SOVEREIGN EQUALITY OF STATES IN INTERNATIONAL LAW

by

R. P. ANAND

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BIOGRAPHICAL NOTE

R. P. Anand, born on 15 June 1933.

After gaining an LL.B. with a first division in 1953, received the LL.M. in 1957 from Delhi University (India) with distinction in International Law. Declared as the best LL.M. student in the University in that year and awarded a special prize. In 1958 joined the Indian School of International Studies as a Senior Research Fellow in International Law.

In 1960-1961 was recipient of a Rockfeller Foundation Fellowship in International Organization at Columbia University in New York. From 1961 to 1963, joined the Yale University School of Law as a Sterling Fellow, received the LL.M. in 1962 and J.S.D. in 1964. In January 1964, was appointed Research Associate at the World Rule of Law Center, Duke University School of Law.

In 1965 returned to the Indian School of International Studies (now part of the Jawaharlal Nehru University) where he has been Professor of International Law and also Chairman of the Centre for Studies in Diplomacy, International Law and Economics.

In 1969 was selected National Lecturer in Law by the University Grants Commission of the Government of India, and delivered lectures at several universities in India on "New States and International Law".

In 1970-1971 was awarded a fellowship by the Woodrow Wilson International Center for Scholars in Washington, D.C. In 1973 was appointed Consultant to the United Nations Secretary-General on Law of the Sea.

On leave from the University, from 1978 to 1982, joined the Culture Learning Institute of the East-West Center Honolulu, as a Research Associate and worked on a project on "ASEAN and the Law of the Sea".

Besides ten books, has published more than 60 articles in Indian, European and American professional journals.

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CHAPTER I

INTRODUCTION

Small "Global Village"

Ours is a dynamic age. Although change is the law of life, life has changed more in our times than perhaps throughout the whole of recorded history. Furthermore, this change is still accelerating and its scope widening making one wonder about the nature of things to come and their effect on practical life.

"One world or none" sounded a bit exaggerated until a few years ago. Today it is a fact of life. It is a pressing reality, an actual condition of mankind, brought about by an age of change which has tied all the peoples of earth in an unprecedented intimacy of contact, interdependence of welfare, and mutuality of vulnerability. The tremendous developments in means of communications and travel, and the orbiting of artificial satellites, have already made the world too small. Economic life has become extremely complex and involves a degree of world-wide interdependence. Currency and tariffs, investment and trade, fluctuations in world-wide prices of goods and multi-national financing, have all increasingly become matters for collective discussion and decision. But even more important, nuclear switches can now be pressed expunging whole nations from the face of the earth. No nation, howsoever powerful, is invulnerable. In some ways, therefore, as it has been aptly said, we are living in a "global village". Whether one likes it or not, we are destined to live nearer still to each other. Proximity is total and is inescapably imposed by modern science and technology.

Besides, there is no escape from the world's commons, the underlying unity and interconnection of space, world's oceans, air and environment. The benefits and dangers from space are common. The seas and oceans, like the winds above, mingle with each other, cleanse or poison each other, pass on each others burdens, and make a seamless watery web. Sovereign governments may proclaim their territorial control and national independence, but airs bring in the acid rain, oceans carry toxic substances to other shores, pollution moves from country to country and continent to continent. If

China or France test nuclear weapons, or there is a nuclear power plant accident in the Soviet Union, the winds blow the fallout to other countries. As the winds and oceans flow round our little planet, China's strontium-90 is as lethal as that of France, the Soviet Union or the United States, and not merely within their own boundaries. Thus it is pointed out that the danger of the "irresponsible" disposal of radioactive wastes from nuclear energy plants is perhaps more of a threat to the security of other States than is the danger of war and conquest[1].

Interdependent but Disunited World

But in spite of all these interdependencies – in technosphere and biosphere alike – and realization that we do indeed belong to a single system and our survival depends on the balance and health of that system, "one world" is in many respects still an ideal and an unfulfilled aspiration. Even under the shadows of a possible nuclear catastrophe, the world is deeply divided. Our small and increasingly interdependent world is divided into 160 and odd independent States claiming absolute sovereignty which, under traditional international law, is supposed to be an unlimited, illimitable, and irresponsible power with no supranational authority to control them.

One of the most important changes of our revolutionary age since the Second World War has been the vast horizontal expansion of the international society. With the decay and almost destruction of Western colonialism, scores of new nations in Asia, Africa and the Pacific, with their teeming millions, which had thus far no status and no voice and had been considered as no more than objects of international law, have emerged as full-fledged members of the international society. A growing majority of these so-called "new" States are neither European nor Western, but represent former colonies and vassals of the Western world with completely different social and legal backgrounds and their own sets of cultural and moral values. Some of these new States (such as China, India, Egypt) are ancient societies and glorious civilizations and have their own well-advanced legal and social systems; others are tribal societies with primitive lives. Some of them are very large States with huge populations, others are tiny States with a few hundred or a few thousand people. Some of them have modern industries and ultra-

modern life styles, others are still coming out of the bush. Some of these countries are extremely rich and have more petro-dollars than they can absorb, others are almost what are called basket cases where famine is almost endemic. But in spite of all their differences in size of territory or population, industrial development or cultural advancement, military strength or financial stability, they all claim to be sovereign and equal and have either joined or want to join the United Nations with their own flags and status as independent members of the international society. Membership in the United Nations has great symbolic and practical meaning. Raising the flag of a new State on the long row of poles on the United Nations Plaza in New York shows self-respect and esteem in the wider world. It enhances feelings of national consciousness that have immense importance for them. As the former Secretary-General of the United Nations, Dag Hammarskjöld, said:

> "It is natural for old and well-established countries to see in the United Nations a limitation on their sovereignty. It is just as natural that a young country, a country emerging on the world stage, should find in the United Nations an addition to its sovereignty, an added means of speaking to the world[2]."

Thus in a world, as we shall see, when the sovereignty of even the biggest and the strongest powers is becoming an anachronism, there is an immense proliferation of sovereignties with no supranational body to contain them. Some of these so-called sovereign States covering a small piece of mother earth as motherland, or a tiny island or islands with a few hundred souls, unable to take care of themselves, claim and are recognized as "sovereign" and "equal" to the oldest, biggest and strongest powers.

Law cannot remain immune to all these changes. In an age of revolutionary and unprecedented changes, it is essential to reassess the validity of present legal rules in the light of new experiences which embrace wholly new perspectives. It is not possible to imprison the process of change in legal traditions which have lost touch with life. In order to remain effective law must constantly justify itself and readjust itself according to the needs of the changing society.

We shall see in the following chapters the origin, meaning and import of the sovereign equality of States. Looking at this fundamental principle of international law in historical perspective, we

shall examine if it needs to be modified and adapted to the present-day world.

Plan of Chapters

The principle of sovereign equality of States refers to the twin principles of sovereignty and equality which are accepted as unimpeachable norms of modern international law which cannot be questioned. However unrealizable they might be in real life, they have become political dogmas and form the very basis of international law. In Chapter I we shall look at the origin and development of the principle of sovereignty. We shall see how etymologically concerned about the internal relationship between the rulers and the ruled, the principle came to be applied to an entirely different relationship between independent States which has led to chaotic situations in international relations. We shall examine how international law has been trying to control the uncontrollable sovereignty or come to terms with it in the increasingly interdependent world.

In Chapter II we shall study the principle of equality of States in an unequal world in historical perspective. Enunciated by classical jurists, reiterated by numerous publicists through the centuries, emphasized by small States, and glibly repeated even by the big powers, we shall see how and why this ideal could never be implemented in practice and what, if any, purpose did it serve.

Examining the meaning and import of the principle of equality of States in a hierarchical world order, in Chapter III we shall see how upheld in theory, rejected in practice, the principle is sought to be implemented through the United Nations General Assembly. We shall also examine how this unexpected application of the "unnatural" principle of equality between unequal States has led to tensions in the United Nations and denunciation of the "democratic" principle by the world's staunchest democracies who want to reject the principle and curb the powers of the representative organ of the world body.

In a world which is becoming increasingly interdependent, and sovereignty and independence of even the largest powers is becoming fiction, we are witnessing a proliferation of sovereignties. We shall examine in Chapter IV how the principle of self-determination has led to the independence of scores of countries, most of whom

are mini-States, with a small population and meagre resources. Theoretically sovereign and even equal to the biggest powers, they are unable to stand on their own and need the protection and help of the international community to maintain their independence, if not bare survival. We shall examine briefly the attempts made to keep them floating and what can and should international law do to help these "helpless" members of the international community.

In conclusion, we shall see why and how international law must readjust itself to the new changed international life and must develop from a law of coexistence to a new law of co-operation.

CHAPTER II

SOVEREIGNTY OF STATES IN AN INTERDEPENDENT WORLD

Sovereignty, a Postulate

Sovereign equality of States refers to two fundamental principles or norms of international law, namely, sovereignty and equality, which are really two sides of the same coin. In the absence of any supra-national body, all States claim to be sovereign subject to no one's authority both in their internal and external affairs. In fact, a State in order to be entitled to recognition as a State and a normal subject of international law, must be sovereign not only externally but internally as well. It must not only be independent of any other State but must also possess a sovereign government claiming and enjoying habitual obedience on the part of the bulk of the population[3]. International law does not confer sovereignty on States. It merely presumes it and is indeed supposed to be a creation of independent States by their mutual consent, explicit or implicit. In the course of a few centuries, sovereignty has got so entrenched in the minds of people that it "has become a postulate rather than a principle, one of the fundamental assumptions of the individualistic system of international law"[4]. As the Permanent Court of International Justice declared in the *Lotus* case:

> "International law governs relations between independent States. The rules of law abiding 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[5]."

In other words, the law of nations is not one enacted by some higher authority and superimposed upon States; it arises directly from their consent. It is a law not of subordination, but of co-ordination[6].

Origin of the Theory of Sovereignty

In order to understand and appreciate the true nature of sovereignty, we must look briefly at its origin and development through the centuries. It is interesting to note that the medieval world knew nothing of national sovereignty. Theoretically, there existed Christendom, with its twin heads of Pope and Emperor, a unifying concept which exercised considerable influence upon political and philosophical thinking until the close of the Middle Ages. In the sixteenth century, reformers split Christendom and destroyed the last unifying element among the peoples of Western Europe. After the decline of the authority of the church and the long struggle between the Pope and the Emperor, Christendom disintegrated. Out of this chaos emerged nation-states, with their monarchs engaged in a struggle against all external and internal adversaries. While externally they had to fight the still lingering influences of the Empire and the Papacy, internally they were troubled by the fissiparous tendencies of feudalism in the form of a miscellaneous assortment of petty lords. But the discovery of the New World dealt a death blow to feudalism, and the invention of gunpowder permitted vigorous kings to raise powerful armies without the approval of baronage. Within the space of 50 years powerful nation-states emerged in England, France and Spain and a little later in Sweden, Russia and other parts of Europe[7]. The kings refused to recognize any superior, both within and without, and jurists came to their aid with a legal theory which served both as a weapon of defence and as a justification for the claim of royal supremacy. Thus originated the notion of sovereignty to help kings meet an intolerable situation. Although he did not expound the theory of sovereignty, Machiavelli, in his work, *The Prince,* published in 1532, suggested the new theory of the State and the methods of securing its advancement. He discounted all restraints upon the ruler, legal or moral, and pleaded for an absolute and irresponsible control exercised by one man who should embody in himself the unity, strength and authority of the State[8]. He paved the way for other writers. Jean Bodin, who is said to be the first to have formulated this theory in 1576 in his *De Republica,* was, like all other writers, deeply influenced by the circumstances of his time. His preoccupation was merely to show the supremacy of the monarch over his own subjects in his own territory and his freedom from

the control of other real or pretended sovereigns, such as the Pope or the Emperor. He wanted to find out the secret of stability in a politically unstable world. Being a sixteenth-century Frenchman and a patriot, his decision was inevitably in favour of monarchy. He was convinced that a State, in order to be a State, must have one, and not more than one, supreme power from which its laws proceeded. He said expressly that the sovereignty of States comprised this one thing, namely, to make and give laws to each of the citizens and subjects, and that since the sovereign made the laws, he clearly could not be bound by the laws he had made himself. In other words, sovereignty was essentially an internal power – the power of a superior over an inferior[9]. But this did not mean that the sovereign was above all laws. As Bodin, defining sovereignty as an "absolute and perpetual power vested in a Commonwealth", added:

> "If we insist however that absolute power means exemption from all law whatsoever, there is no prince in the world who can be regarded as sovereign, since all the princes of the earth are subject to the laws of God and of nature, and even to certain human laws common to all nations[10]."

This theory of sovereignty, clearly circumscribed by law, however, came later to be distorted, and sovereignty came to be identified with absolute power above the law.

The whole purpose of Bodin, as we have seen, was to establish order. The pursuit of the same purpose led Hobbes, writing in the midst of a civil war and political crisis in England, to take the concept of sovereignty to an extreme position. In his *Leviathan,* published in 1651, Hobbes stated that men needed for their security "a common power to keep them in awe and to direct their actions to the common benefit" and that the person or body in whom this power resided was the sovereign. Law neither made the sovereign nor limited his authority; it is might that made the sovereign, and law was merely what he commanded. Further, since the power that was the strongest could not be limited by anything outside itself, it followed that sovereignty must be absolute, illimitable and irresponsible. Hobbes did realize that such power concentrated in a single centre was unpleasant to live under, but argued that it was the lesser of the two evils, life and men being what they were, and compared to "the miseries and horrible calamities that accompany a civil war of that dissolute condition of masterless men"[11].

The majority of the thinkers of the sixteenth and seventeenth centuries, forced by the logic of events to take a realistic view of the function of government in restoring internal order and to define and extend its powers, did not face the problems of international relations. The hold of sovereignty had become so strong upon the thinking of that age that when it became obvious that the personal monarch no longer fitted the role, they started a hunt for the "location" of sovereignty somewhere else. As Hobbes had said the absolute and uncontrollable power need not be vested in a single individual. It could be enjoyed by a group like the British Parliament[12]. With the coming of constitutional government, Locke, and later Rousseau, propounded the theory that the people as a whole were the sovereign, and in the eighteenth century, this became the doctrine which was held to justify the American and French Revolutions[13]. But all that changed was the bearer of sovereignty. In substance, the claim of the sovereign remained unaltered. Whether the individual was called a subject or a citizen, the sovereign held unlimited sway over him. Thus, by the end of the eighteenth century, Europe found itself under the "incubus of a malign and sinister heritage" of a juristic theory which attributed to the State, a juristic entity contrary to the earlier sovereign who was a personal monarch, an absolute and unlimited power above the law[14]. In the international sphere, the national State claimed sovereignty, in the sense of independence from outside control, with the same vigour as its absolutist predecessor. Thus, in 1832, in his *Lectures on Jurisprudence,* Austin defined sovereignty in the following terms:

> "If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent[15]."

This new concept of sovereignty as an unlimited legal power (which Hobbes had described as absolute and illimitable) over all persons and things within its own territory and as full freedom of action in dealing with other States or their nationals, subject to no restraint except that imposed by its own will, found support among several jurists of the nineteenth century and even in some of the decisions of the judicial tribunals[16]. Thus, in *The Schooner Exchange*

v. *McFaddon* (1812), Chief Justice Marshall of the United States Supreme Court said: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself[17]."

Absolutist Conception of Sovereignty Inconsistent with the International Society

Howsoever flattering to national pride this concept of sovereignty might be, it was never the principle acted upon in practice. As Professor Brierly has rightly pointed out, as a matter of principle, the theorists who developed the doctrine of sovereignty were not interested in the relations of States *inter se*; they all thought of a single State *in abstracto* and paid little attention to the question of how the theory could be applied in a world containing a fair number of States[18]. The theory is inconsistent with a system of international law which is itself based on the principle of reciprocal rights and obligations. It is against the facts of actual life, namely, the interdependence of States. Sir John Fischer Williams correctly pointed out:

> "No State is sovereign in relation to another State. Sovereignty is a relationship between rulers and ruled, not between members of a community who are on a footing of equality one towards another[19]."

Originally and etymologically denoting the relation of "superiority", the word has come to be applied to a

> "wholly different relationship which subsists between two or more States which recognize no mutual subjection or inferiority. In other words, language by a curious fallacy has treated absence of inferiority as if it were the same thing as the presence of superiority, and men have come to use in connection with a relationship for which the word 'independence' is entirely appropriate, the inappropriate terms 'sovereign' and 'sovereignty'[20]."

In truth, says Fischer Williams, independence and sovereignty have little in common. Sovereignty, as we have seen, denotes absolute and perpetual power within a State, the sole characteristic of which, as Bodin said, is to give laws to its subjects and to receive none

from them. "Independence", on the other hand, has no reference to subjects, and no connection with the conception of giving laws. A State is independent when it is not bound to receive any laws from an external authority[21]. The confusion reigning around the concept of sovereignty in international law is very largely due to the fact that the sovereign State was first defined by individuals like Bodin, Hobbes and Hegel, who, whatever they were, were not international lawyers and did not pause to think whether their theory would fit the facts of international relations[22]. In fact, most theories of sovereignty, as Brown rightly said, "have been more often apologies for a cause than the expression of a disinterested love for truth"[23].

It was not long before it came to be realized that sovereignty in this sense – which implied the negation of all international society and of all laws – was impossible, and States, as well as statesmen, began to understand that a wise limitation of their sovereignty was its best safeguard: "The increase of civilization, intercourse, and interdependence as between nations . . . influenced and moderated the exaggerated notions of sovereignty[24]." All international law of today is made up of the limitations of sovereignty, limitations created by sovereignty itself. The peace of the world and effectiveness of international law and organization "depend on restrictions on the sovereignty of States imposed on themselves by themselves"[25].

Sovereignty Is Territorial

Sovereignty, explained Judge Huber in his famous award in the *Island of Palmas* case,

> "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[26]."

Sovereignty, therefore, is essentially territorial and "includes certain powers to be exercised in regard to a particular limited territory unimpeded by any interference from outside". As it was declared in the *North Atlantic Coast Fisheries* case as well:

> "One of the essential elements of sovereignty is that it is to be exercised within territorial limits, and that, failing proof

> to the contrary, the territory is coterminous with the sovereignty[27]."

Thus, in "international law, the structure of which is not based on any superstate organization", territorial sovereignty remains of necessity a right "with which almost all international relations are bound up"[28]. As the International Court of Justice has said, "territorial sovereignty is an essential foundation of international relations"[29].

It is obvious that the territorial sovereignty of each State imposes corresponding duties of abstention and non-interference on the part of other subjects of international law. Viewed in this sense, sovereignty and domestic jurisdiction of States become interchangeable terms[30]. States are generally very much conscious of the sanctity of their domestic jurisdiction and extremely critical of interference in their exclusive internal affairs. Not only was this principle recognized by the Covenant of the League of Nations – vide Article 15 (8) – but it has been expressly laid down in Article 2, paragraph 7, of the Charter of the United Nations[31].

Three Aspects of Sovereignty

Sovereignty as supreme authority, or independence, is said to have at least three aspects. A State is said to have external independence when it enjoys liberty of action outside its borders in its intercourse with other States. In consequence of this,

> "a State can, unless restricted by a treaty, manage its international affairs according to discretion; in particular, it can enter into alliances and conclude other treaties, send and receive diplomatic envoys, acquire and cede territory, make war and peace[32]".

A State has internal independence in the sense of liberty of action within its borders. In consequence of this independence and territorial supremacy,

> "a State can adopt any constitution it likes, arrange its administration in any way it thinks fit, enact such laws as it pleases, organize its forces on land and sea . . . adopt any commercial policy it likes, and so on".

Further,

> "all individuals and all property within the territory of a State are under its domination and sway, and foreign individuals and property fall at once under the territorial supremacy of a State when they cross its frontiers[33]".

A State can exercise supreme authority over its citizens at home and abroad under what is called personal supremacy. A State may "treat its subjects according to discretion, and it retains its power even over such subjects as emigrate without thereby losing their citizenship"[34].

Sovereignty and Law

Sovereignty or independence finds expression in the field of international law in two ways: first, as the right of a State to determine what shall be for the future the content of international law by which it will be bound, and, secondly, as the right to determine what is the content of international law in a given case[35]. In other words, apart from the absence of a supranational executive authority, a State does not recognize a legislator above itself.

The principle of consent reigns supreme in international law. It is well known that it is for each State to decide whether it wishes to attend an international conference, and, if it does, unless otherwise agreed, the unanimity principle applies. Further, every participating State remains free to reject even a unanimously agreed draft treaty. Any change in the existing international law depends upon the consent of the State against which such change is claimed to be valid, and every subject of international law may decide for itself whether to accept any further restriction of its sovereignty or not[36].

It is thus well established that every State is its own judge and is not bound to submit its disputes to an international court or tribunal without its consent. As the Permanent Court of International Justice declared in its oft-repeated famous opinion in the *Status of Eastern Carelia* case:

> "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[37]."

This rule has been stressed time and again by the Permanent Court and its successor, the present International Court of Justice, in a number of their judgments. Both Courts have made it clear beyond doubt that the jurisdiction of an international court "depends on the will of the parties"[38] or "on the consent of the respondent"[39], and that jurisdiction exists only in so far as the States have accepted it[40].

In the absence of a comprehensive machinery for the pacific settlement of international disputes, war has been "the litigation of States". International law was compelled to accept the fact of war and the unlimited right of sovereign States to make war for any reason they considered sufficient, or for no reason at all, and to be answerable to no one. "That was the unhallowed inheritance which modern democracies have received from absolutism[41]." Following the lead given by the naturalist writers, law could do no more than seek to mitigate its effects by elaborating rules for its proper conduct. Indirectly, those writers set the seal of legality and normality upon warfare instead of treating it as a breach of international order. In fact, war was accepted as something beyond the pale of law – neither "legal" nor "illegal", but "extra-legal"[42].

Another consequence of the principle of sovereignty underlying traditional international law has been that it is limited to sovereign States with perhaps the addition of a few anomalous communities. The individual has had no existence in the international sphere. He was, as it were, swallowed up in the personality of his State. This gave birth to exaggerated theories of State, applicable not only in the international, but also in the domestic sphere, leading to the regimentation of the human being upon a scale and with a thoroughness unparalleled in the world's history. Further,

> "the irresponsibility of the State to the individual has given to the State, or rather those who temporarily control it, a dangerous and intoxicating immunity from control which on occasions has been grossly abused[43]".

Finally, the personification or reification of the State has made it possible for international relations to be conducted according to a standard of morality based upon narrow and selfish national material self-interest which has long been abandoned, in so far as the individual is concerned. The only regulation on the adoption of war as an instrument of national policy has been to organize public

opinion in support of such a policy. This has given rise to one of the most important causes of misunderstanding in the international sphere and has led to "a comprehensive and unscrupulous system of propaganda permeating the whole social structure of the modern State"[44]. Thus, while States are subject to international law, that "subjection is accompanied by a practically unlimited recognition of the internal sovereignty of the State and by a measure of freedom of action outside its borders" to the extent of annihilating and destroying the independence of another State by waging a successful war. Such freedom, there is no doubt, tends "to bring international law to the vanishing point of jurisprudence"[45].

Sovereignty Does Not Mean Unlimited Freedom

As we have noted, sovereignty,

> "in its meaning of an absolute, uncontrolled State will, ultimately free to resort to the final arbitrament of war, is the quicksand on which the foundations of traditional international law is built[46]".

The positivists, the strongest and faithful champions of such a theory, assume it as a logical conclusion that the will of States is necessarily the sole source of international law. There is little doubt, however, that such a theory would amount to a negation of all law and society. A society of States in which each member is bound only by its own free will would, as Dupuis justly remarked, be an "anarchy of sovereignties"[47]. This theory fails to take into account the actual interdependence of States and the need to curb their independence to suit the conditions of life. The traditional concept of sovereignty has become particularly inconsistent and outmoded in the present-day world. There is a lot of truth in the statement that the first atomic weapon "blew the roof off the sovereign nation-state". As John H. Herz has rightly pointed out, the very core of sovereignty, the "impermeability and impenetrability" of nation-states, has been brought to an abrupt end by the advent of the atomic and space age:

> "In a symbolic way (in addition to their possible practical use for hostile purposes) satellites circling the globe and penetrating the space above any territory of the globe, regard-

> less of 'sovereign' rights over air spaces and duties of 'non-intervention', serve to emphasize the new openness and penetrability of everything to everybody[48]."

Apart from the impracticability of unlimited freedom of States, it is important to note that the positivist doctrine has long released its hold on international lawyers. Indeed, as Sir Hersch Lauterpacht has persuasively shown, it is unsound in theory and without support from practical life. The science of international law, says Lauterpacht,

> "while recognizing that it is the business of international lawyers to expound law, as it is and not as it should be, is now increasingly realizing that dogmatic positivism as taught by a generation of priests fascinated by the splendour of the doctrine of sovereignty is a barren idea foreign both to facts and to the requirements of a scientific system of law[49]."

Thus, while the will of the parties no doubt creates law between them, "it does not depend upon the discretionary will of the State whether it should respect or reject international law[50]. In this respect, Jenks goes a step further and declares

> "that the world has substituted a positive for a positivist concept of law and no longer looks to the dogma of sovereignty as the basis of international relations[51]".

Sovereignty May Be Limited by Treaties

There is little doubt, as the Permanent Court of International Justice said in the *Customs Régime between Germany and Austria* case, that States, being their own masters, may dispose of their sovereign rights as they please[52]. In doing so, they exercise their rights as independent States. There is nothing to prevent a sovereign State from limiting some or all of its sovereign rights and even annihilating itself as a subject of international law[53]. The Permanent Court strongly took this position in the *S.S. "Wimbledon"* case and affirmed it in two later 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[54]."

Once a State has undertaken certain obligations through treaties or agreements, it is bound to fulfil them. *Pacta sunt servanda* is a universally recognized principle. As the Permanent Court of Arbitration emphasized in the *North Atlantic Coast Fisheries* case,

> "every State has to execute the obligations incurred by treaty *bona fide,* and is urged thereto by the ordinary sanctions of International Law in regard to the observance of treaty obligations[55]".

States are still free, it may be asserted, not to sign a treaty. But in practice, in the present interdependent world, this is more or less an impossibility. "Complete and absolute sovereignty unrestricted by any obligations imposed by treaties is impossible and practically unknown[56]." No State could survive today without the benefit of treaties; for, without them, it would be almost impossible to have international trade, communications, diplomatic intercourse, travel and all other normal features of life[57]. In a system of interrelated legal principles, sovereignty is necessarily a relative concept[58].

The most serious and important inroads into the traditional concept of sovereignty have been made by the creation of international organizations. Realizing that interdependence rather than independence is the normal condition of life, States have established these institutions for the realization of common purposes. The establishment of the League of Nations represented the first important step in the direction of building an enduring structure of co-operation among States. But while the acceptance of the League was a halting step in which the sovereignty of its members was preserved to a great extent by the unanimity rule, the failure of the League and the horrors of the Second World War led to the adoption of a more imposing structure in the form of the United Nations. Despite formal salutations to the principle of sovereign equality in Articles 2 (1) and 78 of the Charter, Members have accepted a drastic limitation of their independence by accepting the *majority principle* for reaching decisions in all the organs of the United

Nations. They have also expressly and unequivocally restricted their extreme prerogative of sovereignty, viz. the right to threaten, declare, and wage war. They are bound to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered" (Article 2 (3)). They have also agreed to

> "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations" (Article 2 (4)).

The traditional concept of isolated State sovereignty is undergoing a progressive process of erosion. Under the pressure of the Cold War, large areas of the national interest traditionally reserved for sovereign self-determination of the State and immune to outside influence, have become subject, within each power bloc, to the mutual influences and reciprocal pressures of the operative self-interest[59]. Political co-operation has been extended to military and economic fields. The numerous defence pacts and regional organizations are symbols of international co-operation which has become a universal phenomenon in our age. Restrictions of national sovereignty of truly revolutionary proportions are involved in some of the regional economic organizations, such as the European Coal and Steel Community of 1952, and the European Economic Community and EURATOM of 1957. The same is true of the European Human Rights Conventions. It is interesting to note that several countries in Europe, where the theory of unlimited sovereignty originated, have recently enacted explicit constitutional provisions to enable them to agree to the limitations of their sovereignty in the interest of international co-operation and the organization of peace. Such laws have been passed, for example, in Belgium, Denmark, France, Italy, the Netherlands and West Germany[60].

Supremacy of International Law and Limitations on Sovereignty

It is universally admitted that in the case of a conflict between municipal law (an expression of national sovereignty) and international law, the latter prevails over the former. As the Permanent Court of International Justice stated in the *Greco-Bulgarian Communities* case:

> "It is a generally accepted principle of international law that in the relations between Powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty[61]."

Again, in the *Treatment of Polish Nationals in Danzig* case, the Court observed:

> "According to generally accepted principles, a State cannot rely, as against another State, on the provisions of the latter's constitution, but only on international law and international obligations duly accepted . . . and, conversely, a State cannot adduce, as against another State, its own constitution with a view to evading obligations incumbent upon it under international law or treaties in force[62]."

It is thus clear that municipal law cannot prevail either over the obligations of a State under international treaty or over international customs, including the minimum standards of international law. Nor can a State plead that the non-fulfilment of its international obligations or the violation of a treaty is due to its constitution, or to acts of omission and commission on the part of its legislative, judicial, and administrative organs or any self-governing body under its control[63].

It is well known that the independence of States even within their own territories is limited by the principle of international responsibility[64]. Even in so fundamental and elementary a right of sovereignty as the expulsion of foreigners who are inimical to the security, independence, or the best interests of a State, States have been held liable if such expulsion was not carried through under proper and reasonable conditions, or if sufficient reasons were not given for the expulsion of a foreigner[65].

Sovereignty Within the Law

In the face of all these limitations it would indeed be a bold thing to claim that States are in fact sovereign. The realities of life no more permit absolute independence to States than to individuals. In the present interdependent, shrunken world society, absolute independence would be a contradiction in terms. The old theory of absolute sovereignty fitted in very well with the actual conditions

of the international society at that time. Today, the situation is totally different. In the place of an "anarchy of sovereignties" we have a society of interdependent States, bound by law and possessing a highly developed solidarity of interests. It is true that in the absence of an effective supranational authority, there are no efficient means for the enforcement of law. But the discretion of States is certainly not unlimited. They are bound not only by freely accepted obligations, but by the generally accepted principles of international law. The essence of the matter is simply that the world has outgrown sovereignty[66]. As Max Huber said:

> "The concept of sovereignty, which existed long before the Renaissance, may have been necessary for transforming feudal medieval States into modern ones, but for any ethic of a supranational community it is a mortal poison[67]."

It is a striking tribute to the supremacy of international law that never in any official public act has any State in our time dared to declare that it would not be bound by this law or its precepts. States are still independent, as individuals in a free society are, but they are independent only within the law.

It must be remembered, however, that although international law controls sovereignty, in the sense that it sets a legal limit to a State's power, this power is not a delegation of international law. This is not only logically unnecessary but historically incorrect. Further, nothing is more repugnant to States than the idea that they are exercising a power conceded to them by the international order[68].

Teaching of Publicists

This has also been, in essence, the teaching of publicists since the close of the nineteenth century. Thus, as early as 1890, Sir Fredrick Pollock found the doctrine of sovereignty even in the realm of political theory "inadequate, like all dogmatic formulae, to account for complex facts"[69]. Dicey could find no recognizable sovereign in federal systems of government[70]. Bryce, Duguit, Kelsen, Politis and several other thinkers have consistently challenged and undermined the concept in legal thought. They generally define sovereignty as the supreme power of a State over its territory but within the framework of certain rules of international law which

are binding upon it[71]. As Judge Anzilotti said in the *Customs Union* case that

> "the sovereignty of the State consists of its competence as defined and limited by international law and is not a discretionary power which overrides the law[72]".

He further stressed that by sovereignty "is meant that the State has over it no authority than that of international law"[73].

J. G. Starke feels that

> "it is probably more accurate today to say that the sovereignty of a State means the residuum of power which it possesses within the confines laid down by international law[74]".

Quincy Wright defines sovereignty as "the status of an entity subject to international law"[75]. Oppenheim affirms:

> "The very notion of international law as a body of rules of conduct binding upon States irrespective of their municipal law and legislation, implies the idea of their subjection to international law and makes it impossible to accept their claim to absolute sovereignty in the international sphere[76]."

Lauterpacht asserts that "sovereignty is a delegated bundle of rights. It is a power which is derived from a higher source and therefore divisible, modifiable and elastic[77]."

In a statement concerning international law of the future presented as a community of views formulated after thorough and repeated consultation by about 150 American and Canadian jurists, it was declared:

> "The conduct of each State in its relations with other States and with the community of States is subject to international law, and the sovereignty of a State is subject to the limitations of international law[78]."

In 1949, the International Law Commission declared in its draft declaration on rights and duties of a State:

> "Article (14): Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law[79]."

Professor Brierly sums up the position of States by saying that independence "does not mean freedom from law, but merely freedom from control by other States"[80].

Rejection of State Sovereignty

While the general erosion of sovereignty of States in international relations continues, we are confronted with a paradox in current world affairs. While the charm and lustre of sovereignty seemed to be fading, numerous new sovereign States have emerged with renewed emphasis on this largely discredited doctrine. With a natural aspiration to have full and obvious control of their own affairs hitherto denied, claims to sovereignty are more widely and sometimes more vigorously asserted than ever before by the new States. Supported by the Communist Powers who, for their own reasons, as we shall see below, are great champions of sovereignty of States in a world dominated by a hostile capitalist world, the concept has become a sort of bulwark for the small and weak States of the so-called Third World for the protection of their national freedom against super-power control and domination. But, as Jenks points out, "while the catchword of sovereignty continues to intoxicate national policies the facts of community life make the concept increasingly unreal"[81].

Piqued by this renewed emphasis by the new and some old States on traditional sovereignty, in their enthusiasm to demonstrate the strength of law to control power, and in their eagerness to establish a rule of law in the international society, some scholars deny the very existence of State sovereignty. Thus George Scelle considered "the concepts of juridical personality and the sovereignty of the State as primarily responsible for insufficiencies of the law of nations . . . Only law is sovereign." The concept of limited sovereignty was to him "more unacceptable even than that of sovereignty *tout court*, the latter being, at least, logical, in itself". International law, according to him, is the legal order of the community of peoples or the universal society of men[82].

Describing sovereignty as "sanctified lawlessness, a juristic monstrosity and a moral enormity", Jenks has no doubt that

> "it must be rejected as a deliberate act of policy as a snare and a delusion, which the new States will quickly recognize as such

> as they find that it cannot fulfil any of the essential purposes for which they value their freedom and independence, and which cannot serve effectively the long-term interest of any party to the ideological conflict[83]".

Sovereignty, he insists,

> "holds no promise of peace. It affords no prospect of defence. It provides no assurance of justice. It gives no guarantee of freedom. It offers no hope of prosperity. It furnishes no perception for welfare. It hardens the opposition to orderly and peaceful social change. It disrupts the discipline without which scientific and technological innovation becomes the Frankenstein of our society (but a remorseless Frankenstein perpetually making new monsters). It is a mockery, not a fulfilment, of the deepest aspirations of humanity. The most eloquent refutation of the concept of sovereignty in the sphere of international relations is its futility, as tested by the professed purposes of contemporary politics[84]."

Several other scholars denounce sovereignty as a "dangerous, obsolete, illogical, devastating, destructive" political dogma which must be discarded[85]. The reluctance of nations to relinquish even fractional sovereignty and blind adherence to nationalism, notes famous historian Arnold Toynbee,

> "not only frustrates man's loftiest aspirations but imperils his very existence . . . there is no reason why nations should be sovereign. In fact, no nation is ever sovereign very long[86]."

Lord Clement Attlee, the former British Prime Minister, said:

> "The root of the trouble in today's world is that we believe in anarchy. We believe in the complete, or almost complete, right of every nation to do what it chooses. One still has the feeling that anything like a surrender of sovereignty is contrary to our human nature[87]."

According to Krabbe, "a self-supporting sovereign authority is a fiction and . . . in consequence even national law cannot derive its binding force from such a source". International law, he says, "cannot be built upon the unreal foundations of the sovereignty of the State", though this is continually being attempted. The binding force of international law is "based upon its spiritual nature and,

therefore, upon the fact that it is a product of men's sense of right"[88].

Alf Ross affirms that the modern concept of sovereignty, namely, the subjection of the State only to international law, is an "obvious absurdity", and must be replaced by three special functional concepts as positive legal situations created directly by rules of law, namely "self-government", "capacity of action", and "liberty of conduct"[89].

Sovereignty Not a Myth

Nevertheless, however much it might be decried as a political doctrine, sovereignty "does stand today for something in the relations of States which is both true and very formidable"[90]. It refers to certain powers that States claim for themselves in their mutual relations and to act without restraint on their freedom. In the absence of any effective international order, the international society consists of a number of independent entities none of which is bound to submit to any higher authority. As Schwarzenberger explains:

> "Political sovereignty is the necessary concomitant of the lack of an effective international order and the constitutional weaknesses of the international superstructures which have so far been grafted on the law of unorganized international society[91]."

Under these circumstances, as an unofficial American Commission set up to study the organization of peace declared:

> "A sovereign State claims the power to judge its own controversies, to enforce its own conception of its rights, to increase its armaments without limit, to treat its own nationals as it sees fit, and to regulate its economic life without regard to the effect of such regulations upon its neighbours[92]."

Historically and logically, international law presupposes the State. In fact, modern international law was itself born of the plural system of States pre-established on a territorial basis. It did not confer on the State what is called its territorial competence; it merely accepted the consequences of this competence being exercised by the States as part of their political power. International

law has long tried to come to terms with this political power called sovereignty. It has tried to "domesticate sovereignty", to control its power, to make it amenable to law[93].

It is not possible to wish away sovereignty from the realm of international law. We should not forget that today most conventions of international law still cling persistently to the dogma of sovereignty. Even the most advanced international organizations, such as the Organization for European Economic Co-operation, the Marshall Plan, the Brussels Treaties of 1948, and treaties which led to the NATO, the Council of Europe, and the Western European Union, presume States to be, as in earlier times, sovereign political entities and continue the principle of unanimity. The adoption of the majority principle in the United Nations looks like the rejection of the principle of sovereignty. But in view of the privileged position assigned to permanent members of the Security Council, whose sovereignty really counts in this power-dominated world society, this interpretation cannot be accepted without reservations. The Security Council may be prevented in its action by a veto of one (or more) of its permanent members in almost all important matters of the Organization.

Nor has the Charter, in fact, curbed the sovereignty of the smaller States. As always, taking benefit of the rivalry between the big Powers, they can preserve and maintain their position without too much limitation. With the world sharply divided into power groups today, they have the freedom of choice of their connections and interstate alliances. Their territorial integrity is generally protected by the two Power blocs, and their sovereignty remains unchallenged, strengthened by the fact that both blocs want either to win them over or to keep them in their respective camps[94]. As a result of the Cold War, almost any newly formed State, regardless of its viability, is automatically admitted to the United Nations. These newly independent States are extremely sensitive to any infringement of their independence, and are attached to their sovereignty with all the freshness and warmth of their national sentiments. The same may be said of the 20 Latin American States. Despite all their weaknesses and the massive support that they need, the major powers dare not ignore these voices, as long as precarious balance of power maintains a kind of peace. The "orgy of sovereignties" is reflected in the changed composition and structure of the United Nations[95]. One consequence of this is the elevation of the new national sovereigns,

several of them passing within a few years from tribal subjection to sovereign independence, and many of them unable to exist without support from outside, acquiring a disproportionate influence in world affairs. We may deplore and reject this hardening of the ideology of nationalism, which unlike the nineteenth-century nationalist movements tends to create smaller rather than larger political units, as no longer in conformity with the military, political and economic realities of our time. It is well known that only two or three of the existing States possess power sufficient to make good the claims that possession of sovereignty normally entitles a State to make. The rest, including such once-powerful States as Great Britain and France, can hope for survival in close association and eventual integration with a wider group[96]. For most States, as Brierly so rightly put it:

> "Sovereignty has become little more than an honorific epithet, much as it is when we speak of 'Our Sovereign Lord the King'; it is only the power of a few Great Powers that is a reality in the modern World. That of other Powers, except when it is backed by the power of a Great Power, may sometimes be a minor nuisance, but it can no longer be a serious threat to world order[97]."

The growing integration of West European States with long traditions of national sovereignty is, therefore, more than a historical accident. Despite these contradictions, the fact remains, and we must recognize it, that "sovereignty", which is supposed to be the enemy of international integration, has not been interned. Whether one likes it or not, sovereignty as forged by centuries of history belongs to politics as well as to law. Neither the provisions of the Covenant nor the principles of the Charter have brought about any significant change in the discretionary power that the States propose to keep over those interests which they consider vital, and these interests are protected from interference by international organs by the rule of "exclusive jurisdiction" or "domestic jurisdiction"[98].

It may also be said that the newly independent or generally suppressed countries of the Third World have become champions of their sovereignty or independence not only to protect themselves from the onslaughts of the powerful States, but also to make their political independence meaningful. Without being bothered by

contradictions in their stand, they not only demand and insist upon permanent sovereignty over their natural and economic resources and liquidation of lingering economic and political privileges of their erstwhile masters, but also desire economic help for their development and strongly demand a new international economic order since in an interdependent and small world their plight and interests cannot and should not be ignored.

Soviet Doctrine of Sovereignty

One of the most ardent champions of sovereignty today is the Soviet Union. Soviet publicists and statesmen consider sovereignty a basic principle, a foundation of international law and inter-state relations. "Without its recognition, there can be no free co-operation between States and hence no international law[99]." Sovereignty is defined as

> "the independence of a State expressed in its right freely and at its own discretion to decide its internal and external affairs without violating the rights of other States or the principles and rules of international law".

So circumscribed, it is admitted that in the interests of international co-operation States may voluntarily and reciprocally restrict their sovereignty. But the subjection of small States to the will of large States, or the subordination of the former by the latter, is impermissible. "This is often cloaked by the hypocritical reference to the weak States' 'voluntary restriction of sovereignty'." The unswerving observance of the principle of sovereignty not only does not obstruct co-operation between States, as "the enemies of peace" frequently assert, "but makes it more fruitful and successful". Moreover, "sovereignty is a reliable means of defending the small States from the major imperialist powers' attempts to subjugate them to their diktat"[100].

The Soviet jurists, therefore, denounce the "demolishers" and "gravediggers" of sovereignty[101] from the capitalist countries as imperialists who are trying to promote their own greedy interests to the detriment of other nations of the world[102]. Sovereignty, they point out, protects democratic governments and encourages the battle against world domination by one group. It must, therefore, be defended. Thus, Professor Koretsky said in the International Law Commission:

> "The sovereignty of States limited international law. International law must so regulate relationships between States that the mastery of superiority of one State over another could not exist . . . To limit the power of one's own State was to open the gates to the intervention of other States. The international field must not be dominated by those who interfere in the internal affairs of others, by reactionaries who sought to organize other countries by force [103]."

Contrary to the opinion of the "bourgeois scholars", according to the Soviet jurists, "one major trend of our time and one which directly influences international relations, is the development and strengthening of the sovereignty of States". The reason is not, they feel, the reluctance of statesmen to relinquish power. In fact, "the existence of sovereign States is an objective characteristic of the present stage of social revolution" [104]. That is why the United Nations is an *international,* not a *supranational* organization, an organization of sovereign States as expressly declared in Article 2, paragraph 1, of the Charter. This is considered to be essential because the sovereign States existing today belong to different and even opposing social systems. Accordingly, one of the fundamental principles of international organization is the principle of peaceful coexistence of States with different social systems. The Charter, therefore, calls on the nations "to practise tolerance and live together in peace with one another as good neighbours" [105].

It is crucial to remember, however, that in Soviet doctrine, like law and the State with which it is indissolubly tied up, sovereignty has a class character. Sovereignty is used as a shield to protect Communist countries from the capitalist countries. As Korovin states:

> "The Soviet Union is destined to act as the champion of the doctrine of 'classical' sovereignty in so far as its formal seclusion acts as a legal armour protecting it from interference of those factors under the pressure of which the frontiers of the contemporary capitalist States are changed and the forms of their law altered. So long as beyond the frontiers of the USSR there is only the ring of bourgeois encirclement, every limitation of sovereignty on behalf of it would be a greater or lesser victory of the capitalist world over the socialist order [106]."

As long as there are rich and poor, exploiters and exploited, weak

States and strong ones, according to Soviet writers, any limitation on sovereignty would help only those who are strong and would never benefit those who are weak[107]. However, the principle of sovereignty in relations between States does not mean "absolute" sovereignty.

> "A sovereign State must not in its international relations behave in an arbitrary fashion, without taking account of the generally recognized principles of international law and the undertakings which it voluntarily assumed. To do so would violate the principle of the sovereign equality of all the members of the international community. It would undermine the international community and lead to the unlimited rule of force and violence[108]."

In fact the principle of sovereignty is closely linked with other principles of international law and cannot be realized

> "without strict observance of other generally recognized principles, such as mutual respect for territorial integrity, non-aggression, non-intervention in each other's internal affairs, equality and mutual advantage and peaceful coexistence[109]".

But sovereignty, as conceived by the Soviets, has another purpose. It is –

> "a weapon in the struggle of the progressive democratic forces against the reactionary-imperialistic ones. Under contemporary conditions, sovereignty is destined to act as a legal barrier protecting against imperialistic encroachment and securing the existence of the most advanced social and State forms – socialist and those of a people's democracy; it is a guarantee of the liberation of the oppressed peoples in colonies and dependent territories from the imperialistic yoke[110]."

It must be noted, however, that these principles of sovereignty do not apply to the non-Communist States, where sovereignty is synonymous with class dictatorship of the *bourgeoisie*. The phenomenon of sovereignty, according to the Soviet view, has two fundamentally different senses and purposes, depending on whether it is the sovereignty of a Communist State or that of a capitalist State. In the first case, sovereignty is the instrument of Communist revolution, in the second, it is the instrument of capitalist oppression.

The latter is the very thing which must be fought and destroyed. Sovereignty of the capitalist countries, therefore, finds no protection in Soviet doctrine. Thus, Levin opposed the view that the sovereignty of Franco's Spain could be invoked to protect it from interference within its domestic régime. This, according to him, would be a distortion of the "real meaning of sovereignty". He explained:

> "Under contemporary conditions, sovereignty and democracy are indivisible. The principle of sovereignty is subordinated to the principle of democracy as a more general and universal principle of relations between States and of relations within a State. A régime brought about by aggression, and representing a constant threat of aggression, certainly cannot claim to be protected under the cover of the principle of sovereignty [111]."

It is interesting to note that Molotov defended the war of the Soviet Union against tiny Finland in 1939 as a "just" war because it had to solve the vital problem of the borders of the "country of socialism and peace" [112]. Kojevnikov (Judge at the International Court of Justice, 1953-1960) also asserted in this connection that

> "the USSR has the right to ask for the shifting in her favour of the frontiers of a neighbouring State if, in the opinion of the USSR, that endangers the security of the Soviet Union [113]".

So, according to the Soviet view, the only sovereignty that deserves protection is the sovereignty of the Communist States. The "imperialist" State, the sovereignty of which conceals "the dictatorship of the *bourgeoisie*", always holds forth the threat to become "something like a bull in a china shop on a world scale", and the only treatment it deserves is to be destroyed by the world revolution [114].

Sovereignty Within the Communist Group

It is important to examine how the principle would function within the Communist group of nations. As we have noted, the political function of sovereignty, in Communist ideology, is to liberate "the peoples from the imperialist yoke". Once this is achieved, the principle of proletarian dictatorship governs the

relations between the Communist States. These countries are still called sovereign, but the subject-matter of the term is different. Sovereignty no longer means internal and external independence of the State to carry out its functions, but *freedom to act in the interests of the Socialist world and the interests of the world revolutionary movement.* The sovereignty of each Socialist country cannot be opposed to the overall interests of the Socialist world. Once a country has embraced Communism, there can be no turning back to capitalism. The weakening of any of the links in the world socialist system directly affects all the socialist countries, which cannot look indifferently upon this. When, therefore,

> "internal and external forces that are hostile to socialism try to turn the development of some socialist country towards the restoration of a capitalist régime, when socialism in that country and the socialist community as a whole are threatened, it becomes not only a problem of the people of the country concerned, but a common problem and concern of all socialist countries[115]".

And they are said to have a right to intervene. In a class-ridden society, the Soviet jurists assert, there is not, and there cannot be, a law that is independent of the classes. Law and legal standards are subject to the laws of social development. To lose sight of the class criterion in assessing legal standards would be tantamount to measuring events with the yardstick of *bourgeois* law, which is entirely wrong.

It was on the basis of an alleged threat to the socialist movement, it may be noted, that the Soviet Union and its allies tried to defend the intervention in Hungary in 1956 and the invasion of Czechoslovakia by the Soviet and other Warsaw Pact forces on 21 August 1968. The purpose of these interventions was to protect the "socialist gains" and ultimately to defend their sovereignty from "sudden swoops of imperialism"[116]. They argued that under the cloak of sovereignty and self-determination, the anti-Soviet forces in Czechoslovakia covered up a demand for so-called neutrality and Czechoslovakia's withdrawal from the socialist community. This, however, would have come into conflict with its own vital interests and would have been detrimental to the other socialist States. Naturally, the other "fraternal" countries could not remain inactive for the sake of sovereignty, interpreted in an abstract way, when they saw that the country stood in peril of anti-socialist dege-

neration. "The help rendered to the working people of Czechoslovakia by other socialist countries, which prevented the export of counter-revolution from abroad" constituted, in their view, a practical struggle for the sovereignty of Czechoslovakia "against those who would like to deprive it of its sovereignty and abandon the country to imperialists"[117]. As Gomulka, First Secretary of the Communist Party of Poland, said:

> "When the enemy mines our house, the community of socialist States, with dynamite, it is our patriotic, national and international duty to obstruct this by using the means that are necessary[118]."

Sovereignty in the Communist camp can, therefore, hardly be called true independence. At the most, it means limited freedom which must be exercised in the interests of the socialist group of States[119]. The sovereignty of each socialist country cannot be opposed to the interests of the socialist world.

However, with the split in the Communist group itself, when the Soviet Union could not intervene in China to bring it into line with the Soviet policy, attempts to solidify the socialist world against the capitalist countries have been given up, at least temporarily. While both the Communist groups continue their struggle against the capitalist countries, "sovereignty", according to the Chinese view, is said to protect the weaker States from the hegemonistic and evil intentions of both the super-powers, viz., the Soviet Union and the United States. Besides China, this also applies to Communist countries such as Albania, Romania and Yugoslavia.

Conclusions

The above analysis makes it abundantly clear that if sovereignty means absolute independence, States are not sovereign. For international jurists absolute sovereignty is sheer nonsense. The old idea that omnipotent States cannot be subjected to international law or to any law whatsoever seems to have been discarded once for all. Van Kleffens has very well summed up the position:

> "The adjective 'sovereign' in the sense of omnipotent and self-determining may be explained as a historical delusion, the result of a reaction against the overlordship of popes and emperors, as a result of the pride and ambition of kings and

> republics, of unsound philosophical and legal reasoning, and of former slow, cumbersome and infrequent means of communication, but has never had a foundation in actual fact, nor can it – as results from the foregoing – ever have such a foundation [120]."

But international lawyers still have to struggle with the absurdities of sovereignty of "some sort", whether it is called "limited sovereignty", or "independence", or "autonomy", or what you will. This, even limited sovereignty, there is little doubt, is "the greatest drag, not only to that development of international law, but also to the development of the science of international law" [121]. As Professor Brierly so correctly remarks:

> "To the extent that sovereignty has come to imply that there is something inherent in the nature of States that makes it impossible for them to be subjected to law, it is a false doctrine which the facts of international relations do not support. But to the extent that it reminds us that the subjection of States to law is an aim as yet only very imperfectly realized, and one which presents the most formidable difficulties, it is a doctrine which we cannot afford to disregard [122]."

Law can progress only if it does not shut its eyes and deceive itself as to the realities that it seeks to order. Sovereignty cannot be wished away and it is not "dead" or "abolished", as some scholars world have us believe [123].

> "It is a spirit which is very much alive, and very wide awake. Some may regret it, but if they fail to recognize this fact, they abandon the firm foundation of reality [124]."

Sovereignty creates international law, and that law recognizes sovereignty as its foundation and a basic principle. The procedural weaknesses of international law lead States to exaggerate their claims of sovereignty. Despite all the so-called limitations on States and numerous international organizations, there is no supranational body which can prevent the secession of one of their members by means of sanctions and "thereby give proof of its ability to burst sovereignty asunder" [125]. As long as this is the position, as long as agreements solemnly reached can be broken, and as long as there

are no common institutions endowed with true sovereign powers, in spite of all that might be said to the contrary, sovereignty is not fictitious [126].

And it needs no proof to say that sovereignty is uncontrolled and irresponsible power. It embodies in the collective entities the evil spirit of selfishness which knows no restraint and no standards of judgment other than its own. Verily,

> "sovereignty legitimizes licence and arbitrariness and makes an effective institutional world organization impossible. It perpetuates chaos in international relationships and cannot lead to pacification of the world [127]."

The League of Nations was a valiant attempt at keeping peace. But it was based on the national sovereignty of its members and died an automatic death because its members lacked the will to make it work [128]. In the United Nations, the sovereignty of the majority of member States is sought to be limited, but the sovereignty of permanent members has not been controlled. Such an alliance is surely "a weak reed to support the peace of the world" [129].

Today the situation has become particularly critical. Time and space have been conquered. Science, mechanization, and economics have done their part in uniting the world and in turning all nations into one society. But while the world has become a unity, the nation-states are not prepared to accept this verdict of history. Indeed, as the world is becoming smaller and smaller, the number of independent entities making up the international community is becoming greater and greater. This political fragmentation of the globe, which has come at a time when satellites can circle the earth in a matter of hours, is an anachronism and, in a sense, a denial of the tremendous progress that man has made in the realm of science and technology [130]. The proliferation of numbers as well as political tensions and conflicts of aspirations between them are being accentuated at present by the rival attentions of the major antagonists in the Cold War. This has made a truly effective universal organization of all these States in a world-wide community all but impossible. Nevertheless, it is certain that if man's political ability does not begin to match his inventive genius, if progress in international organizations and solidarity does not keep pace with the progress in science and technology, mankind may sooner or later face collective suicide.

If it is not possible to have an effective universal organization in the near future, it is essential to develop more closely-knit organizations of a political and economic character on a regional level between like-minded States. In this respect, Europe has to some extent shown the way. Reluctance to form such organizations, which transcend the constricting bounds of national borders, is based in part on a misconception of what is really involved in the acceptance of the accompanying limitations, and in part on the failure to appreciate fully the benefits which would result to themselves and to the community of States by the reciprocal assumption of obligations and the renunciation of unlimited freedom of action. There is little doubt that limitation upon liberty is the price which must be paid for all social progress, whether it be local, national or international. Particular States have often found that their own security and welfare could be better promoted by surrendering their sovereignty and uniting in a federal union than by remaining independent. Similarly, the progress in international organization and advance in the promotion of common interests of the community of States has come through mutual restraints and concessions voluntarily imposed or granted by States[131]. Under these circumstances, it is indeed discouraging to find nations, large and small, still "suffering from the cancer of trust in a false god which seems to flatter their vanity but is always served at the expense of their well being"[132]. This can be seen from the general reluctance of States to accept even such minor limitations on their sovereignty as are involved in the acceptance of the compulsory jurisdiction of the International Court of Justice. A general acceptance of such compulsory jurisdiction is not, as is usually assumed, a limitation of sovereignty, but indeed its best safeguard. It is the nature of law, in the national as well as international field, that it protects the freedom of those under its sway by subjecting them to its restrictions and obligations[133].

CHAPTER III

EQUALITY OF STATES IN AN UNEQUAL WORLD. A HISTORICAL PERSPECTIVE

Principle "Absolute and Unquestionable"

The necessary concomitant of the principle of sovereignty of States in international law, the other side of the coin as it were, is the principle of equality of sovereign States. Despite wide and glaring inequalities amongst States – in size of territory or population, economic prosperity or military strength, industrial development or cultural advancement – the equality of States is one of the most familiar and frequently reiterated principles of modern international law. Indeed, equality is traditionally accepted, along with sovereignty and independence, as an inherent and unimpeachable attribute of the State, an "absolute" and "unquestionable" principle upon which international law is based [134].

Genesis of the Principle of Equality

The principle of equality of States, like sovereignty, originated through the ruins of the devastating wars in Europe during the Middle Ages. With the decline of the overwhelming authority of the Holy Roman Empire, and the chaos resulting from the disintegration of Christendom because of the struggle between the Pope and the Emperor, there emerged nation-states without any authority over them. Among different independent States which dared to call themselves sovereign, there could be no relationship except that of equality. As M. Charles Dupuis explained:

> ". . . having asserted their independence against the supremacy of pope and emperor, they (sovereigns) were unable to deny those who were in the same position that sovereignty and independence which they claimed for themselves. Between sovereign and independent States, freed from a previous common inferiority, there could exist no relations of either superiority or subordination. The equality of States was the natural and necessary consequence of their sovereignty and independence.

> Thus, the principle of equality before the law was proclaimed between States before it was admitted by municipal law in respect of individuals, and at a time when the triumph of absolutism gave the sovereigns little incentive to grant to their subjects that liberty and equality which they asserted for themselves[135]."

Enunciation of the Principle by Classical Writers

Whether or not Hugo Grotius explicitly declared this principle or made it the underlying theme of his noble system of inter-state relations[136], it received support in express terms from numerous classical writers, including Samuel von Pufendorf and Emmerich de Vattel. Deeply influenced by the works of Thomas Hobbes and Grotius, and coloured in the prevailing natural law doctrine, Pufendorf's argument was seductively simple: "all persons in a state of nature are equal; the persons of international law are in a state of nature; therefore they are equal[137]."

Thus enunciated by Pufendorf and endorsed by numerous writers during the eighteenth century[138], the doctrine received strong support and a classical exposition at the hands of Vattel. He declared:

> "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.
>
> From this equality it necessarily follows that what is lawful or unlawful for one Nation is equally lawful or unlawful for every other Nation[139]."

Without spelling out any further the implications of the doctrine, most of the well-known publicists of the eighteenth and nineteenth centuries followed Pufendorf and Vattel, somewhat slavishly, in asserting the equality of States. In this they got powerful support from some judicial opinions as well. Thus in *The Schooner Exchange* v. *McFaddon and Others* (1812), Chief Justice John Marshall of the United States Supreme Court stressed the "perfect equality and absolute independence of States"[140]. And in *The Antelope* (1825), in an oft-repeated dictum, he declared:

> "No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva

> have equal rights. It results from this equality, that no one can rightfully impose a rule on another[141]."

Principle More Honoured in the Breach than in the Observance

Despite all the assertions of the principle of equality and teachings or preachings of the classical jurists, the principle was in fact more honoured in the breach than in observance. It is not without a lot of reason that Professor Robert Tucker points out that "*the history of international system is a history of inequality par excellence*"[142]. This is so, he says, not only because of the natural inequalities between States – their physical extent, population, natural resources, and geographical position – but the unevenness in their subsequent development. They are not only born unequal, but the age of industrial civilization and unevenness in their progress has further accentuated the inequalities in their power and wealth[143].

But even more important than these disparities are the procedural weaknesses of the international system or lack of system in which the States live. The condition of the international society which is marked by the absence of effective collective procedures, competitive rather than co-operative, and individualistically lacking in commitment to a common good, has ensured that the differences in power are used to further perpetuate inequality. The result is, as Raymond Aron observed, that the international system

> "has always been anarchical and oligarchical: anarchical because of the absence of legitimate violence, oligarchical (or hierarchic) in that, without civil society, rights depend largely on might[144]".

In the absence of any supra-national institutional forms or procedures to control violence, the States rely on self-help which is claimed as a "right" to determine when a State's legitimate interests are threatened, or violated, and to employ such coercive measures as it deems fit to vindicate those interests. Among unequals, a right of self-help would not only preserve inequalities but more often than not increase them. Thucydides records Athenians as saying that the powerful exact what they can, and the weak must grant what they must. Such a situation cannot be avoided in a system governed only by the unimpeded "right" of self-help[145].

Sometimes the rigours of the "lawless" world of self-help were

perhaps mitigated by such factors as the "balance of power", itself "a political expression of self-help", which meant even distribution of power or a rough equality of the powerful. While the weak might have gained from this rough equality of the strong, more often than not their interests, or even independence were sacrificed, or at least ignored, in the power adjustment following violent upheavals between big powers. War was an indispensable, if ultimate, means of the functioning of the balance of power. The great powers equated order with their equality and equality with their equal aggrandizement. In the eighteenth-century Europe, as we shall see, the operation of the balance of power led to the system of great power partitions irrespective of the interests or even existence of small States. In the nineteenth century, the principle of equal aggrandizement, called the principle of compensation, was "increasingly satisfied through the acquisition of territory and people beyond Europe". Thus, "moderation as the balance of power introduced in Europe depended upon the immoderation of its working in the world outside Europe". After the industrial revolution, especially in the three decades preceding the First World War, the so-called "equality of States" in Europe depended upon a structure of imposed inequalities between the European States and the Asian-African periphery of colonies, protectorates and semi-sovereign entities[146].

It is perhaps true, as Marx insisted, that all law is a "law of inequality". But in some cases the inequality is very apparent and conspicuous. The traditional international law, as Professor Tucker says, "affords a striking example of the law of the strong"[147]. It was generally meant to serve the interests of the powerful nations[148]. It is true that the principle of equality as a corollary to the principle of sovereignty, was always recognized at least in theory as one of the fundamental rights of States as subjects of international law. But such a right could not apply to peoples or nations which, until the present century, were not admitted into the charmed circle of sovereign States and were considered not "subjects" but merely "objects" of international law. Whatever might be their status under classical international law[149], several Asian States got eliminated from the orbit of the family of nations under the impact of colonialism. But even those which survived, such as Turkey, Persia, Siam, China and Japan, were treated as being outside the family of nations, especially after the Congress of Vienna in 1815. The

so-called "family of nations" was restricted to a small selective European-Christian community with a provincial outlook[150]. The Christian rulers adopted Machiavelli's power politics which fitted well with their colonial imperialism. Common Christian European law was not applicable to heathens and heretics. Christianity was in fact the justification of, or the legal title to, the domination of non-Christian peoples[151]. It was only in 1856 that a non-Christian oriental country, Turkey, was formally admitted to the family of nations "to participate in the public law and concert of Europe"[152]. Although this step was taken to maintain the European balance of power, the common factor for the application of international law, no longer found in Christianity, was sought in "civilization". Though not without a substantial measure of ambiguity, "civilization" required not only an effective government over a defined territory but willingness and ability to accept the obligations of European international law, particularly the obligations relating to protection of the life, liberty and property of foreigners[153]. But really speaking, the chief criterion or standard of civilization was power. Thus, Japan was admitted to the group of "civilized" nations only after it defeated China (1894) and Russia in war (1904)[154].

In the prevailing opinion of the nineteenth and the early part of the twentieth centuries, the law of nations, not to speak of equality amongst States, did not apply to non-civilized or semi-civilized nations. They were at best to be treated according to the general rules dictated by humanity. John Stuart Mill, writing in 1867, expressed the prevailing outlook when he said:

> "To suppose that the same international customs, and the same rules of international morality, can obtain between one civilized nation and another and between civilized nations and barbarians is a grave error, and one which no statesman can fall into . . . To characterize any conduct whatever towards a barbarous people as a violation of the law of nations, only shows that he who so speaks has never considered the subject[155]."

T. E. Holland declared:

> "The family of nations is an aggregate of States, which, as a result of their historical antecedents, have inherited a common civilization, and are at a similar level of moral and political opinion. The term may be said to include the Christian nations

> of Europe and their offshoots in America with the addition of the Ottoman Empire, which was declared by the Treaty of Paris of 1856 to be admitted to the 'concert European'. Within this charmed circle to which Japan has also some time since fully established her claim to be admitted, all States, according to the theory of international law, are equal. Outside of it, no State be it as powerful and as civilized as China or Persia, can be regarded as a wholly international person[156]."

The distinction between civilized and uncivilized communities naturally served the interests of

> "western imperialism and colonialism whenever it was opportune to treat communities on the fringes of the expanding Western world on a footing other than that of sovereign States[157]".

Thus most of the Asian-African States were declared to be uncivilized and were forced to sign capitulation treaties which allowed European residents in these countries to submit to their own consular jurisdiction in disregard of the judicial machinery of the sovereign in whose territory they resided. Their allegedly "inferior" local legal systems were considered as not ensuring enough protection to the requirements of foreigners with superior civilization[158].

But even in Europe, given the dependence of international law on the balance of power, war was an indispensable prerequisite for the realization of an effective legal order. But war, itself a breakdown of law, was an insurmountable obstacle to the establishment of even a minimum legal order. Thus, there was the anomaly of a legal system which did not, and could not, make the most elementary distinction a legal system must make: the distinction between lawful and unlawful use of force. Unable to set meaningful limits to the State's right of self-help, international law endowed forcible change in the *status quo*, provided the change was effective, the same legitimacy as the *status quo* it replaced. That the new *status quo* originated in a violation of the rights of other States was just ignored so long as the change was no longer effectively contested by the interested parties. Thus international law recognized territorial changes brought about by force, peace treaties imposed upon the defeated, and unequal treaties signed under duress. This was indeed negation of all law rather than operation of a defective legal

order. The States were still equal to determine the circumstances in which their legitimate interests were threatened and to take measures of self-help. But this freedom of self-help jeopardized even the elementary equality of a civil society, viz. equal protection of the law. In a system governed by self-help, it has been rightly said, rights tend to be co-extensive with power. Therefore, "there is an inherent antinomy between the principle of equality before the law and the principle of self-help" [159].

Economic Inequality

The pattern of inequality in political-legal relations naturally spilled over in economic relations among States. This was the case for mercantilism, which equated economic relations with relations of State power. "Mercantilism was, and openly professed to be, the economic version of political self-help. Inequality was its essence [160]."

The great expansion of Europe overseas between the sixteenth and the eighteenth centuries had led to remarkable economic growth of Europe which, in turn, enabled the great industrial revolution to take place there. With the increasing European need and demand for trade in an era of expanding economy, it came to be asserted "that there was a divine right to trade everywhere" and that "it was unnatural for governments to close their countries to the free flow of trade" [161]. If countries such as China and Japan did not desire to encourage foreign trade, too bad for them. They must be made to do so "in the interests of peace, prosperity and progress" [162]. Thus China was forced by Great Britain to accept the illegal opium trade by a war on China in 1839. In the Treaty of Nanking (1842) that followed the "Opium War", not only was Hong Kong annexed, but four other Chinese ports were opened to foreign commerce. By numerous other treaties, forced upon China, several European powers and the United States claimed rights, privileges, dignities and prerogatives. Several other Asian countries were similarly humbled and even annexed in the name of free trade [163]. In fact, when the whole continent of Asia proved insufficient for the voracious appetite for raw materials of European industries and their need of still larger markets, Europeans penetrated into the vast Continent of Africa. Led by the Belgians, the French, Germans, Portuguese and the British rushed into the dark continent in the

last quarter of the nineteenth century in their scramble for colonies in Africa. In 1884-1885, an international conference was held in Berlin to provide for a European code for territorial aggrandizement in Africa. Within less than two decades, the whole of Africa was partitioned by the European industrial powers to be fully exploited for their economic and political interests[163].

There is little doubt that European economic policies – whether mercantilism or later liberalism (which equated self-help with the individual and with individual equality of opportunity – worked against the interests of the non-European peoples or nations who were considered backward.

"White Man's Burden"

To add insult to injury, all the political and economic aggressions against the Asian-African countries were supposed to be in their own benefit. As John Stuart Mill said:

> "Nations which are still barbarous have not got beyond the period during which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners[164]."

Even Karl Marx supported European colonial expansion because of the benefits the advanced countries would confer on "backward" peoples. About the British rule in India Marx wrote:

> "England has to fulfil a double mission in India: one destructive the other regenerating – the annihilation of old Asiatic society and the laying of the material foundation of Western society in Asia[165]."

In other words, besides mercantile motives, another reason for European imperialism was what Kipling called "The White Man's Burden", that is, "to govern and civilize the Asiatics and Africans, the backward people who are half devil and half child, sullen and wild"[166]. It was said to be the duty of the "superior races" to civilize the "inferior races". French and Germans devoutly believed in their civilization mission in Africa, even if this had to be achieved by force. The French statesman Jules Ferry wrote: "The superior races have a right as regards inferior races. They have a right because they have a duty. They have a duty of civilizing the inferior races[167]." In Germany, the Kaiser said: "God has created us to civilize the

world[168]." In England, Cecil Rhodes exclaimed: "I contend that we are the first race in the world, and the more world we inhabit the better it is for human race[169]." One reason for annexing the Philippine Islands by the United States was explained by President McKinley as follows:

> "There was nothing left for us to do but to take them all, and to educate the Filipinos, and uplift and civilize and Christianize them as our fellow-men, for whom Christ also died[170]."

Congress of Vienna

Under these conditions the international system in the nineteenth century could not but be regarded as a system of inequality. Indeed, all the writers and statesmen knew that though they could assert the existence of the principle of equality without fear of verbal contradiction and preach equality, inequality would be practised[171]. Thus, after the defeat of Napoleon in the Spring of 1814, the principal allied powers assumed the task of restoring peace and order in Europe. At the Congress of Vienna, although all the States engaged on either side during the Napoleonic wars were invited and sent their representatives, the four most powerful States – Austria, Great Britain, Prussia and Russia – recognized themselves as the only parties qualified to make and keep the peace and assumed the responsibility for European security. For the first time the terms great and small powers entered clearly into the diplomatic vocabulary. Even before the Congress met, on 22 September 1814, the four drafted a protocol which declared that they alone would decide the questions relating to the conquered territories. They agreed to permit France and Spain to give their "opinions" and "objections", the right to speak only after the Four had come to a firm decision[172]. The great powers, the so-called "tetarchy" rearranged the map of Europe, confirmed the partition of Poland, united Belgium with Holland, neutralized Switzerland, created the German confederation, and laid down rules of international law with respect to free navigation on international rivers, the rank of diplomatic representatives, and the suppression of the slave trade[173]. The way they took all these decisions was well described by Lord Palmerston, the British Prime Minister:

> ". . .[A]ll the smaller States of Europe had been conquered

and reconquered, and were considered almost at the arbitrary disposal of the Great Powers whose armies had decided the fate of the war. The statesmen who sat in Congress therefore considered themselves at liberty to parcel out with great freedom the several territories of Europe.

The smaller sovereigns, princes, and States, had no representatives in the deciding Congress, and no voice in the decisions by which their future destiny was determined. They were all obliged to yield to overruling power, and to submit to decisions which were the result, as the case might be, of justice or of expediency, of generosity or of partiality, of regard to the welfare of nations or of concession to personal solicitations[174]."

The only statesman capable of effectively challenging the concept of great power hegemony was Talleyrand, the Prime Minister of France. He could not support the idea of France simply approving and ratifying the Four's decisions but wanted to participate with them as an equal. In an attempt to widen the Congress where he might be able to achieve his purpose, he became a spokesman of the smaller countries. At least a month before the Big Four began their private meetings, Talleyrand argued that no assembly could act legitimately if it was not formed legitimately and pleaded for the right of all States, large and small, to be represented at the Congress. The nations of Europe, he pointed out, lived under moral or natural law, as well as under international law. In the absence of a sovereign's consent, conquered territory could not be transferred from one power to another without the "sanction of Europe". Talleyrand realized that French policy had to be based on protecting the small States because their interest and the interest of France coincided. At the Congress, Talleyrand attacked the great power primacy and exercised enough influence over the small States to embarrass the Four's plan. The only settlements that would last would be, he insisted, those in response to "the general will". Talleyrand, of course, did not succeed and the Four decided just to ignore him and settle the issues, but only after they were forced to delay the Congress[175].

They did decide several issues, as we have noted earlier. But there came a deadlock between them over the settlement of Poland and Saxony which deteriorated to a point where a war between Britain

and Austria on one side and Russia and Prussia on the other appeared imminent. There was no choice left for them but to include France in their negotiations on Poland and Saxony. Once Talleyrand had been accepted as an equal, writes the German historian Heinrich G. von Treitschke,

> "not a word did he . . . utter of the fine sounding reasons with which, at the beginning of the Congress, he had defended the equal rights of all States of Europe [176]".

European Concert

Be that as it may, once France was admitted to the dominant group in September 1818, turning "tetarchy" into a "pentarchy", for nearly 50 years the political affairs of Europe remained nearly completely in their hands. Called the "European concert of Great Powers", or the "European System", and acting mainly through congresses, they decided the fate of small countries, intervened in their affairs, defined boundaries, exercised all manner of guardianship over States weaker than themselves, formulated rules, rendered judgments in controversies, and enforced their decisions. In the name of maintaining peace in Europe, the concert powers enforced open dictatorship over other States without giving them any right to participate. There was a good deal of grumbling and protesting by small States, but in the long run they had no choice but to accept the preponderant role of the great powers for maintaining order in Europe [177].

All this was achieved by the Great Powers without the existence of a formal permanent international organization. Practically all the important international conferences (or congresses) held after 1814 were either

> "exclusively composed of Great Powers, who claimed to speak in the name of Europe, or gave them a privileged position. Only the most interested smaller States were at any time invited, sometimes without right of full participation [178]."

In any case they never had any real voice in the decisions and no veto [179]. The principle of equality of States was undoubtedly applied by the great powers among themselves and all the formalities required by the idea of political equality observed. But this consider-

ation was not shown to the small powers[180]. This phase of diplomatic history seemed to be giving rise to a kind of usage recognizing the legal superiority of the great powers[181]. However, before this could harden into an accepted custom, there started the "decay of the European Concert". The Franco-Prussian War of 1870-1871

> "resulting in German danger to European equilibrium, split the European Great Powers into two hostile camps of nearly equal strength, making common action increasingly difficult and finally impossible[182]".

For 40 years after 1871 they became increasingly fearful of each other. By 1914 disunity among the great powers – Germany and Austria on one side, Britain, France and Russia on the other – had made merely mockery of the idea that they could preserve peace[183]. Apart from this, the destruction of the Austrian and Turkish empires, the unification of Germany and Italy, and the extension of international law beyond European countries, all helped in destroying the legal hegemony of the great powers of the European Concert in the latter part of the last century[184].

Rejection of the Principle of Equality by Positivists

The practice of States during the eighteenth and nineteenth centuries, clearly at variance with the equality of States, led many a writer, under the influence of positivism, to deny the efficacy and even the existence of this theory in international law. It is pertinent to note that, while the classical jurists – Spanish theologians, Gentilis, Grotius, Pufendorf, and others – in their teachings relied on the law of nature as the basis of the law of nations, with the rise of nationalism in Europe and under the influence of Enlightenment (faith in reason rather than reliance on religious beliefs) the adherence to natural law philosophy gradually declined and positivist philosophy gained more importance. In international law, it meant more reliance on the practice of States and the conduct of international relations as evidenced by customs and treaties, as against the derivation of norms from basic metaphysical principles. International law, according to positivists, was a product of the consent of States, whether presumed, voluntary, or tacit, and was reflected in their practice and agreements, formal or informal[185]. Another important consequence of the positivist philosophy was the develop-

ment of Eurocentrism in legal and political thinking and regionalization of international law, as we have noted earlier. At the Congress of Vienna the Great Powers had established an exclusive club in the Concert of Europe and assumed the authority to admit new members or re-admit old members who did not participate in the foundation of the closed club. They claimed a right "to issue, or deny, a certificate of birth to States and government irrespective of their existence". The result was, as Alexandrowicz pointed out, that Asian States which

> "for centuries had been considered members of the family of nations found themselves in an *ad hoc* created legal vacuum which reduced them from the status of international personality to the candidates competing for such personality [186]."

The positivists not only denied equality to Asian States but to all weak States. Writing in 1885, T. J. Lawrence reached the conclusion that the principle of equality was obsolete:

> "It seems to me that, in the face of such facts as these, it is impossible to hold any longer the old doctrine of the absolute equality of all independent States before the law. It is dead; and we ought to put in its place the new doctrine that the Great Powers have by modern International Law a primacy among their fellows, which bids fair to develop into a central authority for the settlement of all disputes between the nations of Europe [187]."

A few years later (in 1898), Antoine Pillet concluded that it was futile, as well as a logical mistake, to treat equality as a fundamental right. The assertion that Russia and Geneva have equal rights, said Pillet,

> "has a primary and very grave defect; it is not just. States are not equal from the point of view of their rights any more than that of their wealth and their power [188]".

The most serious and uncompromising attack on the principle came from the well-known Scots jurist, James Lorimer. Pointing out that "the equality of States and their absolute independence have been steadily repudiated by history", he said, that "it is a chimera as unrealizable as the union of the head of a woman with the tail of fish" [189]. Explaining his point further, he wrote:

"Now the equality of all States, the moment they are acknowledged to be States at all, is, if possible, a more transparent fiction than the equality of individuals who are admitted to be jural persons or jural citizens; because in the case of individuals or citizens there are limits to possible size and power, and consequently to equality, which do not exist in the case of States . . . To assert that, without any superiority in other respects, a State with ten thousand inhabitants is equal to a State with ten million inhabitants, or that a State half the size of an English county is equal to a State that covers half a Continent, is just as false as to assert that a thousand is equal to a million, or that the Canton of Geneva is equal to the Continent of Europe[190]."

He, therefore, asserted:

"All States are equally entitled to be recognized as States, on the simple ground that they are States, but all States are not entitled to be recognized as equal States, simply because they are not equal States. Russia and Romania are equally entitled to be recognized as States, but they are not entitled to be recognized as equal States. Any attempt to depart from this principle, whatever be the sphere of jurisprudence with which we are occupied, leads not to the vindication but to the violation of equality before the law[191]."

Principle Defended

These attacks and repudiations of the principle of equality by some publicists[192] from the great powers, however, did not go unchallenged. In fact a vast majority of international jurists strongly defended the principle and refused to give to the hegemony of the great powers any legal significance. Thus, describing the Pentarchy "as a violation of the holiest rights and interests of nations"[193], F. de Martens, the great Russian jurist, said: "If their [small States] equality is not always respected in practice that disturbs in no respect the force of the principle[194]". Of the alleged primacy of the great powers, M. S. Kebedgy opined:

"But these tendencies contrary to right can never establish a right, any more than the abuse of material force can establish a juridical rule, any more than the tendency to break

conventional obligations can seriously unsettle the rule with reference to the binding force of treaties. One does not abolish right by denying it[195]."

Most of the writers, even before the turn of the present century, were of the opinion that the hegemony of the great powers was not an impairment of the juridical equality of States[196]. Alphonse Rivier said (in 1896):

> "Always, by the very nature of things, strong States have exercised a preponderant influence; the political equilibrium was created to oppose the abuse of force. Since 1815, the great powers have ruled Europe. This hegemony, admitted, and useful as long as it is confined within the limits of justice, is *un fait politique* and has to do only with policy. It is in no respect *un principe juridique*; questions of right are not affected by it; it never detracts by itself from the principle of equality. When resolutions are adopted in a Congress a great power has no more voice than a small one[197]."

While condemning the Concert as an "instrument of oppression", Ernest Nys (1896) expressed the same idea:

> "The hegemony of the great powers is indisputable as a political fact: the whole history of Europe in the nineteenth century bears witness to it. But this hegemony does not and cannot constitute a juridical principle[198]."

The great British jurist, L. Oppenheim, also denied that there was any legal basis for the superiority of the great powers:

> "Legal equality must not be confounded with political equality . . . Politically, States are in no manner equals, as there is a difference between the Great Powers and others . . . But, however important the position and the influence of the Great Powers may be, they are by no means derived from a legal basis or rule[199]."

Expressly denouncing the claim of the legal superiority of the great powers, Oppenheim remarked:

> "This doctrine, which professedly seeks to abolish the universally recognized rule of the equality of States, has no sound basis, and confounds political with legal inequality[200]."

Equality in the Western Hemisphere

By the end of the nineteenth century there were 19 independent States in the Western Hemisphere, the United States and 18 Latin American republics. Cuba became independent in 1902 and Panama in 1903. The United States had not yet become a world power, but it far surpassed the other American States in wealth, military might, and political stability. The Latin American States had a somewhat ambivalent relationship with each other. On the one hand they were drawn together by their common struggle for independence from Spain, but at the same time they had intense rivalries and border disputes often led to war. Similarly, the Caribbean States were drawn together and strewn apart. But ever since their independence, the Latin American States tended to see themselves as members of a single family with a common language, a common background, common aspirations, and a sense of equality similar to what was believed to exist among brothers and sisters. Further, beset with hostile European powers and afraid of the United States, they were very jealous and sensitive to their sovereignty and equality. Throughout Latin America the principle of equality of States was "regarded as the essential premise of an international Magna Charta"[201]. As for the United States, President Monroe, while declaring in 1820 to the world that the United States assumed full responsibility for keeping non-American powers out of the hemisphere, had consulted no Latin American State, and made no attempt to get Latin American support afterwards. The primary concern of the United States was its own security. The United States might not have intended to claim superiority, but the unilateralism of the Monroe doctrine could be considered as in conflict with the perfect equality of the American States[202].

However, the United States sought to dispel any impression of superiority when in 1881 Secretary of State, James G. Blaine, inaugurated a series of inter-American Conferences and invited the Latin American States to meet on the basis of complete equality. His purpose was to help settle inter-American disputes amicably and to promote inter-American trade. When the conference opened in Washington, D.C., on 2 October 1889, he again gratified the Latin American feeling about their status in the hemisphere. He told the delegates that they were showing the world a conference in which all American powers, great and small, were meeting together

> "on terms of absolute equality; a conference in which there can be no attempt to coerce a single delegate against his own conception of the interest of his own nation[203]".

The Conference hardly achieved any of its purposes[204], but the delegates had the satisfaction, as the Brazilian delegate said at the closing session:

> "Well, it is an honour for us to assert that there never prevailed around this table any other measure of respect for opinion, liberty of speech, or the value of a vote, than that of the most perfect equality among sovereign States[205]."

The Second American Conference of American States met in Mexico City in 1901, and the third was held in Rio de Janeiro in 1906, and again on the basis of their complete equality. On both occasions, the United States made this concession because of the restricted nature of the agenda: no political questions could be discussed, no controversies could be settled; no judgment could be passed on the conduct of any State[206].

But when it came to the vital questions of peace and security, the United States was prepared to act on a very different conceptual level. It claimed the primary responsibility for maintaining hemisphere order and forgot all about the idea of perfect equality. In 1895, Secretary of State Richard Olney declared the United States practically sovereign on the continent and practically invulnerable against any other power[207]. He was supported by a naval officer, Captain Alfred Thayer Mahan, whose views got widespread support in congressional circles. In a series of articles, he held a prophetic vision of the United States as a world power for which he underlined the crucial importance and need for strategic bases in the Pacific and the Caribbean areas and urged the creation of a powerful fighting fleet. By the twentieth century, Captain Mahan's vision of the United States as a world power was adopted by Theodore Roosevelt. As Assistant Secretary of Navy to President McInley in 1897, Roosevelt advocated a big navy, armed intervention in Cuba if necessary, territorial expansion overseas, and an aggressive foreign policy[208]. After he took office as President of the United States in 1901, he committed the United States to defend the entire Western Hemisphere against European encroachment, and to defend Guam and the Philippines ceded by Spain after the Spanish American war. Since the United States was now involved in two

oceans, an east-west-canal offering speedy transit to American ships appeared vital to American interests. When Colombia refused to ratify a treaty permitting the United States to build a canal across the Isthmus of Panama, Roosevelt did not hesitate to incite a revolution in Panama, prevent the Colombian troops from landing there to suppress the insurrection, and immediately recognized the new revolutionary Panamanian government. President Roosevelt, later describing himself how he "took the Canal Zone", added:

> "We recognized the Republic of Panama. Without firing a shot we prevented a civil war. We promptly negotiated a treaty under which the canal is being now dug . . . Be it remembered that unless I had acted exactly as I did act, there would now be no Panama canal. It is folly to assert devotion to an end, and at the same time to condemn the only means by which the end can be achieved[209]."

The end justified the means, legal or illegal. When order broke down in the hemisphere, regardless of the formal rules of equality applied in inter-American Conferences, the United States acted on the idea that it had to protect these little States. Thus, the United States established governments which ruled nominally independent countries for long periods of time. It ruled Cuba, as if it were Puerto Rico, between 1898 and 1902, and 1906 to 1909; it governed Santo Domingo between 1915 and 1924, and Haiti between 1915 and 1930[210]. After reviewing the history of United States relations with Latin America, Nearing and Freeman conclude:

> "Rich, well armed, equipped with a splendid navy, developing its investments in the Caribbean region at a rapid rate, the United States turns, as a matter of course, to some of its weaker neighbours with the demand that they recognize the economic and strategic interests of the Giant of the North. Refusals greet the demands. The weak nations are still convinced of their right to independence and the exercise of sovereignty. They protest in the name of their rights. Apparently, a small, weak nation has no rights that a great strong nation is bound to respect. Protests are ignored. Opposition is overruled. At length, pressed by political or economic necessity, the strong nation stretches its military arm.
>
> This is the story of France in North Africa, of the Japanese in Korea, of the British in India and Egypt. It is the general

> experience of great empires in their dealings with under-developed countries[211]."

In the smaller countries of Latin America, wrote another American scholar, "controlled by our soldiers, our bankers and our oil kings, we are developing our Irelands, our Egypts, and our Indias[212]".

Like his European counterparts, President Roosevelt made a clear distinction between "civilized" and "non-civilized" nations. Only civilized nations with a power and energy to expand and their ability to govern themselves, had a right to participate in international affairs. The inability of some nations to govern themselves marked their inferiority. Sophisticated nations, therefore, were required to intervene and care for these "callow specimens until they had matured". Each great power had its own special sphere. The Western Hemisphere was the special province of the United States[213]. Senator Albert J. Beveridge supported the President by saying: "God has made us the master organizer of the world to establish system where chaos reigns[214]." Roosevelt substituted the concept of great power paternalism for the concept of equality of States. "In international matters," he said, "to make believe that nations are equal when they are not equal is as productive of far-reaching harm as to make the same pretense about individuals in a society[215]."

It was left for Roosevelt's Secretary of State, Elihu Root, to dispel the misgivings and grave concern among the Latin American States created by Roosevelt's utterances heaping scorn on uncivilized States, his description of the United States as a hemisphere policeman, and United States intervention in the States bordering the Caribbean. At the Third Inter-American Conference held in Rio de Janeiro in 1906, the opening address by Elihu Root as Honorary President struck a harmonious note with the delegates. He said:

> "We wish no victories but those of peace; for no territory except our own, for no sovereignty except sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest members of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights or privileges or powers that we do not concede to every American republic[216]."

On 30 December 1915, welcoming Latin American publicists taking part in the second Pan-American Scientific Congress in Washington former Secretary Elihu Root reiterated his 1906 speech and added:

> "We believe in the independence and the dignity of nations, and while we are great, we estimate our greatness as one of the least of our possessions, and we hold the smallest State, be it upon an island of the Caribbean or anywhere, in Central and South America, as our equal in dignity, in the right to respect and in the right to the treatment of an equal . . . We desire no benefits which are not the benefits rendered by honourable equals to each other. We seek no control that we are unwilling to concede to others; and so long as the spirit of American freedom shall continue, it will range us side by side with you, great and small, in the maintenance of the rights of nations, the rights which exist as against us and as against all the rest of the world[217]."

Throughout Latin America, Root's speech elicited a deep emotional response. Senor Mariano Cornejo of Peru welcomed the speech which "not only defined the interests, but . . . stirred in the soul of America all her memories, all her dreams, and all her ideals". Ruy Barbosa of Brazil found the message as having "reverberated through the length and breadth of our continent, as the American evangel of peace and justice"[218].

Did the United States Secretary of State's speech mean that the United States had changed its heart and policy? No. It is interesting to note that in the same speech that President Roosevelt approved Root's expression of equality in 1906, he also told how the United States had "assumed sponsorship before the civilized world for Cuba's career as a nation", and that if Cuban elections degenerated and became a farce, the United States would unquestionably intervene and would not permit Cuba to remain as an independent nation[219].

Reinstatement of the Principle: the Hague Peace Conferences

Whatever the United States policy, the Latin American States made best use of Root's exhortations and asserted their complete equality, as we shall see, at the second Hague Peace Conference where they were invited at the behest of the United States.

As against the practice of States during most of the nineteenth century, the self-proclaimed superiority of the great powers, and the endorsement of this inequality by the positivist thinkers during the latter part of that century, the principle of equality of States reasserted itself with renewed force during the Hague Peace Conferences of 1899 and 1907. Those were the first international peacetime unions for the purpose of preserving peace and endeavoured to humanize the stringencies of war, and to provide for the pacific settlement of disputes. On 18 May 1899, 26 countries met at The Hague on the invitation of the Queen of Holland for the First Peace Conference, which pointed out that in the conference "each power whatever may be the number of its delegates, will have only one vote"[220]. In respect of both composition and procedure the first Conference was based upon equality[221]. Despite some amount of mistrust, misgivings and lurking suspicion between the great and small powers[222], the Conference was on the whole a success and gave rise to a feeling that a new conference should be called in the not-too-distant future in order to continue the task[223].

A second conference was, therefore, called in 1907 for which, on the insistence of President Theodore Roosevelt that the South American States should also be invited, invitations were sent to 46 States, out of which all but two sent delegates. The principle of equality was observed in the debates even more strictly this time. Each State was to have one vote in the decision-making and the rule of unanimity was to govern all material decisions. Procedural matters were, however, to be decided by a majority vote[224]. No country complained of the breach of the principle. On the contrary, representatives of small countries expressed deep satisfaction with the equal treatment accorded to them. Thus, at the closing session, the first delegate of the Argentine Republic said: "Henceforth we are able to state that the political equality of States has ceased to be a fiction and is established as an evident reality"[225].

But it was their (small States') insistence on the principle of equality which short-circuited the whole project relating to the Permanent Court of Arbitral Justice. The composition of the proposed court became the most controverted issue of the project. The framers of the project, while freely admitting the principle of juridical equality of States, and understanding that a court, to be truly international, should represent all nations, had to face the

difficulty that all the nations could not have a judge on the court. Such a body would obviously be unwieldy; 44 judges, sitting together, might compose a judicial assembly: they would not constitute a court[226]. It was, therefore, proposed that although all States might appoint a judge for the full period of the convention, namely 12 years, these judges should sit for a longer or shorter period, according to a rotation system determined by the population, industry and the commerce of the appointing countries. Thus some States would sit for a period of one year; others for a period of two, four, eight, or ten years; and eight big powers, namely Austria-Hungary, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States, for the full period of 12 years. This scheme, it was argued, was based on the juridical equality of all the States since each one of them would have the right to appoint a judge for the proposed court, even though the judges might serve in rotation and for shorter periods. While respecting the juridical equality of States, it was said, the project recognized the greater interest of the greater powers[227].

This project, however, evoked strong and bitter opposition on the part of the delegates from small States. The most eloquent and forceful critic of this plan was Ruy Barbosa of Brazil, who denounced it as a clear violation of the sacred principle of the equality of States. "Can it be said," he asked,

> "that equal rights are granted to the different countries in the Permanent Court when to some of them judicial function is granted for 12 years, whilst to others such function is granted for only a single year?[228]"

It would indeed be a "mockery" to say that it was so, he said, because the conditions of exercise respect the equality of right only when they are equal for all those possessing that right. On the other hand, he declared, inequality in the exercise implies inequality in the right itself, for the value of a right can be measured only by the juridical possibility of exercising it[229].

Pointing out that the acceptance of this system "would be the proclamation of the inequality of national sovereignties by the very nations it degrades"[230], he declared:

> "If the States excluded from the First Peace Conference have been invited to the Second, it is not with a view to

having them solemnly sign an act derogatory to their sovereignty by reducing them to a scale of classification which the more powerful nations would like to have recognized[231]."

Between States even as between individuals, said Barbosa,

"there are of course diversities of culture, of honesty, of wealth and of strength, but will this fact create any differences whatever as regards their essential rights? Civil rights are the same for men everywhere. Political rights are the same for all citizens. Lord Kelvin or Mr. John Morley have the same vote in electing the august and sovereign Parliament of Great Britain as the ordinary workman dulled by work and misery. But, is the intellectual and moral capacity of this labouring man, who has been degraded by suffering and distress, equal to that of the statesman or the scholar? The fact is that sovereignty is the elementary right *par excellence* of organized and independent States. Now sovereignty means equality . . . Hence, if between the States there is to be a common organ of justice, all the States must, of necessity, have in it an equivalent representation[232]."

He warned that the

"interests of peace are not served by creating among States . . . categories of sovereignty that humiliate some to the profit of others, by sapping the bases of the existence of all, and by proclaiming with a strange lack of logic the legal predominance of might over right[233]".

He advised the conference not to

"multiply the instruments of might, when we imagine we are protecting ourselves against them, by taking shelter under the aegis of pacificatory institutions. Peace in servitude would be degrading[234]."

These unimpeachable arguments of Barbosa encouraged the other small States also to reject the proposed plan relating to the Permanent Arbitral Court. The Mexican delegate said:

"It must be an essentially juridical organism, and, according to the fundamental rule of international law, that is to say, of the equality of the States, all the countries invited to

> the Second Peace Conference, whether they be great or small, powerful or weak, must be represented on the basis of the most absolute and of the most perfect equality[235]."

One after another, the delegates of small States such as Switzerland and Venezuela, the Dominican Republic and Haiti, Norway and Romania, China and Persia, got up to insist upon their equality with the United States, the United Kingdom, France, Germany and Russia and to demand equal representation on the court. The result was that the whole project was defeated.

International Prize Court

Whereas the project relating to the Permanent Court of Arbitral Justice was rejected on the ground that it violated the cherished principle of equality, another proposal, which sought to establish an International Prize Court, came to be accepted though it also provided for an identical rotation system in the appointment of judges. Of the 15 judges that the plan envisaged, eight were to be appointed by the eight great powers, and the rest were to be nominated by a rotation system which classified States according to the tonnage of their merchant marines. Subtle distinctions were drawn between the two courts. The constitution of an arbitral court, it was said,

> "is a matter of universal interest. It does not consider the nations according to their relative importance. No differences of interest may be taken into account in this court, unless it be in favour of the weak against the strong[236]."

On the other hand, so it was argued, the Prize Court would affect only those States which were engaged in seaborne trade and owned a merchant fleet. Therefore, it was in proportion to the value of the fleet owned by a State that its rights should be measured in this matter[237]. As regards the great powers having permanent seats, it was stated that they

> "were more likely to go to war; that their interests either as belligerents or neutrals were greater than those of the small States; that in submitting the validity of their actions to a court composed of neutrals, the larger States conferred such a benefit upon neutrals as to compensate any particular

neutral for inadequate representation, and that, therefore, the larger States were entitled to permanent representation in the Prize Court[238]".

Even so, the plan was not accepted by small States without a lot of misgivings and misapprehensions. Several of them considered the classification of States as an affront to their dignity. Thus the first delegate of the Dominican Republic frankly told the American delegate, J. B. Scott:

> "I will not be a party to any convention which does not recognize the same right in my country to a seat in the court as is recognized to Great Britain; not merely a right, but the exercise of that right[239]."

And though the plan as a whole was adopted, Chile, China, Colombia, Cuba, Ecuador, Guatemala, Haiti, Persia, Salvador and Uruguay made reservations with regard to Article 15, which dealt with the appointment of judges[240].

"Equal States" with "Unequal Influence"

However, despite all these objections from the small powers against certain projects in 1907, it is important not to overestimate their strength. Thus Scott, one of the leading delegates from a great power at the Second Hague Conference, pointed out:

> "It is abundantly clear, therefore, that the delegations at The Hague did not and could not possess equal influence in framing of the conventions, and that, notwithstanding the principle of legal equality, the larger States either forced their views upon the Conference or by their opposition prevented an acceptable proposition from being accepted[241]."

The Chinese Minister to Holland, in a memorial on the Second Hague Conference to his Government, stated the same truth: "The Great Powers naturally availed themselves of their power to benefit themselves by coercing others on the pretext of law[242]."

Professor Edwin De Witt Dickinson, therefore, rightly exclaimed:

> "There was an unreality about the formal proceedings at The Hague, due to the overwhelming inequality of influence that prevailed among the delegations. The initiative in calling

the Conferences came from Russia. The programme, organization, and procedure were practically determined by a single government in consultation with a few of the more influential powers. The conventions were framed in most cases by delegates of the great powers, while proposals approved by large majorities were dropped on several occasions because of the opposition of a few of the great powers[243]."

Renewed Attacks on Equality

But despite this unequal influence at the Second Hague Conference and the numerous frustrations of small States, they were squarely blamed for their intransigent insistence on the application of the principle of equality of States in the selection of judges and the consequent failure of the project relating to the Permanent Court of Arbitral Justice. In fact the "unnatural" principle of equality of States became the subject of renewed and fierce attacks. *The Times* of London declared on 19 October 1907, the day after the conference closed:

"The conference was predestined to fail, because the convocation of such a body at all was based upon a gross violation of the 'law of facts' . . . The only principle upon which all these powers could be induced to send delegates to it was the legal and diplomatic convention that all sovereign States are equal. For certain purposes that convention is useful, but, on the face of it, it is a fiction, and a very absurd fiction at that. Everybody knows that all sovereign States are not equal . . . By pretending to ignore this fundamental and essential truth, the conference condemned itself to impotence. The simplest common sense is enough to teach us that powers like Great Britain, France, Germany, Japan, Russia and the United States will not, and cannot, in any circumstances, allow Haiti, Salvador, Turkey and Persia to have an equal right with themselves in laying down the law by which their fleets, their armies, their diplomats, and their jurists are to be guided on matters of supremest moment. The suggestion that they should submit to such a doctrine is simply fatuous. Such submission would involve the subjugation of higher civilization by the lower, and would inevitably condemn the more advanced peoples to moral and intellectual retrogression[244]."

The insistence of small States to have their judges on the proposed court seemed to "stainless" European countries absolutely without any sense:

> "Hence, in view of the fact that the great powers are not at all disposed to put over them, as their judges, the most corrupt and the most backward States of Asia and of South America, we shall not yet have the arbitral court[245]."

Louis Renault, the great French jurist and delegate to the Second Hague Conference, stated that the juridical equality of States, "if taken literally, leads to absurd conclusions". And he asked:

> "Can it be admitted that in a question of maritime law the vote of the Grand Duchy of Luxemburg or even of Montenegro shall have as much weight as that of Great Britain? Could those small countries, on the plea of unanimity, block reforms upon which the great maritime powers are agreed?[246]"

F. C. Hicks expressed a widely held opinion among the Great Powers:

> "The doctrine of equality was untrue in its origin, was preserved in international law by a verbal consent which is not followed by performance, and was bolstered by false analogies growing out of a confusion in thought between international and positive law[247]."

Endorsing the maxim, "No right without its duties, no duty without its rights", he remarked:

> "The Latin American States and other lesser powers, when demanding equal voting power at The Hague and equal representation upon its permanent courts, are asking rights out of all proportion to the duties that they are able to perform[248]."

He, therefore, suggested that

> "it would be more in accordance with facts if the principle of the *inequality of States*, recognizing actual facts and not being bound down by rules in the observance of which there is such diversity between precept and practice, were adopted[249]".

He pleaded that the "fiction" of equality ought to be dispensed with "in order that progress may not languish nor justice sleep"[250].

He admitted, however, that "the almost unanimous adhesion of great writers on international law to the doctrine has given it such authority, that it is almost heresy to attack it"[251].

Looking back on the proceedings of the 1907 conference, Sir Edward Fry, the British delegate, warned that the claim of the small Powers to equality "is one which may produce great difficulties, and may perhaps drive the greater powers to act in many cases by themselves[252]".

Of course there was nothing new in this warning. As we have seen, all through the nineteenth century the Great Powers had been acting in concert whenever they agreed among themselves. After their misadventures at The Hague in 1899 and 1907, they reverted to the same position. Thus the International Naval Conference, called in 1908 to codify international maritime law, was composed of representatives from only ten principal naval powers[253]. And although the principle of equality of States continued to be paid lip-service during the First World War[254], it was conveniently brushed aside after the war was over.

International Public Unions

It is pertinent to note that already before the establishment of the League of Nations, unequal representation and the majority principle were recognized in various international public unions dealing with economic or technical matters. But in these organizations members usually had the choice of securing greater representation and hence additional votes by paying higher contributions. Moreover, these organizations were concerned with specialized and technical matters where no *vital* or political interests of the member States were involved[255]. Thus the 1907 agreement creating the International Office of Public Hygiene divided the member States into six groups according to the number of units of the bureau States were willing to contribute. Each State had one representative on the governing body of the office, whose voting rights were inversely proportional to the number of groups to which his State belonged. Such provisions were also adopted by the Convention for the creation of the International Agricultural Institute in 1905. The same principle was adopted in the International Telegraphic Union, the Universal Postal Union, the International Union for the Protection of Literacy and Artistic Works, and the International Wireless

Telegraph Union[256]. Another method to give weighted voting rights to various countries was adopted by the Universal Postal Union in 1878 by granting votes to dependent territories[257]. It was generally assumed, however, that

> "under existing international law, the majority principle and unequal representation are compatible with the doctrine of State equality only in technical and procedural matters where only the lesser interests of States are involved"

and did not affect vital interests of States or matters relating to international legislation[258].

Paris Peace Conference of 1919 and the Drafting of the League Covenant

The First World War brought renewed faith in the equality of nations. The crushing of small States situated in the path of invasion and the suffering of the innocent peoples aroused a new interest in the safeguarding of little nations. President Woodrow Wilson of the United States, one of the chief participants in the Peace Conference and the Father of the League of Nations, had been a strong advocate of equality during the war. Thus, in his address to the United States Senate on 22 January 1917, outlining the terms upon which the United States would be willing to join the other civilized nations in guaranteeing a permanent peace, Wilson said:

> "Only a peace between equals can last. Only a peace the principles of which is equality and a common participation in a common benefit . . .
>
> The equality of nations upon which peace must be founded if it is to last must be an equality of rights; the guarantees exchanged must neither recognize nor imply a difference between big nations and small, between those that are powerful and those that are weak. Right must be based upon the common strength, not upon the individual strength, of the nations upon whose concert peace will depend. Equality of territory or of resources there of course cannot be; or any other sort of equality not gained in the ordinary peaceful and legitimate development of the peoples themselves. But no one asks or expects anything more than an equality of rights. Mankind

> is looking now for freedom of life, not for equipoises of power[259]."

Again, in his inaugural address of 5 March 1917, President Wilson declared:

> "That all nations are equally interested in the peace of the world and in the political stability of free peoples, and equally responsible for their maintenance.
>
> That the essential principle of peace is the actual equality of nations in all matters of right or privilege[260]."

A little later, in his war message to Congress, he said that the United States would fight:

> "for democracy, for the right of those who submit to authority to have a voice in their own governments for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free[261]".

Prime Minister Lloyd George of Great Britain was no less forthright in his war aim. As he declared on 25 December 1917:

> "We must know what is meant for equality among nations, small as well great, is one of the fundamental issues this country and her Allies are fighting to establish in this war[262]."

Indeed, the principle of legal equality of States had become so popular during the war that, in order to win friends and influence people, both sides in the conflict referred in diplomatic papers to the principle as part of their war aims[263].

Whether President Wilson and others who vowed by the principle of equality during war actually believed in it or not is another matter. Of course, there is always a difference between theory and practice. Thus, in spite of his pretensions to equality in inter-American affairs, President Wilson continued Roosevelt's policy in Latin America. When order broke down in the Dominican Republic in 1915, Wilson ordered its military occupation. When trouble arose in Haiti in the same year, Wilson sent in the marines, and, on the basis of a forced treaty, retained control over the Haitian Government until 1930. In 1913, he refused to recognize General Victorlana Huerta's government since he had overthrown the

Mexican Government, and had himself chosen as President. Although Britain, France, Italy, Germany and 13 other countries recognized Huerta's government, Wilson called him a "traitor" and a "scoundrel". In fact, on the pretext of a small incident against a few American sailors, he occupied Mexico's ports of Vera Cruz and Tampico and saw to it that Huerta was thrown out of office[264].

After the war was over, all the ideas and ideals of equality and the promises that "there would be no return to a world where peace was made by arrangements among powerful States", and that "all the parties to the war were going to join in the settlement of every issue"[265], were just forgotten. During the Peace Conference in Paris, President Wilson strongly supported, against the advice of his own Secretary of State Robert Lansing[266], the primacy of the Great Powers within the League of Nations on the ground:

> "that the chief physical burdens of the League will fall on the great Powers whether those burdens are military or economic . . . It is desirable to make the plan acceptable that the great powers should be in Executive Council. Then it should be considered what other elements, if any, there should be to it. The general idea is that the Executive Council will consist of those other powers whose interests are affected. The scheme is to have the Executive Council consist of the interested parties. The great powers are always interested[267]."

History bears testimony to the fact that in peace conferences after the wars, the victorious great powers tend to take decisions without consulting the small States and indeed irrespective of their interests. Despite all the promises of international democracy in a new world after the war, it soon became clear that the great powers who had won the war (namely, France, Italy, Japan, the United Kingdom and the United States) were keen on establishing a superior position for themselves in the League. The French delegate, Larnaude, made the point absolutely clear as he said:

> "The matter is not one to be discussed in the abstract or on the basis of sentiment but a thing of cold fact; and the fact is that the war was won by Great Britain, France, Japan, Italy and the United States. It is essential that the League be formed around these effective powers so that at its birth, it shall carry with it influence and prestige of the nations that conquered Germany[268]."

The British delegate, Lord Robert Cecil, said that "absolute equality must be set aside, as Parliaments would not accept it"[269]. In fact he thought that equality of rights was not only "theoretically preposterous", but was "entirely incompatible with the conception of a League of Nations"[270]. He advised:

> "Our chief object is to make the League a success. The chief need in making the League a success is the support of the Great Powers. It must be attractive to them all. Frankly the small powers will, in all likelihood, join anyway[271]."

On the Belgian delegate's, M. Hymans, strong objection that the proposed Covenant would be "nothing else than the Holy Alliance"[272], Lord Cecil said that the

> "description of this Covenant as a new Holy Alliance is an exaggeration, if not wholly a false description. The real security for the small nations must be the sense of justice of the large ones[273]."

There was no equality in Paris. It was accepted neither in representation nor in procedure. Most of the important decisions were made by a "Council of Ten", which at first consisted of two representatives of each of the five great powers and which, later, came to have five and, eventually, four members (when the Japanese delegate ceased to participate except in matters of special interest to Japan)[274]. The peace treaty with Germany was in fact the work of the great powers, and it was left for the small countries only to sign it[275]. Even in the plenary sessions, where all the countries were supposed to participate, the States were divided into three groups according to their relative political importance. The first group of States, consisting of the big powers, was supposed to have general interest and was entitled to participate in all meetings. The second group consisted of belligerent States with special interests, and they were entitled to participate in those meetings in which matters relating to their special interests were discussed. The third group consisted of States which had broken off diplomatic relations with Germany and could attend meetings when the discussions were of concern to them. The classification also determined the number of representatives that each State was entitled to send. The Great Powers were entitled to send five delegates, a minority of States belonging to the second group three delegates, the majority of this

latter group two delegates, and the rest were to have but one delegate. Moreover, the most important commissions were manned exclusively by the delegates of the great powers; others had representatives of small powers on them, but these representatives were in no position to influence decisions[276].

Not only were the negotiations about drafting the League Covenant confined to the Council of Four, called "The Big Four", but they were conducted in utmost secrecy contrary to President Wilson's declared devotion to "open diplomacy" which had been unconditionally proclaimed in his Fourteen Points during the war. On 8 January 1918, the first point in his "program of the world's peace", contained a promise of

> "open covenants of peace, openly arrived at, after which there shall be no private international understanding of any kind but diplomacy shall proceed always frankly and in the public view[277]".

At Paris, however,

> "as negotiations progressed the secrecy of the conferences of the leaders increased rather than decreased, culminating at last in the organization of the Council of Four, the most powerful and the most seclusive of the Councils which directed the proceedings[278]".

The mystery, according to the United States Secretary of State Robert Lansing, which enveloped the Council of the Big Four in "its deliberation emphasized as nothing else could have done the secretiveness with which adjustments were being made and compromises were being effected". It also showed, said Lansing,

> "that the Four Great Powers had taken supreme control of setting the terms of peace, that they were primates among the assembled nations and that they intended to have their authority acknowledged. The extraordinary secrecy and arrogation of power by the Council of Four excited astonishment and complaint throughout the body of delegates to the conference, and caused widespread criticism in the press and among the people of many countries[279]."

Unable to influence the President despite his protestations, Lansing in his frustration wrote:

> "The result of the present method has been to destroy [smaller nations'] faith and arouse their resentment. They look upon the President as in favour of a world ruled by the Five Great Powers, an international despotism of the strong, in which little nations are merely rubber stamps[280]."

He had no doubt that

> "secrecy breeds suspicion; suspicion, doubt, doubt, distrust; and distrust produces lack of frankness, which is closely akin to secrecy. The result is a vicious circle, of which deceit and intrigue are the very essence[281]."

But unfortunately nobody listened to him.

Secretary of State Lansing was also critical of the haste with which the Covenant was prepared which, he felt, "was adopted through personal influence rather than because of belief in the wisdom of all its provisions". He thought that it was through President Wilson's influence that the Covenant was adopted for which he might have "won a great personal triumph". But he achieved it "by surrendering the fundamental principle of the equality of nations". In his eagerness to "make the world safe for democracy, he abandoned international democracy and became the advocate of international autocracy[282]".

Conferential Tzarism

This "conferential Tzarism", as an offended delegate put it[283], reminded one of the days of the Congress of Vienna[284]. The protests of the small States and the invocation of moral principles did not have much effect on the great powers. Thus, in an Anglo-American plan imposed by the great powers on the commission constituted for the purpose of framing the League Covenant, it was proposed to create two bodies – one consisting of all the Members (the Assembly) and the other (the Council) consisting only of the great powers, but with *ad hoc* invitations to such small States as were directly interested in the deliberations on particular subjects. This plan was violently criticized by the small States. The Belgian representative called it "nothing else than the Holy Alliance"[285]. The Brazilian delegate complained that the Council, as proposed, would not be an organ of the League of Nations, "but an organ of the

'Five Nations', a kind of tribunal to which everyone would be subject"[286]. Léon Bourgeois, the French delegate and the President of the Commission tended to be an "advocate of small countries in the camp of the great"[287]. He feared "that if too much power is given to the great powers they will act rather for peace than for peace founded on justice"[288].

Finally, after much argument and acrimonious debate, it was agreed that there were to be four elected representatives of small States along with five permanent members of the great powers. This was said to be a "compromise between law and politics, between juristic theory and tradition and political expediency"[289]. As the Brazilian delegate, Pessoa, explained:

> "It was clear that the question could not be settled entirely by the rigorous principle of law. The injunction of political reasons must also be considered[290]."

Equality Slain

Although the measure of representation secured by the small States was in a sense a victory for their cause and, considering the practices of the European Concert, it was possible to look upon it as a reinforcement of their stand, it was, in view of the price that they had to pay for it, indeed a defeat. The political inequality between States had always existed, but "the formal and general recognition of legal inequality between them was a truly revolutionary innovation"[291]. This was a formal renunciation of equality of rights by the small States and established an important and undeniable precedent for the future. Karol Wolfke rightly remarked in this connection:

> "The great powers yielded before the solidarty pressure of small countries and also that of world opinion, the small as always before material force and weighty arguments, which this force had at its disposal. There is no doubt, however, that the true victors were the great powers[292]."

The strongest attack on the League came from the United States Secretary of State, Robert Lansing. The most serious defect in the Covenant was, he said, "one of principle".

> "It was the practical denial of the equality of nations in the regulation of international affairs in times of peace through

> the recognition in the Executive Council of the League of the right of primacy of the Five Great Powers. This was an abandonment of a fundamental principle of international law and comity and was destructive of the very conception of national sovereignty both as a term of political philosophy and as a term of constitutional law. The denial of the equal independence and the free exercise of sovereign rights of all States in the conduct of their foreign affairs, and the establishment of this group of primates, amounted to a recognition of the doctrine that the powerful are, in law and in fact, entitled to be overlords of the weak . . . it legalized the mastery of might, which in international relations, when peace prevailed, had been universally condemned as illegal and its assertion reprehensible[293]."

He had no doubt that

> "beneath the banner of the democracies of the world was the same sinister idea which had found expression in the Congress of Vienna with its purpose of protecting the monarchical institutions of a century ago. It proclaimed in fact that mankind must look to might rather than right, to force rather than law, in the regulation of international affairs of the future[294]."

"Conceived in intrigue and fashioned in cupidity," Lansing concluded, "the Treaty was unwise and unworkable" and "that it would produce rather than prevent wars[295]."

With such an uncompromising stand against his President's favourite project, it is no wonder that Lansing was forced to resign[296].

There were, of course, other inequalities in the League. The list of original members included the British Empire, four British dominions, and India. The representation of dominions or colonies was calculated to give important colonial powers a larger representation in League institutions than was accorded to other States. The effect was manifest in such an institution as the Assembly, where all members had equal representation. In any case, even if one ignored the subtle manner in which the colonial powers succeeded in circumventing the principle of equality of States and gaining a larger representation for themselves and conceded for argument's sake that the Assembly had been established on the basis of equality (since all the members had but one vote in the Assembly), the appli-

cation of the principle of equality in this instance availed little because the "Assembly had almost no power at all"[297]. As President Wilson remarked, the Assembly had been given "unlimited rights of discussion"[298], but few powers of any real importance. On the other hand, the institutions which had been invested with the greatest powers in connection with the execution of the settlement and the plan for securing peace, such as the League Council, the Governing Body of the International Labour Office, and the river commissions, were "constituted with the least regard for traditional conceptions of equality"[299].

It might still be possible to argue that

> "while there was no equality of representation in the Council, yet the legal equality of the members of the League was really not impaired because they were not bound by decisions in which they did not participate[300] or, in other words, were not bound without their own consent – which is the cardinal principle in the equality of States[301]".

However, the argument that the unanimity principle accepted in the League saved the equality of small States was but small comfort for the loss of their sacred right. Professor Dickinson could, therefore, hardly be blamed for concluding:

> "If this most recent adventure in international organization is an indication of the probable course of future development, as there is reason to believe, the traditional idea of political equality will have to be regarded as an obsolete conception in theory as well as in fact[302]."

It is interesting to note, however, that although five great powers had been given permanent seats on the Council, when the United States refused to join the League, there were only four seats occupied by great powers, along with the same number by the small States. This "equality" lasted for three years when an unintended process set in and the Council was expanded to include more small States. By 1933, the small State representation on the Council had increased to six. In 1936, it had jumped to eleven. With unanimity required for the Council's decisions, it had ceased to become what its founders had designed it to be: the great-power organ of a new Concert of Europe. Further, disunity plagued the relations of the great powers from the very beginning. Britain and France disagreed

over how to treat Germany. An ideological barrier divided Russia from the other great powers. The United States refused to join the League. Germany was not admitted until 1926; and the Soviet Union excluded itself until 1934. By this time the Assembly had developed its authority and started to deal with the settlement of disputes, previously the province of the Council. It was not long before the Assembly, and not the Council, was widely considered to be the most important organ of the League[303].

The League of Nations was able to handle numerous serious, though minor, disputes. But when major problems arose, like Japan's seizure of Manchuria (1931), Italy's invasion of Ethiopia (1935), Italian, Germany and Russian participation in the Spanish Civil War (1936-1939), Hitler's occupation of the Rhineland (1936), hostilities between Japan and China (1937), and the annexation of Austria by Nazi Germany (1938), the League was helpless, swept off its feet, and ultimately swept away[304].

Japanese Equality Amendment

Express Reference to Equality Avoided in the League Covenant

Despite verbal affirmations of the principle of equality in the 1919 Paris Peace Conference and its violations in the provisions of the League Covenant, it is important to note that an express reference to the principle was carefully avoided in the Pact of the League. Of all the plans submitted to the Commission appointed to draft the Covenant, only the Italian plan contained a distinct affirmation of the principle[305], but it was never considered. In the fifth meeting of the Commission of the League of Nations, on 7 February 1919, the Japanese delegate suggested the inclusion of the following clause in the Covenant:

> "The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States members of the League, equal and just treatment in every respect, making no distinctions, either in law or fact, on account of their race or nationality."

Having been subjected to humiliations and discriminated against in the immigration laws of the United States and the British Domi-

nions for a long time, the Japanese had been very touchy about their essential dignity as human beings. Once Japan was admitted as a major power in Western Council by its own right, the Japanese wanted the stigma of "an inferior race" removed. However, in spite of an impressive case made out by the Japanese representative, Baron Makino, it was not acceptable to Great Britain because of its implications for immigration to "White Australia" and other British dominions. But with the strong support the proposal received from all the small States and from France and Italy, to formulate objection to it was not an easy task[306]. In order to evade or avoid the issue President Wilson said that "the trouble is not that any one of us wishes to deny the equality of nations or wishes to deny the principle of just treatment of nationals of any nation". But he was afraid that it would give rise to discussions "that raise national differences and racial prejudices". Contrary to the impression gathered by others, he added:

> "This League is obviously based on the principle of equality of nations. Nobody can read anything connected with its institution or read any of the articles in the Covenant itself, without realizing that it is an attempt – the first serious systematic attempt made in the world – to put nations on a footing of equality with each other in their international relations . . . It is a combination of moral and physical strength of nations for the benefit of the smallest as well as the greatest. That is not only a recognition of the equality of nations, it is a vindication of the equality of nations."

Although all this was tacitly recognized, he was opposed to an express insertion of it in the Covenant to avoid discussion and inciting the "burning flames of prejudice"[307].

However, the Japanese feelings were so strong on the issue that they threatened to decline to sign the Treaty of Peace[308] unless a reference to "equality of nations and just treatment of their nationals" was at least included in the Preamble to the Covenant. It is interesting to note that in order to pacify the Japanese, almost at the last minute the big powers agreed to accept the Japanese claim as against China, to former German property and rights in the Kiao-Chau and Shantung[309] provinces of China, in spite of an overwhelming case made out by the latter. Japan thereafter withdrew its threat and agreed not to press the amendment[310].

Although, President Wilson and others took this step "in order to *save the League of Nations*"[311], it left a very bad taste in the Conference and was strongly objected to even by the American delegates accompanying President Wilson. As Robert Lansing recorded :

> "Apparently the President is going to do this to avoid Japan's declining to enter the League of Nations. It is a surrender of the principle of self-determination, a transfer of millions of Chinese from one foreign master to another. This is another of the secret arrangements which have riddled the 'Fourteen Points' and are wrecking a just peace[312]."

According to R. S. Baker, United States Press Director at the Conference and Wilson's authorized biographer, Wilson knew that he would be accused of violating his own principles, but thought that he had no choice but to work for world order. The Shantung settlement, explained Wilson, "was the best that could be had out of a dirty past"[313].

Equality of States and the Permanent Court of International Justice

The principle of equality of States again became a matter of intense discussion in connection with the composition of the proposed Permanent Court of International Justice in the Committee of Jurists appointed in 1920 by the Council of the League of Nations to draft the Court's Statute[314]. As in 1907, some members representing the great powers on the committee insisted on permanent representation for the great powers on the Court. Thus M. Adatci, the Japanese member, suggested that "the viability of the Court must be primarily considered" and that the "vital question must be treated from the standpoint of sociological rather than formalistic jurisprudence". Though, according to strict law, the rights of Monaco were equal to those of the United States, Adatci questioned whether such a solution of the problem would satisfy the public sense of justice. He was convinced that the five great powers must be represented on the Court and that the exclusion of any one of them would render the Court impracticable. "That fact," he said,

> "was undeniable. Why not admit it frankly, without any ambiguity? Here we must all . . . possess the juridical courage

> and a sense of realities, lacking which we shall be unable to create a living juridical organism[315]."

There was no doubt, according to him, that "an institution based on juridical equality of States was not practicable"[316].

Adatci's arguments were supported and reiterated by Lord Phillimore, the British member. "The Court must have behind it", said the British jurist, "a material force to ensure the execution of its decisions", and that would be possible

> "only if it includes representatives of the great powers; otherwise the new Court will have no more authority than the Permanent Court of Arbitration. It is true that the latter on several occasions had avoided small wars, but it was unable to prevent the Great War."

Without the representatives of the great powers, Lord Phillimore said, the Court would lack "back-bone". He asked:

> "Is it possible to conceive the peoples of the great powers consenting to have their country submit to the judgment of a Court on which they are not represented?"

He feared that "the ordinary Englishman would not be at all satisfied with a Court on which his country was not represented". He, therefore, declared:

> "It was possible to give to the small powers all kinds of formal satisfaction and to make all kinds of concessions to them which do not touch the heart of the problem, but the principle on which the claims of small powers are based could not be admitted[317]."

Even Elihu Root, the former Secretary of State of the United States, who had been a great advocate of the principle of equality of States[318], did not oppose the hegemony of the great powers but found their demands quite reasonable. "The difficulty," he said,

> "was the conflict between the principle of the equality of States and the great powers' fear of finding themselves having to submit to the judgment of a Court in which the majority of the members were representatives of small States[319]."

As the Court was supposed to curb the power of the great States and protect small ones, all nations were not on the same footing.

"The large powers made great sacrifice; the little powers sacrificed practically nothing, and on the other hand obtained a protection of which the great powers were not in need." The problem, therefore, Root said, could not be solved by the application of the principle of equality since a court formed on these lines "would put the great powers at the mercy of those States which give little and receive much"[320].

Furthermore, according to Root, individuals in democracies were expected to hold the view that each of their votes carried as much weight as the vote of any citizen of another country. If that was the case,

> "it would be impossible to put forward a plan in which, for instance, the hundred million inhabitants of the United States would have to consent to have the sovereign rights of their country limited by a Court on which the vote of the half-million inhabitants of Honduras might decide a case against the United States[321]".

These views were opposed by other jurists. Francis Hagerup of Norway said that "the principle of the equality of States is the Magna Carta of the smaller States" and that "if one tried to introduce an element of inequality into the scheme for the Court of Justice, this scheme would fall to the ground as did the scheme of 1907"[322].

M. Ricci Busatti, the Italian jurist, at first defended the principle of equality in spite of his being from a country which was then considered to be a great power. "In the administration of justice in eventual cases", he said, "great or small powers did not exist: the interest of all is the same[323]." Later on, however, he changed his opinion and held "that this idea was slightly utopian"[324].

M. de Lapradelle, the great French jurist, was unswervingly in favour of the equality of States. Pointing out the distinction between the political and juridical points of view, he stated that

> "in the domain of law the States are equal, and the equality of States with regard to the nomination of judges is nothing but the necessary consequences of this principle[325]".

He convincingly pleaded that in a judicial Court "more justice and less force was required"[326].

M. Fernandes, the Brazilian jurist, warned that a Court based on

the sacrifice of the principle of equality of States would be impracticable since the majority of the Members of the League were immutably opposed to any rule involving disregard for this principle [327].

In view of these and other defences [328] of the principle of equality, it could not be entirely ignored. It, therefore, became the task of the committee to adopt the principle of equality of States as a basis and to reconcile it with the necessity of giving the great powers representation on the Court [329]. Happily, a solution was found which ensured a permanent place on the Court for the great powers, without declaring it openly, and maintaining the appearence of equality in the Statute. The compromise provided for a double election of judges by the Council (representing in the main the Great Powers) and the Assembly (where the small States were in a majority) of the League of Nations from among the foremost legal scholars of the world. Thus each group would be in a position to veto the choice of the other; in this way both the large and the small States would collaborate on an equal footing in the selection of the judges, and no judge would be chosen who was not approved by the representatives of both groups of States [330]. There is little doubt, however, says Karol Wolfke, that

> "the essential element of this solution . . . was the conscious introduction of divergence into the actual and formal contents of the Statute, with the aim of secretly introducing inequality [331]".

But apart from this introduction of inequality by the backdoor, as it were, there was an apparent discrepancy between the rights of the members of the Council and those of the Assembly. As M. Fernandes pointed out:

> "The project gives a double vote to States represented both in the Council and in the Assembly in an election in which those who are represented only in the Assembly have but one vote. A flagrant wrong here is done to the principle of equality; it is impossible to hide the fact [332]."

Equality of States and the United Nations

The reticence of the great powers to include the "equality of States" in the League Covenant was noticeably absent after the Second World War [333]. Following the Atlantic Charter of 1941, the

Four-Power (China, United Kingdom, United States, and the Soviet Union) Moscow Declaration of 1943 recognized the necessity of establishing a general international organization "based on the principle of sovereign equality of all peace-loving States"[334]. Through the Dumbarton Oaks Proposals drafted by the big powers[335], this later found its way into the United Nations Charter. Proclaiming its faith "in the equal rights of men and women and of nations large and small", the Charter declares in unambiguous terms in Article 2, paragraph 1, that "The organization is based on the principle of sovereign equality of all its members". This is further reiterated in Article 78 which says that relationship among Members of the United Nations "shall be based on respect for the principle of sovereign equality".

But affirmation and reaffirmation of this well-recognized though truncated principle of the Law of Nations did not deter the great powers from asserting their greatness and special status in the new "Charter of Hope" established to safeguard future generations from the scourge of war. Advancing the usual argument that they had "special responsibilities" in matters relating to peace and security, they claimed special status for themselves in the United Nations. As early as 1943, President Roosevelt offered Joseph Stalin the concept of the Great Powers (United States, Great Britain, Russia and China) as the world's four policemen. The Russian premier agreed and felt that the great powers had special rights and were exempt from rules and restrictions binding others. As Winston Churchill said:

> "The Kremlin had no intention of joining an international body on which they would be outvoted by a host of small powers, who, though they could not influence the course of the war would certainly claim equal status in victory[336]."

However, concerned about the attitude of their smaller allies on a blunt declaration of their dominant role, they proclaimed in Moscow in October 1943 the necessity of establishing an international organization based on the principle of "the sovereign equality of all peace-loving States[337]". On his return from Moscow the British Foreign Minister, Anthony Eden, in a statement, said that the Moscow declaration made it clear "that there was and there would be no attempt to impose a sort of great power dictatorship on other States[338]". But they were not prepared for the Charter of

international organization to be prepared by a full-scale conference of large and small States. This might lead, said United States Secretary of State, Cordell Hull, to "innumerable difficulties and differences of opinion and to great delay". The most effective way to prepare a Charter was for the great powers to reach an agreement first among themselves. Such a tentative accord would be subject to modification after the smaller countries had been heard[339].

Although equality of representation and voting was generally maintained[340] in the San Francisco Conference[341] called to frame the United Nations Charter, and, unlike the Paris Peace Conference, small countries were given some bargaining power and a role in the framing of the Charter[342], the main purpose of the Conference was "no other than to get the smaller nations to agree to a plan of organization based on the proposals worked out by the Big Three or Big Four at Dumbarton Oaks"[343]. Following the precedent set in the League Covenant, the Dumbarton Oaks Proposals sought not only to give permanent seats[344] on the Security Council of the United Nations to five great powers, viz. the United States, the Soviet Union, the United Kingdom, France and China, along with six other countries elected by the General Assembly[345], but also to reinforce their position by giving them the right of veto on all the important questions to be decided by the Security Council. Justifying these proposals in a joint statement, the big powers declared:

> "In view of the primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred. Therefore, if a majority voting in the Security Council is to be made possible, the only practicable method is to provide, in respect of non-procedural decisions, for unanimity of the permanent members plus the concurring votes of at least two of the non-permanent members[346]."

This privileged position of the great powers and their right of veto were vigorously attacked by the small States at San Francisco. They declared this superiority contrary to the "fundamental principles of democracy"[347] and extremely unjust. Such a right (of veto) might

lead to a position, they pointed out, similar to that of a murderer who was permitted to vote on his own guilt[348]. Since no nation could be expected to vote for action against itself in any case of threat to the peace or breach of the peace caused by itself, the Organization would be powerless[349]. This would establish a world order, said the Mexican delegate, "in which the mice could be stamped out but in which the lions would not be restrained[350]". Although they conceded leadership to the great powers, they did not want to be ignored, especially when their own interests were involved. As Ezequeil Padilla, the Mexican Secretary of State, said:

> "The small nations do not pretend to equal participation in a world of unequal responsibilities. What they do desire is that when injustice may strike at the door of small nations, their voices may be heard; and that their complaints and protests against injustice shall not be shrouded in the silence and blind solidarity of the great powers[351]."

All this had, however, no effect on the big powers. On the other hand, the small States were advised to look at the position "realistically"[352]. The special position of the great powers, they were reminded, corresponded to the "responsibilities and duties that would be imposed upon them"[353]. Peace must rest, said the British delegate, "on the unanimity of great powers for without it whatever was built would be built on shifting sands, of no more value than the paper upon which it was written"[354]. In any case, the small States were told point-blank that the Charter would be unacceptable to the great powers without these special privileges. Thus, getting impatient at the continuous and repeated criticism of the veto provision, Senator Connally, the United States delegate, made his final plea: "You may go home from San Francisco, if you wish, and report that you have defeated the veto", he cautioned the delegates, "but you can also say, *'we tore up the Charter'*"[355]. At that point, Connally later wrote,

> "I sweepingly ripped the Charter draft in my hands to shreds and flung the scraps with disgust on the table. The delegates fell silent, while I stared belligerently at one face after another. Then a long moment of uneasiness descended on the gathering and the vote followed. I won[356]."

Put in this way, the question of voting was no longer a legal one but, as the Norwegian delegate put it, one of "political engineering"[357]. The small powers were left with no choice except to accept the "evil" of the veto and the special status of the great powers "because the alternative was a thousand times worse"[358]. It is important, however, to note that though they "acquiesced" in the proposed voting system for the time being, it did not mean that they "agreed to it". They, therefore, expressed a hope that it would be amended in due course[359].

The privileged position of the great powers, of course, gave them numerous powers, not enjoyed by others, and enhanced their status even further than it had been in the League of Nations. Unlike the League Council, the Security Council of the United Nations is endowed with real powers under Chapter VII in connection with threats to the peace, breaches of the peace, and acts of aggression, and all the Members of the United Nations are bound to accept the decisions of the Security Council and to carry them out (Arts. 25 and 48) by rendering all necessary assistance, including armed force[360]. Whereas the Members of the League of Nations possessed the veto in the Council and in the Assembly because of the "unanimity rule", all except the big five have lost it in the United Nations. Apart from the most important field of peace and security, the special status of the great powers in the Security Council gives them further powers in connection with the admission (Art. 4), suspension (Art. 5), and expulsion (Art. 6) of Members, the appointment of the Secretary-General (Art. 97), and the amendment of the Charter (Art. 108).

Nothing more need be said to prove the gross inequality between the great powers and the small States in the United Nations. These inequalities did not, of course, go unnoticed in the San Francisco Conference. The Belgian delegate, Rolin, said that the small States would regard it as ironical, in view of the striking inequalities evident in the Organization, to find at the head of the statement of principles, a bold reference to the "sovereign equality" of all Members. He, therefore, proposed to omit the word "sovereign" found in Article 2, paragraph 1. His proposal was promptly seconded by the delegate from Uruguay, but he suggested that the word "sovereign" should be replaced by the word "juridical". Both of these proposals were defeated[361], however, and the Charter deceivingly affirmed the "sovereign equality" of all its Members. Con-

sidering the fact that the Members of the United Nations have neither equal rights nor equal protection of such rights as they have, Professor P. E. Corbett can hardly be blamed for stating that "the 'sovereign equality' of Article 2, paragraph 1, is a striking manifestation of the persisting appeal of face-saving phrases in international politics", and that, in the circumstances, "it is difficult to attach much practical significance to the salute to the 'principle of equal sovereignty' in Article 2, paragraph 1"[362].

In contrast to the Security Council[363], the General Assembly, like the League Assembly, has been organized on the basis of the principle of equality and all the Members have the right to equal representation, equal opportunity to participate in discussions, and equal voting power. But even in the General Assembly, the Soviet Union was given three votes since the Ukraine and Byelorussia, two constituent states of the Soviet Union, were permitted to join the United Nations as original members. Before the San Francisco Conference was called at Yalta (4 to 11 February 1945), the big three (United States, United Kingdom and the Soviet Union) agreed that, in view of the support Britain could, in general, count from its Dominions and India, and the United States from the Philippines and some Latin American States, the Soviet Union may be given two additional seats in the General Assembly. In fact they even agreed to give to the United States three seats as well, but the United States later abjured this right. Both India and the Philippines, though not entirely independent, were admitted as original members. The Kremlin was convinced that Britain had six votes and, thanks to its influence in Latin America, the United States had even more[364].

In any case, the great powers agreed to an equality between unequal States in the General Assembly because it was supposed to have "no power to take decisions binding on Members with respect to their policies and conduct in their international relations"[365]. Although the Charter authorizes the Assembly to take binding decisions in procedural matters, to perform certain elective functions, to admit new members, and to approve the budget and allocate expenses, its powers are otherwise limited to initiating studies, discussing matters brought before it, and making recommendations to Members and to other organs[366]. The equality in the General Assembly, therefore, would not affect the great powers and the special powers they had acquired in other organs, as least so they

thought. What symbolized the small State's share in the United Nations was their right in the General Assembly to debate, to advise, to discuss, and to recommend. It is interesting that no one took seriously the right to pass resolutions. As originally conceived by the great powers, resolutions were expected to be a rare occurence[367].

CHAPTER IV

EQUALITY OF STATES IN A HIERARCHICAL WORLD ORDER

A Hierarchical World Order

We live, and perhaps have always lived, in a hierarchical world order. Not only the Greek and the Roman worlds, but the world or worlds of Ancient Asia – whether in India, China or Southeast Asia – have always been based on hierarchical order[368]. Ever since the emergence of nation-states in Europe, it has been a hierarchical society. As Professor A. C. Coolidge recalled:

> "By the close of the fifteenth century certain States had assumed a position which entitled them to the modern designation of 'great European powers'. The Holy Roman Empire, still first in dignity, France, after she had recovered from the Hundred Years' War and had broken the might of her great feudal lords, England in the firm hands of Henry VII; the newly formed Kingdom of Spain, which had finally ended Moorish rule in the peninsula, all these held a position unlike that of their neighbours. The difference between them and such powers as Denmark, the Swiss Confederation and Venice was one of rank as well as strength. Politically they were on another plane: they were not merely the leaders, they were the spokesmen, the directors of the whole community[369]."

Of course, in a changing world everything changes; nothing abides. During the sixteenth century, the Holy Roman Empire lost its lustre and its place was taken by Austria. For a while Spain was a real big power overshadowing all others, dominant in Europe, supreme in America. The seventeenth century saw the decline of Spain, the primacy of France, and the temporary rise of Sweden and the Netherlands. The eighteenth century saw the last two subside into relative insignificance, and two others – Russia and Prussia – stepped to the forefront of European affairs. After the French Revolution and the Napoleonic wars, as we have seen in the previous chapter, five great powers – Russia, England, Austria, Prussia and

France – dominated Europe. Called the European Concert, this Pentarchy controlled European affairs and laid down principles and rules governing other European countries. They decided that they would usually meet alone to discuss measures for the maintenance of "general peace". Italy crept into the Concert of Europe through the Congress at Paris in 1856, and took her place as the sixth great power of Europe since her foundation in 1861 until the First World War. These six powers considered themselves as the true masters of Europe[370].

The United States, always hostile to foreign entanglements, became a world power by reason of her size, growing wealth and influence, almost in spite of herself. The Spanish-American War of 1898 is generally believed to be the turning point in her history in this respect[371].

After her military victories over China in 1894, and over Russia ten years later, Japan could not be denied the rank of a great power even in Eurocentric international society consisting of white European civilized States and States of European origin in America, with a very few Asian States admitted to the family of nations by courtesy of the European powers.

After the First World War, five allied powers which had defeated Germany – Great Britain, France, Japan, Italy and the United States – formed the new International Directorate as permanent members of the Council of the League of Nations. Although four small powers were also admitted into the Council, they were supposed to be only junior partners since the chief physical burdens of the League were expected to fall only on the great powers[372].

This tradition of great or militarily strong States controlling the fate of others was continued after the Second World War although the faces had changed. The new directors – United States, the Soviet Union, the United Kingdom, France and China – not only acquired permanent seats in the executive body of the United Nations which was given much more power than the League Council, but the right of veto. In view of the primary responsibility of the permanent members, it was said, they could not be expected to act in serious matters relating to the maintenance of international peace and security in consequence of a decision in which they had not concurred.

With this historical background there is little doubt that might did, and does, make right. In fact military power, or the lack of it,

at a particular point in history has been the only difference between the so-called great powers and small States. Obviously, smallness depends neither on population nor on area, nor has the status of a small State to do with its place in history, to its geographical situation, to its form of government, to its degree of civilization; or to its *per capita* wealth. Thus China, with a population ten times as great as that of France or of Italy, was until 1945 a small State. Even in the United Nations it owes its great power status primarily to the courtesy of the United States and Great Britain rather than to any other factor. Japan, which had been recognized as a great power at least since the turn of the present century and has since grown into an economic giant, is only a small State in the United Nations. Brazil, with an area ten times as large as those of France and Italy put together, has been and is still a small State. India, Australia, Canada, Spain, Poland were all counted as "small States" in the League of Nations and are so considered in the United Nations.

Meaning of the Term "Sovereign Equality"

Before we go on to examine the recent changes in the international power structure and their effect on the relationship between unequal States, it is interesting and important to understand the meaning and importance of the term "sovereign equality" in international law. In the whole range of formulae current in international relations, as we have seen, there is none more volubly asserted than this by the governments of small States or more glibly repeated by those of the great. Nor in the class-ridden international society is there any other principle which on its face asserts a greater contrast between so-called law and the facts of life. States are overwhelmingly unequal, not only in resources and influence, but in the voting power and other rights conferred on them by international instruments. The recitation of the pious and holy principle hardly makes any difference. As Samuel Grafton, a syndicated columnist of the war period, said:

> "Even after you give the squirrel a certificate which says he is quite as big as any elephant, he is still going to be smaller, and all the squirrels will know it and all the elephants will know it[373]."

In any case, the treatment accorded to smaller and weaker nations

at numerous international conferences since the seventeenth century, by the Concert of Europe in the nineteenth century, and at peace conferences after the First and Second World Wars in the twentieth, should have persuaded them of the insubstantialness of their claim to legal equality. If in spite of all this treatment, they have continued to insist on this largely ignored and purposely violated principle of equality, according to Professor Percy Corbett:

> "Obviously they attach value to this shadow. Of course, even a *panache* has value. But is there anything more in 'sovereign equality' than a plume which the great powers allow the weak to wear as a sop to their vanity, calm in the assurance that it adds nothing appreciable to their weight[374]?",

he asks. He believes that the answer is yes, but adds that there is something more. That something more, he says, "is in the nature of a nuisance value". Lately, however he thinks, "that the notion of equality is gaining practical significance"[375].

Whatever the ceremonial value or practical significance of equality, according to Oppenheim, four rules can be derived from this principle:

> "This legal equality . . . has four important consequences: the first is that, whenever a question arises which has to be settled by consent, every State has a right to vote, but . . . to one vote only.
>
> The second consequence is that legally – although not politically – the vote of the weakest and smallest State has, unless otherwise agreed by it, as much weight as the vote of the largest and most powerful. Any alteration of international law by treaty has legal validity for the signatory powers and those only who later on accede expressly or submit to it tacitly through custom . . .
>
> The third consequence of State equality is that – according to the rule *par in parem non habet imperium* – no State can claim jurisdiction over another. Therefore, although States can sue in foreign courts, they cannot as a rule be sued there, unless they voluntarily submit to the jurisdiction of the court concerned . . .
>
> A fourth consequence of equality . . . of States is that the courts of one State do not, as a rule, question the validity or

> legality of the official acts of another sovereign State or the official or officially avowed acts of its agents, at any rate in so far as those acts purport to take effect within the sphere of the latter State's own jurisdiction and are not in themselves contrary to international law[376]."

All these rules, however, according to some scholars, can, with more logic and convenience, "be attributed to the principle of independence rather than to that of equality"[377]. Thus Brierly also affirmed that "no theory of equality is needed to explain or justify" these rules[378]. As Westlake said, the "equality of sovereign States is merely their independence under another name"[379]. The principle of equality is therefore, they argue, "redundant and unnecessary", and it becomes "actively fallacious when pressed to yield results which cannot be explained by independence"[380]. Thus to allow a State of one million inhabitants to hold the same constitutional position as a State of 100 million inhabitants in an international organization, "is not only theoretically but practically indefensible". To do so would be, it is suggested, undemocratic in the true sense of the word. Such an institution would lack real influence or authority for the obvious reason that it would not represent the political interests and the political forces of the human race[381].

Whether the principle of "equality of States" is redundant or not, it has been a favourite theme and cherished doctrine of the small powers all through history. According to Professor Dickinson, equality of States is the expression of two legal principles[382], viz. (i) equality before the law or equal protection of the law, and (ii) equality of rights and obligations or more often equality of rights. To these may be added a third and distinct principle, (iii) equality for law-making purposes[383], before we look at the (iv) application of the doctrine embodied in the United Nations and its recent ramifications.

Equality before the Law

There is hardly any dispute in regard to the first of these rights. It is supposed to be the *sine qua non* of any legal system. It is universally admitted to be essential to a stable society of nations and is said to be the only alternative to "universal empire" or "universal anarchy". As Dickinson points out, "In the law of nations it is the necessary consequence of the denial of universal empire, and

an international society controlled by law"[384]. All it means is that the States are equally entitled to be protected in the enjoyment of their rights and equally compelled to fulfil their obligations. In other words, all the States stand before the law on equal terms, and law must not differentiate between them[385]. In this sense the equality of States has found strong support from the decisions of international tribunals. Thus in the *Norwegian Shipowners' Claims* case, the Permanent Court of Arbitration, pointing out that both parties come before the Tribunal on a footing of "complete equality", emphasized: "International law and justice are based upon the principle of equality between States[386]."

In the *Sambiaggio* case before the Italian-Venezuelan Claims Commission, the claimant asked for damages suffered and property taken by the revolutionary forces in Venezuela. It was suggested on behalf of the claimant that whatever might be the general rule of international law with respect to non-liability of governments for the acts of revolutionists, this rule did not find a proper field of operation in Venezuela, the country being subject to frequent revolutions. Ralston, as Umpire, noting that some dictatorial means of intervention had in fact been used by the big powers against small States, refused to admit that Venezuela could be regarded as inferior to any other nation. In a forceful opinion he said:

> "For about 70 years Venezuela has been a regular member of the family of nations. Treaties have been signed with her on a basis of absolute equality . . .
>
> The Umpire entered upon the exercise of his functions with the equal consent of Italy and Venezuela and by virtue of protocols signed by them in the same sovereign capacity. To one as to the other he owes respect and consideration. Can he therefore find as a judicial fact, even inferentially (the protocol not authorizing it in express terms), that one is civilized, orderly, and subject only to the rules of international law, while the other is revolutionary, nevertheless, and of ill report among nations, and moving on a lower international plane?
>
> It is his deliberate opinion that as between two nations through whose joint action he exercises his functions he can indulge in no presumption which could be regarded as lowering to either. He is bound to assume equality of position and equality of right[387]."

The principle of equality before the law has been confirmed in several other decisions of international tribunals[388] and has never been expressly repudiated by anybody. But despite all these affirmations of the principle, one dare not deny that

> "international law has not yet reached that stage of development whereby agencies function adequately to protect rights and to assure equal protection of rights. The remedial process of international law has not always proved sufficient against encroachment on the rights of small States by powerful States, and has failed to function even when the national existence of a small State was in issue. Indeed the independence of States has been violated so repeatedly that to some legal realists the entire principle of equal protection before the law seems an abstraction – a phantasmagoria of the law[389]."

It is, therefore, felt that until

> "a world organization with real powers comes into being which can end the anarchy of international life, recognizing certain rights of States and protect those rights, it is useless to speak of equality before the law[390]".

As we have also noted in our previous chapter, the anarchical system of self-help prevailing in international relations is essentially an expression of inequality of States since the utility of the right of self-help depends upon the power at the disposal of those exercising this right[391].

Equality of Rights

In any case, whereas the first principle specifying equal protection of the law, howsoever unrealizable in practice, is so well recognized that express mention of it is several times considered to be unnecessary and only a passing reference is made to it in the course of an argument or opinion, there is no such consensus in regard to the second principle derived from equality. Thus Professor Brierly says that if equality

> "merely means that the rights of one State, whatever they may be, are as much entitled to be protected by the law as the rights of any other . . . then the statement is true, but obvious. But it is not true, if it means . . . that all States have equal rights . . .

> If it is said that all States ought to have equal rights whether they actually do or not, then the doctrine ceases to be merely innocuous and becomes mischievous[392]."

Professor Dickinson agrees and confines equality to the "equal protection of the law". He believes that

> "equality before the law is not inconsistent with the grouping of States into classes and attributing to the members of each class of a status which is the measure of capacity for rights. Neither is it inconsistent with inequalities of representation, voting power, and contribution in international organization[393]."

Whatever the case may be, after Samuel von Pufendorf declared that States, being in a state of nature, must have equal rights[394], most publicists came to adopt the view that equality of rights and obligations was a necessary consequence of the equality of States. Thus, according to Calvo, equality "has a twofold consequence, in that it attributes to all States the same rights and imposes upon them reciprocally the same duties"[395]. Similarly, Taylor described equality as meaning that "the legal rights of the greatest and smallest States are identical"[396]. Pitt Cobbett thought that what equality really meant was that "all States, whether great or small, have equal rights and duties in matters of international law"[397]. The Latin American States which, as we have seen, have long been among the most insistent on legal equality, asserted in the Montevideo Convention of 1933:

> "States are juridically equal, enjoy the same rights and have equal capacity in their exercise. The rights of each do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law[398]."

The American Institute of International Law stated:

> "Nations are legally equal. The rights of each do not depend upon the power at its command to insure their exercise. Nations enjoy equal rights and equal capacity to exercise them[399]."

This does not, however, mean that States have the same or identical rights and obligations. For obviously this is not the case. All

that they meant was, as Pradier-Fodéré explained, that States "have potentially . . . the same rights, that they have an equal power . . . of realizing them, and that they ought to be able to exercise them with the same inviolability"[400]. This is also made clear beyond doubt by Carnazza Amari:

> "Thus fundamental equality should not be taken to mean that it is necessary for them to develop their existence and realize their rights in the same degree; these rights may differ according to the more or less extensive activity of each State and according to the differences of situation in which the different peoples may find themselves and the varied influence of accompanying circumstances. It is necessary to understand this equality in the sense that all States have potentially the same rights, and enjoy . . . the same inviolability in the exercise and in the realization of their rights[401]."

This interpretation may also be said to have found support in the only case where the principle of equality was a matter directly at issue. In the *Venezuelan Preferential* case (1904), the controversy arose over claims held by citizens of Germany, Great Britain, Italy and several other States against the Republic of Venezuela. Prolonged diplomatic negotiations having failed to bring an adjustment, the Governments of Great Britain, Germany and Italy resorted to joint coercive measures, including a blockade of Venezuelan ports, the seizure of custom-houses and other expedients. As a consequence, Venezuela was constrained to recognize in principle the justice of the claims against it and proposed that all the claims be paid out of the customs receipts of the ports of La Guaira and Puerto Cabello, 30 per cent of the receipts of those ports being set aside each month for that purpose. The proposal was accepted by the claimant nations, but Great Britain, Germany and Italy, the blockading powers, claimed that their subjects should receive preferential treatment and should not rank with the claims of the other powers for compensation. Venezuela and the non-blockading powers declined to accept this view and contended that all should participate equally. The question was submitted to the Permanent Court of Arbitration.

In the course of the proceedings, it was argued by Venezuela and the non-blockading powers that the principle of equality among nations created a presumption in favour of equal participation and

that preferential treatment for the blockading powers would violate the equality of sovereign States. As Venezuela put it:

> "Such further preferential treatment is objected to because equality is equity, and as all nations are equal in the forum of international law, they should be accorded equal treatment by this tribunal unless some valid and conclusive reason can be adduced for denying them such equality[402]."

The United States developed the same thesis:

> "While each State is sovereign within its domain, elsewhere – on the high seas and everywhere within the domain of the general community – all States are equal, having equal rights and duties of respect, of representation, and of justice. Each may demand justice for its nationals domiciled in another State, but not to the exclusion of the same right of the nationals of other States. The pretension to such exclusive rights assails the sovereignty of a debtor State. It also assails that of other States having claims equally just; and if insisted on it would necessarily provoke resentments and lead to inevitable conflicts[403]."

These arguments were strongly and successfully met by the blockading powers. As Great Britain very effectively replied:

> "The main proposition of law on which the other creditor powers rely is that all nations are entitled to equality of treatment, or, as it is otherwise stated, that 'equality is equity'. It is perfectly true that all nations, great or small, are to be regarded as on a footing of equality *inter se,* but *this proposition cannot possibly be stretched to the extent of meaning that all nations are to have equal rights in all circumstances,* or that equality is always equity irrespective of the question whether the parties concerned are in an equal position or not. There is nothing to prevent one nation from agreeing to confer special privileges on another nation, even though that agreement be prejudicial to the interests of a third nation, provided that no vested rights are affected. One nation, for instance, may obtain a preferential tariff from another nation by treaty or by force, but that gives no right in law to any third nation to insist on equal treatment.

> It is equally certain that the doctrine of equality can have no application in cases in which the nations concerned are not in a position of equality. A neutral, for instance, cannot claim the privileges of a belligerent . . . A creditor who has taken no steps to enforce the payment of his debt is not in the same position as a creditor who has taken successful proceedings against the debtor[404]."

Recognizing the soundness of these arguments advanced by the blockading powers, the tribunal granted preferential treatment[405].

Although it is difficult to say that this case stands as a precedent for or against the equality of States, there is little doubt that it confirmed the opinion that whatever equality may be called it means at the most an "equality of capacity and not of rights"[406]. As Julius Goebel also remarks,

> "it is appropriate . . . to remark that the legal significance of the idea of equality is restricted to questions of capacity. By legal capacity we mean simply the capacity of being a legal subject, in other words exercising the rights which the law accords[407]."

Pradier-Fodéré stressed the same point when he said:

> "However, among States as among individuals, natural or juridical equality does not necessarily correspond to social or real equality. While each people possesses all rights potentially . . . it does not realize them equally in the same degree as other peoples. Indeed, all States are naturally and juridically equal from the point of view of absolute right, but all are not equally powerful, influential through their ideas, preponderant on account of their civilization, and formidable because of their material forces. The metaphysicians will discourse in vain on the absolute equality of States from the point of view of natural right; they will always be obliged to recognize in the reality of things an inequality between the Empire of all the Russias, for example, and Portugal, or some Spanish American republic[408]."

Grave questions have, however, been raised even in regard to the interpretation of equality as "equality of capacity for rights". This is said to be neither in conformity with the realities of life, nor in fact essential to the rule of law[409]. Equality in the sense of

equality of capacity means the negation of status. As Goebel points out:

> "When we speak of equal legal capacity we mean that there is no distinction between legal subjects; that they are in respect to the exercise of rights or the performances of duties on a basis of parity[410]."

But equality in this sense, we are reminded, is not to be found even in a most democratic national society. Thus in English law, as Ivor Jennings pointed out, pawnbrokers, money-lenders, landlords, infants, married women, and indeed most other classes, have special status and special rights and duties. "Nor is it possible to affirm", he said,

> "that equality exists because any person can legally join one of these classes. A man cannot become a married woman or an infant; nor can anyone become a licensee of a public house or a film exhibitor without the consent of someone else[411]."

All that equality means, therefore, is that "among equals the laws should be equal and should be equally administered, that like should be treated alike"[412]. If this is the case in a national society, it is stressed, it can hardly be denied in international society. International law undoubtedly recognizes differences in the status of States. Thus, apart from protected and permanently neutralized States with special status and limited capacity for rights, there are numerous other limitations, both internal and external, on the capacity of States which are by no means uniform. In contrast with internal limitations arising from a State's organic constitution, external limitations upon equality are imposed from without by treaty arrangements and by usages which are defined in the practice of nations. One may only mention limitations incidental to protection, trusteeship, neutralization, international servitudes and supra-national organizations, along with innumerable other limitations undertaken by States as a result of treaties. One may argue of course that if a State chooses to make itself politically unequal by entering into a treaty, that has nothing to do with the principle. But the fact is that so long as international law recognizes the validity of unequal treaties signed under duress or coercion or undue influence, "the ideal of equality of States can never be even approximated"[413]. And even apart from treaties there are certain other

factors which cannot be ignored. Thus an inland State obviously does not have the same range of capacity for rights as a maritime State.

In face of all this inequality, it cannot be said that States are equal in their present capacity for rights. It makes no difference, says Stowell in this connection,

> "that we find the most solemn manifestations of equality and respect upon paper. As a Russian proverb says, 'paper endures everything'. In actual State practice equality or any approximation to it exists only between States of the same rank in respect to the exercise of power[414]."

The most, therefore, that can be said is, according to Professor Dickinson that equality of legal capacity is an "ideal toward which the practical rules of the law of nations can only approximate"[415]. But he qualifies it by saying that

> "among States, where there is such an utter want of homogeneity in the physical bases for separate existence, there are important limitations upon its utility even as an ideal[416]".

If, therefore, all that equality means is that equals should be treated equally and that under the same conditions States have the same rights and the same duties, this is certainly "an empty and insignificant formula because it is applicable even in case of radical inequalities"[417]. The principle of equality so formulated, Professor Kelsen rightly remarks,

> "is but a tautological expression of the principle of legality, that is, the principle that the general rules of law ought to be applied in all cases in which, according to their contents, they ought to be applied. Thus the principle of legal equality, if nothing but the empty principle of legality, is compatible with any actual inequality[418]."

All these attempts to conciliate the irreconcilables, Professor Corbett correctly remarks, have resulted in "confusion worse confounded"[419].

Equality for Law-Making Purposes

Apart from the above-mentioned two principles which amount to nothing more than empty phrases in practice, equality is also understood to mean that no State can be bound to accept a cer-

tain legal rule in law without or against its will. As Oppenheim says:

> "International Law as at present constituted knows of no legislative process in the proper sense of the term, i.e., the imposition of legally binding rules upon a dissenting State or minority of States[420]."

International treaties are, therefore, said to be binding merely upon the signatory States, and the decision of an international body cannot bind a State which is not represented on that body or whose representative has voted against the decision. Understood in this sense, a majority vote is excluded from taking any binding decision and unanimity is supposed to be the rule of international law[421]. As the President of the Second Hague Conference said in 1907:

> "The first principle of every Conference is that of unanimity; it is not an empty form, but the basis of every political understanding . . . in an International Conference each delegation represents a different State of equal sovereignty. No delegation has the right to accept a decision of the majority which would be contrary to the will of its Government[422]."

The doctrine also means, it is important to note, that the votes of all States are of equal value. The will of the one is as good as the will of the other; power is of no importance for the sovereignty of States. Indeed, the rule of "one State, one vote" "is a direct consequence of the entire train of thought of voluntaristic positivism"[423].

In all the conferences held before 1919 unanimity was the accepted rule, though the great powers, as we have seen, were always granted a special position of control and privilege[424]. Conditioned by these precedents, unanimity was accepted as the working rule in the League of Nations. As the Phillimore Draft pointed out: "The precedents in favour of unanimity are so invariable that we have not seen our way to give power to a majority, or even a preponderant majority[425]."

The Permanent Court of International Justice (PCIJ) also stressed that the rule of unanimity was "in accordance with the unvarying tradition of all diplomatic meetings or conferences" and that it was "naturally and even necessarily" applicable to such inter-governmental bodies as the League Council, save only in explicitly excepted cases[426].

Despite this almost universal acceptance of the unanimity principle, however, it was found to be a great hindrance in the progress of international law and organization. As Nicolas Politis said:

> "To lay down the principle that in an international organization every important decision must be adopted unanimously . . . is to admit that among nations no real organization is possible, for the rule of unanimity may lead to paralysis and anarchy[427]."

Whereas in old-fashioned diplomacy the role of unanimity meant simply that a State might abstain from treaty relationship which others might enter into at their pleasure, in an international organization it tended to be transformed into the rule of *liberum veto*, according to which no organizational decision could be reached if any member of the organization dissented[428]. This "archaic" rule, therefore, needed to be revised. And as international organization developed, it involved, as Professor Claude tells us, "the steady lifting of the dead hand of the unanimity rule"[429]. It came to be argued that while the equality of independent States required that each State has a right to dissent, there was nothing in the concept of independence which prevented a State from voluntarily entering into an agreement to so limit its freedom of action as to consent to be bound in future by the decisions of a majority. Thus States could by a *unanimous vote* establish an international organization laying down that they would be bound by a majority decision of the organization. The necessity for an initial unanimity did not involve a like necessity beyond that point[430]. Once a State consented to be bound by a majority vote, it could not subsequently plead lack of consent when it found itself in the minority. Such an acceptance of the majority rule, it was asserted, did not violate the principle of equality so long as each State had the same number of votes in the organization[431].

Minor modifications of the unanimity rule had already been achieved in a number of public international unions in the nineteenth century. The Hague Conferences permitted the passage of *vœux* by a majority vote. The League of Nations encouraged this trend by developing several methods of expanding the limited number of exceptions to the unanimity rule stipulated in the Covenant[432]. After the Second World War, the Charter established the

rule of simple or extraordinary majorities in all organs, major and minor, of the post-war organizational system. Thus, C. W. Jenks commented: "The battle to substitute majority decision for the requirement of unanimity in international organization has now been largely won." In this he saw "the completion of a revolution of decisive importance for the future development of international organization"[433].

It is important, however, to remind ourselves that the unanimity principle has not been entirely defeated. It is still effectively present in the veto power of the five permanent members of the Security Council of the United Nations over the most important activities of that body and also over the adoption of amendments to the Charter. The great powers have not yet thought it advisable to renounce the unanimity rule, which has been given up by the other States. As Claude says: "The less-than-unanimity rule of the Security Council is a far cry from real majority rule[434]." Furthermore,

> "a decision to recommend or to propose is not the same as a decision to impose legal obligation, and it is clear that the triumph of majoritarianism has been achieved primarily in regard to the former, not the latter, type of decision".

The majority rule in the United Nations and its organs, it must not be forgotten, is confined to

> "passage of recommendations which States may respect or ignore at their pleasure, to adoption of legislative conventions which bind each member State only if it chooses to ratify them, and proposal of amendment to organizational constitutions which in many cases become effective for a State only upon its formal acceptance and which in any case a State may evade, by resort to the expedient of withdrawing from the organization[435]."

Indeed, at the present stage of international organization, as Professor Claude goes on to tell us, non-unanimous decisions with binding effect are confined to matters of mainly technical importance or of not more than minor political concern. When serious and fundamental security questions are involved, such as in the NATO Council, the traditional unanimity still holds sway[436].

Elaboration of Equality of States at the San Francisco Conference

Amidst all these contradictions and confusion about the meaning of equality of States, the principle not only continued to be asserted but elaborated without, however, adding much to the clarity of the doctrine. Thus at the San Francisco Conference, the *Rapporteur* of Committee I/1 which drafted Article 2 of the Charter, said in his report that the term "sovereign equality" was understood to include the following elements:

(1) That States are juridically equal.
(2) That each State enjoys the rights inherent in full sovereignty.
(3) That the personality of the State is respected, as well as its territorial integrity and political independence.
(4) That the State should, under international order, comply faithfully with its international duties and obligations[437].

The International Law Commission, in its draft Declaration on Rights and Duties of States prepared in 1949 simply said: "Every State has the right to equality in law with every other State."

The Commission added in its comment:

> "This text was derived from Article 6 of the Panamanian draft. It expresses, in the view of the majority of the Commission, the meaning of the phrase *'sovereign equality'* employed in Article 2 (1) of the Charter of the United Nations as interpreted at the San Francisco Conference, 1945[438]."

This elaboration hardly clarifies the matter. Thus, despite the first element of the above-mentioned definition of equality, special privileges, as we have seen, have been conferred on the great powers. Professor Kelsen rightly remarks that "if the States are 'equal' in spite of the fact that some have privileges which others have not, the term 'equal' has lost its original sense"[439]. "Juridical" equality means, as we have discussed above, either "equality before the law" or "equality of rights". As the United Nations is unable to take any "action" against the great powers because of the veto, there is no equality before the law. "Equality of rights", on the other hand as we have seen, amounts to nothing more than the principle of legality which means that everybody has the duties and rights which the law confers upon them. The first element is, therefore, nothing but "an empty tautology"[440].

The second element of equality as described above is also, as Professor Kelsen rightly emphasizes, meaningless[441] as long as the term "sovereignty" is not defined.

The third element does not result from Article 2, paragraph 1, but from Article 2, paragraph 4, which provides that:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."

The fourth element, it is clear, has nothing to do with the sovereign equality but merely states a truism that legal obligations should be complied with[442].

Sovereign Equality: a Restriction on the Power of the United Nations

Whatever its meaning, the principle of sovereign equality, we are told by some well-informed authorities, was intended to emphasize the fact that the United Nations was an

> "international organization to facilitate voluntary co-operation among States and that it was not a super-State which would destroy the legal personality of its individual members[443]".

In practice it has been invoked by members to check any growing authority of the United Nations or any related body at the expense of national sovereignty. On the basis of this experience in the United Nations, some scholars believed that the principle of sovereign equality was likely to be used more as an argument for restrictive interpretation of the Charter than as a safeguard of equal rights of small States[444].

New Dimensions of "Sovereign Equality"

Without underestimating the emphasis on "sovereignty" that has come to be put in recent days to curb the authority of the United Nations, it is important to examine new meanings that have come to be attached to the principle of sovereign equality, especially by the small and underdeveloped States. Thus, during discussions on the principles of international law concerning friendly relations and

co-operation among States in accordance with the Charter of the United Nations, pursuant to General Assembly resolutions Nos. 1815 (XVII)[445] and 1966 (XVIII)[446], the small and developing nations tried to give extensive and far-reaching interpretations to the term "sovereign equality of States" as declared in Article 2 (1) of the Charter. The principle, which, they said, was as sacrosanct in inter-State relations as the principle of racial equality in individual human relations, needed to be developed and modified in the light of new aspects that had emerged during the last two decades[447]. Conscious of the inequalities suffered by them in the past and the exploitation of their States, they not only wanted restitution for past injustices but also demanded assurances against their repetition. Juridical equality could have little practical meaning, said the Canadian representative, if powerful States were free to advance their interests by resorting to threats or the use of force rather than by recourse to the rule of law through peaceful procedures. He, therefore, demanded the strict observance of the territorial integrity and political independence of States[448]. The Ethiopian delegate wanted the equal sovereignty of States strengthened by the removal from international law of all pretexts for interference based on the pseudo-humanitarian motives of "civilizing the pagan"[449]. Several of the newly independent countries understood the principle of sovereign equality to extend to non-self-governing territories as defined in Chapter XI of the Charter, and they refused to recognize them as integral parts of any State. They, therefore, demanded self-determination for colonial peoples[450].

The small States not only wanted equal rights and duties with the great powers, irrespective of their differing social and economic systems and the level of their development, but equal capacity for the exercise of those rights and duties[451]. They demanded an equal right to participate in international life which meant participation on an equal footing in international organizations, international conferences, and multilateral treaties and in formulating and amending the rules of international law[452]. In this connection, they declared that treaties should be concluded only on equal terms laying down equal rights and duties, and demanded that all unequal treaties, unequal concessions, *de facto* privileges, and military bases, granted before or after independence, should be deemed or declared to be null and void, being in violation of the principle of sovereign equality. Application of unequal treaties concluded under

pressure, they warned, was a threat to friendly relations and co-operation among States[453].

Concerned about their terribly underdeveloped economies and subhuman standards of living, most of these countries wanted economic help, but were in no mood to tolerate interference in the exploitation of their natural wealth and resources and interpreted the principle of sovereign equality accordingly. They thought that the latter principle extended to the right of States to exploit their natural wealth and resources which included, according to some, the right to suspend or terminate any agreement concerning natural resources, subject only to the obligation in law to provide compensation[454]. It was further stressed that nowadays there could be no political independence without economic independence and that political equality would lack any sense without economic equality. Already in 1961, the Fiftieth Inter-Parliamentary Conference had declared that

> "the economic inequality of countries, i.e., the parallel existence of highly developed and underdeveloped countries, fosters relations of inequality among nations (neo-colonialism) and the use of such relations for cold-war aims".

The existence of misery, poverty, hunger and high mortality in a number of countries, particularly in this age of far-reaching scientific development, the conference pointed out, was not only a shame for mankind but also a source of international tension. It was, therefore, declared to be an "imperative obligation" of all developed countries to help generously the underdeveloped nations with a view to eliminating all elements of inequality[455]. Vigorously supporting this resolution, the representatives of small poor States reminded the economically advanced countries of their duty to do what they could to narrow the gap between themselves and the underdeveloped countries[456].

But despite these wider connotations that the small States sought to attach to the term "sovereign equality", the United Nations Special Committee, appointed to study the principles of international law concerning friendly relations and co-operation among States, in its first session held in 1964 in Mexico, reached a consensus on the meaning of this principle which avoided most of these views and hardly contained any innovations. Consensus was reached on the following points:

(1) All States enjoy sovereign equality. As subjects of international law they have equal rights and duties.
(2) In particular, sovereign equality includes the following elements:
   (a) States are juridically equal.
   (b) Each State enjoys the rights inherent in full sovereignty.
   (c) Each State has the duty to respect the personality of other States.
   (d) The territorial integrity and political independence of the State are inviolable.
   (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems.
   (f) Each State has the duty to comply fully and in good faith with its international obligations, and to live in peace with other States[457].

Needless to add, this was more or less a repetition of the elements declared in the San Francisco Conference which we have discussed above.

Small States and Their Growing Influence

Even if the small States could not get their wider interpretations of "sovereign equality" accepted in the Mexican Conference, their views are not entirely without influence in the present transformed international society. In the first place, it is important to note the vast horizontal extension of international society. With the emergence and participation of so many Asian and African countries, international society has become, for the first time in history, a true world society. The United Nations is not the same old body that it was in 1945. It has developed from its original 51 members to 159 members with a vast majority consisting of small and middle powers. But in spite of the fact that most of these States are weak and underdeveloped and without much influence "individually", their importance to the maintenance of a world public order in the present tension-ridden, bipolarized world can hardly be exaggerated. Although small States have always benefited from great power rivalry[458], for the first time they have come to acquire an unusual and disproportionate weight in influencing the course of history. "Uncommitted" as most of these States are today, they have become objects of strong competition and wooing among the super powers at least to keep them uncommitted. Moreover, with the

threat of a limited use of force reduced, because of the danger of its developing into a devastating nuclear war, they can generally maintain their positions even against the might of the great powers. This was impossible before the Second World War. The existence of an international forum, such as the United Nations, where they can make their voices heard and where they have some scope of concerted action, enhances their power and helps them in pursuing their purposes. They are further helped in the United Nations as we shall see presently, by the rivalry between the great powers, since it has incapacitated the "potential directorate of the five permanent members of the Security Council", and has shifted the power to the General Assembly, the stronghold of the small countries, where they enjoy complete formal equality with the great powers and, of course, numerical superiority[459].

Egalitarian General Assembly

It is important to recall that the General Assembly of the United Nations was organized on the principle of equality and on the "one State, one vote" rule because, as we have seen in the previous chapter, the great powers believed at the San Francisco Conference that their interests would be adequately protected by their right of veto in the Security Council. The Security Council was charged with the primary responsibility for the maintenance of international peace and security and all the important decisions were envisaged to be taken in that body. On the other hand, the General Assembly was expected to be of lesser political significance, not more than a "town meeting of tomorrow's world"[460], authorized to make recommendations without any binding force.

This estimate of the situation, however, proved utterly wrong. The Charter's design of order was made dependent on the condition that the great powers would retain a basic identity of interests. The United Nations could act only if the big powers agreed. However, it was not long before the big power unanimity proved to be a myth. In the chilling atmosphere of the cold war, the work of the Security Council came to be frozen. With the persistent use and abuse of veto, not only did the Security Council come to a standstill, but its authority as well as prestige started declining. In the light of its hoped for purposes, the Security Council has "from the beginning been a glorious failure"[461].

The change from an instrument of the great powers to a forum

for the smaller States to press their claims began in the 1950s. The most important characteristic of international relations in the post-war years, which suddenly gave the weak of the world unexpected significance, was the bipolar power structure and the ensuing cold war whose pervasiveness was matched by its intensity. It was primarily to get the political allegiance and support of the Third World States that the real power in the United Nations was sought to be shifted by the Western powers from the Security Council – immobilized by the Soviet veto – to the General Assembly. In the early fifties, the Western powers, led by the United States, had the solid support of the majority of the member States. The General Assembly was, therefore, a welcome instrument – first and foremost in the pursuit of the cold war. The General Assembly action in the Korean war was a dramatic example of this function. Through the Uniting for Peace Resolution adopted in 1950, the increased power and active role of the General Assembly even in matters relating to peace and security was regularized. This *volte face* of the General Assembly and *de facto* amendment of the Charter, informally accepted by a vast majority of the United Nations members, later got a powerful legal support from the International Court of Justice in *Certain Expenses of the United Nations* case. Replying to the criticism by a few countries that in matters relating to peace and security it was only the Security Council which was authorized to take any action relating thereto, and that the General Assembly's power was "limited to discussing, considering, studying and recommending", the Court pointed out that the responsibility conferred on the Security Council was "primary", not "exclusive". The Charter made it abundantly clear, the Court said, "that the General Assembly is also to be concerned with international peace and security[462]". Referring to the limitations of the General Assembly under some provisions of the Charter (Arts. 11 (2), 12) the Court went on to explain that, while it was the Security Council which could exclusively order coercive action,

> "the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies and the making of recommendations; they are not merely hortatory[463]".

Describing this process as "a major constitutional revolution", Professor Claude said that

"the evolution of the constitutional relationship within the United Nations system has tended to make the General Assembly the unrivalled principal organ of the entire system[464]".

Changing United Nations

As the General Assembly got more power and influence and started boldly dealing with numerous world issues, including the most serious matters relating to peace and security, the United Nations structure started changing its colour. Several new States from Asia and Africa became independent and were admitted into the United Nations as equal and active members. In 1955, 16 countries joined the United Nations; in 1960, 17 joined. There was hardly a year after that without a new member. In 1986 the total membership is 159. The balance of votes gradually became more uncertain and it marked an end of the era in which the United States and the Western powers had a clearcut preponderance among the members of the General Assembly. As the new States of the Third World, most of them non-aligned, began to assert themselves and speak clearly and loudly – many a time bluntly – on issues of decolonization, development and disarmament, some of the erstwhile followers of the American lead began to adopt a more independent stand. Together, Asian, African and Latin American countries – small, poor, underdeveloped, turbulent countries of the Third World – began to put pressure on the colonial, Western, industrialized States through massive majorities of the former for phenomenal changes in international structure, as we shall see presently. Time after time they put the West in the dock, castigating it for its malfeasance and making demands for redress[465]. It is said, therefore, that the "expansion of international society" and the "expansion of international law" have not resulted in the integration of international society, and in spite of all the dangers facing the world, there is no sophistication in the conduct of its affairs. The fact is "that there are now more States to quarrel and more questions to quarrel about"[466].

Authority of the General Assembly and its Resolutions

Although the General Assembly is admittedly not authorized to make any binding decisions except in a few cases, such as admission of new members (Art. 4), suspension of the rights and privileges of

members (Art. 5), the expulsion of members (Art. 6), or budgetary questions (Art. 17), and its resolutions are supposed to be merely recommendatory, having no mandatory force, these provisions do not and cannot reflect the true position. There is little doubt that the Assembly's decisions, expressing as they do the majority's consensus, on the issue under consideration, help in mobilizing public opinion which may not be easily ignored[467]. The voice of the United Nations may not be the authentic voice of mankind, but surely it is

> "the best available facsimile thereof and statesmen have by general consent treated the United Nations as the most impressive and authoritative instrument for the expression of a global version of the general will[468]".

Since States are not legally bound they may act in violation of General Assembly resolutions, but generally they prefer not to do so, or at least appear not to do so, because "collective approbation is an important asset and collective disapprobation a significant liability in international relations"[469]. As Dag Hammerskjöld, the former Secretary-General of the United Nations, said:

> "To the extent that mere respect, in fact, is shown to General Assembly recommendations by the member States, they may come more and more close to being recognized as decisions having a binding effect on those concerned, particularly when they involve the application of the binding principles of the Charter and of international law[470]."

Although the General Assembly is not a Parliament or a legislative body, its resolutions passed by an overwhelming majority or by unanimous votes surely affect the law. There is no doubt that the General Assembly has been increasingly used by States for *collective legitimization* of certain claims, actions and policies, "an agency capable of bestowing politically weighty approval or disapproval" upon their projects and policies[471]. The whole process of decolonization through multilateral denunciations of colonialism, claims in regard to self-determination, challenge to the present economic order, and attacks on several aspects of the traditional law of the sea are only a few of the examples of such acts of "collective legitimization", or new "legislative power"[472]. Traditional lawyers may brush aside several of these changes in law as not legitimate, as not

having achieved universal support, but statesmen are bound to regard them as facts of international political life and would attach greater weight to the political consensus of the Assembly than to the controversial provisions of international law. In this sense, "collective legitimacy represents a political revolt against international law"[473].

The expressions of political and juridical conscience of nations, or at least of their majority, in the form of General Assembly resolutions have a force which is much more than recommendatory[474]. There is no doubt that collective legitimization can and is stimulating changes that will make international law more worthy of respect and more likely to be respected. In any case, the crucial point is that the General Assembly has acquired a power to influence world events which cannot be ignored. And the small, poor, weak countries of the Third World, which have to a large extent become custodians of this power, are bent upon using it to their advantage, to bring about necessary changes in the present inequitable legal, political and economic structure which has kept them subservient so far. To them the most important issues before the United Nations are: (i) to rid the world of colonialism and racialism, and (ii) to help the poor nations to better their conditions.

Present Cruel Economic Order

While they have largely succeeded through their relentless struggle in eradicating colonialism, and racialism is facing a grim fight and is on defence, it is the economic front on which they have not succeeded at all so far. The traditional order that governs international economic relations is, they feel,

> "based essentially on the domination of the poor by the rich, and on the shameless exploitation and terrifying impoverishment of the developing by the developed countries[475]".

The poor countries have come to understand that because

> "the developed countries have virtual control of the raw material markets and what amounts to a monopoly on manufactured products and capital equipment, while at the same time they hold monopolies on capital and services, they have been able to proceed at will in fixing the prices of both the raw

> materials they take from the developing countries and the goods and services with which they furnish those countries. Consequently, they are in a position to drain the resources of the Third World through a multiplicity of channels to their own advantage[476]."

By virtue of its dominant position, a small minority, composed of highly developed countries, proceeds at will in order of priorities of its own. As a result of that situation, the process whereby some continually grow richer while others founder in destitution has become some kind of a universal law[477].

The institutions in which the present international economic order is expressed, namely, the IMF, the World Bank and the GATT, to mention only the most important, were created at the end of the Second World War when the United States emerged as the most powerful and richest industrial State. This made it possible to organize those institutions so as to guarantee the United States, along with some European imperialist powers, almost absolute dominance, in international economic relations. The present international monetary system has been called "unfair, unequal, unsuitable, uncertain and inconsistent. The very least one can say of it is that it is outdated"[478]. In the eyes of the vast majority of humanity, it is an order as unjust and as outdated as the colonial order to which it owes its origin and substance.

The present economic order concentrates three-quarters of revenues, investment and services, and practically all the achievements of research, in the hands of one-quarter of the world's population and divides the nations of the world into areas of over-consumption and under-consumption. While the resources of our planet are being over-exploited and wasted to sustain an ever-rising standard of living in a few affluent and over-consuming countries, the developing world accounting for 75 per cent of all mankind, furnishes only 7 per cent of the world's industrial production, and manages with only 25 per cent of the world's income, in subhuman conditions characterized by illiteracy, malnutrition and hunger, disease, unemployment and underemployment. They live under conditions so degrading as to constitute an insult to human dignity. Poor, pressured and powerless, these peoples depend on a limited range of primary exports whose prices fluctuating widely around a downward trend lead to declining purchasing power. The result is that

plans for their socio-economic development are rendered collapsible. Beneath a vicious sky of inflation and recession, the prices of imports are rising at least one-and-a-half times faster than the prices of exports of developing countries. Tariff and non-tariff barriers to trade tend to fossilize the development structures of the poorer countries, and extensive debt obligations impose a tremendous burden upon public policy for development. Food surpluses tend to accumulate in developed nations while the prevalence of primitive agricultural technology in developing countries continues to accentuate the cruel and agonizing effects of hunger and disease, combined with the vagaries of weather. Indeed, "in today's world, one can portray the heaps and humps of wealth and affluence against the depths and dumps of woe and misery"[479]. Since the present economic order is maintained and consolidated and thrives by virtue of a process which continually impoverishes the poor and enriches the rich, it is contended, this economic order constitutes the major obstacle in the development and progress for all the countries of the Third World.

Demands for Change

Ever since they achieved their independence, the developing countries have been urging the developed countries to help them in making the economic system more equitable so that the vast gap between the rich and the poor may be reduced. But all their pleadings to change the present inequitable and unequal economic system, their demands for help, and their appeals for consideration have gone unheeded. During the last more than 30 years, the United Nations has been used as a forum in the campaign for economic equity. But despite the establishment of a United Nations capital fund[480], the first United Nations Development Decade declared in 1960[481], four United Nations Conferences on Trade and Development (UNCTADs), the agreed conclusion of the Special Committee on Trade Preferences, and the Second United Nations Development Decade[482], the economic gap between the developing and the developed countries has failed to decrease. Indeed, the poor countries have actually suffered economic shrinkage. The aspirations and hopes of the poor countries have generally been thwarted. In most cases the developed countries have failed to honour their commitments. There has been a clear lack of will on the part of the rich

countries. The fundamental problems remain the same; inequality in the terms of trade, non-stabilization of forces and markets for primary commodities, lack of adequate access to the markets of the developed countries, and a generalized system of preferences. In other words, while political colonialism has almost ended, economic imperialism and exploitation, or neo-colonialism, continues unabated[483].

Unable to persuade the rich countries by all the persuasion at their command, the developing countries are getting restive. They are sick of being meek and are making their demands more militantly. They want to make a conscious break with the present situation and declare that in order to do that, "what is necessary is not evolution but revolution"[484]. The "damned of the earth", resigned and submissive until yesterday, have changed into confident and revolutionary advocates of a new order learning more about themselves and their continued exploitation in the course of the struggle. There is nothing fated, they point out, about what is modestly called the deterioration in the terms of trade. This is the operation of a system which is fundamentally bad and unequal. To put an end to this situation, the international community must evolve a new system which will bring greater justice, equity and equality to international economic relations. It is unjust, they insist, that the prices of manufactured goods fixed by the economic powers should surge ahead while the prices for the primary commodities necessary for the manufacture of those products are maintained at the same level or are even allowed to decline by the same powers. The least that can be done, they plead, is to take steps to index the prices of the products exported by the developing countries to tie them to the prices of the manufactured and capital goods they must import[485]. In other words, they ask for some correlation between the prices of raw materials and those of manufactured goods. The developed countries must also open their markets to the products of the developing countries by doing away with the protectionist barriers which lead to a decrease of exports by the underdeveloped countries[486].

Group of 77

It is being increasingly realized that these poor, turbulent countries of the Third World, often described as the South in contrast to the industrialized North, in quest of their progress, present a

challenge to the rest of the world. Politically non-aligned as most of them are, they have aligned both inside and outside the United Nations to play an important role in the international structure. Within the United Nations they have formed a consortium – called the Group of 77 – which has actually more than 120 members. Acting in concert, these poor and weak countries have come to acquire sufficient influence and strength to challenge the most influential and strongest powers. The increasingly militant demands by the militarily inconsequential poor countries of the Third World, which form a vast majority in the United Nations today, upon the privileged minority for an international redistribution of wealth and power are being made with great frequency and greater intensity. Many a time, their rhetoric is inflammatory and their language hostile which, it may be said, is merely a reflection of their increasing frustration and desperation.

General Assembly and the Principle of Equality

The new majority can now muster overwhelming voting support for its demands on a wide range of political and economic issues – especially resources and development, racial and colonial grievances in South Africa, and Arab grievances against Israel. This changing role of the United Nations, criticism by the world's mendicants and until yesterday subservient States of the rich and powerful Western powers, and a situation in which the latter can practically always be outvoted, has led to increasing outbursts against the United Nations and scorn towards its actions. In fact the growing importance and effectiveness of the General Assembly, and with it that of the smaller powers, has led to a powerful reaction arising out of the frustrations of the big powers. As they do not have a "veto", the unlimited power of obstruction, in the General Assembly, they are getting jealous of its powers and extremely critical and impatient at its exercise of those powers. In as much as the veto serves, in Claude's words, as "a deliberately contrived circuit breaker in the decision-making process of the Security Council", the "Uniting for Peace Resolution" can work like a penny in the fuse box that could short out the entire system[487].

It is pointed out that

> "under equal voting it is possible for countries with 2 per cent

> of the total population of the United Nations membership to form a blockading third, and countries having 11 per cent of the population can form a winning two-thirds".

Though it may not always happen in practice, there is nothing to stop countries with one-and-a-half per cent of assessments of the regular budget to block action and those with about 5 per cent to form a winning coalition[488]. Nor is this, we are told, in the realm of mere possibility. Many a time, these small and turbulent States use their automatic majorities to pass resolutions, particularly "on colonialism, which could only be described as reckless and careless of peace and security"[489]. Even a glance at the parliamentary diplomacy being transacted at the General Assembly shows that there is a constant pressure from the newly independent, underdeveloped countries on the colonial, Western, industrialized States, through massive majorities of the former, for redistribution in their favour. These redistribution attempts, it is said, take many forms: statements of principles that seek to reduce the legal rights of the "haves" and enhance those of the "have-nots"; decisions asserting the Assembly's competence to supervise the decolonization process; requests for voluntary contributions to the United Nation's widely varied activities in furtherance of economic development; and the fixing of assessment scales based on capacity to pay[490]. Most of these recommendations for action are made, it is interesting to note, over the opposition of the very minority of developed countries to whom the recommendations are addressed[491].

As Robert Klein points out:

> "There is a gross disproportion between voting power and real power. The smallest and financially weakest States, representing a minority of the total population in the Organization, possess a majority of votes. Paying a fractional share of the assessments of the Organization, they are able to outvote those paying the higher rates. At budget time . . . the major powers, paying two-thirds of all United Nations costs, feel the full impact of the majority rule. They find themselves chosen to foot the bill for projects which they voted against and which the majority, by themselves, could never afford[492]."

It is complained that these small, inexperienced, newly independent members of the international society are virtually "running"

the United Nations, and in fact "running away with it"[493]. A situation in which, according to the prosperous Western countries, "we pay and you decide what is to be done with our money" has become intolerable[494].

A favourite comment in Western circles about the changing United Nations and its new membership is, therefore, "irresponsible"[495]. The underlying grievance of Western diplomats is

> "that the growing number of small recently constituted non-Western States tend to gang up and pass judgment on their elders on issues regarding the tutelage of European countries over dependent territories without having responsibility comparable to that of the administrators[496]".

As Mike Mansfield, majority leader in the United States Senate, said:

> "It is not finances which are at the heart of the United Nations problems. It is the procedural distortion between the power to make decisions and the power, the will and responsibility to carry out decisions which has produced these difficulties in the United Nations[497]."

"In playing out the myth of democracy and sovereign equality", says Klein, "irresponsibility is reflected in a stream of resolutions on a wide variety of matters based on emotion and without regard to the consequences for the Organization or for the world over"[498].

The General Assembly has, therefore, come to be attacked as a "most unwieldy body which bears no relationship to the realities of world power"[499]. The very basis of the organization of the General Assembly is declared to be faulty. "A body in which Guatemala or Bulgaria exercises the same voting power as the United States or the Soviet Union", said Senator Fulbright of the United States, "can scarcely be expected to serve as a reliable instrument of peace enforcement or even of consultation"[500]. It is "nonsense", Lord Cherwell declared, for nations to submit their "vital interests to a body so absurdly constituted as the General Assembly"[501]. President de Gaulle of France was even more critical. He said:

> "The United Nations no longer resembles the organization founded in 1945. The General Assembly wields additional powers and now includes representatives of more than

> 100 States . . . most of which, at least many of which – are improvised States and believe it is their duty to stress grievances or demands with regard to the older nations, rather than elements of reason and progress."

General de Gaulle went on to describe the meetings of the General Assembly as "riotous and scandalous sessions" in which debates were "filled with invective and insults proferred especially by the Communists and by those who are allied with them against the Western nations". Under these circumstances, he said that France could only adopt an attitude of greatest reserve toward the "United, or Disunited, Nations"[502].

Confrontation

The increasing boldness of the weak and poor States, and their continued pressure for their never-ending demands in the General Assembly, have led to increasing exasperation and frustration among the Western industrial powers. The General Assembly, which the western countries helped grow in stature and importance and which in the early years they used for their own purposes against the Soviet group, has now become a big headache for them. The climax came in 1974 when at a Special Assembly called to consider a "new international economic order", the Western rich countries were accused of wasting energy and minerals, building weapons they did not need, polluting the air and the oceans, eating too much and contributing to the starvation of others. It was not difficult for the "automatic majority" to pass resolutions advocating more economic help from those who voted "no" to those who voted "yes". Subsequently, at the 29th General Assembly, the same "globe-girdling" majority suspended South Africa from the current General Assembly, royally received the Palestinian guerilla leader, Yasar Arafat, to present his appeal to the General Assembly, voted to deny Israel the right to speak more than once during the heated debate on the Palestinian question, approved a highly controversial "Charter of Economic Rights and Duties of States"[503], and in the Unesco in Paris, excluded Israel from a regional caucus – all actions opposed by the United States and other Western powers.

Unable to take it any more, the United States ambassador to

the United Nations, John Scali, told the General Assembly on 6 December 1974, of his deep concern "over the growing tendency . . . to adopt one-sided, unrealistic resolutions that cannot be implemented". He warned the "tyrannical majority" that "unenforceable, one-sided resolutions destroy the authority of the United Nations. Far more serious, however, they encourage disrespect for the Charter and for the traditions of our Organization". The "pursuit of mathematic majorities", he said, "can be a particularly sterile form of activity" because "each time this Assembly makes a decision which a significant minority of Members regarded as unfair or one-sided, it further erodes vital support for the United Nations among the minority. But the minority which is so offended may in fact be a practical majority, in terms of capacity to support the Organization and implement its decisions". Support for the United Nations, he pointed out, "is eroding – in our Congress and among our people. Some of the foremost American champions of this Organization are deeply distressed at the trend of recent events"[504].

Ten Western ambassadors spoke in similar vein. "We cannot overlook", said the French delegate, Louis de Guiringaud,

> "the drawbacks of adopting so many shortlived resolutions – each longer than the last, and one a repetition of the other, dealing with identical subjects in almost similar terms, virtually unreadable and sometimes not read, even by their sponsors. Since the approval given to these overgeneral texts deceives no one, the significant result is that no newspaper in the world reproduces them. The United Nations thus runs the risk of living in a closed world, in an atmosphere of appearances and verbalism[505]."

Some others talked of the need for "consensus" and the advisability of the majority taking the essential interests of the minority into consideration since the co-operation of the latter was indispensable for any positive action[506].

The reaction of the developing countries to this outburst was equally strong. "The most heinous crime of the so-called tyrannical majority appears to be", said Sri Lanka's delegate, Amersinghe, "that many of them are small and poor". Referring to the oft-repeated allegation that many resolutions had been adopted by majorities that represented only a small fraction of the people of the world, its wealth or its territory, he asked:

> "How small is a small fraction? . . . are the majorities that include the 750 millions of China, or nearly 700 millions of the subcontinent comprising India, Pakistan and Bangladesh, the millions from other parts of Asia . . . the millions of black Africans and in some cases the not insubstantial millions from Latin America fractional?"

He said that it was understandable that powers accustomed to command imperiously found it intolerable to comply gracefully. He told the big powers that "contempt for United Nations resolutions is a worse form of brutality than disregard for the sensitive minority". He pointed out that

> "if there is such a thing as the tyranny of the majority or, to give it another description, the impractical minority, there is also its counterpart which is the despotism of the minority or the practical majority, to use an elegant euphemism[507]."

Referring to the super-powers' assertion that member States of the United Nations had different status and capabilities in international affairs and, therefore, different responsibilities, the Chinese delegate asked:

> "Is this not an open advocacy of superpower privileges and big-power hegemonism and the power politics of the big bullying the small, the strong domineering over the weak and the rich oppressing the poor? If their demand is to be complied with, will not the history of the 1970s be turned back to the nineteenth century?[508]"

Mr. Baroody, the delegate from Saudi Arabia, pertinently asked: "Is wealth the yardstick of wisdom?[509]" The Egyptian delegate advised the powerful giants:

> "If we call upon the numerical majority to exercise self-restraint and to adopt a responsible attitude, the mighty minority must in turn understand the international changes that have come about and respect the will of the international community. They should not resort to threats, menaces and challenges[510]."

Mr. N'Dessabeka of Congo told them:

> "So long as those measures remain dead letters, so long as

> certain countries . . . continue to trample under foot resolutions adopted by wide consensus, we should not be surprised that at each session we make the same claims at the risk of attaching too much importance to the world of words and displeasing those who are allergic to it[511]."

Confrontation Continues

The United States and the other industrial powers let it be known that they would not endorse the various proposals of the developing countries contained in these resolutions demanding a new international economic order: price-fixing cartels, expropriation of foreign property without adequate prompt and effective compensation, and a system of indexation for raw materials. The postures of confrontation continued unabated. But in 1975 on the first day of the Seventh Special Session, 1 September, the United States Secretary of State, Henry Kissinger, in a very conciliatory speech to the General Assembly offered the United States' co-operation. Washington was prepared to discuss the proposition that raw material producers should have assistance in coping with wild and ruinous price fluctuations and the industrial countries should – without in any way accepting guilt or an obligation to make reparation – help the developing countries establish a broader economic base. He offered no miracles but the new approach seemed to make all the difference. As he concluded:

> "There remain enormous things for us to do. We can say once more to the new nations: We have heard your voices. We embrace your hopes. We will join your efforts. We commit ourselves to our common success[512]."

The American offer was welcomed everywhere and at the Seventh Session the atmosphere was very conciliatory and friendly. But in the end it achieved nothing in concrete terms. All that the poor nations received was sympathy for their deplorable conditions, recognition of the fact that it was an interdependent world and needed co-operation to achieve common development goals, and innocuous promises of co-operation provided that the rich countries were not pressurized and the decisions were reached through negotiations and consensus. Starving masses were advised to be patient. Otherwise,

> "we would enter an age of festering resentment, of increased resort to economic warfare, a hardening of blocs, the undermining of co-operation, the erosion of international institutions, and failed development[513]".

The developing countries were certainly getting impatient. They made it clear that "we desire co-operation and, if at all possible, consensus, but not consensus for the sake of consensus alone, we wish to see consensus for action[514]". Some of them warned:

> "We must not be mesmerized into accepting proposals for producer-consumer co-operation by sanctimonious references to the concept of interdependence. There can be no true interdependence unless it is based on relations of equality. Let us beware lest that concept of interdependence be used as a mask to disguise new forms of dependence and new forms of subjection – or, indeed, to sustain old forms[515]."

As the Seventh Special Session collapsed, the United States Ambassador, Moynihan, made it clear that the United States "did not much give a damn" to this failure for which he blamed the developing countries[516]. In fact he thought that the United States was being too much pushed around and its representatives humiliated or ignored. It was time that the United States stopped being passive, discarded the habit of appeasement, stood up and replied and told the truth, howsoever disagreeable that might be. In as much as the United Nations majority was most often arrayed against Western viewpoints, especially those of the United States, he pleaded that the United States should go into "opposition" and give a fairly strong response to hostile acts on the part of the United Nations majority. It was time, he thought, that the "American spokesman came to be feared in international forums for the truth he might tell". In a combative style he sought to demonstrate the undemocratic and inegalitarian propensities of those Third World diplomats who appeared to proclaim social, democratic and egalitarian ideas[517].

Soon thereafter, at the thirtieth session on 10 November 1975, the General Assembly touched the raw nerve of the Western countries by adopting a resolution against Israel which declared that "Zionism is a form of racism and racial discrimination"[518]. The United States and other Western countries were "appalled"[519].

The United States Senate and the House of Representatives each condemned the measure by unanimous votes. Editorial opinion across the United States was uniformly and sharply condemnatory[520]. Ambassador Moynihan declared that the United States "does not acknowledge, it will not abide by, it will never acquiesce in this infamous act"[521]. Later, speaking on a report of the Special Committee on Decolonization of American Samoa, Guam and the Virgin Islands, Moynihan told the General Assembly that it "is becoming the theatre of the absurd"; and "I begin to feel that the world's increasing contempt" for the General Assembly, "is increasingly deserved"[522]. He admonished the Assembly that it

> "has been trying to pretend that it is a parliament, which it is not. It is a Conference made up of representatives sent by sovereign governments which have agreed to listen to its recommendations – which are, however, in no way binding".

Therefore, he pointed out, "resolutions that condemn, that accuse, that anathematize, do not bring us nearer to agreement. They have the opposite effect"[523]. Condemning the whole debate on the need to establish a new international economic order, he said:

> "Many governments – most governments – now represented in the General Assembly seem disposed to use this body as if it has powers, which the General Assembly does not have, to enforce policies of a nature which the General Assembly ought not, at this stage, even to consider[524]."

Thorn of Luxembourg, President of the thirtieth session of the General Assembly, said that unless resolutions adopted by the Assembly reflected mutual concessions, sensible balance and restraint, they "remain dead letters and fade away, treated with indifference, or forgotten, not only by the public opinion but by governments themselves"[525].

Majority Principle Decried

It is interesting to see that the Western democracies have started questioning the suitability of the democratic majority rule in the international field. Majority rule, it is pointed out, works only when the minority has such confidence in the ultimate reasonableness of the majority and such conviction of the ultimate community of

majority and minority interests that it can afford to respect the right of the majority to rule without undue obstruction. Also, it is necessary that the majority recognizes the rights of the minority, respects the rules of the game and the interests of the community and rules without undue suppression. Such conditions hardly exist in the international community. Majority principle can work as an impartial servant and guardian of community interests only if there is a genuine community. What we find, however, is that States are so fundamentally divided that international society is essentially an arena of national struggle rather than a community. As Riches says,

> "In the absence of a recognized community of interest and of agreement upon objectives, majority decision is impossible for the reason that the minority sees no reason for acquiescing in the decisions which might be reached by the majority[526]."

Whatever might have been the reasons for adopting majority rule in the international field, it is denied any valid claim of legitimacy apart from the existence of a basic moral consensus. "We ought to be on guard", says Professor Claude,

> "against the naive tendency of some internationalists to assume that decisions of international majorities are infallibly just and impartial; national-minded sinners are not transformed into world-minded saints by coalescing to form a majority voting bloc in the General Assembly[527]".

Finding themselves almost always outvoted, the Western powers have started questioning the validity of a voting procedure "which gives an African nation of 500,000 still emerging from tribalism", precisely the same vote as that of the United States, Soviet Union, France or Great Britain. "In this grotesque United Nations calculus," said Senator Thomas J. Dodd, "one African bushman becomes the equivalent of 100 Frenchmen or 400 Americans[528]." Under the pretext of respect for the equality of States such a system shows a perfect contempt for the equality of individuals[529]. The majority voting in the General Assembly, therefore, it is asserted, is not a "genuinely democratic procedure, so long as the rule of 'one State, one vote' persists"[530]. Indeed, the acceptance of the majority principle is said to be illogical and unreasonable in a body like the General Assembly. As Professor Claude says:

> "Majority decisions in the equalitarian General Assembly are likely to be undemocratic in the sense that they do not represent a majority of the World's population, unrealistic in the sense that they do not reflect the greater portion of the world's real power, morally unimpressive in the sense that they cannot be identified as expressions of the dominant will of a genuine community, and for all these reasons ineffectual and perhaps even dangerous[531]."

Aspaturian also thinks:

> "In the United Nations, where majorities do not correspond to the actual distribution of population, wealth, power or enlightenment, 'majority will is a synthetic' contrivance expressing the lowest common denominator of interests and passions which temporarily and adventitiously shape it, while 'majority rule' under these conditions is an unmitigated vice[532]."

It is, therefore, proposed to remove and amend the manifest disproportion between voting power and real power by curbing the power of the majority in the General Assembly and offsetting the minority position of the great powers. Apart from some faint suggestions to arrest time and change or reverse the course of history by "reviving" the comparatively inactive Security Council, or creating a "Concert" of the great powers on the lines of the nineteenth-century Concert of Europe[533], this ideal is sought to be achieved by several other means.

Weighted Voting

One method of "democratizing"[534] the General Assembly that has been talked about time and again is to introduce weighted voting reflecting in terms of voting power the glaring inequalities in power and importance which now exist among the nations of the world. If the General Assembly is to assume greater responsibilities, it is stressed, it must have some form of weighted voting, so that nations which are themselves unable to assume serious military or financial responsibilities cannot put those responsibilities on other nations[535].

It is important to note in this connection that these proposals to confer votes according to the capacity of States are not entirely

new. As we have seen in the previous chapter, even in the nineteenth century in several international public unions dealing with economic or technical matters weighted voting was introduced. At present, in numerous financial agencies and trade organizations such as the International Bank, the International Monetary Fund, the International Finance Corporation, the International Development Association, the European Coal and Steel Community and several international community arrangements, there is already a practice of assigning unequal votes proportionate to the financial contributions of the members or their industrial or trade potential[536]. But while it has been found feasible to reach agreement in regard to the allocation of unequal votes in bodies concerned with technical subjects, such as finance or trade, where varying interests of the members can be measured by statistics or factual criteria, it is not easy to reach such agreement in general political bodies like the General Assembly. For, the most difficult question is, what should be weighted? Population, territorial possession, national wealth, industrial production, military strength, financial contributions to the United Nations, or willingness to contribute to the maintenance of world peace? If several of these factors should be used, how much importance should be attached to each? Notwithstanding some heroic attempts by a few scholars to devise some formulae to assign unequal votes to States on the basis of these factors[537], it has not been possible to find any satisfactory solution to the problem. Indeed, it would be impossible to reach any satisfactory agreement since in search for any formula "the subjective aspect of the problem would overshadow the objective aspect"[538], and bitterness and discord would be unavoidable accompaniments. Though the great powers share the grievance of under-representation in the General Assembly, Claude rightly points out, they are "unlikely to discover a common interest in any particular plan for altering the pattern of voting strength"[539]. In the United States, for instance, in a study conducted by the Department of State, 15 weighted formulas were applied to 178 key votes that took place in the General Assembly between 1954 and 1961, and it was found that generally the Soviet Union and the Communist bloc would have benefited more by weighting than the United States. The same conclusion was reached in projecting these formulas to 1970, having regard to further increases in membership[540]. In March 1978, President Carter of the United States, in a report presented to the United States Congress

on reform and restructuring of the United Nations, confirmed that "there was virtually no possibility of adopting an across-the-board system of weighted voting in the General Assembly"[541]. Moreover, let us not forget that all these criteria for weighted voting are subject to change in the ever-changing world and a formula, if it ever could be agreed upon, might become outmoded even before it is implemented.

In any case, even if it were possible for the big powers to reach agreement in this regard, a reapportionment of votes in the General Assembly would be a basic change requiring revision of the Charter. This would necessitate not only the approval of the permanent members of the Security Council, but also of two-thirds of the membership of the General Assembly. The great powers, especially the Soviet Union, have made it clear that they are not in favour of any formal Charter revision[542]. Already resentful of the great powers' dominance in the Security Council, the smaller States are also unlikely to favour the prospect of losing their advantageous position in the General Assembly.

Informal Weighted Voting

Dual Voting: Another method of reducing the importance of the General Assembly that has been suggested is the introduction of dual voting. Already, the General Assembly and the Security Council engage in dual voting in the selection of the judges of the International Court, the Secretary-General, and in the admission of new members. It is proposed to extend this participation of the Security Council on all substantive matters so that decisions should be made by a two-thirds majority of the States in the Assembly which should also include two-thirds of the members of the Security Council[543].

The 1978 Report of the United States President to the Senate also suggested introduction of weighted voting through informal agreements by United Nations Members. The suggestion envisioned that groups of United Nations Members would agree in advance to accept General Assembly resolutions as binding on certain types of issues, for example international economic issues, if reached by a specified vote (for example, by three-fourths or four-fifths majority), or if the resulting decisions included the affirmative votes of a specified group of Members[544].

Another United States proposal would exclude use of the veto on membership issues in the Security Council in exchange for weighted voting on budget questions in favour of countries which contribute the largest portion of the United Nations budget in the General Assembly[545].

Consensus: Suggestions have also been made to avoid confrontation and deadlock of the present voting procedures. Instead of voting showdowns, a simple solution is recommended: do not take any votes, but decide the issues by *consensus* among those whose action together is necessary to carry out any given international programme. It is said:

> "Once there is a consensus about action, a vote is unnecessary. When there is not yet a consensus about action, a vote dramatizes the differences and makes eventual reconciliation that much more difficult[546]."

But as the 1978 United States President's Report warned, the consensus procedure is not applicable to every situation. If some Members are strongly opposed to a resolution before the Assembly, there is no basis for a consensus. Furthermore, one of the pitfalls of extending its use is the danger that the resulting decisions will be so generalized as to be meaningless. Also, to stipulate that resolutions adopted by consensus or unanimous vote would be binding would give far more legal weight to General Assembly decisions than most Members, including the United States, would be willing to accept at this time. In any case, the President's report concluded that adoption of consensus procedure would require amendment of the Charter which was just not possible at that stage[547].

It is interesting to note that several proposals by some Third World countries also suggested the adoption of consensus procedure for reaching decisions in United Nations organs provided that such decisions were accepted as binding. They also suggested exclusion of veto on membership issues, in appointment of commissions of enquiry, fact-finding commissions and commissions having humanitarian purposes, except in matters involving enforcement action. Suggestions were made to limit numerically the use of the veto during a specific time period, modify the veto power to require two or three negative votes of permanent members for a veto, redistribute the veto power on a more equitable geographical basis, and abolish the veto power altogether[548]. Needless to add, these

are only academic exercises which have no practical value and no chance of adoption[549].

Committees with Selective Representation

In order to build "greater responsibility into the United Nations decision-making", it has also been suggested that the day-to-day work of the General Assembly be conducted more and more by representative committees of a limited size, like the 37-member United Nations Outer Space Committee, or the 27-member Conference on International Economic Co-operation which met in Paris from 1975 to 1977 to discuss international economic problems[550]. The committees could be weighted in favour of those members with the greatest interest or responsibility in the issue involved. At times they could be weighted in favour of the major powers and yet be flexible enough to permit additions and subtractions as the need arose[551]. The General Assembly would then act only on the recommendations of such a committee passed by a two-thirds majority of the Committee's membership, consisting, in most cases, of the five permanent members of the Security Council, some middle powers, and some small States. This would involve, in effect, the adoption of a self-denying ordinance by the General Assembly to act only upon proposals first adopted in the new suborgans[552]. Again, whether the small States would agree to limit their powers in this fashion is a doubtful proposition. H. G. Nicholas tells us that

> "the General Assembly has been notorious for its refusal hitherto to delegate authority to subordinate committees. It has been repeatedly pilloried as the only parliamentary body in the world that tries to do almost all its business in committees of the whole."

The reason for this "tenacious conservatism", he goes on to say, is rooted in a "pervasive conviction that to delegate is to enfeeble"[553].

Howsoever weighty, therefore, may be the reasons for adopting some kind of weighted voting in the General Assembly, it is not possible to get it. It must not be forgotten, as Judge P. C. Jessup so wisely pointed out, that States, like individuals, have also "feelings, and the psychological (prestige) factor cannot be ignored any more than the power factor"[554]. Weighted voting would be "a slap

in the face of the weaker States"[555], and they should not be expected to take it lightly. Moreover, whether the present role of the General Assembly and the value of its recommendations would be enhanced by its use of weighted voting is questionable. It presupposes the expectation that the great powers, within the foreseeable future, will submit to the binding decisions of the General Assembly. Since they have not so far submitted to those of the Security Council, a much smaller body where they hold permanent seats, it is unreasonable to expect them to do so in the General Assembly, no matter how the votes are weighted[556]. As Professor Claude expresses his fear:

> "It is . . . probable that they (great powers) will resist the establishment of weighted voting in such organs as the General Assembly, for fear of losing their best excuse for opposition to expansion of the competence of international voting majorities[557]."

There is, therefore, no alternative but to accept the *status quo.* To invoke again the authority of Professor Claude:

> "for better or worse, it appears that the United Nations voting system, with its numerous concessions to the superiority of the great powers – which do not spell democracy – and its unmitigated equalitarianism in the Assembly – which represents no attempt to meet the realistic requirements of democracy – will be characteristic of general international organization for the indefinite future[558]".

General Assembly May Be Ignored?

It is warned, however, that if the General Assembly continues to be represented the way it is and the United Nations procedures are not adapted to take account of power realities, the great and middle powers will increasingly start ignoring the world body and pursue their national interests outside the United Nations system[559].

> "The Organization cannot indefinitely go on endowing every scrap of decolonized empire with a sovereign equal vote and at the same time hope to persuade the more powerful nations to join, return to or remain within the fold and to have enough faith in the processes of political decision making to make the essential contributions and commitments[560]."

After all it is more in the interest of small States than big powers, it is argued, to form an effective United Nations. They have everything to gain from the establishment of law and order in the world. For the weak law is not only "justice" for all, but particularly security for themselves. By serving the United Nations and making it more effective, they are promoting their national interests. Compared with the great powers, they are said to gain more while risking less[561].

Let us not forget, however, that times have altogether changed and that these statements are only partially true. The old days of "each nation for itself" and "God for us all" are gone for ever. Not only has the world become too small but too interdependent. These kinds of threats have become largely outmoded and ineffective. War concerning only the States directly involved is becoming out of date. There is always a danger of a limited war developing into a nuclear catastrophe. The next world war, if it ever comes, may not only finish the small States, but may also wipe out the great powers. It is therefore not only in the interest of the small States but also of the great powers to strengthen the United Nations and make it more effective. It is not a question of ideals, it is a problem of simple survival. As President Johnson of the United States put it:

> "International cooperation is simply not an idea nor an ideal. We think it is a clear necessity to our survival. The greater the nation, the greater is its need to work cooperatively with other people, with other countries, with other nations[562]."

Furthermore, as Churchill said, "peace is not promoted by throwing small nations to the wolves"[563].

The economic plight of the small States and their pleadings for a new international economic order have not been entirely without effect on world public opinion. By the 1960s a new political sensibility was clearly discernible even in the Western countries. The liberal intellectual elites in the West became increasingly preoccupied with the issue of international inequalities of income and wealth and a conviction developed of a duty on the part of the rich nations to reduce such inequalities. The new idea of "collective responsibility" led to renewed emphasis on equality as the principal moral imperative of our time[564], and insistence on the duty of the rich to redress global inequalities. As the President of the World

Bank, Robert S. McNamara, said: "The developed nations must do more to promote at least minimal equity in the distribution of wealth among nations[565]." There also arose a conviction that inequalities of income and wealth represent the most serious long-term threat to world peace[566].

We must, therefore, keep the United Nations going. For this purpose, irrespective of the old dogmas relating to the higher status of the great powers, there is no alternative but to accept the equalitarian principle of the General Assembly. The Security Council having failed in its purpose due to great power rivalry, it is only the General Assembly which provides a balance and sustaining force to the United Nations and expresses the conscience of all mankind. It is the duty of all the States, big or small, to make it a success. Anarchy might have been profitable for the mighty[567] in days gone by. Today it would be suicidal for all[568]. As the Secretary-General of the United Nations, U Thant, warned:

> "If we are to survive in this nuclear and space age, we must move forward, however slowly, away from the concept of the absolute freedom of action of the sovereign State, towards the community of ideas and identity of interests that cuts across national, cultural and ideological boundaries[569]."

It is significant to note that the United States and other great powers themselves realize that confrontation does not help. Thus Moynihan's combative style and "overkill" tactics irritated not only the small countries but his own Government and the United States allies[570]. The appointment of William Scranton in Moynihan's place as United States Ambassador to the United Nations was a turning point in United States policy, with a renewed emphasis on accommodation rather than confrontation[571]. The Carter administration also sought to mollify rather than confront the Third World.

But President Reagan again changed the United States policy by appointing a tough-minded Jeane Kirkpatrick as United States Ambassador to the United Nations. It has become clear that "the Reagan administration is committed to precisely the kind of tough-minded diplomacy that Senator Moynihan advocated in the pages of *Commentary*"[572].

Whether we like it or not the United Nations reflects the world as it is. It is not a world government. Far from it, it is an association of 159 independent nations and although it cannot dictate to the

big powers – nor to anyone else – it cannot be ignored. The United Nations has not been provided by its members with the power or the resources to prevent all wars, but it has prevented many and could prevent more. As Adlai Stevenson, the United States Ambassador to the United Nations noted:

> "If the United Nations has not succeeded in bringing the great powers together it has often succeeded in keeping them apart – in places where face-to-face confrontation might have changed difficult situations[573]."

Another writer has pointed out, "If the United Nations had died we might be fighting world war III by now"[574].

But the United Nations' more important task today is in the fields of economic and social development. One of the most important, though least appreciated, functions of the United Nations system is in influencing the political process within member States. The great global conferences held by the United Nations on environment, population and food, for example, unquestionably helped in focussing attention and mobilizing public opinion on hitherto neglected problems and thus significantly influenced national policies. It is indeed surprising how with a comparatively small budget of a little more than US $3 billion for the United Nations and its whole family of agencies – no more than the price of a single Trident submarine – the United Nations can do so much. There is no doubt that its achievements have been substantial and its promise is great.

It is important to note that the United Nations provides a standing conference machinery and the State representatives are involved in an ongoing process of negotiations and multilateral diplomacy. During the Assembly the Delegates' Lounge is full of valuable contacts even among States which do not openly want to have contact[575]. It offers a cover for quiet diplomacy within its confines[576]. The concentration of 159 States as members and 6 as observers is an unparalleled forum and source of information. United Nations informality offers easy access to top diplomats of developing countries who are usually more open to dialogue and attention in New York than in their own capitals. Professor Frederick Hartmann has called the United Nations a "permanently organized, permanently headquartered, more or less permanently meeting diplomatic conference"[577]. The United Nations is a handy place for embarrassed heads of State to have their say for public consumption, yet turn

to quiet diplomacy to work out delicate situations, as the United Nations deliberations on Cuba and during the 1967 Middle East crisis. It has correctly been remarked that "the United Nations is a gateway to summitry"[578].

The General Assembly has always served as a forum for world public opinion and an arena for moral judgments. Any nation, large or small, powerful or weak, can voice its aspirations, concerns and complaints. The major powers can be challenged to defend their positions. Condemnation is a part of its functions. The United States and other Western powers used it not infrequently in the 1950s and 1960s against the Soviet Union and, as the Soviet Ambassador Malik pointed out, the United States invented the so-called "automatic majority"[579]. It is interesting to recall that in the first eight years, in more than 800 resolutions adopted, the United States was defeated only twice[580]. The United States was able to exercise a "hidden veto" to prevent adverse General Assembly votes. The General Assembly functioned as a convenient instrument of American policy[581]. At that time, the whipping boy for the United Nations was the Soviet Union. Every Soviet veto in the Security Council was received with whoops of delight. It was evidence, so it was concluded, of how wicked the Russians were. The United States and the West European powers were always right. The shoe is on the other foot now. The whipping boys today are the nations of the Third World. Once the laughing stock in America and the Western European countries, they are now giving it back with a vengeance.

It is interesting to note that the American and the generally Western attitude toward the United Nations has drifted from elation to frustration. So long as they controlled the United Nations, it was accepted as a great institution[582]. Today, several of them call it a "dangerous place"[583], scorn it and plead for turning their back to it[584]. Others argue that the Western powers should not pull out of the United Nations but stand up to the Third World countries and "give them hell"[585]. Some of them argue that while they might participate in debates, "we should never vote in the General Assembly because by voting we implicitly grant authority to majority"[586].

It is realized by all, however, that it is not possible to wish away the United Nations. Most of the critical problems today are universal in character. Radiation fall-out from nuclear testing in any part of the world is of concern to all peoples and nations. Hunger and impoverishment of more than half of the world's population is a matter

of international concern. Disease has no national boundaries. Pollution and despoliation of the environnment is worldwide. The economic interdependence of nations has been demonstrated time and again. Monetary imbalances seriously affect the economies of all trading nations. The oil crisis had world-wide repercussions and dramatically demonstrated the interdependence of nations. Global problems require a global approach and a global approach is not possible without an effective international organization – the United Nations. It has been rightly noted: "It is easy to scorn the United Nations but can anyone suggest an alternative? or imagine the world without it?[587]"

Herein lies the rationale for strengthening the United Nations to prepare it to take a more crucial and effective role in world affairs. Only with a common vision and purpose can nations even begin to attack problems with worldwide consequences. Imperfect to be sure, but yet it is the only truly global organization which can be used to tackle the monumental tasks facing humanity struggling for their survival. Despite all their irritations and frustrations, the United States and other critics of the United Nations have never thought of leaving it or withdrawing from it, which, they believe, would be unwise. The United Nations, with all its weaknesses, is irreplaceable. The United Nations is merely a reflection of a turbulent, pluralistic, diverse world. The Western powers feel that they may not like it, but prudence requires that they face it and formulate policies in this context[588].

Small States not Irresponsible

It must also be emphasized that, despite strong criticism to the contrary, the small States are not so "irresponsible" as we are sometimes led to believe. As Judge Jessup, with tremendous experience in international diplomacy, testifies:

> "The small States do not out of a sense of diplomatic reality actually 'gang up' on the great powers and make embarrassing vital decisions by their majority votes[589]."

Mr. Dag Hammerskjöld, former Secretary-General of the United Nations, also confirms this opinion:

> "Smaller nations are not in the habit of banding together against the larger nations whose power to affect international

> security and well-being is so much greater than their own. Nor do I see justification for talk about the responsible and irresponsible among nations[590]."

To allay the fears of the great powers he again stated:

> "There is in the views expressed in favour of weighted voting an implied lack of confidence in the seriousness and responsibility with which newly independent States are likely to take their stands. Such a lack of confidence is not warranted by the history of the United Nations and must be rejected as contrary to facts[591]."

The criticism of the smaller States that they can force the industrialized, rich States to spend money on their own schemes, is considered by well-informed observers to be nothing less than a "distortion". Indeed, the potential recipient States have shown great restraint and responsibility in this regard in the United Nations, "if only because they know very well that the United States and other donor countries will not in fact pay, if others are to decide what is done with their money"[592].

After all, a sense of international responsibility is not a monopoly of powerful, rich or large countries. "Neither size, nor wealth, nor age is historically to be regarded as a guarantee for the quality of international policy pursued by any nation"[593]. E. N. Van Kleffens observed in this connection:

> "It is sometimes said that the great powers are entitled to the last word because they make the greater sacrifice and carry the heavier burden. I doubt whether that consideration should be decisive. The smaller powers suffer for the mistakes made by the big ones on the strength of their power, mistakes often made against the express advice of the lesser States whose existence, as a result of such errors, is sometimes endangered to an even greater degree than that of their more powerful friends. Nor should the importance of the smaller powers be underrated . . . If we are true to the democratic idea, these ideas should prevail. We cannot proclaim democracy, and practice the rule of the few[594]."

Whatever might be the reason, whether their lack of might or their love of right[595], the small powers have always been committed

to a system of law and order and time and again they have played a decisive role in efforts to preserve or restore peace[596]. Furthermore, the small States themselves understand that the United Nations is their best protection and they cannot be expected to weaken it. Hardly did anybody know this fact more than the former Secretary-General:

> "It is not the Soviet Union or, indeed, any of the other big powers who need the United Nations for their protection; it is all the others. In this sense the Organization is first of all *their* Organization, and I deeply believe in the wisdom with which they will be able to use it and guide it[597]."

Instead of being a hindrance in the progress of the United Nations, they are expected to widen its perspectives, enrich its debates, and bring it closer to present-day realities. They, moreover, exercise a sound influence in the direction of a democratization of proceedings by lessening the influence of firm groupings with firm engagements[598]. Being free to speak, as compared with the leaders of the great powers, they can more simply and more faithfully express the sentiment of the world community as it exists in large and small States alike[599]. Said U Thant, another Secretary-General:

> "One of their functions in the United Nations should be to build bridges between East and West – to interpret the East to the West – and the West to the East, and thus strengthen the very foundation on which this organization is built[600]."

To decrease their influence, therefore, will neither be useful nor will it be in the best interests of the United Nations. The so-called "crisis of confidence" in the United Nations is, there is little doubt, based on misconceptions and lack of appreciation of the role that the small States can and do play in world affairs[601]. With U Thant we hope it is merely a

> "passing phase and before long even the critics will realize that the interests of humanity are best served by a universal organization practising the true principles of democracy on the international plane[602]".

If some further proof of the restraint and seriousness of small States is needed, the record of the United Nations during the last several years makes it clear that they have been always mindful of the importance of the great powers and have never abused their

power of numbers to unnecessarily harass their big brethren. Thus a detailed study of the United Nations resolutions made by Catherine Senf Manno shows that, along with the doubling of membership in the United Nations since 1954, there has been an increasing trend toward overwhelming majority decisions or unanimity in the General Assembly. Between 1954 and 1962, the percentage of unanimous resolutions more than doubled while the percentage of contested resolutions (those with one or more "No" votes) was halved. For the contested resolutions adopted, the average ratio of majority to minority members was 7 to 1 in 1954, 8 to 1 in 1959, and 9 to 1 in 1962[603]. It is significant to note the overwhelming size of the majorities throughout this period and for all subjects. Only four of the 363 resolutions studied by Manno were adopted by close votes by majorities of 75 per cent or less of those voting[604]. The same trend to avoid confrontations continued in the 1970s and the 1980s and, as the United States Ambassador to the United Nations, Andrew Young, pointed out,

> "Overwhelmingly the resolutions passed by the General Assembly are passed by consensus and only in rare cases are we not able to negotiate the differences and disagreements that we have[605]."

The number of General Assembly resolutions approved without recorded vote by consensus or acclamation reached 58 per cent of resolutions adopted during the 1981 regular General Assembly and 54 per cent in 1982[606]. Unanimity, there is no doubt, was obtained in most cases "at the price of innocuousness or of watering down the level of commitment sought in resolutions"[607]. But the majority of small States has been gladly prepared to accommodate the minorities rather than force their will upon the latter.

Western dissents occurred chiefly, Miss Manno tells us, "on decolonization issues, broadly interpreted, while the dissenting votes of the USSR were cast chiefly on East-West issues and on a few constitutional questions"[608]. It is also interesting to note that,

> "besides the conspicuous cases of defiance of Assembly recommendations, there are also important cases of substantial compliance. The recommendations most often and most completely ignored are those directed at one or a few States and they deal chiefly with a shrinking field of problems – those of colonies seeking independence[609]."

While in this field, for obvious reasons, newly independent States are unrelenting and the tone of anti-colonial resolutions is "suggestive of an angry younger generation rebelling against the parents", this is not the general rule. On other subjects, such as disarmament, or many problems relating to peace and security, the resolutions of the General Assembly "remind one of respectful children watching anxiously, as the parents threaten to incinerate the family under the guise of 'deterrence'"[610].

Equal States with Unequal Influence

Apart from this generally conciliatory attitude of the small States, it must be remembered that "equal" States have unequal influence in international relations. As Mr. Scott stated:

> "While all States are legally equal, still in this practical world of ours we must not, or at least we cannot, ignore the historic fact that nations exercise an influence upon the world's affairs commensurate with their traditions, their industry, their commerce, and their present ability to safeguard their interests. It follows from this that though equal in theory, their influence is often unequal in practice[611]."

The position and influence of the great powers can never be and is not ignored in the United Nations. We have already noted their privileges in the Security Council. The Trusteeship Council, so composed as to maintain a balance between the trust powers and the non-colonial powers, also gives a seat to each of the five Permanent Members of the Security Council. Although the Charter does not guarantee them permanent seats on the Economic and Social Council, the United States, the Soviet Union, the United Kingdom and France have always been elected to it. The International Law Commission and the International Court of Justice have always included nationals of the five Permanent Members of the Security Council. In the United Nations Secretariat, there is a general understanding that nationals of major powers should have a certain number of higher level posts. The quota system provides a greater number of Secretariat jobs for nationals of the major powers[612].

Moreover, despite formal equality in the General Assembly and some other organs of the United Nations, "invisible" weighted

voting is apparent in these bodies and different States carry varied powers in influencing their decisions. Professor Richard Gardner is entirely right in stating that

> "anyone who believes that United States influence in the United Nations is measured by the fact that it has less than one-hundredth of the votes in the General Assembly fails completely to understand the realities of power as they are reflected in the world organization."

These realities include the fact that the United States, despite all the cuts it has made, is still the principal contributor to the regular budget of the United Nations, is by far the largest supporter of peace-keeping and development programmes of the United Nations, and is perhaps the most powerful nation on earth. There is little doubt that on every important United Nations decision, the voting of several other countries is considerably influenced by the United States views[613]. Hammarskjöld also confirmed this opinion:

> "I believe that the criticism of the system of one vote for one nation, irrespective of size or strength, as constituting an obstacle to arriving at just and representative solutions tends to exaggerate the problem. The General Assembly is not a parliament of elected individual members; it is a diplomatic meeting in which the delegates of member States represent governmental policies, and these policies are subject to all the influences that would prevail in international life in any case[614]."

It is true that the support of the larger nations is essential in most cases to give force and effect to a decision of the United Nations. The small States have got to understand that the primary value of the United Nations is to serve as an instrument for negotiations and for concerting action among governments in support of the goals of the Charter. As Mr. Hammarskjöld wisely advised:

> "In an organization of sovereign States, voting victories are likely to be illusory unless they are steps in the direction of winning lasting consent to a peaceful and just settlement of the question at issue[615]."

Needless to emphasize, voting cannot solve all the problems or resolve all conflicts. A majority of the small States cannot expect

the great powers, in questions of vital concern to them, with their superior might and economic strength, automatically to accept a majority verdict. On the other hand, it cannot be over-emphasized that even the great powers cannot, as members of the world community, and with their dependence on all other nations, set themselves above or disregard the views of the majority of States[616]. If the currency of recommendations of the General Assembly is not to be debased, it is essential that they should reflect a substantial consensus among all the countries.

What is wanted, in the last analysis, is not voting, but results. The United Nations must become a place of co-operation among States. The important thing is not to impose the will of the majority on the minority, or *vice versa,* but to provide an environment and procedure for composing or containing the differences among States.

> "A voting victory or a voting defeat may be of short-lived significance. What is regarded as responsible world opinion as reflected in the voting and in the debates is in many respects more important than any formally registered result[617]."

It is pertinent to remember, however, that the newly independent nations did not join the United Nations in order to liquidate it or make it irrelevant. But it must be understood that the attainment of political independence by them is not the end of the road. Indeed, it is only the first stage of their march to the attainment of a minimum level of material welfare that is essential for a decent quality of life. This aim, it may be emphasized, underlies the numerous resolutions adopted by the so-called "mathematical majority". As the Prime Minister of India, Mrs. Indira Gandhi, said:

> "I wish for my people not riches or power but their basic necessities, so that they can have the opportunity to be human and to experience the fullness of life, to be not afraid of hardship or sorrow or danger but to face them face to face as part of life. All our hopes cannot be fulfilled, and all our aspirations cannot be attained. But we can try, and if we succeed even in small measure, it will be worthwhile[618]."

The "non-mathematical" minority should not get disturbed by this modest aim of the majority. The powerful nations must cast their suspicions, fears and mistrust, and try to understand the feelings and aspirations of the Third World which has become aware of its

existence, which is organizing itself and which aspires to achieve at last a worthwhile life after centuries of obscurity, privation and exploitation. They cannot employ economic or political pressure on the big powers. Their only weapon is the Charter. They have no army, no military arsenal, but they have an immeasurable faith in the United Nations. Its achievements have been modest, but they have no other means. A United Nations which the majority dominates was not the one conceived by its founders; but a United Nations which the powerful manipulate is not the organization they crave for. The majority has neither power, nor ambition, nor designs to dominate. But neither has it the inclination to capitulate. Their only hope is to co-operate. They do understand that it is only through co-operation with the big powers, and not by confrontation, that they can hope to progress. We are, as it were, "wandering between two worlds, one dead, the other powerless to be born". In this situation, which is of the utmost political and economic importance, the United Nations can serve as an indispensable midwife[619].

Hierarchical Order Continues

We started this chapter with an assumption that we live in a hierarchical world order. Despite all the changes that have occurred in international relations since the framing of the United Nations Charter – metamorphosis of the United Nations and the importance that the so-called Third World has come to acquire in the world body – the hierarchical order has not ceased. If anything, it has been accentuated. On the top of the international system today there are the so-called super-powers, then there are the great powers, under them the middle powers, and at the bottom the small powers. These countries are small, not in geographical size, nor in population, not necessarily in GNP *per capita,* but in terms of their structural position. There are two such strongly related pyramids in the international system headed by the two super-powers[620]. A super-power is defined as "a great power which has no rival capable of preventing it from imposing its will upon small powers"[621] *in its sphere of influence.* But it cannot impose its will on small States in another super-power's sphere. It is also pertinent to mention that, according to Professor William T. R. Fox, much of the Third World is not clearly in either super-power's sphere[622]. In this system of

two super-powers, around which an alliance system is formed, each supreme power undertakes to protect its junior partners from onslaughts by the other by holding a nuclear umbrella over them[623]. These "junior partners" sometimes include yesterday's great powers still holding permanent seats in the United Nations Security Council. The international structure has conspicuous similarities with the feudal structure of the Middle Ages[624]. In their agreement to control their own worlds, Raymond Aron wrote of the big two as "enemy brothers", and Henry Kissinger described the "unique relationship" of the big two who "are at one and the same time adversaries and partners in the preservation of peace"[625].

It is interesting to note that the relationship which the Soviet Union has with her satellites in Eastern Europe is more or less similar to the one the United States has with her satellites in the Western hemisphere. As Professor Galtung points out:

> "What happened in the Dominican Republic in 1965 is almost exactly the same as what happened in Czechoslovakia in 1968, the Brezhnev doctrine and the Monroe doctrine could have been written by the same man; the defence Adlai Stephenson gave the United Nations after the Dominican Republic incident is almost identical to the speech given three years later by the Russian Ambassador to the United Nations after Czechoslovakia[626]."

The contact between countries at the bottom is almost negligible and is channelled through the top and also controlled by the top. The result is, says Professor Galtung, "split and conquer"[627]. The Big Brothers, the big two, jealously and eagerly see to it that the United Nations does not interfere in their relationships with countries in their spheres of influence and that any crisis that arises is handled by the "appropriate regional organization", the Organization of American States (OAS) or the Warsaw Pact, which they can manage. It is interesting and instructive to learn, as Galtung tells us, that lawyers of the State Department in the United States were eagerly collecting the evidence of the 1956 Hungary crisis in 1965 so that they could use it in the case of the Dominican Republic[628].

The big powers are the definers of the international system. They define what and when a problem is; a real problem is supposed to be the big power problem. If small powers have a dispute, it is declared as "irresponsible" conduct showing that they have not grown

up. If there is a big problem in the world, say in the Middle East, it can better be handled by big powers. They are expected to take the initiative. Others must "stand by and wait, unmobilized and immobilizing themselves"[629].

So also, the big powers are supposed to have big weapons and small powers small weapons. This is perfectly evident from the nuclear club. So long as the nuclear proliferation takes place from two to three, from three to four, from four to five, that is said to be in accordance with the law of nature. Similarly, if there is vertical proliferation in more and more sophisticated nuclear weapons among the big two, that should only be expected and is reasonable, "giving unto the lords what belongs to the lords". Beyond that, proliferation of nuclear weapons is taboo and is not permissible because it is thought to be too dangerous. The smaller countries, not agreeing to accept the nuclear non-proliferation treaty, are said to be irresponsible because their problems are not considered as real, only apparent. The proliferation of nuclear powers involves so great a danger to world peace and security, in the view of the big powers, that no argument about discrimination among States by perpetrating the existing monopoly of a privileged few, or breach of the principle of equality, should be allowed to stand in the way of acceptance of a non-proliferation treaty[630].

The languages the big powers speak are said to be world languages and their cultures are world cultures. The big powers may use their languages and cultures to penetrate small countries and even have cultural organizations for doing so: United States Information Service, the British Council, Alliance Française, the Soviet Cultural Centres, are several such examples. The small countries, on the other hand, are not supposed to undertake such activities on such a large scale because they have only cultures, not world cultures[631].

Soviet Concept of Sovereign Equality

Before we look at the ways and means of defeudalizing the present feudal international system, it is interesting to look briefly at the Soviet concept of equality, especially because the Soviet Union claims to be a great champion of the principle. While affirming that the principle of sovereign equality of States in the United Nations Charter means that States are equal and each State participates on an equal footing in international relations, it is suggested that the

principle "cannot be understood in an absolute, metaphysical sense". Legal equality in international relations, in the Soviet view, is not an abstract quality; it does not imply an absolute identity of rights and duties of States in their international relations. A dialectical understanding of the principle of sovereign equality does not preclude that certain States have advantages, which is provided for in the Charter. Thus the principle of unanimity of the great powers is said to be not in contradiction with the principle of the sovereign equality of States. The principle, in fact, involves the legal equality of States in their quality as subjects of international law. But their individual contribution and their responsibility in the system of international law cannot be equal because of differences existing among States in their economic and military power, size of territories and numbers of population. Far from establishing great power hegemony, since the permanent members of the Security Council belong to two opposing social systems, it is asserted, that the "unanimity rule is a guarantee against hegemony. If it did not exist, the imperialist powers, who command a majority in the Council, might indeed establish their hegemony"[632]. The "veto" power, therefore, is not a violation of the principle of equality, but indeed its best safeguard. Says Professor Tunkin,

> "In reality, if this principle did not exist, the Security Council could easily be transformed into a dangerous weapon in the hands of the imperialist powers and be used not only against the Socialist States, but also, and even most likely, against the weak States of Asia, Africa, and Latin America[633]."

When the persistent Soviet veto prevented the use of the United Nations as a colonial-power instrument against the weaker nations, and generally as an instrument of one group of States in the early years of the United Nations, it is pointed out, the United States

> "rail-roaded through the General Assembly a resolution deceptively entitled 'Uniting for Peace' transforming power to the General Assembly to pass recommendations on any and every kind of action, including the use of force[634]".

This "flagrant violation of the Charter" was sought to be justified because the Soviet veto allegedly prevented the United Nations from discharging its functions of maintaining peace and security. Really speaking, according to Soviet jurists, the United States often exer-

cised its "hidden veto" because a majority of the members of the Security Council were regular military allies of the United States, and in the General Assembly it could easily muster votes against resolutions it opposed[635].

To "mislead the small nations", according to the Soviet view, the supremacy of the General Assembly is being preached as supposedly more consistent with the principle of sovereign equality and the interests of the small nations, who are in a majority in the Assembly. Although the composition of the General Assembly has so changed that the "imperialist powers" can no longer command an automatic majority, what has not changed is that the United Nations is an organization of sovereign States and that it is the small nations which need the Charter guarantees of respect for the members' sovereignty. Such protection could not be guaranteed, the Soviet jurists warn, by the General Assembly because of the character of that organ. In this body

> "the imperialist powers would have broad opportunities to use the various combinations, to apply the old 'divide and conquer' policy, from which small countries have suffered so much in the past[636]".

Equality Within the Communist Group of States

As we have noted in our chapter on sovereignty, the relations between countries of the Socialist camp are said to be built upon the basis of "Marxist-Leninist principles of proletarian internationalism". Socialist countries, says the 1957 Declaration of the Meeting of Representatives of Communist and Workers' Parties of the Socialist Countries,

> "build their mutual relations upon the principles of complete equality of respect for territorial integrity, State independence, and sovereignty, and of non-interference in one another's internal affairs . . . Fraternal mutual assistance is an integral part of their mutual relations. The principle of socialist internationalism finds its true manifestation in such mutual assistance[637]."

Although the principles of respect for State sovereignty, non-interference in internal affairs, and equality of States are also found

in generally recognized principles of international law, the Socialist principles are believed to

> "relate to a new, higher type of international law – a Socialist international law. They aim at strengthening and developing relations of the fraternal commonwealth of Socialist countries, at ensuring the construction of socialism, and at protecting the gains of socialism from the infringements of forces hostile to socialism[638]".

As mentioned earlier, once a State embraces communism, there is no going back. The principle of Socialist internationalism, it is said, signifies above all the unity of the Socialist States in the class struggle between socialism and capitalism which takes place in the international arena and which comprises the content of basic international relations. An important part of this struggle, says Tunkin, "is the joint defence of the Socialist system from any attempts of forces of the old world to destroy or subvert any Socialist State of this system"[639]. It was in pursuance of this policy that assistance was rendered to Hungary in 1956 by the Soviet Union and, together with other Socialist countries, to the people of Czechoslovakia in 1968

> "in defending their sovereignty and independence from sudden swoops of imperialism, as well as assistance to the Vietnamese people, in their struggle against United States' aggression"[640].

The solidarity and close unity of the Socialist countries, it is argued, "is a true guarantee of the national independence and sovereignty of each Socialist country". In regard to equality among Socialist States, the 1957 Soviet-Hungarian Declaration said:

> "This equality differs fundamentally from the fictitious 'equality' which exists between imperialist powers and which in reality signifies exploitation of the peoples of small States and the plundering of the wealth of these States by imperialist monopolies[641]."

While we agree that there is no equality between capitalist States under general international law, equality among the Socialist States is, to say the least, equally deceptive.

Need for Defeudalization

Thus we find that whatever they may say the big brothers do not mean to practice equality, at least not in their own sphere. The feudal structure is put to test when one of the "serfs" tries to go over to the other side, or at least tries to leave its sphere. Thus, when the Dominican Republic might have gone "Communist" in 1965, or Czechoslovakia might have gone "neutral" in 1968, there were crises which could only be resolved by intervention by the big brothers to "protect" the junior partners[642]. What is really needed by these small countries today is some protection against "protection" of the big powers. For this purpose small Dominican Republics and Czechoslovakias somehow need to join hands and get the support of other small States in their quest for protection. There is nothing linking the Dominican Republic and Czechoslovakia except the international organizations where all the small nations can meet and discuss, and coalesce. The United Nations, therefore, however feeble, has a fantastic potential for defeudalization of the international system. There are several voting groups in the United Nations, such as East-West groups or North-South groups. There are Socialist, West-European and the United States, and non-aligned caucuses. But it is suggested that the real division is between the big five and the rest of the United Nations members. The latter need to form a bargaining trade union not only to put forward collective demands, but a trade union which puts some kind of power behind its claims. They should not hesitate to make it clear to the big powers that they do not want to be supervised by the big five. If need be, they may meet even without the super-powers. Some kind of dissociation from them may be essential even if they suffer some material loss and political insecurity in the process. As some of the leaders of the small countries advise, better independent and poor, than rich but on one's knees[643].

Another approach to defeudalize the international system might be to strengthen the United Nations so that it penetrates into the big powers' spheres of interest. Thus the resolutions declaring outer space and celestial bodies not subject to occupation, demilitarization of the seabed and ocean floor, or the declaration of the sea-bed and ocean-floor beyond the limits of national jurisdiction as the common heritage of mankind, were all decisions of phenomenal importance. Several other ideas have been suggested for the same

purpose. The idea of United Nations ownership of outer space, of international waters, of the ocean floor beyond the limits of national jurisdiction, the idea of United Nations revenue for renting outer space when one uses a satellite, of revenue for exploitation of the ocean floor, are all important ideas that would strengthen the United Nations because they would give it independent sources of income which could be used to redistribute the resources in the world[644]. Even more importantly, they would help the United Nations overcome its financial crisis, because the rich and powerful States have decided that it is in their interests to reduce the United Nations to such a pecuniary embarrassment[645].

All these changes are not easy and may not be brought about soon. But surely, the old system of inequality is beginning to be challenged. However, the institution of self-help must be altered if international society is to become egalitarian. The primordial institution of self-help, along with natural inequalities of States, almost guarantees that the international system remains oligarchical[646]. The only hope to control and contain self-help lies in strengthening the United Nations.

CHAPTER V

MINI-STATES AND EQUALITY OF RIGHTS

End of Colonialism and Proliferation of Sovereignties

At a time when the sovereignty and independence of even the greatest and strongest powers is becoming out of tune with the increasingly interdependent world, we are witnessing a proliferation of sovereignties. But while sovereignty in the traditional sense has meant independence – both internal and external – and presumed self-reliance for a State in its economic and political affairs, many, if not most, of the new sovereigns are unable to take care of themselves and are so much dependent on other States for their economic viability and political existence, that their independence is there in name only. As we have noted earlier, with the rapid destruction of western colonialism since the Second World War, numerous new States have emerged as full-fledged members of the international community. According to the new ethos of the modern age, colonialism is considered as an unmitigated evil which must be speedily brought to an end. Under the influence of the newly independent Asian-African States, the new anti-colonial gospel was spelled out by the United Nations General Assembly in Resolution 1514 (XV) of 14 December 1960. In this Declaration on the Granting of Independence to Colonial Countries and Peoples, the General Assembly declared that:

> "1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation;
>
> 2. All peoples have the right to self-determination; by virtue of that right they freely pursue their economic, social and cultural development;
>
> 3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence;

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected;

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom;

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations;

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."

In the beginning, the decolonization effort in the United Nations was aimed at relatively large territories or areas with a more or less sizeable population. But as most of the larger territories became independent, the pressure for decolonization has extended to smaller and smaller territories, constituting the bulk of the "remnants of empires"[647]. As the United Nations effort reaches "the bottom of the barrel", what remains is "tenacious and the sound of the scraping is noisy"[648].

Irrespective of their size or population, political stability or economic viability, the United Nations has been vigorously prodding the colonial powers to emancipate their remaining dependent territories. The "Special Committee on the situation with regard to the implementation of the declaration on the granting of independence to colonial countries and peoples", or the Committee of 24, as it is popularly known, said in its report in 1964 that it was convinced that the provisions of the Declaration were applicable to smaller territories in the Atlantic or Pacific Ocean areas and in the Carib-

bean[649]. In fact, in Resolution 2105 (XX) of 20 December 1965, the General Assembly requested the Committee of 24

> "to pay particular attention to the small territories, and to recommend to the General Assembly the most appropriate ways, as well as the steps to be taken, to enable the populations of these territories to exercise fully their right to self-determination and independence".

Self-Determination and Emergence of Micro-States

The General Assembly reiterated its stand in 1966 (Res. 2189 (XXI)) and 1967 (Res. 2326 (XXII)) to enable the smallest territories under colonial rule to exercise their right of self-determination. While as a matter of principle, the General Assembly's stand is irrefutable and the right of self-determination can no longer be denied to a people under colonial domination, this has resulted in numerous problematic situations in international society.

It is true that independence is acknowledged as only one of the ultimate results of self-determination. Among other available options are, as General Assembly Resolution 1541 (XV) of 15 December 1960 spelled out, free association or integration with an independent State, provided certain safeguards are complied with. The United Nations gave its blessings in some cases to the termination of colonial status of small territories by examining the facts *post facto.*

> "Thus, in 1953, it recognized that the people of Puerto Rico had achieved a new constitutional status under the United States Constitution and exercised their right of self determination. In 1954, it accepted that Greenland had become an integral part of Denmark: in 1955 it accepted the new federal status of the Netherlands Antilles and Surinam in the Kingdom of the Netherlands; and in 1959, it accepted that the people of Alaska and Hawaii had exercised their right of self-determination and joined the United States as equal states of the Union[650]. On several occasions the United Nations supervised directly elections or plebiscites by means of a United Nations Commissioner and a staff of international observers. In some cases, like Togoland under French administration and Ruanda Urundi, the operation resulted in full independence and

membership in the United Nations. In other cases, like Togoland under British administration, and the northern part of the Cameroons, they were integrated with Ghana and Nigeria respectively. In the case of the Cook Islands, the exercise of self-determination led to a self-governing régime short of independence[651]."

But independence is accorded special importance by the United Nations. No territory, it is felt, should be deprived of its right to choose independence, whatever the circumstances or consequences[652]. The result of this United Nations policy has been that the process of decolonization has led to the independence and emergence of numerous very small States or Mini-States, Micro-States, Lilliputian States, or Diminutive States, as they have been variously called[653]. Former United Nations Secretary-General, U Thant, described "Micro-States" as "entities which are exceptionally small in area, population, and human and economic resources, and which are now emerging as independent States"[654]. Although he did not mention any population criterion or size of territory, the Legal Counsellor of the United Nations wrote that the Secretary-General had in mind, as a threshold for United Nations membership, a point in population "somewhere in the neighbourhood of the then existing smallest member" (i.e., the Maldive Islands with an area of 298 square kilometres and a population of 101,000)[655]. Since 1968, when the Maldive Islands became independent and was admitted to the United Nations, several others, and even smaller States, have emerged as subjects of international law. Thus, Nauru with a total land area of 21 square kilometres and a population of 6,500 has become a sovereign State after it achieved its independence in 1968. So also, Turvalu (pop. 7,500), Bahama Islands (220,000), Grenada (113,000), the Cape Verde Islands (340,000), the Comoros Islands (380,000), São Tomé and Principe (70,000) and the Seychelles (57,000) became independent and all but Tuvalu and Nauru have been admitted as sovereign and equal members of the United Nations[656]. The Committee of 24 reviewing the situation of islands in the Pacific, such as Niue, Tokelau, Gilbert and Ellice, Pitcairn and others, "reiterated its view that the question of size, isolation and limited resources should in no way delay the implementation of the Declaration in these territories"[657]. It is thus interesting to note that Pitcairn Island, with an area of 1.75 square miles and a popu-

lation of 92, has the inherent right to became a sovereign State and a member of the United Nations. As the major colonial empires have crumbled before the forces of nationalism, these new nations have sought United Nations membership as a form of recognition, or international endorsement of their sovereignty and integrity as nations[658]. It also provides a convenient way to conduct their foreign affairs in a concentrated fashion. It may be noted that as a diplomatic centre, it offers unparalleled opportunities for contact with representatives of other countries and of international organizations. It is a public forum which affords the means for instant communication of one's message to a wide audience. Further, as a leading international political institution, its recognition of a State confirms that States' legitimacy and standing in the world community. For Mini-States of the future, the chief attractions of the United Nations

> "may be its acceptability as a source of technical and economic assistance and as a countervailing force for small States whose security is threatened by former metropoles, neighbouring States or other external antagonists[659]".

But membership of the Organization is not without its cost. Thus, even the minimal dues from member States at 0.01 per cent of the total assessment of the United Nations which amounts to more than $50,000 per annum may be a great burden on the resources of very small States. In fact, but for the help provided by the United Nations to pay for five delegates of each Member, they cannot even afford to send their delegates to New York to attend the regular sessions of the General Assembly[660]. Further, it is not easy for them to meet the demands of membership and record voting positions on an imposing number and variety of issues that come up before the United Nations. Strain on the limited number of trained personnel from Mini-States is a serious problem and is likely to accentuate. Also, to maintain a permanent representation at the United Nations headquarters is an expensive affair which many of them just cannot afford. The Maldives Islands located their small mission in the former Maldive Island stamp shop in Manhattan[661]. Absenteeism is already an observable feature of General Assembly life and the expectation is that it will increase[662].

If all the remaining colonial possessions or non-self-governing territories and trust territories[663] were to become independent and

obtain membership in the United Nations, there would be over 200 States represented in the world body in the very near future. Nearly half of these nations would consist of islands and archipelagos and two of every five would be Micro-States with less than 300,000 souls. Although any criterion would be more or less arbitrary, territories with less than one million population are generally considered as very small States or Mini-States[664].

Inherent in the hopes of mankind, the principle of self-determination enjoys widespread appeal. But until the Second World War, the principle was confined only to Europe. It is only in recent decades that it has generated a revolutionary impact on world affairs and contributed to a remoulding of the composition of the community of nations[665].

Besides other policy issues, this is very taxing for the United Nations system. Every additional national delegation increases the need for space, documents, discussion time and operational cost. The United Nations must continuously expand many of its facilities and services. As Inis Claude said, several years ago:

> "The United Nations is about to run out of flagpoles, and chairs, and unthinkable disaster: paper... The sheer numerical growth of the Organization poses difficult housekeeping, procedural and political problems[666]."

Micro-States in International Organizations

Although there is no accepted definition of a small State and no fixed criteria for their admission to the family of nations, the existence of very small States or participation of very small territories in international relations is not a new phenomenon. Tiny States have emerged as full-fledged members of the international society, survived, disappeared and re-emerged throughout history in one form or another, without their right of existence ever being challenged on the ground that they are too small[667]. In fact in the fifteenth century, the Republic of Venice, with a population of less than 150,000, was a world power. Several small European States – Luxembourg, Iceland, Monaco, Liechtenstein, San Marino – have existed for over two centuries without arousing any controversy about their viability. Even the entry into the United Nations as a result of decolonization prior to 1960, of a few small and underde-

veloped countries did not seem to raise any fundamental problem. But recently, the emergence of so many very small States has aroused a great deal of scepticism about their viability as political entities and their role in international organizations. It has been suddenly realized that the composition of the United Nations is undergoing a radical change, that it has become much easier for the small developing countries to muster vast majorities in the United Nations in conflict with the interests of the western developed countries, and that the relationship between decision-making and the degree of financial contribution is drastically changing. It is theoretically possible, it is pointed out, that a two-thirds majority could be formed in the General Assembly representing only 9 per cent of the world population. Further, with the addition of the potential Mini-States, 4 per cent of the world population would form such a majority[668].

Micro-States apart, it may be noted that more than two-thirds of the world's nations today have populations of fewer than five million, and roughly the same proportion has a geographic area of less than 25 million hectares. Further, 73 countries have populations of 1 million or less, and geographic areas smaller than 5 million hectares[669]. Sometimes derisively mentioned as "specks of dust" or "unwanted and useless remnants of empires"[670] and "damned dots"[671], it is suggested by some Western diplomats that the unlimited acceptance of the Mini-States in the United Nations family is basically wrong. As a Western diplomat is reported to have said:

> "It was not anticipated, nor . . . would it have been accepted in 1945 that the United Nations be extended to include tiny States whose only justification for existence is that their territory is no longer wanted by the colonial governments that for years supported them[671]."

It is said that unless some minimal standards for admission are laid down, "United Nations membership may be debased beyond redemption"[672], and the world organization may be condemned "to die of creeping irrelevance"[673], the "victim of a simple structural ailment"[674].

There are two issues involved here: (1) minimum size for a State to be independent and viable; and (2) minimum level for admission to the United Nations or other international organizations. These two aims are not identical. The United Nations Secretary-General,

U Thant, expressed the view that it was desirable "that a distinction be made between the right to independence and the question of full membership in the United Nations"[675]. While the qualifications for statehood may be construed liberally, the qualifications for admission to the United Nations must fulfil the conditions laid down in Article 4 of the United Nations Charter. Membership in the United Nations, it is provided in this article, is open to all "peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the organization, are able and willing to carry out these obligations".

Mini-States and the League of Nations

It is interesting to note that while the United Nations has admitted numerous very small States, the League of Nations did not admit any State which could be considered a Mini-State. In the early days of the League of Nations, a number of Mini-States filed applications for membership: San Marino, Iceland, Luxembourg, Monaco and Liechtenstein. The report of the Fifth Committee, which examined the Luxembourg case, said that

> "the small extent of the territory (2,586 sq. km.) and its limited population (about 300,000) were the object of a discussion in the Committee and some members wondered whether circumstances of this kind ought not to be considered as obstacles to the admission of certain States[676]".

But it was decided ultimately in the Plenary to admit Luxembourg because it was an ancient State, was recognized by all the civilized States and had always scrupulously carried out its international obligations[677].

However, Liechtenstein was denied admission following a report by the Fifth Committee which noted that:

> "There can be no doubt that juridically the Principality of Liechtenstein is a sovereign State, but by reason of her limited area (159 sq. km.), small population (about 11,000), and her geographical position, she has chosen to depute to others some of the attributes of sovereignty. For instance, she has contracted with other powers for the control of her customs, the administration of her Posts, Telegraphs and Telephone

> Services, for the diplomatic representation of her subjects in foreign countries other than Switzerland and Austria, for final decision in certain judicial cases. Liechtenstein has no army. For the above reasons we are of the opinion that the Principality of Liechtenstein could not discharge all the international obligations which would be imposed on her by the Covenant[678]."

In the meantime, Monaco withdrew its application and San Marino and Iceland failed to pursue theirs and no further action was taken on them[679].

Mini-States in the United Nations

No controversy arose about the admission of small States in the early years of the United Nations. Luxembourg was an original member and Iceland was admitted on 19 November 1946 without any question. Monaco, Liechtenstein and San Marino never applied for membership, though the latter two became parties to the Statute of the International Court of Justice.

While supporting the admission of the first Mini-State, the Maldive Islands, to the United Nations, the United States representative, Charles Yost, said in the Security Council:

> "There are many small entities in the world today moving towards some form of independence. We are in sympathy with their aspirations and applaud this development. However, the Charter provides that applicants for United Nations membership must not be only willing but also able to carry out their Charter obligations . . . Today many of the small emerging entities, however willing, probably do not have the human or economic resources at this stage to meet this second criterion. We would therefore urge that Council members and other United Nations members give early and careful consideration to this problem in an effort to arrive at some agreed standards, some lower limits, to be applied in the case of future membership."

He added:

> "We do not for a moment suggest the exclusion of small new States from the family of nations; on the contrary, we

> believe we must develop for them some accommodation that will permit their close association with the United Nations and its broad range of activities. This is another facet of the problem that we think demands early and careful consideration[680]."

The Secretary-General of the United Nations, U Thant, said in his 1965 report that the limited size and resources of emergent exceptionally small States

> "can pose a difficult problem as to the role they should try to play in international life . . . I believe that the time has come when member States may wish to examine more closely the criteria for the admission of new members in the light of the long-term implications of the present trends[681]".

In his 1967 report, the Secretary-General further elaborated his view. He said:

> "I believe it is necessary to note that, while universality of membership is most desirable, like all concepts it has its limitations and the line has to be drawn somewhere . . .
>
> I would suggest that it may be opportune for the competent organs to undertake a thorough and comprehensive study of the criteria for membership in the United Nations, with a view to laying down the necessary limitations on full membership while also defining other forms of association which would benefit both the 'Micro-States' and the United Nations . . .
>
> As members of the international community, such States are entitled to expect that their security and territorial integrity should be guaranteed and to participate to the full in international assistance for economic and social development. Even without Charter amendment, there are various forms of association, other than full membership, which are available, such as access to the International Court of Justice and membership in the relevant United Nations economic commissions. Membership in the specialized agencies also provides an opportunity for access to the benefits provided by the United Nations Development Programme and for invitations to United Nations conferences. In addition to participation along the foregoing lines, 'Micro-States' should also be permitted to establish permanent observer missions at the United Nations

> Headquarters and at the United Nations office at Geneva, if they so wish, as is already the case in one or two instances. Measures of this nature would permit the 'Micro-States' to benefit fully from the United Nations system without straining their resources and potential through assuming the full burdens of United Nations membership which they are not, through lack of human and economic resources, in a position to assume[682]."

On 13 December 1967, the United States, in a letter addressed to the President of the Security Council, referred to these remarks of the Secretary-General, suggested that they should be examined in terms of general principles and procedures, and recommended that the Council's dormant Committee on the admission of new members be revived for that purpose[683].

Since no action was taken on the United States suggestion, the United States raised the issue again in July 1969 and on its initiative two plenary meetings of the Security Council were called on 27 and 29 August 1969 to consider the Mini-State problem. The Council established a Committee of Experts, consisting of all members of the Security Council, to study the entire dilemma and report back its recommendations[684]. In the Mini-State Committee, the members were extremely reticent in giving any opinion, much less suggestions, on the issue because the "matter was an extremely delicate one, since it bore on the question of the equality and sovereignty of States[685]". There was inordinate delay and even after a lapse of 18 months, the Committee was unable to present a report.

The United States and British Proposals

Nevertheless, two substantial proposals on the subject were submitted before the Committee by the United States and the United Kingdom. On 26 September 1969, the United States, concerned about the disproportionately heavy burden of United Nations membership on exceptionally small new States, on the one hand, but their need for association with the world body for their own political, economic and social development as well as the contribution they could make to the attainment of broad objectives of the United Nations on the other, proposed the establishment of a new status of United Nations Associate Member. The proposed Mini-State Associate Member would:

"*(a)* enjoy the rights of a member in the General Assembly except to vote or hold office;
(b) enjoy appropriate rights in the Security Council upon the taking of requisite action by the Council;
(c) enjoy appropriate rights in the Economic and Social Council and in its appropriate regional commission and other sub-bodies, upon the taking of requisite action by the Council;
(d) enjoy access to United Nations assistance in the economic and social fields;
(e) bear the obligations of a member except the obligation to pay financial assessments.

The admission to Associate Membership in the United Nations will be effected in accordance with the same procedures provided by the Charter for the admission of members. States which opt for Associate Membership would submit to the Secretary-General a declaration of willingness to abide by the principles of the United Nations, as set forth in the Charter[686]."

On 25 May 1970, the United Kingdom submitted an alternative proposal –

"whereby a State could voluntarily renounce certain rights (in particular voting and election in certain United Nations bodies) but otherwise enjoy all the rights and privileges of membership. This arrangement (which would not require amendment of the Charter) might be embodied in a declaration to be made by a new State at the time of its application . . ."

In submitting its application for membership, the Mini-State would express –

"its desire to enjoy the privileges and assume the obligations of membership of the United Nations and to be accorded the protection and assistance which the United Nations can provide, in particular with regard to the maintenance of its territorial integrity and political independence; and declares that it does not wish to participate in voting in any organ of the United Nations, nor to be a candidate for election to any of the three Councils established by the Charter or to any subordinate organ of the General Assembly. On this basis and on

> the understanding that the assessment of its financial contribution would be at a nominal level, the State of . . . declares that it accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfil them.
>
> The State of . . . further undertakes that it may at any time, after the expiration of one year's notice to the Secretary-General of its intention to that effect and after its acceptance of a revised assessment of its financial contribution, avail itself of those rights of membership the exercise of which it has hereby voluntarily renounced[687]."

Both the United States and the United Kingdom stressed the voluntary nature of their respective proposals. The Mini-States themselves were to decide about their relationship with the United Nations. As for the Mini-States, which were already members of the United Nations, as one United States official explained:

> "I do wish to stress that no United Nations member would be in any way affected by the establishment of some form of associate status unless it should itself decide, and this I do not preclude, to withdraw from the United Nations membership, and seek associate status instead[688]."

Reaction to the Proposals

Two important questions needed to be addressed and satisfactorily answered before these proposals could be accepted: (1) did they necessitate Charter amendment; and (2) who would be eligible for associate membership or voluntary renunciation of their rights and obligations? In other words, what is a Mini-State?

Charter amendment: Both the United States and the British delegates, in their enthusiasm, assured the Committee that amendment of the Charter would not be necessary. The United States delegate said that –

> "the powers conferred on the General Assembly in Articles 10 and 11 (2) of the Charter, together with the fact that under Charter Article 21 the Assembly adopted its own rules of procedure, established the right of the Assembly to create a category of Associate Member States having some, but not all, of the rights of membership[689]".

The British representative argued that –

> "If, in voluntary exercise of its sovereignty, a State, as part of its request for membership, renounced the exercise of certain rights of membership in a manner acceptable to the Organization and its other members, that would not be contrary to the provisions of Article 2 (1) of the Charter, which was designed to safeguard the sovereign equality of all members. The situation would simply reflect the free and sovereign choice of the State concerned and the recognition and acceptance by the Organization of the choice so made[690]."

Most of the other members of the Mini-State Committee, however, were sceptical about the United States and British reasoning and interpretations and doubted whether their proposals "were compatible with the Charter, given the very clear meaning of certain of its articles"[691].

In view of these substantive differences, the Mini-State Committee decided to seek the advice of the United Nations Counsel if the United States and the British proposals could be implemented within the framework of the Charter without requiring amendment thereof. Referring to the United States proposals about the creation of a United Nations Associate Member status, the Legal Counsel said:

> "Article 4 of the Charter (which defines the conditions for admitting new members to the United Nations) makes no reference to 'associate membership' nor to 'associate members', nor do these terms appear elsewhere in the Charter . . . [I]t is not possible without Charter amendment, to create some other means of becoming a party to that instrument or of becoming a party in a capacity other than that of a member[692]."

The Legal Counsel added:

> "It is significant to recall, in this connection, that certain of the specialized agencies, such as the Food and Agriculture Organization and the Unesco, which had no provisions for associate membership in their original constitutions, deemed it necessary to adopt such provisions through the amendment procedure provided in those constitutions[693]."

For these reasons, an "associate member", as defined by the

United States proposal "for the present purposes . . . must be considered as a 'non-member' as the Charter now reads"[694]. The proposal would permit these non-members to "enjoy the rights of a Member in the General Assembly except to vote or hold office", including an unlimited prerogative of participation in the plenary debates of the General Assembly and of proposing items for its agenda. Thus far non-members enjoyed only very limited rights of participation in plenary meetings.

Further, Article 9 (1) which provides that "the General Assembly shall consist of all the Members of the United Nations", would have to be amended, in the opinion of the Legal Counsel, if the United States proposal were to be accepted. Otherwise,

> "there would appear to be no limitation whatsoever on the Assembly's powers to alter its composition, by adding extra categories of members, without recourse to the amendment procedure of the Charter[695]".

Further, the Legal Counsel felt that the rights of non-members to submit questions to the General Assembly, circumscribed by the provisions of Articles 11 (2) and 35 (2), "would have to be removed through Charter amendment"[696].

The United States proposal also sought to accord to an associate member "appropriate rights" in the Security Council and ECOSOC. This would require amendments of Articles 32 and 69 respectively, in the considered view of the Legal Counsel. He also doubted in view of past practice, whether it would be feasible to exempt the proposed associate member from making a financial contribution although the General Assembly had a lot of discretion in the matter under Article 17 (2)[697].

United Kingdom Proposal

Since under the United Kingdom proposal a Mini-State would be admitted as a full (not associate) member who would voluntarily renounce the right to vote or hold office in the Organization, it would be compatible with Article 9 of the Charter concerning the composition of the General Assembly. Nevertheless, the Legal Counsel was not sure if it would be compatible with Article 4 because, in being assessed at a nominal value, it might be deemed thus unable to carry out the financial obligations of the Charter[698].

Further, although the British proposal provided for a voluntary renunciation of the right to vote, the Legal Counsel wondered "whether such a voluntary renunciation accords with the letter and spirit of the Charter" and specifically if it did not violate Article 18 (1) which provided that "each member of the General Assembly shall have one vote". Moreover, Article 19 specified the conditions under which "a member of the United Nations . . . shall have no vote". "Can new and unrelated conditions for loss of vote by a member State be created without Charter amendment?", the Legal Counsel asked[699].

A necessary consequence of Article 2 (1) of the Charter, said the Legal Counsel, "is the equality of essential rights and obligations under the Charter". Therefore

> "grave doubts arise as to the propriety of a member State renouncing, in a legally binding form, its fundamental Charter rights. While such a State may remain 'sovereign' it hardly remains 'equal'[700]."

Moreover, said the Legal Counsel, "if fundamental rights can be renounced, can fundamental obligations also be given up (such as the obligation to settle international disputes by peaceful means)?"[701]

The Legal Counsel also questioned the British proposal for renouncing the right to be considered for elections to the various organs of the United Nations. "There are surely certain fundamental rights which cannot be renounced", he felt. Moreover, Mini-States might become members, with *full* rights, of United Nations subsidiary organs simply by virtue of their membership in one of the specialized agencies. If the British proposal were to be accepted, it might "require some modification of the basic decisions establishing these (United Nations subsidiary) organs and the loss of an existing right"[702].

While Article 17 (2) leaves the Assembly with a wide discretion in apportioning expenses, the Legal Counsel was not sure if voluntary renunciation of its rights by a Mini-State could be a factor which could be considered appropriate when apportioning expenses. Moreover, under the British proposal, a State, which could not be characterized as a Micro-State, "could also obtain a nominal assessment by making the necessary renunciation". Raising the question as to what precisely constitutes a Mini-State, the Legal Counsel asked:

"if such arrangements are to be made available to certain member States, can they validly be denied to other member States? Where is the line to be drawn?[703]"

Amendment of the Charter

The Legal Counsel concluded that

"the United States proposal and the United Kingdom suggestion cannot, as they presently stand, be implemented within the framework of the United Nations without amendment of the Charter[704]".

It is important to note that virtually nobody was in favour of amendment of the Charter. As Michael Gunter summed up the position:

"The very existence of the United Nations is predicated on a delicate balance maintained by some (159) sovereign States. An amendment that might be interpreted as challenging the sovereign equality of States – despite the noblest of intentions – could not help but result in the bitterest rancor and suspicion. What had begun as a sincere and innocent attempt to solve the specific problem of Mini-State membership, might then have snowballed into a fundamental struggle over the very nature and even existence of the Organization. Rather than risk this eventuality almost everybody was adamant in their opposition to amendment[705]."

Not only were the smaller States against amendment of the Charter, but even the bigger States did not favour it. The Soviet Union left no one in doubt that it was "opposed as a matter of principle to amending the Charter"[706].

Interestingly, while discounting the need for amendment of the Charter, the Legal Counsel of the United Nations said that "the rationale" of the United States and British proposals could be otherwise achieved through "an association other than membership with the Organization" which, he felt, already existed. This "association" was based on "facilities . . . which derive from the Charter and from the decisions of United Nations organs" and gave

"to what, might be called 'associate States' a very wide range

> of possibilities for participating in almost every field of United Nations work, in many instances with rights identical to those of member States[707]".

After thoroughly examining the Charter provisions, rules of procedure, and practice of the main organs of the United Nations, he concluded that there "has developed in practice under the Charter what might be called an 'associate status' . . . this development has been *ad hoc* and has not generally systematized"[708]. He suggested that it should be possible for the principal deliberative organs to define, within the limits set by the Charter,

> "in a set of principles, possibly to be known as 'associate status', the terms and conditions under which non-member States may participate in their proceedings and the proceedings of their subsidiary organs or may formally observe such proceedings[709]".

He added that the General Assembly could lay down the assessment, if any, to be paid by an "associate State", and proposed that the Security Council might define "general criteria indicative of the size and population of the States to which it is considered particularly appropriate that 'associate status' should apply"[710].

The Legal Counsel admitted that his recommendation "presents similarities to the United States proposal", but felt that his suggestion "would be designed to avoid those points in the United States proposal which are not compatible with the Charter as it now stands"[711].

Problem Swept Aside

With this opinion of the Legal Counsel, there was little, if any, enthusiasm left for solving the Mini-State problem. Some other possibilities for dealing with the problem, including representation by another member State, or the possibility of joint membership of more than one Mini-State whereby several Micro-States would combine their resources to cover all United Nations operations, have also not been found practicable because they would need Charter amendment. It also raises the practical problem of whether sufficient identity of interest would exist for the concept to be feasible[712].

Observer status is another option, but it has lacked appeal. In the past it has been mostly accorded to States prevented by the veto from becoming full members: Japan (until 1956), the two Germanies (until 1973), the two Koreas (up to the present day), North and South Viet Nam (until 1977). There are some exceptions, however. Switzerland which has decided not to join the United Nations, and Monaco and the Holy See, which have no ambitions to play a more active role in the Organization. Moreover, observer status has no formal legal basis and observers can take no part in United Nations proceedings. It, therefore, has nothing to recommend it[713].

Since the Micro-States do not want to be treated as second class citizens and see real advantages in full membership, none of these proposals is likely to be accepted. It is also pointed out that it is difficult to justify closing the barn door after so many Micro-States have already crept in. It is significant that although the Admissions Committee has been resuscitated, not a single candidate has been refused membership on the ground of size and/or viability[714].

Since it is just not possible to amend the Charter at this stage, the problem has been sort of swept aside or swept under the rug. Although the Mini-State Committee is still alive, though dormant, and can still be revived, it is generally felt that "the issue, if not the problem, is dead"[715]. Although several Mini-States, such as the Gambia and the Maldives, have found it increasingly difficult to fulfil even minimal financial obligations of 0.01 per cent of the assessment or maintain a permanent representation at the United Nations Headquarters, even smaller States, with still less resources, like Antigua and Barbuda (with a population of 77,000), Samoa (population 99,000), São Tomé and Principe (population 86,000), the Seychelles (population 64,000), have come to be admitted into the United Nations. It may be noted, however, that some new Pacific Mini-States have opted out of membership in the Organization[716] and a few potential Mini-States have been integrated into much larger States. Thus Sikkim was merged into India in 1975, Indonesia took over East (Portugese) Timor in the same year; Niue (population 5,000) entered into "free association" with New Zealand in 1974, as earlier (in 1965) the Cook Islands had done; and Micronesia has agreed to an association with the United States. It is also interesting to recall that Zanzibar, earlier admitted into the United Nations (in 1963) merged with Tanganyika in 1964 to form

Tanzania, letting its individual membership lapse[717]. However, some more Micro-States are likely to join the world body as they achieve their self-determination and independence.

As we mentioned earlier, while universality of membership of international organizations is welcome, independence for very small States, unable to stand by themselves, is more or less a fiction and seems to be stretching the principle of self-determination to a breaking point[718]. They are not ordinary States and cannot fulfil all the functions of an ordinary State. If they are forced to stretch themselves beyond their capacity, they cannot survive, like Procustes' visitor in Greek mythology. According to the legend, when a visitor who was too short for Procustes' bed sought his hospitality, "he was placed on the long bed and his limbs pulled out until he died from exhaustion"[719]. Small territories, upon becoming free, are not like an ordinary or a classic nation-state. Islands such as Samoa, Nauru, or Anguilla, even if they are free, are quite unlike larger States. While considering the proper roles which these small States may play, we should be sufficiently flexible. If we don't want to stretch Micro-States to fit a Procustean bed we should measure up their needs and design something to fit those needs[720]. For one thing they cannot be left alone. As Fisher points out –

> "The paradox of their existence is that in order to be left alone, outsiders will have to help. It has taken, and will take, international concern to free places from a stifling colonialism. It has taken and will take international concern to keep them free. The promise of self-determination is that a people should be allowed to determine their own future. Yet if a small group of people is to have that right, outsiders will necessarily be involved in establishing it in making it meaningful, and in maintaining it[721]."

It has been rightly pointed out that in several respects

> "small States are so specially disadvantaged that their needs in large measure become qualitatively different from those of other developing countries. They are not merely scaled-down needs, they are different needs[722]."

It is true that these territories and their peoples have been unjustly exploited for a long time under colonialism. Sometimes their small territories have been made uninhabitable or rendered

extremely dangerous by continuous nuclear tests[723]. They have been particularly vulnerable to outside subversion, intimidation, and intervention[724]. As President Maumoon Abdul Gayoom of the Maldive Islands said in an address in June 1984:

> "In the past decade there have been attempts at alien subversion in the independent Commonwealth nations of the Bahamas, on Abaco Island, in Vanuatu and the Seychelles . . . And the Kingdom of Lesotho has suffered the gross injustice of military incursions into its territory of a particularly brutal nature by the armed forces in South Africa[725]."

Indeed, these small territories and their innocent peoples need the protection and help of the international community instead of being throttled. After the United States intervention in Grenada in 1983, the Commonwealth Heads of Government said in a declaration issued in Goa:

> "We are particularly concerned at the vulnerability of small States to external attack and interference in their affairs. These countries are members of the international community which must respect their independence and, at the very least, has a moral obligation to provide effectively for their territorial integrity[726]."

They ought to be accepted as wards of the international community. The reason that most of these Micro-States hasten to join the United Nations is for their protection. They are neither interested nor inclined to get involved in international controversies. If it is not possible to amend the Charter, it should be liberally interpreted so as to permit them to join the United Nations without getting unnecessarily involved in its politics. It is interesting to note that some of the regional economic commissions of the United Nations, such as ECAFE, ECLA, ECA, have associate members without a right to vote, and specialized agencies of the United Nations, such as UNCTAD and UNIDO, have among their membership States that are not members of the United Nations, including some Mini-States. Thus, while Mini-States can take benefit from the United Nations Development Programme, even without joining the United Nations, they have been tempted to join the world body for the prestige and security it additionally provides. There is no reason why they cannot be provided with this security in some form without the

need to take the financial and other burdens. They also need close relationship and advice about the governments with which they ought to establish contacts. It needs impartial and competent assistance in considering options open to them and in devising new options. Participation in the United Nations and its affairs can help them to some extent. It is interesting to note that Australia recently took the initiative and provided funds for a joint New York office with common support services which was established in 1983 to house the permanent missions of three Pacific Islands – the Soloman Islands, Vanuatu and Western Samoa – and the Republic of the Maldives. This helped in a considerable reduction of the expenses of the four Mini-States in maintaining their representatives in New York and was much appreciated even by other small member nations[727].

It may be appropriate to establish a special unit in the United Nations Secretariat to service the needs of small States[728]. As the representative of Jamaica said at the 22nd Session of the General Assembly in 1967:

> "There are also those small States economically not viable, which would choose full independence if they could. It should not be beyond the capacity of the United Nations to devise means of linking them to this organization in order to ensure that the exercise of their right does not lead them to continuing or eventual poverty. Specifically it would not be amiss for the General Assembly to recommend that a section of the Secretariat should devote itself exclusively to the interests of small territories which might elect to exercise that right. This special section could provide technical and administrative assistance where needed[728]."

Such services, available to non-member small territories, may even reduce the pressure on newly independent Mini-States to seek membership of the United Nations. But in order to survive in this treacherous world, they need the help and protection of the international community more than emphasis on their sovereignty and equality. Sridhath Ramphal, Secretary-General of the Commonwealth, has raised very pertinent questions in this connection. Referring to the familiar phrase, "small is beautiful", he points out that these States know that small is also weak and fragile, vulnerable and relatively powerless. He then adds:

"Sometimes it seems as if small States were like small boats, pushed out into a turbulent sea, free in one sense to traverse it; but without oars or provisions, without compass or sails, free also to perish. Or, perhaps, to be rescued and taken on board a larger vessel.

The truth probably is that the world community has not thought its way through the phenomenon of very small States in the world that is emerging in the end years of the twentieth century . . . Can the world proceed any longer on the old assumptions that underpinned the concept of the nation-state?

Must the right to sovereignty and territorial integrity depend exclusively on the capacity of a State, however small, to defend itself, to assert its nationhood by superior arms? Must its survival be contingent on its capacity to repel predators? Or, is it not, indeed, a premise of independence under the Charter that the international community has obligations to help to sustain those whom it has helped to bring to freedom – and to do so not only by resolutions after the event, but by the machinery of collective security and the will to use it?[729]"

International law must adjust to the new situations of a new extended but totally interdependent society. In this new world society emphasis should not be so much on sovereignty and equality, but on the common needs and demands of the international community. It must develop from a law of co-existence to a new law of co-operation and welfare under which its Members should depend not on the power of their sovereignty, but the joint strength of the international community.

CONCLUSION

New Extended World-Wide Society

ıpared to a few short years ago we are living in a new world. For a long time international society and its law had been confined to Western European, Christian, or "civilized" States, or States of European origin. Large parts of the Asian, African and Pacific worlds had no legal existence and were considered as no more than chattels in international law. But with the corrosion and later collapse of Western colonialism, numerous States have emerged as independent members of the international society. With the emergence and participation of more than 100 independent States in Asia, Africa, the Pacific and the Caribbean, since the Second World War, international society has expanded to become a world-wide society. The process is still not finished as some remnants of colonialism are in the process of gaining their independence and status as subjects of international law.

But despite this vast horizontal expansion of the international society, tremendous developments in science and technology have made the world so small and inter-dependent. Distances between farthest lands have been obliterated and communication has become instantaneous. We are already living in a global village. The development of nuclear and other weapons of mass destruction has made even the most powerful States vulnerable. Not only peace but prosperity has become indivisible.

Outdated Formulae and Outmoded Law

But while the world has changed almost beyond recognition, we are still stuck with outdated formulae and outmoded law. Thus at a time when interdependence rather than independence has become the essential condition of international life, more than 100 new independent States have emerged on the world scene claiming sovereignty which is still understood in law as an "unlimited, and irresponsible power". When the sovereignty of even the biggest and strongest powers is becoming illogical and impossible, scores of new and very small States are emerging, with limited resources,

but jealous of their sovereignty which they do not want to give up at any cost. There is no doubt, however, that if sovereignty means "absolute independence", no State is sovereign. In fact no State was ever meant to be absolutely independent any way. Etymologically concerned with the relations between the ruler and the ruled, the term sovereignty came to be applied to an entirely different relationship between independent States. But whatever its origin, and however inappropriate it may be in relation to other States, sovereignty became a sacred cow jealously guarded by independent States, especially smaller States, concerned about their protection from the big powers. Although sovereignty has always been a drag on the development of international law, and it is realized by everybody that it must be curbed to develop a rule of law, it has not been given up. Despite all the criticism against this "archaic", impracticable doctrine, international law cannot ignore it. Indeed, international law recognizes sovereignty as its foundation and a basic principle. In spite of all the attempts to curb this doctrine which perpetuates chaos and arbitrariness, sovereignty has not been curbed. Thus, although the sovereignty of a majority of the Members in the United Nations is sought to be limited, the sovereignty of permanent members of the Security Council has not been controlled. There is no doubt, however, that the struggle to control the irresponsible power called sovereignty must continue because that is the only route toward sanity and a rule of law in international relations. It may be mentioned, however, that sovereignty within the limitations of law, or independence according to law, has another function, viz. the protection of smaller States which are too weak. This function of independence should not only be emphasized but strengthened.

Equality in an Unequal World

If States are not sovereign, they are certainly not equal either. Equal in theory, no two States are equal in fact. While the principle of equality of States has been generally accepted in international law, it has been rarely, if ever, respected in practice. Indeed, so long as the threat or use of force cannot be effectively controlled, and some judicious and judicial means for the settlement of international disputes are not available and obligatory, might is going to make right. Because of the procedural weaknesses of internatio-

nal law, and the predominance of self-help in international relations, international society has always been "anarchical and oligarchical". "Self-help" in a world of unequals merely perpetuates inequality.

Equality in a Hierarchical International Society

Traditional international law is a typical example of the law of the strong. There could be no equality in this system between European, Christian and later "civilized" or powerful States on the one hand, and a vast conglomeration of Asian and African peoples who had not been admitted to the "charmed circle" of European society and were meant to be merely colonized and exploited for the benefit of the white man's world. But even within the narrow circle of "civilized States", uncivilized means of self-help and recognition of war or the use of force as beyond the law merely perpetuated inequality. The result was that the international society was always a hierarchical society controlled by a few great powers who exercised the right of life and death over the smaller States. Whether it was the Concert of Europe, or Pentarchy during the nineteenth-century Europe, the United States hegemony over the Western Hemisphere in the nineteenth and the twentieth centuries, the Japanese domination after its emergence as a great power in its part of the world, or the restoration of peace in the devastated world after the First and the Second World Wars, it was a system ruled by a few great powers to whose authority the smaller, weaker States had to submit. As times changed, the faces of great powers changed, but the system continued. In this system, the principle of equality had no place but was persistently invoked by the small States to satisfy their vanity or sometimes appeal to the good conscience of the big powers who were seldom, if ever, persuaded by the idealistic doctrine. Some positivists, more honestly and realistically, sought to reject or discard the doctrine of equality in the nineteenth and early part of this century, but the smaller States and many publicists doggedly clung on to the idealistic though unrealistic principle not only because habits die hard, but also in the hope that some day it may be realized in practice. The big powers let them be satisfied with the pious recitation of the holy principle without being bothered by its meaning or hidden influence, if any. Thus the declaration of sovereign equality of States in Article 2 (1) of the United Nations Charter is nothing more than a formal salute

to the traditional principle and an empty phrase. The special privileges of the great powers in the Security Council and otherwise belie the principle and it seems to have nothing more than a sentimental or ceremonial function. States have in real life neither equal rights and duties, nor even equal protection of the rights they have. So long as the anarchical system of self-help prevails, there can be no equality between unequal States. Until a world organization with real powers becomes a reality which can end anarchy in international life, there can be no equality before the law. And anarchy in our dangerous thermo-nuclear age may lead to catastrophe in which not only the small States but the biggest powers may be wiped off.

Equality in the United Nations

The only road to progress in our increasingly interdependent world society, therefore, lies in strengthening the United Nations. It is important to note that the world Organization is not the same as it was when established in 1945 though the purpose for which it was established, viz. to save the succeeding generations from the scourge of war –, has become even more urgent. For one thing, the United Nations has expanded from a small European or Western Organization, dominated by a few western powers, to become a world-wide Organization and a forum for the small, poor, underdeveloped and militarily inconsequential States who until yesterday had no power and no status and could not dare to speak or take a stand against the big powers. Due to an ideological and power struggle between the Communist and the non-Communist States after the Second World War, and the big power rivalry and jealousy, the over-powered Security Council, the potential directorate of the big powers, has become powerless, and its place has come to be taken by the egalitarian General Assembly. Thus while the principle of equality has been discarded in the United Nations Charter, small States have acquired a measure of equality with the great powers, and an authority which, in unison, they may use even against their big partners. But the growing importance of the popular body, and with it that of small States, has become intolerable to the aristocrats of the international society. Having always enjoyed the fruits of their superior might, and being used to be the primary actors on the international stage, such an "unnatural" position is unacceptable to the great powers. Unable to adjust themselves to the new situa-

tion, they seek to change the course of history and revive the old position in which their hegemony is fully recognized and respected. Calling the "one State, one vote" formula in the General Assembly "undemocratic", they want to amend it and demand weighted voting. This, however, is neither feasible nor perhaps desirable. As the former Secretary-General of the United Nations, Dag Hammarskjöld, observed:

> "It is sometimes said that the system of one vote for one nation in the United Nations, and the consequent preponderance of votes by the middle and smaller powers, damages the usefulness of the United Nations . . . It is certainly not a perfect system, but is there any proposal for weighted voting that would not have even greater defects[730]."

It does not mean, of course, that the position or influence of the great powers can be, or is, ignored. Besides the Security Council where they have permanent seats with the right of veto, they have always been represented in the Trusteeship Council, the Economic and Social Council and the International Court of Justice. Even in the General Assembly, "invisible" weighted voting is apparent and different States carry varied powers in influencing its decisions. Indeed, the small States have always been mindful of the importance of the great powers and have never abused their power of numbers to harass their big brethren unnecessarily. In the General Assembly, the resolutions have been watered down to below the level that could have commanded the necessary two-thirds majorities in order to accommodate the minorities. The result is that there has been an increasing trend toward overwhelming majority decisions or unanimity in the General Assembly. But it is important for the great powers also to understand and appreciate the position and feelings of the overwhelmingly small States who can no longer be suppressed, ignored or bypassed. If the chief purposes of the United Nations are the preservation of peace and the furtherance of even a rudimentary system of rule of law in international society, there is little doubt that small States can be helpful. Whatever might be the reason, whether their lack of might or their love of right, the small States have always been committed to a system of law and order and time and again they have played a decisive role in efforts to preserve or restore peace[731]. After all, a sense of international responsibility and wisdom are not the monopolies of powerful, rich

and large countries. Experience has shown that a small State represented by an able statesman may make a contribution of ideas no less than that of a great power. The small countries have shown wisdom in understanding world problems and perseverance and restraint in their solution. Besides, even the elementary principles of law demand that all States must have equal protection of the law. They must have the protection of the Organization. They must have an equal right to protest if they suffer injustice. It is ironical for the Western liberal democracies to champion loudly the unimpeachable principle of democracy and ask for the rule of the few.

The Problem of Micro-States

The Western colonial powers, in their heyday during the eighteenth and nineteenth centuries, especially after the Industrial Revolution, occupied every bit and corner of the globe, howsoever small and insignificant a piece of territory from economic or political points of view it might have been. Those were days of long, tedious and boring maritime navigation and travel for European maritime powers and even the smallest islands in the remotest areas could be useful as halting stations for replenishment, recuperation and recreation, in their long maritime journeys to and from their colonies in Asia, Africa, the Pacific and the Caribbean. Many a time these small islands or territories were found very useful for their mineral or natural resources. But economically useful or not, they were all acquired not only in a spirit of adventure by the adventurous white men, but for the use made of them on their long navigational routes. Nobody bothered about these small territories or their peoples and they were all exploited to the hilt. After the Second World War, as the Western colonialism started crumbling, as we have referred to earlier, numerous Asian and African States emerged as independent and full-fledged members of the international society. In the beginning the United Nations and its Trusteeship Council were concerned mainly with the big and populous colonies. But with the growing influence of these newly independent erstwhile colonies, colonialism came to be considered as an unmitigated evil. In the new anti-colonial spirit at the United Nations, it came to be accepted that the right of self-determination could not be denied to even the smallest territories irrespective of their size or small population, economic viability or political, sustainability.

The result of this wave has been that more than 73 very small States, unable to depend on themselves economically or politically, have emerged as independent members of the international community. Almost as soon as they are granted independence by the colonial powers under pressure from the United Nations and its watchdog Committee of 24, these tiny States seek and get admission to the United Nations whether or not they are willing or able to fulfil the obligations of United Nations membership, as provided in the Charter. Nobody wants to stand against the current tide of independence, even if everybody realizes that these small States cannot fulfil even the minimal financial obligations of United Nations membership, cannot send their delegations to attend even general annual sessions of the General Assembly, cannot afford to keep a permanent mission at the United Nations headquarters, and indeed cannot even stand on their own. All attempts to stop the tide and do something about these tiny territories by some well-meaning scholars and statesmen have come to nought. A Mini-State Committee appointed to consider certain proposals to help these Mini-States gain United Nations membership without undertaking its financial and other burdens was shelved. But while the problem has been swept under the rug, it cannot be avoided altogether especially when several more small remnants of colonialism gain independence. It would be unreasonable to let these small territories, and their innocent peoples, exploited for a long time, be permitted to die and perish for want of help and succour from the international community and the United Nations which have helped them achieve their independence. They are neither interested nor desire to be involved in international controversies. They need the help and protection of the international community and it should not be beyond the capacity of the United Nations to link them to the Organization and provide them technical and administrative assistance in a spirit of co-operation.

A New Law of Co-operation

International law must adjust to the new situations, to the needs of an extended but totally interdependent international community. In the extended worldwide society, emphasis should be less on sovereignty and equality and more on the means to co-operate in the shrinking global village. International law must

develop from a law of co-existence to a new law of co-operation if we want to survive and prosper in the dangerous thermo-nuclear age. In the present interdependent society, it has become essential to inculcate a spirit of international community and devise means of international co-operation. This, of course, requires wisdom as well as vision. Long ago it was said that, "where, there is no vision, the people perish". Let us hope we have vision and foresight in these dangerous times without which the very human race may be wiped out.

NOTES

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2. Dag Hammarskjöld, *Servant of Peace,* Bodley Head, 1962, p. 134; also quoted in C. W. Jenks, *Law in the World Community,* New York, 1967, p. 40.
3. Hersch Lauterpacht, *International Law* (Collected Papers of Hersch Lauterpacht), E. Lauterpacht (ed.), Vol. 3, Cambridge, p. 6.
4. Deviprasad Pal, *State Sovereignty at the Cross Roads,* Calcutta, 1962, p. 69.
5. *PCIJ, Series A, No. 10,* p. 18.
6. See P. E. Corbett, "Social Basis of a Law of Nations", *Collected Courses,* Hague Academy of International Law, Vol. 85 (1954-I), p. 480.
7. See George W. Keeton and Georg Schwarzenberger, *Making International Law Work,* New York, 1972, pp. 133-134.
8. See Keeton and Schwarzenberger, *ibid.*, p. 135; Richard H. Cox (ed.), *The State in International Relations,* San Francisco, p. 82.
9. See Jean Bodin, *Six Books of the Commonwealth,* M. J. Tooley, trans., Oxford, 1955, pp. 25-26.
10. See Bodin, *ibid.,* also quoted in Richard H. Cox (ed.), *The State in International Relations,* San Francisco, p. 45.
11. Quoted in John Bowle, *Western Political Thought,* London, 1947, p. 324.
12. See Keeton and Schwarzenberger, n. 7, p. 137.
13. See J. L. Brierly, *The Law of Nations,* Sir Humphery Waldock (ed.), Oxford, 1963, edn. 6, pp. 13-14.
14. See G. H. Sabine and W. J. Shephard, "Introduction" to Krabbe's, *The Modern Idea of the State,* New York, 1930, pp. xxx ff.
15. Quoted in G. Schwarzenberger, *Power Politics,* London, 1964, edn. 3, p. 89.
16. See J. W. Garner, "Limitations on National Sovereignty in International Relations", *American Political Science Review,* Vol. 19, 1925, p. 5.
17. Quoted in Garner, *ibid.*
18. Brierly, n. 13, pp. 45-46.
19. John Fischer Williams, *Some Aspects of the Covenant of the League of Nations,* London, 1934, p. 49.
20. John Fischer Williams, *Chapters On Current International Law and the League of Nations,* London, 1929, pp. 285-287; see also C. W. Jenks, "Fischer Williams: The Practitioner as Reformer", *British Year Book of International Law,* Vol. 40, 1964, pp. 238-239.
21. Williams, *ibid.*
22. See E. N. Van Kleffens, "Sovereignty in International Law", *Collected Courses,* Vol. 82 (1953-I), p. 53.
23. Quoted by Schwarzenberger, n. 15, p. 86.
24. *North American Dredging Company Claim* (1926), *Reports of the International Arbitral Awards (RIAA),* Vol. 4, p. 28.
25. See M. S. Korowicz, "Some Present Aspects of Sovereignty in International Law", *Collected Courses,* Vol. 102 (1961-I), p. 111.
26. *RIAA,* Vol. 2, p. 838.
27. *North Atlantic Coast Fisheries* case *(Great Britain* v. *United States), RIAA,* Vol. 11, p. 180.
28. *RIAA,* Vol. 2, p. 839.

29. *Corfu Channel* case, *ICJ Reports 1949*, p. 35.
30. See G. Schwarzenberger, *International Law*, London, 1957, edn. 3, Vol. 1, p. 116.
31. For an exhaustive treatment of the meaning and import of the term "domestic jurisdiction", see M. S. Rajan, *Domestic Jurisdiction and the United Nations*, New Delhi, 1961.
32. L. Oppenheim, *International Law*, Vol. 1, H. Lauterpacht, ed., London, 1955, edn. 8, pp. 286-287.
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34. Oppenheim, *ibid.*, p. 288.
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36. Schwarzenberger, n. 15, p. 92.
37. *PCIJ, Series B, No. 5*, p. 28.
38. *Rights of Minorities in Upper Silesia, PCIJ, Series A, No. 15*, pp. 220; see also *Anglo-Iranian Oil Co.* case, *ICJ Reports 1952*, pp. 102-165.
39. *Mavrommatis Palestine Concessions* case, *PCIJ, Series A, No. 2*, p. 16.
40. *Peace Treaties* case, *ICJ Reports 1950*, p. 71; *Ambatielos* case, *ibid., 1953*, p. 19; and the *Monetary Gold* case, *ibid., 1954*, p. 32.
41. A. David Jayne Hill, "Europe's Heritage of Evil", *The Century*, Vol. 94, May, 1917, pp. 7-15; quoted in Cox, n. 8, p. 85.
42. See Keeton and Schwarzenberger, n. 7, pp. 145-146.
43. *Ibid.*, p. 147.
44. Keeton and Schwarzenberger, *ibid.*, pp. 147-148.
45. Lauterpacht, n. 3, p. 7.
46. P. C. Jessup, *A Modern Law of Nations*, New York, 1949, p. 40.
47. Quoted by Garner, n. 16, p. 6.
48. Quoted by John H. Stoessinger, *The Might of Nations*, New York, 1961, p. 8.
49. H. Lauterpacht, *Private Law Sources and Analogies of International Law*, London, 1958, pp. 51, 58.
50. Bluntschli, quoted by Lauterpacht, *ibid.*, p. 57.
51. See C. W. Jenks, *A New World of Law?*, London, p. 137.
52. *PCIJ, Series A/B, No. 41*, pp. 48-49.
53. See Korowicz, n. 25, pp. 86-87.
54. *PCIJ, Series A, No. 1*, p. 25. See also the *Exchange of Greek and Turkish Populations* case, *PCIJ, Series B, No. 14*, p. 36; and the *Kronprins Gustaf Adolf* case, *RIAA*, Vol. 2, p. 1254.
55. *RIAA*, Vol. 11, p. 186.
56. See joint dissenting opinion of seven Judges in *Customs Régime* case, *PCIJ, Series A/B, No. 41*, p. 77.
57. See Arthur Larson, "International Organizations and Conventions", in Arthur Larson; C. W. Jenks and Others, *Sovereignty Within the Law*, Dobbs Ferry, N.Y., 1965, p. 372.
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59. See Kovil Loewenstein, "Sovereignty and International Cooperation", *American Journal of International Law*, Vol. 48, 1954, p. 225.
60. Loewenstein, *ibid.*, pp. 227-228.
61. *PCIJ, Series B, No. 17*, p. 32.
62. *PCIJ, Series A/B, No. 44*, p. 24. See also *Reparations for Injuries* case, *ICJ Reports 1949*, p. 180, and the case concerning the *Application of the Convention of 1902 Governing the Guardianship of Infants, ibid.*, 1958, p. 67.
63. See Schwarzenberger, n. 30, p. 69; see also *Reparations for Injuries* case, *ICJ Reports 1949*, p. 180; *S.S. Lotus* case, *PCIJ, Series A, No. 10*, p. 24; *Chorzów Factory* case (Merits), *PCIJ, Series A, No. 17*, p. 33; *Free Zones* case, *PCIJ, Series A/B, No. 46*, p. 167.

64. See Edwin M. Borchard, *Diplomatic Protection of Citizens Abroad,* New York, 1915; and J. H. Ralston, *The Law and Procedure of International Tribunals,* Stanford, 1926, Chap. 10.
65. See *Buffalo* case, *RIAA,* Vol. 10, pp. 531 ff.; *Oliva* case, *ibid.,* p. 607; *Maal* case, *ibid.,* pp. 731-732; see also Ralston, *ibid.,* pp. 287 ff.
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67. Quoted in Jenks, *ibid.*
68. See Charles De Visscher, *Theory and Reality in Public International Law,* P. E. Corbett, trans., Princeton, 1968, p. 103.
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71. See Marek, St. Korowicz, "Writings of Twentieth-Century Publicists", in Arthur Larson, C. W. Jenks and Others, *Sovereignty Within the Law,* Dobbs Ferry, N.Y., 1965, p. 415.
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73. *Ibid.,* p. 57.
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76. Oppenheim, n. 32, p. 123.
77. Lauterpacht, n. 3, p. 8
78. *The International Law of the Future, Postulates, Principles and Proposals,* Washington, 1944, Postulate 3.
79. See also Articles 2 and 13. *Yearbook of the International Law Commission,* 1949, New York, 1956, pp. 287-288.
80. Brierly, n. 13, p. 130; see also C. C. Hyde, *International Law,* Boston, 1945, edn. 2, Vol. 1, pp. 43 ff.; Kelsen, *Principles of International Law,* New York, 1967, edn. 2, pp. 190-191; see to the same effect several writers quoted by Korowicz, n. 71, pp. 414 ff., n. 23, pp. 18 ff.
81. Jenks, n. 66, p. 131.
82. Quoted in Korowicz, n. 25, pp. 24-25.
83. Jenks, n. 66, p. 133.
84. *Ibid.,* p. 134. To the same effect see C. W. Jenks, "Sovereignty Today", Chapter 3 of his *Law in the World Community,* New York, 1967, pp. 34 ff.
85. See Korowicz, n. 25, p. 27; see also Albert Einstein, "Nations Should Be Deprived of Their Sovereignty", in Ivo D. Duchacak and Kenneth W. Thompson (eds.), *Conflict and Cooperation Among Nations,* New York, 1960, pp. 198-199.
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87. Quoted by Beeker, *ibid.*
88. H. Krabbe, *The Modern Idea of the State,* G. H. Sabine and W. J. Shephard (eds.), London, 1930, pp. 234, 236.
89. Alf Ross, *A Textbook of International Law,* London, 1947, pp. 40, 44, 45-49; see also other writers and statements by world federalists, Korowicz, n. 25, pp. 98 ff.; and Van Kleffens, n. 22, pp. 74 ff.
90. Brierly, n. 13, p. 47.
91. Schwarzenberger, n. 30, p. 114.
92. Quoted by Brierly, n. 13, p. 47.
93. Charles De Visscher, n. 68, pp. 104, 105.
94. Korowicz, n. 25, pp. 97-98.
95. W. Friedmann, *The Changing Structure of International Law,* New York, 1964, p. 32.
96. Friedmann, *ibid.,* p. 35.
97. J. L. Brierly, "The Sovereign State Today", in *The Basis of Obligation*

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98. Charles De Visscher, n. 68, p. 104.

99. *International Law: A Textbook,* Moscow, Academy of Sciences of the USSR, n.d., p. 96.

100. *Ibid.,* pp. 93-97.

101. E. A. Korovin, "The Second World War and International Law", *American Journal of International Law,* Vol. 40, 1946, pp. 747.

102. See Koretski, as quoted in Korowicz, n. 25, p. 422.

103. *Yearbook of the International Law Commission,* 1949, Session 1, p. 72.

104. G. I. Tunkin, "Is the UN Charter Out of Date?", *New Times,* No. 20, 17 May 1967, p. 10.

105. See Tunkin, *ibid.*

106. Korovin, quoted by Mintauts Chakste, "Soviet Concepts of the State, International Law and Sovereignty", *American Journal of International Law,* Vol. 43, 1949, p. 31.

107. Korovin, n. 101, p. 748.

108. See *supra,* n. 93, pp. 96-97.

109. *Ibid.,* p. 98.

110. Korovin, *ibid.,* see also T. A. Taracouzio, *Soviet Union and International Law,* New York, 1935, pp. 26 ff.

111. Levin, quoted in Korovin, *ibid.*

112. See Korowicz, n. 71, p. 423. It may be recalled that the Soviet Union invaded Finnish territory on 30 November 1939, and because of this reason, was expelled 14 days later from the League of Nations.

113. Quoted in Korowicz, *ibid.*

114. See Chakste, n. 106, p. 34.

115. L. Brezhnev, Communist Party Chairman, in a speech in Warsaw on 12 November 1968, *The Times,* London, 13 Nov. 1968.

116. See G. I. Tunkin, *Theory of International Law,* tr. William E. Butler, Cambridge, Mass., 1974, pp. 435-436.

117. Sergei Kovolyov, "Sovereignty and International Duties", *Pravda,* Moscow, 26 September 1968. Also *Survival,* London, Vol. 10, Nov. 1968, pp. 367-377.

118. Quoted by Kovalyov, *ibid.,* p. 376.

119. L. Erven, "Limited Sovereignty", *Survival,* Vol. 11, Feb. 1969, pp. 66 ff.

120. Van Kleffens, n. 22, p. 83.

121. Josef Kunz, quoted by J. A. Rodrigues, "International Law and Sovereignty", *Proceedings of the American Society of International Law,* 1953, p. 17.

122. Brierly, n. 13, pp. 47-48.

123. See N. Politis, quoted in Korowicz, n. 25, p. 5. See also Scelle as quoted above.

124. Van Kleffens, n. 22, pp. 128, 130.

125. De Visscher, n. 68, p. 102.

126. Gerhard Leibholz, *Politics and Law,* Leiden, 1965, p. 232.

127. Leibholz, *ibid.,* p. 235.

128. Keeton and Schwarzenberger, n. 7, pp. 160 ff.

129. Graville Clark, quoted in Leibholz, n. 126, p. 236.

130. Francis J. Wilcox, "International Confederation: The United Nations and State Sovereignty", in Elinor Plischken, ed., *Systems of Integrating the International Community,* New York, 1964, pp. 29-30.

131. See Garner, n. 16, pp. 23-24.

132. J. H. Ralston, *A Quest for International Order,* Washington, 1941, p. 55.

133. H. Lauterpacht, *The Development of International Law by the International Court*, London, 1958, pp. 330-331.

134. See Philip C. Jessup, "The Equality of States as Dogma and Reality", *Political Science Quarterly*, Vol. 60, 1945, p. 527.

135. M. Charles Dupuis, as quoted in E. N. Van Kleffens, "Sovereignty in International Law", *Collected Courses*, Vol. 82 (1953-I), p. 90. See also Herbert Weinschel, "The Doctrine of the Equality of States and its Recent Modifications", *American Journal of International Law*, 1951, pp. 417-418. Marcel Moye, as quoted in Ricard J. Alfero, *Collected Courses*, Vol. 97 (1959-II), p. 96; also A. Rivier, *ibid.*, Theodore U. Woodsay, *Introduction to the Study of International Law*, New York, 1885, p. 35.

136. There is a difference of opinion among scholars on this point. Dickinson is firmly of the opinion that Hugo Grotius, the father of modern international law, was not the founder of the doctrine of equality of States. Edwin De Witt Dickinson, *The Equality of States in International Law*, Cambridge, Mass., 1920, p. 34. This conclusion is affirmed by P. J. Baker in "The Doctrine of Legal Equality of States", *British Year Book of International Law*, London, Vol. 4, p. 6. This view is, however, disputed by Frederick Charles Hicks, "The Equality of States and the Hague Conference", *American Journal of International Law*, New York, N.Y., Vol. 2, pp. 531-532. Other writers believe that though Grotius did not deal with the doctrine of equality of States, it was an underlying principle of his system. See Ann Van Wynen Thomas and A. J. Thomas, "Equality of States in International Law – Fact or Fiction?", *Virginia Law Review*, Charlottesville, Va., Vol. 37, p. 794.

137. See Baker, n. 136, p. 6. Samuel Von Pufendorf's *De Jure Nature et Gentium* was first published in 1672.

138. See Dickinson, n. 136, pp. 83 ff.

139. Emmerich de Vattel, *Le Droit des Gens* (first published in 1758) as translated in Charles B. Fenwick, *Classics of International Law*, Washington, D.C., 1916, Vol. 3, p. 7.

140. Quoted in Dickinson, n. 136, p. 156.

141. Quoted in Dickinson, n. 136, p. 161. See also several other decisions quoted by Dickinson in the same book. According to Professor Dickinson, the principle of equality of States "has never been expressly doubted or denied . . . in any formal judicial utterance in a national court". *Ibid.*, p. 162.

142. Robert W. Tucker, *The Inequality of Nations*, New York, p. 3.

143. Tucker, *ibid.*

144. See quoted in Tucker, *ibid.*, pp. 3-4.

145. See Tucker, *ibid.*, pp. 4-5.

146. Tucker, *ibid.*, pp. 7-8.

147. Tucker, *ibid.*, p. 8.

148. See B. V. A. Roling, *International Law in an Expanded World*, Amsterdam, 1960, p. 15.

149. Asian States were considered members of the family of nations until at least the eighteenth century when they came under the sway of the European powers. See C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations* (16th, 17th and 18th centuries), Oxford, 1967, Chap. I.

150. See Philip C. Jessup, *The Use of International Law* (Thomas M. Cooley Lectures at the University of Michigan Law School), Ann Arbor, 1959, pp. 20-21.

151. See Roling, n. 148, pp. 17-21.

152. Alexandrowicz, n. 149, p. 318.

153. See Tucker, n. 142, p. 9.

154. See R. P. Anand, *New States and International Law.*

155. Quoted in Roling, n. 148, p. 29.

156. T. E. Holland, *The Elements of Jurisprudence*, edn. 13, London, 1924, p. 396.

157. G. Schwarzenberger, "The Standard of Civilization in International Law", *Current Legal Problems*, Vol. 8, London, 1955, p. 220.
158. See Anand, n. 154, p. 23.
159. Tucker, n. 142, p. 14. See for excellent discussion on self help Tucker, *ibid.*, pp. 3-15.
160. Tucker, *ibid.*
161. See K. M. Panikkar, *Asia and Western Dominance*, London, 1954, p. 123.
162. See for a comprehensive review of European forcible penetration into Asia, especially China, Panikkar, *ibid.*, pp. 120-138, pp. 166-199.
163. See R. P. Anand, *Origin and Development of the Law of the Sea: History of International Law Revisited*, The Hague, 1984, pp. 131-134.
164. Quoted in Tucker, n. 142, pp. 9-10.
165. Karl Marx, "The Future Results of British Rule in India", in Shlomo Avineri, *Karl Marx on Colonialism and Modernization*, New York, 1969, pp. 132-133; also quoted in Tucker, *ibid.*, p. 10.
166. See quoted in Thomas Parker Moon, *Imperialism and World Politics*, New York, 1927, p. 73.
167. Quoted in Robert A. Klein, *Sovereign Equality Among States: The History of an Idea*, Toronto, p. 51.
168. *Ibid.*
169. *Ibid.*
170. Quoted in Moon, n. 166. See also Anand, n. 154, pp. 25-26.
171. Jessup, n. 134, p. 528.
172. See Robert A. Klein, n. 167, pp. 10-17.
173. See R. R. Palmar and Joel Colton, *A History of the Modern World*, edn. 3, New York, 1965, pp. 415-417; Arthur Nussbaum, *A Concise History of the Law of Nations*, New York, 1962, pp. 186-187, Weinschel, n. 135, p. 420.
174. Quoted in Edwin D. Dickinson, *The Equality of States in International Law*, Cambridge, Mass, 1920, p. 295; see also Genevieve Peterson, "Political Inequality at the Congress of Vienna", *Political Science Quarterly*, Vol. 60, pp. 532-554.
175. See Klein, n. 167, pp. 17-20.
176. Quoted in Klein, *ibid.*, p. 25.
177. See for several instances of Big Power domination, Karol Wolfke, *Great and Small Powers in International Law from 1814 to 1920*, Wrocław, 1961, Chap. 1, pp. 9-32; see also John Westlake, *Chapters on the Principles of International Law*, Cambridge, 1894, pp. 92-101.
178. Adolf Lande, "Revindication of the Principle of Legal Equality of States, 1871-1914 – I", *Political Science Quarterly*, Vol. 62, p. 281. Emphasis in the original. See also Dickinson, n. 136, p. 280.
179. Dickinson, n. 136, p. 309.
180. See Lande, n. 178, p. 280; Wolfke, n. 177, pp. 33 ff.; Dickinson, n. 136, p. 309.
181. See Lande, n. 178, p. 286.
182. Adolf Lande, "Revindication of the Principle of Legal Equality of States, 1817-1914 – II", *Political Science Quarterly*, Vol. 62, p. 409.
183. See Klein, n. 167, p. 37.
184. Lande, n. 178, p. 263; n. 20, p. 409; see also Bengt Broms, *The Doctrine of Equality of States as Applied in International Organizations*, Helsinki, 1959, p. 115.
185. See R. P. Anand, "Influence of History on the Development of International Law" in his *Confrontation or Co-operation? International Law and the Developing Countries*, New Delhi, 1986, pp. 13-15.
186. C. H. Alexandrowicz, "Mogul Sovereignty and the Law of Nations", *Indian Yearbook of International Affairs*, Vol. 4, 1955, p. 318.
187. T. J. Lawrence, *Essays on Some Disputed Questions in Modern Inter-*

national Law, Cambridge, 1885, edn. 2, p. 232. Quoted in Dickinson, n. 136, p. 141. See also T. J. Lawrence, *The Principles of International Law,* New York, N.Y., 1913, edn. 5, pp. 275, 288.

188. Quoted in Dickinson, n. 136, pp. 133-134.

189. Quoted in Lande, n. 178, p. 260.

190. James Lorimer, *The Institute of the Law of Nations,* London, 1883, Vol. 2, pp. 170-171.

191. *Ibid.,* p. 260.

192. For attacks on the principle of equality of these and other jurists, see Dickinson, n. 136, pp. 13 ff.; S. W. Armstrong, "The Doctrine of the Equality of Nations in International Law and the Relations of the Doctrine to the Treaty of Versailles", *American Journal of International Law,* Vol. 14, pp. 545 ff.; Wolfke, n. 177, pp. 68 ff.; Arnold McNair, "Equality in International Law", *Michigan Law Review,* Ann Arbor, Mich., Vol. 26, pp. 135 ff.

193. Quoted in Wolfke, n. 177, p. 79.

194. Quoted in Dickinson, n. 136, p. 118.

195. Quoted in Dickinson, *ibid.,* pp. 118-119.

196. According to Lande, 23 text-books written between 1847 and 1887 supported the principle of equality. See Lande, n. 178, p. 260, fn.

197. Quoted in Dickinson, n. 136, p. 127.

198. Quoted in Dickinson, *ibid.,* p. 129.

199. L. Oppenheim, *International Law,* London, 1905, edn. 2, Vol. 1, p. 170.

200. *Ibid.,* p. 171. See for similar views of several other writers Dickinson, n. 136, pp. 115-131; Wolfke, n. 177, pp. 78 ff. P. H. Kooijmans, *The Doctrine of the Legal Equality of States: An Inquiry into the Foundations of International Law,* Leiden, 1964. Lande found support for the principle in about 30 standard works on international law written between 1903 and 1916. Even T. J. Lawrence, a strong opponent of the principle had moderated his views. See Lande, n. 178, p. 26, fn.

201. Dickinson, n. 136, p. 175.

202. See Klein, n. 167, pp. 39-47.

203. See Roberto Herrera, "Evolution of Equality of States in Inter-American System", *Political Science Quarterly,* Vol. 61, 1946, p. 91.

204. The proposed customs union could not be established on the basis of equality. A compulsory arbitration convention was concluded with sweeping reservations relating to matters which, in the opinion of one of the parties, might imperil its independence. See Klein, n. 167, pp. 45-46.

205. See quoted in Klein, *ibid.,* p. 46.

206. See Klein, *ibid.*

207. Quoted in Klein, *ibid.,* pp. 47-48.

208. See Klein, *ibid.,* pp. 48-49.

209. See quoted in Scott Nearing and Joseph Freeman, *Dollar Diplomacy: A Study in American Imperialism,* New York, 1925, p. 83.

210. See Raymond Leslie Budl, "The Protection of Foreign Lives and Property in Disturbed Areas", *Annals of the American Academy of Political and Social Science,* Vol. 144, July 1929, p. 9. John Foster Dulles, "Conceptions and Misconceptions regarding Intervention", *ibid.,* pp. 12 ff.

211. Nearing and Freeman, n. 209, pp. 171-172; see to the same effect J. A. Hobson, *Imperialism: A Study,* London, 1948, pp. 54 ff.

212. Samuel Guy Inman, quoted in Parker Thomas Moon, *Imperialism and World Politics,* New York, 1927, p. 407.

213. See Klein, n. 167, p. 50.

214. Quoted in Klein, *ibid.,* pp. 50-51.

215. Quoted in Klein, *ibid.,* p. 52.

216. Quoted in Dickinson, n. 136, p. 178.

217. Dickinson, *ibid.,* pp. 179-180.

218. Quoted in Klein, n. 167, pp. 53-54.
219. See Klein, *ibid.*, p. 53.
220. Frederick Charles Hicks, "The Equality of States and the Hague Conference", *American Journal of International Law,* Vol. 2, p. 537.
221. Dickinson, n. 136, p. 180; Broms, n. 184, pp. 166-167.
222. See Wolfke, n. 177, pp. 57-60.
223. The results of the First Peace Conference included three Conventions, three Declarations, one Resolution, and six *Vœux,* Broms, n. 184, p. 107.
224. For some ingenious means devised to circumvent the requirement of unanimity in material decisions adopted in the conference, see Broms, n. 184, p. 108.
225. *The Proceedings of the Hague Peace Conference: Conference of 1907,* New York, N.Y., 1920, Vol. I, p. 387. See also the statement of the Persian delegate, Samad Khan, *ibid.*, p. 525.
226. See statement by the American delegate, James Brown Scott, *ibid.*, Vol. 2, p. 321.
227. Scott, *ibid.*, pp. 322, 609 ff.; Joseph H. Choate, *ibid.*, p. 684.
228. Ruy Barbosa, *ibid.*, p. 647.
229. *Ibid.*, p. 628.
230. *Ibid.*, p. 619.
231. *Ibid.*, p. 620.
232. *Ibid.*, p. 150.
233. *Ibid.*, pp. 620-621.
234. *Ibid.*, pp. 647-648.
235. *Ibid.*, p. 653.
236. *Ibid.*, p. 287.
237. *Ibid.*
238. J. B. Scott, *The Hague Peace Conferences of 1899 and 1907,* Baltimore, Md., 1909, Vol. I, p. 458.
239. Scott, *ibid.*, p. 503.
240. See *The Proceedings of the Hague Peace Conferences,* n. 225, p. 168.
241. Scott, n. 238, p. 165.
242. Quoted in Dickinson, n. 136, p. 291.
243. Dickinson, n. 136, p. 290.
244. Quoted in Hicks, n. 220, p. 545.
245. See the quotation in *The Proceedings of the Hague Peace Conferences,* n. 225, Vol. 2, p. 150. Emphasis in the original.
246. Quoted in Scott, n. 238, pp. 165-166.
247. Hicks, n. 220, pp. 535-536.
248. *Ibid.*, p. 559.
249. *Ibid.*, p. 556, emphasis added. See to the same effect Richard Olney, quoted in Hicks, *ibid.*, p. 537.
250. Frederick Charles Hicks, "Equality of Nations", *Proceedings of the American Society of International Law,* Washington, D.C., 1909, p. 247. For similar criticisms by several other writers, see Hicks, n. 220, pp. 538 ff. See also Philip Marshall Brown, "The Theory of the Independence and Equality of States", *American Journal of International Law,* Vol. 9, pp. 326 ff. He declares that "it is unpardonable folly to assume that things which are unequal in almost every important respect are nevertheless equal to each other". *Ibid.*, p. 327.
251. Hicks, n. 220, p. 536.
252. Quoted in Hicks, *ibid.*, p. 244.
253. See Dickinson, n. 136, pp. 307-308.
254. Both sides in this conflict referred in diplomatic papers to the principle as part of their war aims. See Lande, n. 178, p. 262.
255. See Weinschel, n. 135, p. 421.
256. See Dickinson, n. 136, pp. 320-321.

257. See Lande, n. 182, pp. 402-403.
258. Weinschel, n. 135, p. 422; Lande, *ibid.*, pp. 412-413, 417.
259. *Congressional Record*, Vol. 54, Pt. 2, 1917, p. 1742.
260. *Ibid.*, Vol. 55, Pt. 1, p. 3; see also Dickinson, n. 136, pp. 184-186.
261. See quoted in Dickinson, *ibid.*, p. 185.
262. Quoted in Dickinson, *ibid.*, pp. 186-187.
263. See Lande, n. 178, p. 262.
264. See Klein, n. 167, pp. 63-67; Nearing and Freeman, n. 209, pp. 100-108.
265. See Wilson's concept of "the new world in which we live" quoted in Klein, n. 167, p. 67.
266. United States Secretary of State Robert Lansing drafted on 2 December 1918 a plan for an International Council which was "based on international democracy and denies international aristocracy". He was convinced that any departure from the principle of equality "would be a serious error fraught with danger to the peace of the world and to the recognized law of nations, since it could mean nothing less than the primacy of the Great Powers and acknowledgement that because they possessed the physical might they had a right to control the affairs of the world in time of peace as well as in time of war". See Robert Lansing, *The Peace Negotiations*, Cambridge, Mass., 1921, pp. 56-58.
267. David Hunter Miller, *The Drafting the Covenant*, Vol. 1, New York, 1928, p. 146.
268. Miller, *ibid.*, pp. 159-160.
269. Miller, *ibid.*, p. 140.
270. See quoted William E. Rappard, "Small States in the League of Nations", *Political Science Quarterly*, Vol. 49, December, 1934, p. 553.
271. Miller, n. 267, p. 161.
272. Miller, *ibid.*, p. 162.
273. Miller, *ibid.*, p. 162.
274. See Bengt Broms, *The Doctrine of Equality of States as Applied in International Organization*, Helsinki, 1959, p. 118.
275. Wolfke, n. 177, p. 95.
276. Wolfke, *ibid.*, p. 98; Broms, n. 274, p. 117.
277. See quoted in Lansing, n. 266, p. 314.
278. Lansing, *ibid.*, p. 218.
279. Lansing, *ibid.*
280. Lansing, *ibid.*
281. Lansing, *ibid.*, p. 24.
282. Lansing, *ibid.*, pp. 138-139.
283. See Wolfke, n. 177, p. 97.
284. Wolfke, *ibid.*, pp. 105-106.
285. Hymans, quoted in Miller, n. 267, p. 162.
286. Miller, n. 267, Vol. 2, p. 257.
287. Wolfke, n. 177, p. 111. But he did support Big Power dominated Council; Miller, n. 267, pp. 571-572.
288. Miller, n. 267, pp. 147-148.
289. See William E. Rappard, "Small States in the League of Nations", in *Problems of Peace*, London, 1935, Series 9, p. 30.
290. Quoted in Wolfke, n. 177, p. 112.
291. Rappard, n. 289, p. 31; see also Herbert Weinschel, "The Doctrine of the Equality of States and its Recent Modifications", *American Journal of International Law*, Vol. 45, 1951, pp. 417, 425.
292. Wolfke, n. 177, p. 115.
293. See Lansing, n. 266, pp. 164-165.
294. Lansing, *ibid.*, p. 166; see also *ibid.*, pp. 269, 272-274.
295. Lansing, *ibid.*, p. 274.

296. Lansing, *ibid.*, p. 279.
297. Dickinson, n. 136, p. 374.
298. Quoted in Dickinson, *ibid.*
299. See Dickinson, *ibid.*, pp. 365-376.
300. The Council could not make binding decisions; its powers being limited to recommendations. However, the Council could expel by unanimous vote a "Member of the League which has violated any Covenant of the League". Article 16, paragraph 4.
301. Weinschel, n. 291, pp. 426-427.
302. Dickinson, n. 136, p. 378.
303. See Klein, n. 167, p. 75.
304. See Klein, *ibid.*
305. Article 1 of the Italian draft provided:

> "Every State is equal before the law. Inequalities of power cannot be invoked in justification of any act of commission or omission, of any claim or pretension incompatible with the respect due to the international duties". Wolfke, n. 177, p. 113.

306. See Miller, n. 267, p. 461.
307. Miller, n. 267, pp. 462-463.
308. See Robert Lansing, n. 266, pp. 243-244; Klein, n. 167, pp. 81-82.
309. See Lansing, *ibid.*, p. 253.
310. Lansing, *ibid.*, p. 255.
311. See Lansing, *ibid.*, p. 261. Italics in original.
312. Lansing, *ibid.*, p. 256.
313. See R. S. Baker, *Woodrow Wilson and World Settlement*, New York, 1922, Vol. 2, p. 266; also quoted in Klein, n. 167, pp. 82-83.
314. The Committee appointed under Article 14 of the League Covenant consisted of ten members; five were nationals of the Great Powers and the others nationals of the small States. See Manley O. Hudson, *Permanent Court of International Justice, 1920-1942*, New York, 1943, p. 115.
315. *Procès-Verbaux of the Proceedings of the Advisory Committee of Jurists on the Permanent Court of International Justice, 16 June-24 July 1920*, The Hague, 1920, p. 29.
316. *Ibid.*, p. 120.
317. *Ibid.*, pp. 105-106.
318. See *supra*, n. 216, 217.
319. *Procès Verbaux*, n. 315, p. 108.
320. *Ibid.*, p. 134.
321. *Ibid.*, pp. 134-135.
322. *Ibid.*, p. 103.
323. *Ibid.*, p. 108.
324. *Ibid.*, p. 368.
325. *Ibid.*, p. 104.
326. *Ibid.*, p. 122.
327. *Ibid.*, pp. 365-366.
328. See Loder, *ibid.*, p. 124; Altamira, *ibid.*, pp. 102, 116.
329. See Descamps, President of the Committee, *ibid.*, pp. 128-129; 131.
330. See the Report of the Committee, *ibid.*, pp. 700-701.
331. See Wolfke, n. 177, p. 124.
332. *Procès Verbaux*, n. 315, p. 368.
333. See Broms, n. 274, p. 155.
334. Louis B. Sohn, *Cases and Materials on World Law*, Cambridge, Mass., 1950, p. 1145.
335. Sohn, p. 1146.
336. Quoted in Klein, n. 167, p. 110.
337. See Klein, *ibid.*, p. 112.

338. Quoted in Klein, *ibid.*, p. 113.
339. Cordel Hull, *The Memoirs of Cordel Hull,* New York, 1948, Vol. 2, p. 1709; also quoted in Klein, *ibid.*, p. 115.
340. Cf. Broms, n. 274, pp. 159 ff.
341. Fifty governments were represented at the conference.
342. At San Francisco, said Judge Jessup, the "voice of the middle and small Powers is louder, more insistent, and, again comparatively, more productive of results", Philip C. Jessup, *A Modern Law of Nations: An Introduction,* New York, N.Y., 1948, p. 29.
343. L. Wolfers, "The Role of the Small States in the Enforcement of International Peace", *Proceedings of the Academy of Political Science,* New York, N.Y., Vol. 21, p. 24.
344. It is important to note that whereas the States which were given permanent seats in the League Council were actually Great Powers, it was not so in 1945. Thus, China was never considered to be a Great Power, and the United Kingdom and France had lost their Great Power status as a result of the Second World War. See Weinschel, "The Doctrine of the Equality of States and its Recent Modifications", *American Journal of International Law,* Vol. 45, p. 423; Harol Sprout, "The Role of the Great States", *Proceedings of the Academy of Political Science,* Vol. 21, pp. 284, 286. See also Quincy Wright, "History and Influence of the U.N. Veto", *Virginia Law Weekly,* Charlottesville, Va., 7 December 1961. According to Professor Wright, the Great Power status in the United Nations does not correspond to any rational criterion for determining Great Powers today. He, therefore, remarks that "the Great Powers veto in the United Nations is a product of history, not of reason".
345. The Charter has been amended to include ten non-permanent members in the Security Council.
346. *Report to the President on the Results of the San Francisco Conference* by the Chairman of US Delegation, Dept. of State Publication 2349, Washington, D.C., 1945, p. 76.
347. Representative of Cuba, UNCIO doc., Vol. 11, New York, 1945, p. 351.
348. Mexican delegate, *ibid.*, p. 333.
349. The Netherlands delegate, *ibid.*, p. 314.
350. *Ibid.*, p. 474.
351. Quoted by Roberto Herrara, "Evolution of the Equality of States in Inter-American System", *Political Science Quarterly,* Vol. 51, p. 111.
352. Representative of Great Britain, n. 347, p. 322.
353. Soviet Representative, *ibid.*, p. 332.
354. *Ibid.*, p. 475.
355. See quoted in Senator Tom Connally, *My Name is Tom Connally,* New York, 1954, p. 283. Italics in original.
356. Connally, *ibid.*, see also United Kingdom Representative, *UNCIO* doc., Vol. 11, p. 475.
357. UNCIO doc., Vol. 11, p. 350. See also Wellington Koo, *Voting Procedures in International Political Organizations,* New York, 1947, pp. 224 ff.
358. Lebanese Representative, *ibid.*, p. 486; see New Zealand's Representative, *ibid.*, pp. 170 ff.; Peru, *ibid.*, p. 457; Cuba, *ibid.*, p. 460; Honduras, *ibid.*, p. 460.
359. The Netherlands delegate, *ibid.*, p. 330. See also representatives of Peru, *ibid.*, p. 166; Cuba, p. 459; Argentina, p. 473; Uruguay, p. 460; Australia, p. 492.
360. Cf. Eagleton, "Covenant of the League of Nations and Charter of the United Nations: Points of Difference", *Department of State Bulletin,* Washington, D.C., Vol. 13, pp. 263-269.
361. UNCIO doc., Vol. 6, p. 332.
362. P. E. Corbett, *Law and Society in the Relations of States,* New York,

N.Y., 1951, pp. 264-265. See also Broms, n. 274, p. 166, where he remarks that the term "sovereign equality" "signified merely an act of homage paid to the doctrines of equality and sovereignty of States and that this term was not intended to govern the position between the Members of the United Nations in the functional aspect".

363. There is also no equality of representation in the Trusteeship Council. On the other hand, equality principle is respected in the constitution of the Economic and Social Council. See Weinschel, n. 291, pp. 429-430.

364. See Klein, n. 167, pp. 117-123.

365. Leland M. Goodrich, *The United Nations,* New York, N.Y., 1959, p. 111.

366. See Weinschel, n. 344, pp. 432-434.

367. See Klein, n. 167, pp. 128-129.

368. See O. W. Wolters, "Culture, History and Religion in Southeast Asian Perspectives", in R. P. Anand and Purificacion Quisumbing (eds.), *Asean: Identity, Development and Culture,* Manila, 1981, pp. 1-49, where he points out that the ancient Asian Societies were based on overlapping *mandalas,* or "circles of Kings", in which one powerful king, identified with divine and universal authority, claimed personal hegemony over the others who in theory were bound to be his obedient allies and vassals.

369. A. C. Coolidge, *The United States as a World Power,* rev. ed., New York, 1918, p. 2.

370. See William E. Rappard, "Small States in the League of Nations", *Political Science Quarterly,* Vol. 49, No. 4, December 1936, pp. 547-549.

371. Rappard, *ibid.,* p. 549.

372. See *supra,* Chap. III, n. 267 and text relating thereto.

373. See quoted by William T. R. Fox, "The Super Powers: Then and Now", *International Journal,* Canadian Institute of International Affairs, Vol. 35, No. 3, Summer 1980, p. 418.

374. Percy E. Corbett, "Social Basis of a Law of Nations", *Collected Courses,* Vol. 85 (1954-I), p. 509.

375. Corbett, *ibid.,* p. 509.

376. L. Oppenheim, *International Law: A Treatise,* Lauterpacht, ed., New York, N.Y., 1955, edn. 3, Vol. I, pp. 163-267. Also cf. edn. 2 of the same book (published in London in 1905), where the fourth consequence is not given.

377. P. J. Baker, "The Doctrine of Legal Equality of States", *British Year Book of International Law,* London, Vol. 4, p. 12. He relies for this opinion on the analysis of Frederick Pollock, who attributes similar rules to the independence of States. See *ibid.,* pp. 11 ff.

378. J. L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace,* Sir Humphrey Waldock, ed., Oxford, 1963, edn. 6, pp. 131-132. Also Wellington Koo, Jr., *Voting Procedures in International Political Organizations,* New York, N.Y., 1947, p. 4.

379. John Westlake, *International Law,* London, 1910, Vol. I, p. 321 and A. D. McNair, "Equality in International Law", *Michigan Law Review,* Ann Arbor, Mich., Vol. 26, p. 134.

380. Baker, n. 377, p. 10. According to Brierly, "the doctrine of equality is worse than merely redundant, for it may easily become seriously misleading". Brierly, n. 378, p. 132.

381. Baker, n. 377, p. 19.

382. Edwin De Witt Dickinson, *The Equality of States in International Law,* Cambridge, Mass., 1920, pp. 334-335.

383. See McNair, n. 379, p. 136.

384. Dickinson, n. 382, p. 4.

385. P. H. Kooijmans, *The Doctrine of the Legal Equality of States,* Leiden, 1964, p. 101.

386. United Nations, *Reports of International Arbitral Awards (RIAA)* Vol. I, pp. 331, 338.
387. *RIAA*, Vol. 10, pp. 523-524.
388. See, for instance, *David J. Adams* case (1921), *ibid.*, Vol. 6, p. 89; *Ottoman Debt Arbitration* in L. C. Green, *International Law through the Cases*, London, 1951, p. 155; *Corfu Channel (Merits)* case, *ICJ Reports 1949* p. 15; and "El Salvador versus Nicaragua", in *American Journal of International Law*, Washington, D.C., Vol. II, p. 719.
389. Ann Van Wynen Thomas and A. J. Thomas, "Equality of States in International Law: Fact or Fiction?", *Virginia Law Review*, Charlottesville, Va., Vol. 37, p. 803.
390. *Ibid.*, p. 822.
391. See Chapter III, n. 144, 145 and 158 and texts relating thereto. See also Robert W. Tucker, *The Inequality of Nations*, New York, 1979, p. 4.
392. Brierly, n. 378, p. 132. For similar views, see quotations in Kooijmans, n. 385, pp. 222 ff.
393. Dickinson, n. 382, p. 335; see also p. 4.
394. Dickinson, n. 382, p. 81.
395. Quoted *ibid.*, p. 105.
396. Quoted *ibid.*, p. 106.
397. Pitt Cobbett, *Cases and Opinions on International Law*, London, 1909, edn. 3, Vol. I, p. 50 and Roberto Herrera, "Evolution of Equality of States in Inter-American System", *Political Science Quarterly*, New York, N.Y., Vol. 61, p. 96.
398. Quoted in Corbett, n. 374, p. 509.
399. See quoted in Roberto Herrera, "Evolution of Equality of States in Inter-American System", *Political Science Quarterly*, Vol. 61, 1946, p. 96.
400. Quoted in Dickinson, n. 382, p. 107.
401. *Ibid.*
402. United States Senate, *Venezuelan Arbitration before the Hague Tribunal 1903*, Senate Doc. 119, Washington, D.C., 1905, p. 240.
403. *Ibid.*, p. 430. See also statements on behalf of France and Spain to the same effect, *ibid.*, pp. 898 ff. and 914.
404. *Ibid.*, p. 975. Emphasis added. See also statement by the Italian representative, *ibid.*, p. 1028.
405. *RIAA*, Vol. 9, pp. 107-110.
406. Dickinson, n. 382, p. 167; and Kooijmans, n. 385, p. 102.
407. Julius Goebel, *The Equality of States*, New York, N.Y., 1923, p. 78; Kooijmans, n. 385, p. 245; and Adolf Lande, "Revindication of the Principle of Legal Equality of States, 1817-1914", *Political Science Quarterly*, Vol. 62, pp. 415 ff. Lande says: "All individual rights of States as granted by law, that is, by the general rules of international law, are equal in regard to their capacity for rights (legal personality) and their capacity of action." Cf. Marek Stanislaw Korowicz, "Some Present Aspects of Sovereignty in International Law", *Collected Courses*, Leiden, Vol. 102, pp. 34 ff.
408. See quoted in Dickinson, n. 382, p. 116. See to the same effect Carvazza Amaeri, *ibid.*, p. 117.
409. Dickinson, n. 382, pp. 4, 151-152; 334-335, and Thomas and Thomas, n. 389, p. 498.
410. Quoted in Kooijmans, n. 385, p. 245.
411. Sir Ivor Jennings, *The Law and the Constitution*, London, 1943, edn. 3, pp. 291-292.
412. *Ibid.*, p. 49; Dickinson, n. 382, pp. 189 ff. Cf. Herrera, n. 397, pp. 94 ff.
413. Thomas and Thomas, n. 389, pp. 799 ff. See also McNair, n. 379, pp. 138 ff. and Koo, n. 378, p. 7.

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689. UN doc. S/AC.16/SR.10 (1971), p. 5.
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691. See the French representative in UN doc. S/AC.16/SR.10 (1971), pp. 10-11, and Argentine delegate, *ibid.*, p. 5; see also Gunter, n. 656, pp. 115-116; Schwebel, n. 686, pp. 112-113; Gunter, n. 655, pp. 478-482.
692. UN doc. S/AC.16/Conf. Room Paper 8 (1971), p. 4; also quoted in Gunter, n. 656, pp. 118-119.
693. *Ibid.*, pp. 4-5.
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699. *Ibid.*, p. 13.
700. *Ibid.*
701. *Ibid.*
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703. *Ibid.*, p. 13.
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705. Gunter, n. 656, p. 115.
706. Quoted in Gunter, *ibid.*
707. See, n. 692, pp. 14-15.
708. *Ibid.*, p. 56.
709. *Ibid.*
710. *Ibid.*, pp. 56-57.
711. *Ibid.*, p. 57, note.
712. See Sheila Harden (ed.), *Small is Dangerous: Micro States in a 'Macro World'*, Report of the Study Group of the David Davies Memorial Institute of International Studies, London, 1985, pp. 18-19.
713. *Ibid.*, p. 19.
714. *Ibid.*
715. Gunter, n. 656, p. 123; Gunter, n. 655, p. 484.
716. Some Microstates, such as Western Samoa, Tonga and Nauru did not seek admission to the United Nations. Earlier, some European States such as Liechtenstein, San Marino, Monaco and the Vatican City did not join the United Nations. See Gunter, n. 655, p. 485. For discussion of the "Pacific Way", see Peter J. Boyce and Richard A. Herr, "Micro-State Diplomacy in the South Pacific", *Australian Outlook*, Vol. 28, 1974, pp. 24-35.
717. See *Basic Facts about the United Nations*, New York, 1984, p. A.7.
718. See *Vulnerability*, n. 664, pp. 91-92, 116.
719. See Roger Fisher, "The Participation of Micro-States in International Affairs", *Proceedings of the American Society of International Law*, 62nd Annual Meeting, 1968, p. 165.
720. Fisher, *ibid.*, p. 166.
721. *Ibid.*
722. S. Ramphal, quoted in *Vulnerability*, n. 664, p. 120.
723. The United States, the United Kingdom and France have been using small Pacific Islands for nuclear tests since 1946. The nuclear tests carried out on the Bikini and Enewetak Atolls (Marshall Islands) between 1946 and 1958 by the United States left them desolate and dangerously contaminated. The United Kingdom conducted H-bomb and A-bomb tests on Johnston Island and Christmas Island between 1957 and 1963. The French have been testing nuclear weapons at Fangatanfa and Mururoa Atolls in French Polynesia since the early 1960s. See Harden, n. 712, pp. 184-185.
724. See *Vulnerability*, n. 664, pp. 14-16, Chap. 3, pp. 23 ff.

725. Quoted in Harden, n. 712, p. 7.
726. Quoted in Harden, *ibid.*, p. 24.
727. See Professor P. J. Boyce, "Micro-States and Their Role in International Affairs", *Australian Foreign Affairs Record,* Vol. 48, January 1977, p. 28; Fisher, n. 719, pp. 168-170; W. J. Brisk, *The Dilemma of a Mini State: Anguilla,* Columbia, S.C., 1969, p. 90; S. A. de Smith, "Exceedingly Small", in J. E. S. Fawcett and R. Higgins (eds.), *International Organizations: Law in Movement,* London, 1974, p. 65; see also *Vulnerability,* n. 664, p. 82.
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729. See quoted in Harden, n. 712, pp. 5-6.
730. Dag Hammarskjöld, "The Vital Role of the United Nations in a Diplomacy of Reconciliation", *United Nations Review,* New York, Vol. 4, May 1958, p. 7.
731. See Sydney Bailey, *The General Assembly of the United Nations,* London, 1960, p. 10; Alfred Zimmer. "The Great Powers and the League of Nations", *Problem of Peace,* Ninth Series, London, 1935, p. 55; but cf. William E. Rappard, "Small States in the League of Nations", *Problems of Peace, ibid.,* pp. 49, 51.

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