

TREATY AND DIPLOMATIC RELATIONS BETWEEN EUROPEAN AND SOUTH ASIAN POWERS IN THE SEVENTEENTH AND EIGHTEENTH CENTURIES

CHAPTER I

INTRODUCTION

IN 1498, six years after the discovery of the American Continent, Vasco da Gama landed in Calicut on the West Coast of India to establish the first Portuguese foothold in "rediscovered" Asia. The event has been considered by some historians as the opening of a new period in Asian history—a period in which the destinies of two continents intertwined, first leading to a protracted struggle and then to the political dominance of the West over Asia which ultimately came to an end with the emergence of the present democratic States in Asia. Moreover it has been maintained that throughout this period the principles of International Law were not applied to the intercourse between European and Asian Powers.¹

It is not possible for the historian of the law of nations to subscribe to this proposition. The type of intercourse which prevailed between European and Asian powers prior to the nineteenth century must be considered as completely different from European-Asian relations in the nineteenth century after the decline of the independent Asian State system. The writers belonging to the period of the classic law of nations entertained little if any doubt as to the sovereign status of Asian powers within the natural and universal Family of Nations, and as to the character of treaty and diplomatic relations between them

1. *Asia and Western Dominance* by K. M. Panikkar, 1954, p. 42. See also C. L. Tupper, etc., (below).

and European nations. It was only after some of the Asian States had disappeared from the political map of the world and after others had been relegated to a doubtful legal status that international lawyers tended to view the Asian State system as outside the orbit of International Law or the concert of civilised nations. Whatever the merits or demerits of this outlook, it can only relate to the period in which it was conceived, but it cannot have any bearing on what may be called "the Vasco da Gama period" of Asian History which extended from the close of the fifteenth century to the end of the eighteenth century. It would be a fallacy to judge events during this period by *ex post facto* law.² The positivist concept of International Law had not yet superseded the natural law ideology which was predominant among the classic writers and made it possible to view Asian powers as part and parcel of the universal Family of Nations.

Unlike in the continents of America and Africa, the European newcomer in Asia in the sixteenth century found himself faced with a precise network of inter-State connections. Whatever his own ideas and policy, he was doomed to be caught in this network and though he tried to extricate himself from its grip in order not to lose his own identity, he had also to admit that he had found many ideas in common with his Asian counterpart and that he had to learn a good deal from the experience of mutual intercourse. The Portuguese went to Asia to destroy "Moorish" trade and navigation and to import by direct sea route spices and other merchandise to Europe offering in exchange the Cristian faith to Asia.³ They were followed by semi-sovereign Companies of Dutch, English and French mer-

2. This view has been recently expressed by the International Court of Justice in the Indo-Portuguese dispute relating to the enclaves. The Court insisted on considering the validity of the Portuguese-Maratha treaty of 1779 on the basis of the law in force at the time of its conclusion and not on the basis of practices and procedures which developed later.

3. The purpose of Portuguese action was also to attack the Asian Hinterland of the Ottoman Empire which drew from the East Indies vast resources in support of its aggression against Christian Europe. In their anti-Islamic drive the Portuguese allied themselves with a number of Hindu Rulers such as the King of Vijayanagar with whom they concluded treaties; see particularly the Treaty of 1547 (below). The Portuguese treaties are recorded in Justice Biker's Collection of Treaties (*Collecão de Tratados*), 1881.

chants who had a more secular outlook. All of them were instrumental in transplanting inter-European conflicts into the Asian scene and enlarging the area of power politics at a period when the struggle between the Ottoman Empire (the Centre of Islam) and the Holy Roman Empire neared its crisis. None of the great powers in the East Indies, in spite of their preoccupation with their own problems, could remain indifferent to the impact of this struggle on Asia. The Mogul Empire, Persia and other East Indian powers were drawn into its orbit, however remotely. Moreover none of the classic writers of the Law of Nations viewed European-Asian intercourse as taking place in a legal vacuum, though the application of many still undefined legal principles made a legal assessment of inter-State relations in Asia, and for that matter in Europe, a difficult proposition. This is one of the crucial points which deserves the attention of the historian of the Law of Nations: the law was in its formative stage and the question arises to what extent did European-Asian intercourse contribute to its development and better formulation. Before attempting an examination of this question the following introductory remarks may be relevant.

In order to discuss treaty and diplomatic relations in the seventeenth and eighteenth century in South Asia, it seems essential to consider first briefly the introductory period of the sixteenth century which was the object of some of the most outstanding classic treatises of the Law of Nations written in the seventeenth century. Moreover, though the geographical area under our consideration is in principle South Asia, treaty and diplomatic intercourse in this area was intimately connected with some of the neighbouring countries such as for instance Persia or Siam. Our discussion must therefore extend to a wider region which may be called by its ancient name, the East Indies.

It would also be appropriate to state that the relevant source material relating to treaties and diplomatic intercourse is so vast that an exhaustive enquiry into it could only be undertaken by research carried out in archives and libraries in different centres of Europe and Asia presupposing, *inter alia*, the knowledge of several European and Asian languages. Such an ex-

haustive enquiry was not possible in the present circumstances. It was therefore essential to make a tentative selection of treaties and other documents out of the material actually available. Whether the representative character of such a selection is adequate enough to justify general propositions may be an open question. However, some of the most relevant treaties and diplomatic missions have been subjected to examination, and a substantial number of classic treatises of the Law of Nations have been brought into the picture. It may be noted that one of them i.e. "*De Justo Imperio Lusitanorum Asiatico*" by Seraphim de Freitas, a hitherto unexplored work, has been given special attention.