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INTER-STATE RELATIONS IN ASIA

By
PROFESSOR K. A. NILAKANTA SASTRI

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'THE modern Law of Nations,' says Oppenheim,[1] 'is a product of Christian civilization. It originally arose between the States of Christendom only, and for hundreds of years was confined to these States. Between Christian and Mohammedan nations a condition of perpetual enmity prevailed in former centuries. And no constant intercourse existed in former times between Christian and Buddhistic states.' Likewise Ross: 'According to its historical origin International Law only comprises Christian European States', though he adds parenthetically, 'the fact that in other parts of the world too similar particular systems may have arisen is thus disregarded.'[2] Oppenheim who puts the age of Modern International Law at about four hundred years, is fully aware of the inchoate nature of this law in earlier times and in other countries outside Europe. He writes: 'However, the roots of this law go very far back into history. Such roots are to be found in the rules and usages which were observed by the different nations of antiquity with regard to their external relations. But it is well known that the conception of a Family of Nations did not arise in the mental horizon of the ancient world. Each nation had its own religion and gods, its own language, law and morality. International interests of sufficient vigour to wind a band around all the civilized States, bring them nearer to each other, and knit them together into a community of nations, did not spring up in antiquity. On the other hand, however, no nation could avoid coming into contact with other nations. War was waged and peace concluded. Treaties were agreed upon. Occasionally ambassadors were sent and received. International arbitration was resorted to. International trade sprang up. Political partisans whose cause was lost often fled their country

[1] pp. 26 and 27 (see Bibliography).
[2] pp. 97-8.

and took refuge in another. And, just as in our days, criminals often fled their country for the purpose of escaping punishment. Such more or less frequent and constant contact of different nations with one another could not exist without giving rise to certain fairly consistent rules and usages to be observed with regard to external relations. These rules and usages were considered to be under the protection of the gods ; their violation called for religious expiation.'[3]

This shrewd and summary account of the ancient history of international relations was followed in Oppenheim's treatise by ' a glance at the respective rules and usages of the Jews, Greeks and Romans'. In this paper an endeavour will be made to give a similar sketch relating to Asian nations. It is well known that the range of Modern International Law is no longer confined to Christian or European nations and the concept of the Family of Nations now virtually covers the entire world as may be readily seen from a perusal of the Charter of the United Nations. It is usual to date the breach into the European character of the law from the admission in 1783 of the Circle of American Confederation and in the first decades of the nineteenth century of the States of Central and South America which had just become independent. By the Treaty of Paris (1856) Turkey was admitted into the ' European Concert ', which thus abandoned its exclusively Christian character. But contacts of European States with Asian States began long before the nineteenth century, and for a long time the Christian European States made it a point of treating Asian and indeed all non-European States as in some sense ' backward ', although they had little scruple in treating them as sovereign states when it came to a matter of advantages secured for themselves by means of treaties or forced capitulations. To quote the high authority of Oppenheim once again :[4] ' Before the First World War the position of such States as Persia, Siam, China, Abyssinia, and the like was to some extent doubtful. Their civilization had not yet reached that condition which was necessary to enable their governments and their population in every respect to understand, and to carry out, the rules of International Law. On the other hand, international intercourse

[3] Sec. 37b.
[4] Sec. 28(5).

had widely arisen between these States and the States of the so-called Western Civilization. Many treaties had been concluded with them, and there was full diplomatic intercourse between them and the Western States. China, Persia, and Siam, had even taken part in The Hague Peace Conferences. Since the Second World War China has acquired the status of a Great Power.' Japan, though a non-Christian power, became a full member of the Family of Nations the moment her ability to wage a Modern War with success against Russia was made clear.

We shall now sketch briefly the landmarks in the growth of inter-state relations in Asia in ancient times, with some attention to contacts with European states and to any obvious similarities in practice and theory between Europe and Asia, and also trace the stages by which in modern times the non-European states of the East found entry into the sphere of International Law. This is not and cannot in the present state of research seek to be an exhaustive or systematic study of this very interesting side in the history of International Law, but is calculated to be a preliminary survey of the ground to be covered in detail by future study. It will give a little more attention to Indian developments than to those in other countries.

One of the earliest groups of treaty-records in the history of the Indo-European World is that discovered at Boghaz-Koi between the Hittite King Shubbiluliuma and his vassal the Mitanni King Mattiuaza of about 1400 B.C.[5] The treaty which contains an invocation to the gods including the Indo-Aryan deities of Mitra, Varuna, Indra and the Nasatyas was cemented by a marriage alliance—Mattiuaza marrying his suzerain's daughter and making her his queen and agreeing to take no second wife as her rival.

The Persian conquest of North-Western India brought most of the Indus Valley and possibly a considerable part of the Punjab under Persian domination as we see from the inscriptions of Darius and the account of Herodotus. It has been a moot question if the exploration of the Indus and the Persian Gulf by Skylax was undertaken before the conquest or, what

[5] CHI. I, pp. 110-11 ;
CAH. II, p. 302. also p. 13.

seems more likely, after the conquest which made the middle and lower Indus territorial waters of the Persian empire. On the former alternative, it would be an instance of an advanced and well-organized empire extending the sphere of its influence over adjacent territory occupied by relatively unorganised peoples with a view to eventual annexation by conquest,—an anticipation of modern colonial practice by many centuries.

The Persian empire had much to do with Greek States even after the decisive repulse of its attempt to overcome Greece and subjugate the city-states of the country in two formidable invasions. From the later contacts between the Persian empire and the Greek state system two treaties may deservedly find mention here as notable examples of Eurasian relations. First is the Peace of Callias concluded in 448 B.C. as the result of negotiations carried on by Callias at Susa.[6] It has been doubted if we have got a correct record of the terms of the treaty which as they stand appear to be suspiciously favourable to Athens. The Athenians were to abstain from attacking or interfering in Persian territory, and Artaxerxes, the Persian Emperor, was to recognise the independence of the Greek Cities in the littoral of Asia Minor and keep his men-of-war out of the Aegean. In any case, there was unbroken peace between the two parties for a period of thirty-six years after the Treaty. More than half a century later, we have the Peace of Antalcidas (387 B.C.). Known also as the King's Peace, the terms of this agreement were reached at what we should now call an International Congress held at Sardes and attended by representatives of many city-states : it was agreed (1) that the city states in Asia and the Islands of Calzomenae and Cyprus belonged to Artaxerxes of Persia ; and (2) that the rest of the city-states were independent with the exception of Lemnos, Imbros and Scyros which were to continue to belong to Athens as before. It was also agreed that those who opposed the terms of this Peace would be treated as enemies by the Persian Emperor and the Greek States which accepted the terms of the peace—an early instance of collective security. The clauses which were finally incorporated in the treaty were first promulgated in a manifesto to the Congress issued by the Persian Emperor. Opinion in

[6] Laistner, p. 20.

Greece as represented by Isocrates and other publicists long felt it a humiliation for the Greek cities to have submitted to the ukase of an autocrat.[7]

When Alexander was about to invade India after his overthrow of the Persian Empire, the King of the frontier state of Taxila sent him an embassy which met him beyond the Indian borders and solicited his friendship. When Alexander actually crossed the Indus, he was sumptuously entertained for several days by Ambhi, the son of the Taxilan King who had first solicited Alexander's friendship and died in the meanwhile. From Taxila Alexander sent his messengers to the courts of the different Indian princes of the Punjab demanding their submission ; many complied and sent him presents. Porus, however, sent him a defiant reply and the valour he displayed in the battle of the Jhelam evoked the admiration of Alexander and had no small part in promoting resistance in the Greek army to further advance into India. The premature death of Alexander shattered his romantic plans for ' the marriage of Asia and Europe '. But the succession states that arose on the break up of his empire, particularly Syria and Egypt, maintained long and friendly relations with the Mauryan empire of India after Chandragupta's repulse of Seleucus's initial attempt to recover the Indian territory that had been temporarily overrun by Alexander. The presence of several Greek ambassadors (of whom Magasthenes is the best known) in the Court of Pataliputra, and the despatch of letters and messengers to the Greek courts by the Indian Emperors are well authenticated, though few details are forthcoming. Under Asoka these exchanges became more frequent and that great emperor claims that he sent his *dutas* (ambassadors) to distant countries outside his empire including Syria, Egypt, Macedon, Epirus and Cyrene, both for preaching the *Dhamma* (Buddhism) among the rulers and peoples of these countries and for the establishment of hospitals for men and animals and gardens for the growth of medicinal herbs and plants.

The mention of the Mauryan empire naturally leads to a brief consideration of the nature and theory of Indian and Asian imperialism. Legendary conceptions of an Oecumenical empire

[7] Ibid, pp. 185-6.

make their appearance very early in Indian thought. The *Aitareya Brāhmaṇa* contains a long list of emperors who claimed universal rule and celebrated the *Aindra-Mahābhishekā*, i.e. the Great Coronation which marks a king as Indra (King of the Gods) on earth. Kings of the Ikshvaku (solar) line to which Rāma belonged are said in the *Rāmāyaṇa* to have ruled the whole earth. The Buddhists had the conception of Dhārmika Dharmaraja who became a *Chakravarti* universal emperor by the aid of a blazing mystic wheel (*Chakra*) which moved in the air in front of his armed forces conducting them to the conquest of all the quarters of the world. Asoka was obviously under the influence of this concept when, after the single war of his reign waged for the conquest of Kalinga, he renounced war as an instrument of policy in the hour of his victory, and turned to *Dhamma Vijaya*, conquest by or for the sake of (the spread of) Dhamma, the Law (of Buddhism). Before Asoka's time, Kautilya gave a realistic turn to the legendary conception of Chakravarti by his statement in the *Arthāsāstra*[8] that the whole of India from the Himalaya to Cape Camorin constituted the *Chakravarti-Kshetram*, the field of the Emperor (and his operations). Though the complete political unity of India was seldom attained in the past and was only a passing phase which lasted for somewhat a century and a half in the period of British rule in India, the ideal continued to fascinate the minds of India's rulers ; religious texts on the performance of imperial sacrifices like Rājasūya and Aśvamedha, the gradation of royal titles as Rāja, Māhārāja, Samrāt and Sarvabhauma which finds a place in our books on polity, and the practice of powerful rulers performing the *svamedha* are evidence of this. The *aśvamedha* included a challenge to the neighbouring kings ; the sacrificial horse was let loose to roam over all the political units in the neighbourhood for the period of a whole year ; any king desirous of taking up the challenge might seize the horse and hinder its free movement ; then he had to be prepared for a fight with the claimant for suzerainty. If no one obstructed the movement of the horse or the suzerain-to-be successfully overcame all opposition, he then performed the sacrifice in due form and secured for himself a sort of hegemony over

[8] —IX, 1.

all the rulers whose kingdoms had been touched by the horse in its peregrination. There are many historical examples of this to be gathered from the inscriptions of ancient India.

Indian imperialism did not generally lead to any administrative centralization or a systematic exploitation of subject countries. The Mauryan empire was an exception in this respect, and there is very good reason to think that its administrative system as well as the thought of Kautilya as expounded in his unique treatise on *Arthaśāstra* was greatly influenced by the models of the Achaemenid system of Persia, many elements of which were retained and developed to greater perfection by Alexander and his successors. But this attempt at a centralized political unification of India disappeared with the Mauryan empire, to be revived by the British long after ; even the British changed their policy after 1857 and halted the progress of integration which was carried to a logical finish within the first years of freedom after the British withdrawal by the statesmanship of Vallabhbhai Patel. The tradition of unity in the truncated Indian Union is being put in some jeopardy by somewhat unbridled enthusiasms ; we may hope that there will be a recovery before it becomes too late. But the empires of Indian history as a rule were loose and temporary formations, little more than a formal recognition of the suzerainty of a powerful ruler or line of rulers by kings of neighbouring states who are generally required to be present at the suzerain's Court in person or by deputy on ceremonial occasions, send presents or tribute annually, and contribute military contingents to the imperial army in case of war. In fact the relations between the suzerain and vassals more often resembled those between different states than between a central and provincial governments. This was recognized by some states, the Rāshṭrakūta empire (8-11 century A.D.) for instance, appointing officers known as *Sandhivigrahis* (Ministers of peace and war) for the different regions of the state. An inscription records that a Rāshṭrakūṭa emperor used to send courtesans of his choice to adorn the courts of his vassals where they served as spies on the suzerain's account. Such use of women in diplomatic work of a shady character is not unknown to modern European States though seldom mentioned openly. The Soviet Union furnishes perhaps a distant analogy to the organization of an empire-

state in ancient and mediaeval India though there is far greater control from the centre in Russia than in the Indian analogies. Nussbaum writes :[9] 'Regarding the fundamental Soviet idea of a multinational state, expressed in its very name, "Union of Soviet Socialist Republics", it has, of course its international bearings, but it pertains basically to constitutional law. In reality, also, the Soviet empire is far from being an "international" organization, considering the absolutely dominant position of the Central government.'

Mention may be made also of the Indian conception of Law and Sovereignty which applies to the field of International Law as much as to state law. For the Indian theorist of old, law derived its validity from its conformity to Dharma ; Dharma is linked up both historically and logically with the vedic concept of Ṛita or universal order or the nature of things. The nearest approach to this in Western thought is found in the idea of the Law of Nature and its conformity to right reason. Manu's Code and the Mahābhārata contain a significant legend on the origin of royal power or sovereignty (Daṇḍa) and its nature. Here we learn that Daṇḍa is an emanation from the creator (Brahmā), calculated to preserve the universal order. Manu identifies it with Dharma and says *Daṇḍam Dharmam vidur budhāh*, 'the wise recognize Dharma in Daṇḍa'. By fear of Daṇḍa, says Manu, echoing a well-known text of the Upanishads, the Sun and the Moon perform their allotted duties, the rains fall in proper time, and gods, men and things play their respective parts in the maintenance of the intricate balance of the world order. More particularly, in the sphere of polity, the king is able to avail himself of the Daṇḍa and its force in the discharge of his duties, only so long as he conforms to Dharma. The moment he breaks the law and begins to act in an arbitrary way, the Danda deserts him, he sinks to the level of a common felon and often perishes with his family and relatives as the result of a popular rising.[10] The King, in other words, is as much subject to law as all the others in the State, and law is the true sovereign. And this view of the supremacy or sovereignty of law applies to all political relations, including those among different states. Among modern

[9] p. 289

[10] Manu, Ch. VII ; see also the present writer's paper in the last Year Book (1952).

Western writers on law, Krabbe may be said to furnish a close parallel to this ancient line of Indian thought. For according to him,[11] acts of state are legitimate and valid only to the extent they conform to the rule of law. International Law comes into existence when people from different states, under the impact of external events, widen their sense of right so as to include international relations. The resulting rules of international law constitute real law. Their source is not the will of the States but the consciousness of law felt by those individuals whose interests are affected by the rule or who, as members of the government, judges, and so forth, are constitutionally called upon to take care of those interests. National and international law, therefore, have essentially the same quality, and both are superior to state rule as such. Krabbe carries this monistic line of thought one stage further and visualises the essentials of a world state, though he developed his system of thought prior to World War I. He says that international law, being the law of the larger community, takes precedence over the national law and points the road to a world-state enforcing a world-wide sense of right in every field. Likewise Ross points out the need for a legislative organ in the realm of international law and the abrogation for the future of the dogmas of the sovereignty and equality of States. He says :[12] ' What is required is not a decision on the basis of law already in force, but a political revision, of extant treaties and relations of power.'

To resume the thread of our historical sketch. The fall of the Mauryan Empire was followed by the incursion into India from the North-West of various foreign tribes among whom were Greeks, Śakas, Pahlavas and Kushānas. They came as immigrants and conquerors, founded kingdoms and cities, and introduced new elements, ethnic, linguistic and cultural, into India. But they were so fascinated by Indian Religion and Polity, that most of them virtually became Indians. They doubtless brought India into closer contact with Central and Western Asia and the Roman Empire, linked up Indian trade with the silk route and other important trade routes, and in some ways reproduced a foreign milieu on Indian soil as we see

[11] Summary in Nussbaum, pp. 283-4.
[12] p. 56

from the description of Sakala, King Milinda's (Menander's capital), in a well-known Pāli Buddhist text, the *Milinda Panha* (Questions of Milinda), a description which recalls the main traits of a Greek city. But their advent raised no problems of International Law as they virtually fitted into the Indian State system such as it was. We have the instance of Antialcidas, the Greek King of Taxila, sending an ambassador Heliodorus to the Śunga (Indian) court of Vidiśā (Bhilsa) in the second century B.C.; the ambassador describes himself as a *bhāgavata*, i.e. a worshipper of Bhagavat (Vishṇu) and sets up a Garuḍa column in stone bearing a Sanskrit inscription. So too the advent of Huns and other tribes in later times, however important historically, is of no great interest from our point of view. The case of the Muslims is different ; they came as conquerors ; their earlier incursions were acts of war attended with much ruthless destruction of life and property, and they later became rulers by right of conquest who just tolerated their subjects who had, in theory, to purchase their lives and freedom to retain their own religion by the payment of a tax and by submission to humiliation.

Much more interesting are the developments due to the maritime contacts of South India. Some reference was made on a previous occasion[13] to the instances of trade settlements of foreign merchants on Indian shores who were allowed to retain their personal laws and habits and form a kind of *imperium in imperio*. We hear first of Yavanas—a term which includes Graeco-Romans and Arabs both before the foundation of Islam and after. A temple of Augustus is mentioned in Muziris, a port on the West Coast, and Muslim travellers and historians from the eighth century onwards make categorical statements on the immunities enjoyed by their compatriots in the western States of India. This, however, is not an instance of exterritoriality or capitulation as understood in modern international law ; for there is no evidence that the settlers in India were under the jurisdiction of their states of origin or that those states claimed any such jurisdiction. The Indian state was a pluralist state, a sort of federation of half-sovereign social units, each free to regulate its own affairs according to ancestral law and custom ; the addition of one more group to the federation did not affect

[13] Year Book 1952.

the set up. In its relations with individuals and groups of the state in which it had settled, it had to be governed by the law of that state. An interesting instance of this respect for personal law and alien custom comes from the reign of the Vijayanagar ruler Devarāya II (1426-46) who remodelled his armed forces by enlisting Muslims for service in his wars against the neighbouring Muslim Kingdom of the Bahmanis, and caused a Quran to be placed prominently in front of the throne to enable his Muslim employees to perform the obeisance in the darbar without violence to their religious scruples. The celebrated pillar inscriptions of Motupalle (1244 and 1358)[14] assuring shipwrecked foreign traders exemption from the traditional law by which their cargoes became forfeit, finds its counterpart in the mediaeval law of Europe. The 'Italian maritime states, Venice and Genoa among them, concluded conventions with the Byzantine Emperor.[15] Such states also entered into agreements with other Oriental princes, Christian as well as Mohammedan, including among the latter the rulers of Egypt, Tunis, and Syria. These treaties were essentially commercial in nature, providing, among other things, mutual protection from piracy and abolition of the ancient law of shipwreck, which gave the local inhabitants or their overlords the right to the wreck, its cargo, and even the persons of the ship-wrecked. In many cases the Italian merchants obtained the right to settle in separate quarters of the foreign seaports and to enjoy there privileges even beyond those obtained by the Hanseatic League. These settlements became the nucleus of the large Italian populace in the Levant.' The analogy between these Italian settlements on foreign soil and those of Arabs on the West Coast of India leading to the rise of the Moplahs of Malabar is indeed quite obvious. We may note in passing, that there is clear evidence of the exchange of embassies between Persia under Khusrau and the Deccan under Palakesin II of Badami in the first half of the seventh century.

The celestial Empire of China disdained to regard any nations outside China as other than barbarians. China owed much to India in religion and art, and the debt was acknowledged by the scores of learned Chinese pilgrims who travelled in the

[14] Ibid.
[15] Nussbaum, pp. 37-8.

'Western land' visiting its shrines, and gathering manuscripts, teachers, relics, icons and spiritual knowledge which they carried to China. But politically the Empire was first in the world, and all Asia tacitly allowed the claim. The dynastic annals of China are full of the records with dates of the 'embassies' which visited the Chinese Court from the different states of Southern and South-Eastern Asia bringing 'tribute' and returning to their respective countries with 'presents' from the Emperor. It has been rightly pointed out that these 'tributes' and 'presents' are really the diplomatic names for imports and exports forming part of the regular commercial relations of China with the rest of Asia. We shall be led too far if we seek to go into these 'embassies' in any detail, and it is not necessary to do so as no questions of law are involved in them. We may note, however, that Harshavardhana (seventh century) the emperor of Northern India maintained diplomatic relations with China, perhaps across Nepal and Tibet; that the Pallava Narasimhavarman sent an embassy by sea (720) soliciting, among other things, Chinese help against the growing power of the Tibetans in the Bay of Bengal; and we may also note the Chola embassies of Rajaraja I, Rajendra I and Kulottunga I which reached the Chinese court in the years 1016, 1038 and soon after 1070.

Buddhism which brought China and India so close together for many centuries also drew other states towards India. After the quasi-legendary relations between Asoka and Ceylon, the island kingdom figures in the Nagarajunakoṇḍa inscriptions (third century A.D.) as having built a monastery for the comfort of Sinhalese pilgrims and monks who often went there for study and worship. King Meghavarna of Ceylon (A.D. 352-79) sent an embassy to the contemporary Gupta Emperor Samudra Gupta with rich presents of Ceylonese gems seeking permission to build a monastery and rest house in Bodh Gaya for the convenience of visitors from Ceylon; the permission was readily given and the magnificent monastery that came up as a result was still flourishing in splendour when Hiuen Tsang visited it in the seventh century. The vast maritime empire of the Śailendras of Java and Sumatra also sought the permission of Indian rulers to provide facilities on Indian soil for their subjects visiting the sacred spots of Buddhism. At the

request of Balaputradeva, Śailendra Viceroy of Sumatra, Devapala of Bengal (C. 850) not only allowed him to build a new monastery at Nalanda, the famous centre of learning in Bihar, but himself presented a number of villages to the new foundation. Likewise in 1006 another Sailendra King secured permission of the Chola Rajaraja I to build a monastery for his subjects at Nagapaṭṭinam (Negapatam), the first port of landing in South India in those days for persons who crossed the Bay from Malaysia, and like Devapala of Bengal, Rajaraja also endowed the new foundation, and this was confirmed by his son Rajendra a few years later when the foundation was completed. The affairs of this Vihara became again the subject of international regulation at the end of the eleventh century when another embassy from Sumatra and Malaya visited the Chola Kulottunga I for this purpose ; and this, in spite of the fact that the relations between the Cholas and Śailendras had not run a smooth course and there had been at least two occasions of conflict—one when Rajendra I had sent a successful naval expedition against the island empire to break its monopolistic control of the trade routes to China, and the second when a Chola King, Vīrarajendra (C. 1068), helped a Śailendra prince to regain his throne after he had been worsted in a civil war.

Enough has been said to show that the states of Asia constituted a Family of Nations with established laws, conventions and practices of their own, long before the rise of the modern European Law of Nations, and a strict regard to the facts of history may lead to a modification of Oppenheim's categorical denial of the concept of a community of Nations among the ancient and mediaeval states outside Europe.

We may now turn to a brief review of the steps by which non-European States, particularly Asian States, entered the European system which had its roots in Roman Law and Christianity until the European and Christian character of international law gave place to a universal world order. From the Middle Ages European thinkers have differed among themselves in their attitude to non-Christian States. The question whether 'infidels' were capable of exercising sovereignty at all was debated ; St. Thomas Aquinas (1227-74) and Pope Innocent IV held that they should be recognised as such by the

Christian states ; Wycliffe and the Council of Constance held the opposite view, and later opinions have varied widely some granting the possibility of full sovereign rights to the non-Christian states, others only partial rights, and yet others denying all sovereign rights.[16] Phillimore characterised as 'detestable' the doctrine of International Law being confined in its application to European territories, and held that the principles of international justice were binding on Great Britain in her intercourse with the native powers of India and other countries.[17]

The extraordinary Papal bull *Inter Caetera* of Alexander VI (1492), by which all land and islands not possessed by Christian princes, found or to be found to the West of a line drawn from the North Pole to the South at one hundred leagues to the west of the Azores and Cape Verde Islands, were conferred on Ferdinand and Isabella, set forth the plenary power of the Pope over the whole earth in the most challenging terms.[18] But in reality the bull had little effect. The papal claim was opposed by England, France, and Holland ; Grotius denied the Pope's authority over peoples occupying the unknown parts of the world. And even the beneficiaries of the bull, Spain and Portugal, regulated the distribution of the newly discovered countries and those to be discovered, without papal assistance or interference, by the Treaties of Tordesillas (1494) and Saragossa (1529). The pretended system of Papal grants was never an operative factor and does not count as much more than a historical curiosity.

In reality the concept of *territorium nullius* was never applied to non-Christian lands and from the beginning of their contact with these lands, modern European nations recognized the sovereign rights of their rulers by means of the embassies they sent for the negotiation of trading privileges including that of setting up *Comptoirs* and factories on their territory, and by conclusion of treaties with those rulers. This did not prevent the European nations, often represented by Trading Companies functioning under monopolistic charters from their respective governments, from quarrelling among themselves and waging war on one another in the East, or from seeking

[16] See Lindley, pp. 11-20, for a succinct summary.
[17] Ibid., pp. 45-6.
[18] Ibid., pp. 124-7. Nussbaum, pp. 53-4.

to build up in one way and another territorial possessions of their own and establishing their own rule. The Portuguese led the way, their motives being more religious and political than economic ; impelled by more secular and lucrative motives the Dutch, the French, and the English followed ; but we cannot pursue here in any detail the incidents of this phase of Eurasian history in their bearing on international law and usage. We must restrict our sketch to a survey of the legal relations observed by the European nations as among themselves *vis-a-vis* the lands they had all decided to appropriate for their own uses. The recognized modes of acquisition were : Conquest, Cession and Occupation. When any of these modes became fairly established and sufficiently well known, the other European powers respected the rights so acquired and treated the territory concerned as under the acquiring state. These different modes are fully discussed in text-books and need not be discussed in any detail here. Lindley[19] has pointed out that cession by a native sovereign of non-European lands in order to be valid must satisfy the following conditions : (1) it must be made with the consent of the Chief or Government who enjoys paramount rights over the region ; (2) by a person or body with power to make the cession according to local law or custom ; (3) in the form usually adopted for acts of a public nature ; and (4) it must be understood in its provisions by the natives concerned—a condition that has sometimes been not fully satisfied, particularly in Africa. Cession is perhaps not invalidated even if force has been used to procure it, for very often a treaty of peace concluding a war stipulates cession of territory among other provisions though such cession, as Oppenheim points out,[20] 'is regularly one without compensation'. According to the same authority, a third power, in exceptional instances—as when title is sought to be gained by a flagrantly unjust resort to war, or when a cession might endanger the balance of power or be otherwise of vital importance—may claim and properly exercise a right of veto on the cession. 'Thus in 1940 the states of the American Continent made clear their intention not to recognize transfers of territory as they then

[19] pp. 169-73.
[20] Sec. 216.

appeared probable in connection with the War in Europe.'[21] In more recent times, under the influence of democracy and nationalism, cession of territory, to be valid, should, it is claimed, be ratified by the will of the people of the ceded territory ascertained by a plebiscite, and 'several treaties' of cession concluded during the nineteenth century stipulated this. 'But,' says Oppenheim, 'it is doubtful whether the Law of Nations will ever make it a condition of every cession that it must be ratified by a plebiscite. The necessities of international policy may now and then allow or even demand such a plebiscite, but in some cases they will not allow it'.[22]

Occupation as a mode of acquisition applies only to *terra nullius*, no state's land, whether entirely uninhabited or so sparsely inhabited or unorganised as not to be considered a State. And in order to be recognized as effective the occupying power must set up an established administration, however rudimentary in its nature, and an authority to maintain peace where necessary. But for small islands used for a particular business such as fishing the presence of an official or two may suffice.[23]

One question that has raised some considerable discussion is whether the duties of the sovereign with respect to the natives of non-European countries can be regarded as legal duties. In spite of notorious past acts like the treatment of American Indians, the Maoris, and the dark races of Africa, and current reactionary tendencies such as *apartheid* in South Africa, there is a rapidly growing volume of opinion that even subject backward races should be held entitled to the protection of International Law. This is held to cast duties on the advanced nations which they owe as much to the other members of the International Family as to their native subjects to whom certain fundamental rights should be guaranteed such as the right of life, liberty, freedom of religion and conscience and the like. The fact that states respect such fundamental rights of aliens resident within their territory, the intervention in states on humanitarian grounds like that of Britain, France and Russia in Turkey in 1827, the treaties for the protection of religious and linguistic minorities, and those with humanitarian objects

[21] Sec. 218.
[22] Sec. 219.
[23] Sec. 221 : Lindley, p. 159.

such as the abolition of slavery and the slave trade and of forced labour, treaties for securing humane conditions of work and so on, show the trend in the practice of nations towards increasing recognition of the 'rights of mankind' which have now found place among the principal objects of the United Nations in the Charter of the Organization. But there still remains a lurking doubt as to the legal force of these rights mainly on the ground that States, not individuals, are the subjects of International Law. It has also been pointed out that 'the recognition of the rights of man as part of International Law need not necessarily be combined with the conferment upon individuals of full procedural capacity before international courts and agencies—which capacity alone would make them full subjects of International Law'.[24]

It is perhaps natural, and in the circumstances inevitable, that a certain measure of caprice, not to say arbitrariness, should have marked the relations of the advanced nations to the less advanced ones. Self-interest, expediency, and the balance of force have been the guiding factors rather than a sense of right or propriety, much less a consistent regard for law. Some states though mostly controlled in their external relations by International Law were not, until recently, admitted to be full members of the Family of Nations and possibly still occupy a rather doubtful position; Siam and Abyssinia are examples. And even to-day the ludicrous spectacle of Formosa being recognized as China, and China proper being considered outside the pale, is a conspicuous instance of chicanery dictated by expediency. We may refer briefly to some leading instances from the past. In 1885 the Sultan of Zanzibar protested against the proclamation of a German Protectorate in East Africa; the German reply was, not that he was not capable of acquiring sovereign rights in that area, but that there was no evidence of his ever having acquired them; and though Zanzibar itself became a British Protectorate in 1890, it was still held to have the right to occupy new territory.[25] A Colonial Protectorate recognised by other members of the Family of Nations gave the Protecting Power, the right, as

[24] Oppenheim, Sec. 292 and p. 584; Lindley, p. 327 and ch. XXXV.
[25] Lindley, pp. 118-19.

against themselves, to take steps to annex the protected territory to its dominions. The process by which vast territories in Africa were partitioned among the European Nations in the last quarter of the last century followed a certain pattern : the first step was a treaty with the local ruler which started the Colonial Protectorate by ceding local jurisdiction to the Protecting Power. Then the Protecting Power gradually encroached on internal affairs wherever this could be done without fuss or failure, and this process began long before definitive annexation was effected. The best instances are furnished by British policy in Bechuanaland and Central Africa.

Britain's relations with the ' Native States ' as they used to be called in India had followed a similar pattern. The instrument of policy here was the well-known ' subsidiary system ' by which the states consented to hand over their external defence and often also the maintenance of law and order within their territory to the Government of the East India Company, who maintained a separate contingent of the army for the purpose and was generally paid for the service by transfer of a part of the territory of the protected states. The terms of the original written treaty were often modified in practice by an irresistible process of interpretation and usage, and the degree of autonomy left to each state varied according to exigencies. The state was not British territory, but its subjects were protected abroad as British subjects. Though in theory the Company was not responsible for the character of internal administration in a state, still it exercised a general supervision, and claimed and exercised the right to regulate succession, and this gave the occasions to annex states on the score of misrule or failure of succession. Some Governors-General avowedly pursued a policy of losing no opportunity that offered itself of annexing a state, because they sincerely believed that that was the best way of spreading the advantages of an enlightened modern administration to people who were floundering in the bog of mediaeval autocracy. The ' Mutiny ' of 1857 brought a change, annexation was halted, and the political map of India petrified, until the interrupted task was resumed by Vallabhbhai Patel after 1947. The most interesting future from our point of view is the progressive degradation in the legal and constitutional status of the ' native states ' whose relations with the Company's Govern-

ment were at first regulated by principles of International Law, but in the end became metamorphosed into those of a Paramount Power with its vassals and subordinates. In 1826, in a treaty with Nagpur, the preceding Rajah was said to have made an attack upon the British troops ' in violation of public faith and of the Law of Nations '. In 1891 the Gazette of India contained the announcement : ' The principles of International Law have no bearing upon the relations between the Government of India, as representing the Queen-Empress on the one hand and the Native States under the suzerainty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter.'[26] The completion of the process was underlined by Lord Reading's letter to the Nizam relating to the Berars in 1926 and by the cryptic statement of the Butler Committee : ' Paramountcy must remain paramount.' The detailed history of this interesting transition still remains to be traced from the records.

Colonial Powers also had another method of dividing among themselves large unorganised areas by agreements marking out their respective ' spheres of influence '. Great Britain and Holland reserving the Malacca Peninsula and Indonesia to themselves by treaty in 1824, or Great Britain and Germany demarcating their respective spheres in Africa in 1885 are examples. The first is typical of the modern period which saw the elimination of force which marked the colonial wars of the eighteenth century. But other powers which are not parties may dispute such arrangements and decline to respect them or demand a price for doing so. Great Britain and Russia demarcated by agreement their respective spheres in Persia. The policy followed by Japan in Korea is a very good illustration that even Asian Powers were by no means squeamish in following established models. In 1895 the independence of Korea was recognized in a peace-treaty between China and Japan. In 1898 Russia recognised Japan's special interest, industrial and commercial in Korea. In 1902 Korea's independence was reaffirmed in the Anglo-Japanese treaty. Two years later, Korea had to agree to adopt Japan's advice in administration

[26] Ibid. pp. 199-200.

and to allow her to occupy strategic positions in Korea if that was necessary to protect the country and its king. Finally in May 1910 Korea was annexed to Japan by virtue of a Treaty of Cession by the Korean Emperor. Spheres of interest began to develop in China from 1898. Like European Turkey, China too found some security from the mutual jealousies among the predatory Colonial Powers. On 6th February 1922 a nine-power treaty was concluded in Washington, the parties being the United Kingdom, United States of America, Belgium, China, France, Italy, Japan, the Netherlands and Portugal. All the powers agreed not to enter into any treaty or other arrangements with one another or with any power which would impair or infringe the sovereignty, independence or territorial and administrative integrity of China or the principle of equal opportunity for commerce and industry for all nations in China.[27] By virtue of her position in India and her intrinsic strength, Britain warned France off Burma in 1884, and in 1903 Lansdowne, the British Foreign Secretary, defined British policy in the Persian Gulf as aiming to promote and protect British trade without excluding the legitimate trade of other powers, and announced that the establishment of a naval base or fortified post in the Gulf by any other power would be 'a very grave menace to British interests which we should certainly resist with all the means at our disposal'—A British Monroe doctrine of the Gulf region.

Much in the old diplomacy and International Law as developed in the nineteenth century, has been changed by the two World Wars. The idealism which animated the League of Nations and United Nations has been dimmed by the pressure of old habits and new antagonisms. The Western nations, particularly the U.K. and U.S.A., realize the need for one World and a radical revision of the attitude of the West to the East. A vast revolution of this character takes time to work itself out and may not be expected to move smoothly or always in the line of progress without set-backs and sidetrackings. In spite of the Malans, one hopes that the Nehrus will have it.

[27] Ibid. pp. 208-24.

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