the claim, not on the ground of metaphor, but on the solid ground of likeness to the type. 42

No body can deny to-day that the interdependence of states has become a fact. A community of interests between states exists in as real a sense as a community of interests between individual men. The prevention of war, the regulation of conflicting claims, the promotion of general welfare of the group have created a moral and material unity among the different nations which can hardly be ignored.

This ever-increasing contacts between peoples of different nations under conditions of present-day have brought about the need for a system of rules and law between different states. Indeed if the acceptance of legal obligation depends upon a minimum of human relationships across national frontiers that admit of and call for international regulation and upon a minimum of values that are understood or understandable across national frontiers and that may serve as standards for such regulation, it may be assumed that the area of the dominion of international law extends as far as such regular relationships and commonly understood or understandable values extend. 43
Thus Brierly has observed: "The subjection of states to law needs no philosophical explanation other than that by which we explain the subjection of individuals to the law of the state; the differences between that law and international law are important, as we have seen but they do not lie in metaphysics nor in any mystical qualities of an entity called state sovereignty." 44

Although the world has reached a stage of economic inter-dependence of states created by the complex web of international commerce and finance, there is still a condition of keen rivalry and economic competition in which the struggle for control over the raw materials of industry, for the trade of foreign markets, for concessions in undeveloped countries and for other special advantages defied all regulation. 45

Down to the eve of the first World War, little progress had been made in establishing the responsibility of the international community as a whole for the settlement of disputes by peaceful means.

The inability of the Hague Peace Conference of 1907 to get beyond "pious voeux" in respect to compulsory arbitration points out clearly how the conception of "state sovereignty"
was a dominant consideration even while the assembled powers were proclaiming, in the Preamble of the Convention for the Pacific Settlement of International Disputes, "the solidarity uniting the members of the society of civilised nations." 46

So long as the leading powers are unwilling to submit their rivalries to a rule of law, the international community, whatever may be the character of such a community, suffers from its own inherent contradictions and uncertainties.

The deep division between the major states which the political evolution of the contemporary state system has produced does have profound effects upon the scope of universal international law. No doubt it has not destroyed all common standards on which different states can and do agree. But on those standards of international conduct which are considered as most fundamental, it has brought forth emphatic disagreements between the doctrines espoused by the governments of the most powerful states. They are involved in the meaning to be given to the broad conceptions referred to as basic in the construction of international law, as in the United Nations Charter conceptions of peace and security, equal rights and self-determination of peoples, human rights and fundamental freedoms, sovereign equality and political independence of states. 47
This division on fundamentals encourages trends away from universal law. It promotes the further growth of non-universal or particular, international law among those states which are bound by a community of special interests. It must be frankly confessed that in the contemporary state of division on fundamentals, the growth of bodies of rules of particular international law over wide areas, each with common interests and values which hold it together and separate it from areas outside, is both challenging and disturbing.

The various attempts made hitherto, and specially the deliberations of the International Law Commission for the codification of international law clearly demonstrate the truth of such a proposition.

Senator Elihu Root wrote as far back as 1911, "To codify municipal law is to state in systematic form the results of the law-making process already carried on by a nation through its established institutional forms. To codify international law is primarily to set in motion and to promote the law-making process in the community of nations in which the institutional forms appropriate for the carrying on of such a process have been so vague, indistinct, uncertain and irregular that they could hardly be said to exist at all."
Yet the need for codification in the international society can hardly be exaggarated. No doubt, so long as there exists no international legislature able to impose upon all members of the international community, the law as formulated by a majority of states, the scope of codification in the international sphere must differ from that within the state.

In fact, political divisions of the world and the conflict of some fundamental notions of law as between groups of states render impracticable, in most matters, any attempt to achieve generally agreed statement or development of the law. When the world lies in the twilight of dissension and disharmony, international law which rests on the world's common convictions, must inevitably sustain profound eclipse as the world ceases to have any.

The truth is that international law, whether codified or not, implies essentially a restriction of the sovereignty of states whose relations it governs. It is in the nature of things that states wedded to an uncompromising maintenance of their sovereignty cannot view with favour attempts at effective codification.

If international law is to develop into a stronger legal system, competent to maintain peace and to promote justice in the relation of states, it must have to accept
Acceptance of fundamental principles which have not yet been adequately recognised and must be based on an effective organisation of the international community.

It is clear that if the term "sovereignty" has to serve any purpose it must be understood in a manner consistent with maintaining law and order in the international community. There has thus been a tendency among many writers to narrow down the concept of sovereignty. Sovereignty, it has been said, does not mean absolute unrestricted power, but power within the limits of international law. The absoluteness of sovereignty is not the extent but the basis of its power. Sovereignty, briefly expressed, is sole subjection to international law. It will be interesting to note that while formulating the "International Law of the Future," postulate No. 3 rightly provides that the "conduct of each state in its relations with other states is subject to international law, and the sovereignty of a State is subject to the limitations of international law."51

The Inter-American Juridical Committee in their Preliminary Recommendation on Post-War problems, similarly observed, "the sovereignty of the state must be understood in a manner consistent with the supreme necessity of maintaining
peace, order and justice in the international community."

So long as international law is built upon the postulate of the individual interest of a single state as the ultimate standard of values and legal obligation, it cannot develop into a coherent and harmonious system of precepts governed by an all-prevading unity of the reign of law. Until the world achieves some form of international government in which a collective will takes precedence over the individual will of the sovereign state, the ultimate function of law which is the elimination of force for the solution of human conflicts will not be fulfilled.

The states must therefore yield once and for all the right to be the judges in their own case and the right to take the law into their own hands; they must recognize the higher right of the international community acting through its appropriate organs, to preserve and protect the peace of the community and to ward off the causes of dissent that leads to acts of violence.

But unless the sovereignty of the state can be brought within these limitations, no international community can effectively function on a unified basis. International law in such a community of sovereign states resembles a "building eaten up by dry-rot, where the visitant creeps anxiously beneath the blackened and broken rafters, wondering which beam and what plank will be the next to go."
The truth is that sovereignty is essentially a legal fiction and as such is a paradox, though not an absolute impossibility, for if a state is a sovereign in the complete sense, it knows no law and therefore abolishes at the moment of its creation, the jural creator which gave it being.

But although such legal fictions, serve as "the mask that progress must wear to pass the faithful but blear-eyed watchers of our ancient legal treasures" and thus "are useful in mitigating or absorbing the shock of innovation," at times they work havoc in the form of intellectual confusion.

Thus jurists have pointed out, though politicians have failed to act, that state sovereignty is incompatible with the existence of an international legal order.

"Every legal order claims universality. It cannot admit an empty space. If a state, claiming to be sovereign, refrains from ordering all human relations everywhere, if it allows matters to be left without regulation or to be regulated by another state, this means merely that, for technical reasons or lack of power, it does not actively exercise its right of sovereignty, not that it ceases to claim sovereignty. Theoretically, equality of states can only be conceived from the point of view of a superior authority."
As long as there are international relations in peace or war, the absence of conflict is juristically merely an accident. Each international relation whether at present regulated or not must be subject either to an international rule or to the conflicting laws of different states. \textsuperscript{54} Compromise between national and international sovereignty seems to be thus impossible.

In a sense the pure idea of law in and of itself pays no regard to the separation of society into individual states. From the universal validity of the juridical law there directly follows the necessity of a legal community which extends over the whole of society. The existence of a plurality of states and of bodies politic generally is legally accidental. It is neither demanded nor rejected by the law. It remains a question of expediency whether and how far separate legal organisations in society are desirable according to such accidental boundaries as are determined by geographical conditions or by language, customs and usages, religion, race and similar factors.

A state is merely an institution, "that is to say, a system of relations which men establish among themselves for securing certain objects, of which the most fundamental is a system of order within which their activities can be carried
They possess no more inherent sanctity or finality than the multitude of other institutions which men, for the satisfaction of their various needs have organised among themselves. The notion of sovereignty was intended by its original inventors as an explanation of the internal authority within a State, with practically no regard to the relations of states with one another. The sovereign is one who determines the competence of others, but whose competence is not determined by others. This idea cannot exist in a community in which there are two or more such sovereigns; if the one is, the other cannot be a sovereign. It is incompatible with the notion of law, for the function of law is to delimit the competence of its various subjects. "Sovereignty", writes Sir John Fisher Williams is only a name given to so much of the international field as is left by law to the individual action of States. What is sovereignty is not law; what is law is not sovereignty. All law is based on an abandonment of sovereignty, "that man may obtain justice he gives up his right of determining what it is, in points the most essential to him."