

**Changing Dimensions of International Law :
An Asian Perspective (Martinus Nijhoff Publisher – Sept 2006)**

**Lecture II
Development of Modern International Law
&
India**

By

**R.P. Anand
Professor Emeritus of International Law,
Jawaharlal Nehru University, New Delhi.**

Development of Modern International Law and India

By

R.P. Anand

**Professor Emeritus of International Law,
Jawaharlal Nehru University, New Delhi.**

International Law in Ancient Societies and India

Although European writers, with a tremendous sense of pride, assert that modern international law is a product exclusively of the Western European Christian civilization, and that it is not more than four or five hundred years old, there is little doubt that ancient societies like India, China, Egypt and Assyria had their own much older systems of inter-state conduct which had parallel, if not similar, rules of inter-state relations as modern international law. It is true, however, that these earlier systems were generally confined to their own civilizations in different geographical areas because means of travel and communications were neither so efficient nor fast. But there were occasionally inter-state trade relations, exchange of diplomats, and conclusion of agreements and treaties between countries far apart from each other. India had frequent trade relations with Western Asia, Greece and Rome since at least the first century of the Christian era. Indian states had even more frequent trade and commercial relations with the countries in the East, like Burma, Malaya, Indo-China, the Philippines and even China and Japan. Indian, Chinese and Malay ships regularly voyaged each other's coasts. The regularity of monsoon winds in the Indian Ocean as a reliable and pleasant source of power came to be known to Indians and Arabs from time immemorial. The north-east monsoons, used properly by mariners, who understood the art of sailing, simplified voyages up and down the coast of Arabia, up the Persian Gulf and as far as the mouth of the Red Sea. The same monsoons enabled voyages to be made with large ships from the Indian coasts to Burma, Malaya and all the East Indies. Beyond these, other good and

seasonal winds could be used to go to Indo-China, the Philippines, and China. Indian ships voyaged regularly to the Burmese coast and the Malay Peninsula and Indonesia to the East and to Persia and Socotra in the West.¹ R. Swell, the famous authority on the early history of South India, records:

“The Andhra period seems to have been one of considerable prosperity. There was trade, both over land and by sea with Western Asia, Greece, Rome and Egypt, as well as with China and the East. Embassies are said to be sent from India to Rome. Indian elephants were used for Syrian warfare...Roman coins have been found in profusion in the Peninsula, and especially in the South. In A.D. 68 a number of Jews, fleeing from Roman persecution, seem to have taken refuge among the friendly coast people of South India, and to have settled in Malabar.”²

The Roman conquest of Egypt (in 30 B.C.) gave new impetus to direct maritime relations with India and led to the first Indian embassies sent to Rome. After Augustus became Emperor of Rome, several embassies from various Indian states visited Rome “frequently”.³ Augustus built new and especially large ships for the Indian spice trade which he is said to have financed with the best gold and silver currency available, inaugurating a direct service between Egypt and India.⁴

There is no doubt that all of these relations were based on well known, well-recognized, and widely accepted rules of inter-state conduct.

¹ See O. K. Nambiar, *Our Seafaring in the Indian Ocean* (Bangalore, 1975), p. 16.

² Quoted in Radha Kumud Mookerji, *Indian Shipping* (Allahbad, 1962), p. 82.

³ See E. M. Warmington, *The Commerce between the Roman Empire and India* (London, 1974), pp. 35-37; Rawlinson, H. G. Rawlinson, *Intercourse between India and the Western World: From the Earliest Times to the Fall of Rome* (Cambridge, 1926), p. 107.

⁴ See J. Innes Miller, *The Spice Trade of the Roman Empire: 29 B.C. to A.D. 641* (Oxford, 1969), p. 14.

Fabled Land of India :

Known to Europe for centuries, the fabled land of India was famous for its treasures, its products, especially textiles and silk , and even more importantly, spices. Europeans had been getting Indian products and spices through the caravan routes of the Levant. But the trade route from India to Europe became inaccessible after the establishment of Islam in the Middle East and religious wars between the Muslims and the Christians. Indian spices, especially black pepper, was in great demand in Europe and could not be brought from the Indian ports across the territories controlled by the Muslim rulers.

Pepper became the motivating factor of history and led Portugal and Spain to make intensive efforts for generations to find a sea route to India. Aromatic spices from India and the East Indies had been and were in greatest demand and yielded the largest profits to merchants and could come only from the Indian ports across the territories controlled by the Muslim rulers. The spice trade with the East was one of the great motivating factors of history. Pepper may seem insignificant today, but we are told that “in that age it ranked with the precious stones. Men risked the perils of the deep and fought and died for pepper.”⁵ Giving the rationale for this situation, Professor G.F.

Hudson explained in his learned study on *Europe and China* explained:

“Spices which became more and more essential for European cookery could not be obtained except from India and Indonesia and most came through Persia and Egypt; this indispensable and naturally monopolistic trade came to be the chief bone of contention in the politics of the Levant and was the most powerful single factor in stimulating European expansion in the fifteenth century. The Tatar ascendancy in Persia, before the conversion of the Ilkhanate to Islam, allowed Italian traders to go direct to India and cut prices against the Egyptians, who were

⁵ See K. M. Panikkar, *Asia and Western Dominance* (London, 1970) p. 22.

went to raise them 300 per cent as middlemen between India and Europe; as a result Europeans knew where spices were produced and at what cost, so that when they were again cut off from the Indian market by a hostile Islam and by incessant wars in the Levant, they were well aware of the opportunities awaiting any power that could find a new route to the 'Indies where the spices grow'."⁶

Search for a Maritime Route to India:

It is also important to note that in the fourteenth and fifteenth centuries, Arabs were the great intermediaries of trade between Europe and India. Spice trade of the Malabar coast of India had been more or less monopolized by the Arabs and they had a number of colonies in Calicut, Cochin, Quilon and other parts on the western coast of India. From the marts of the Red Sea coast, the Venetians who had the control of the Mediterranean, carried the goods to markets in the West. Due to their skillful diplomacy, adventurous spirit and far-sighted policy, the Venetians had for a long time established a strong influence in Egypt and other Muslim areas in the Levant and had become monopolistic agents of Eastern trade in Europe.

For the two Iberian nations, Portugal and Spain, having fought endless wars with the Muslims ('Moors' as they called them) from tenth to the thirteenth century, fight against Islam was considered as a religious duty and patriotic necessity.⁷ Finding a sea route to India and taking Christendom directly to the Indian Ocean came to be adopted by the Portuguese King, Prince Henry the Navigator (1394-1460), as part of the grand strategy to turn the tide of Islam. Although religion was important, the immediate objective was, of course, the spice trade and to capture at least a part of the wealth that was pouring into the coffers of Venice as well as the Muslim treasures. This combination

⁶ Quoted in Panikkar, *ibid.*

⁷ See Auguste Toussaint, Auguste Toussaint, *History of the Indian Ocean* (Translated by June Guicharnaud) (London, 1966), p. 98.

of greed and godliness—lust for riches and passion for God—drove the Portuguese and the Spanish relentlessly into the torrid, fever-ridden seas that lapped the coast of tropical Africa and beyond.⁸ The idea of reaching India became almost an ‘obsession’ for the Portuguese king, Dom Henry.

Without going into the relentless efforts of Portugal and Spain to reach India, during the course of which Columbus found America, the Portuguese reached India in 1498. After the Portuguese reached India it tried to monopolize the Indian spice trade and keep the route secret because the spice trade helped Portugal to become extremely rich in Europe. Portugal also tried to control navigation in the Indian Ocean by asserting sovereignty over the sea and trying to enforce it by its warships, equipped with cannons, which was unheard of in the Indian Ocean. Although the Portuguese had some limited success against the Arabs, who largely controlled shipping in the Indian Ocean, they could not keep the other Europeans out.

Other European Countries Enter the Fray:

Jealous of the Portuguese monopolistic spice trade, it was not long before the secret sea-route to India became known and several other European countries organized East India Companies to pursue trade with the East Indies. It is interesting to note that it was during this early struggle between the European countries or companies for spice trade with India and the East Indies that the first book of modern international law, *Mare Liberum*, was prepared as a legal brief by a Dutch jurist, Hugo Grotius, to contest the Portuguese monopoly of Indian Ocean trade and to defend his country’s right to have

⁸ J. H. Plumb, “Introduction” to C.L. Boxer, *The Portuguese Seaborne Empire 1415-1825* (Victoria, Australia, 1969), p. xxii.

freedom of the seas to have trade with East Indies. It is also significant that freedom of the seas and trade was common and well-recognized inter-state law in the Indian Ocean for centuries before the Portuguese sought to enforce their fiat, and Hugo Grotius knew it and learnt from it, as he makes it clear in his famous book. Europeans, however, did not accept the Freedom of the seas doctrine propounded by Hugo Grotius, and as practiced by Asians, and continued to practice *Mare Clausum*, or closed sea, as advised by John Selden, the famous British jurist who prepared his thesis on the advice of the British Crown. It was only in the late eighteenth or early nineteenth century that freedom of the seas came to be accepted in Europe in response to the needs of the industrial revolution in Europe.

Rules of Inter-State Conduct in India :

Europeans came to India and the East Indies for trade and had East India Companies established in their countries with Charters giving them authority under their own laws to trade with Oriental rulers, sign agreements, even fight wars in protection of their interests, and make peace. All of them sought permission from local rulers to establish factories or small trading posts and fiercely competed with each other. In fact each one of them tried to have monopoly of trade in territories of the rulers with whom they signed agreements resulting in a lot of tension and ill will. All of them had their war ships and soldiers and fights amongst them, especially on the high seas, were common. Later, they used to get embroiled in local disputes as well siding with one ruler or other. It is important to remember, however, that all the Europeans and their companies lived and traded according to local laws, or rules of inter-state conduct, accepted and applicable in India and the East Indies. They sent envoys, concluded treaties with the

local rulers, conducted war, and made peace, according to the widely accepted customary rules of Asian countries. They could not have survived without it.

Thus, when the Portuguese arrived in India they had to deal with well-established states with their own customary rules of conduct for foreign traders. Sometimes they violated the local laws and got embroiled in disputes. But they also concluded treaties with the local kings and established their factories. Similarly, the Dutch and later British arrived. The British Emperor sent diplomatic envoys to the Mughal Emperor and sought permission to trade in his territory. Since the Asian rulers encouraged foreign trade, they gave them permission to establish factories or trading posts to buy and sell goods after payment of necessary duties.

India : A Divided Subcontinent :

Although India was very rich, endowed with tremendous natural resources, and an industrially advanced country in the sixteenth century, it was a vast subcontinent divided into several small and big states. All through her long history, even when India had strong and large empires ruling a large part of country, there were numerous small semi-independent chiefs and rulers who were allowed to exist and maintain their power and influence. But as soon as the Center became weak, empires disintegrated and India was divided into small states and kingdoms. It must be noted, however, that despite all the chaotic political conditions and continuous warfare, India had a well-recognized cultural unity. Moreover, Indians had developed sophisticated rules of inter-state conduct which had been clearly defined and fully explained in numerous well-respected texts dealing with law, like *Arthashastra*, *Manu Smriti*, *Narada Smriti*, and others. Even after a large part of India came to be ruled by Muslim rulers who generally came from outside,

these customary rules were not given up. On the contrary, except for a very few invaders who attacked some parts of India to loot its wealth and left with a large booty, most of the Muslim rulers settled down in India and got absorbed into India and her culture. They married Indian women and, with the racial fusion, their dynasties became Indian dynasties. They did not apply Islamic rules of inter-state conduct applicable outside India, but adopted the Indian customary rules. Muslim law or Shariat was applicable only as personal law of the Muslims. Furthermore, India was a country of hundreds of thousands of villages bound by their own village community law which did not change much by Islam.

From 1526 to 1707, India had a very large and strong Mughal Empire during which India reached new heights of prosperity. Mughals respected the institutions of embassies, treaties and laws of war and peace. They had diplomatic and trade relations with numerous Asian countries, including Persia and Turkey. So long as the Mughal Emperor Aurangzeb ruled until 1707, the country was united and the European companies had small factories in different parts of the country, but they followed the law and behaved in a proper manner as small traders. But once Aurangzeb died, within an incredibly short period of twenty years, the country was totally disintegrated and fell into a condition of masterless disorder.

Taking benefit of the situation, the French and the English East India Companies started indulging and interfering in local disputes siding with one ruler or the other, hiring their trained troops, and grabbing afterwards. They also started exercising some authority, especially tax collection, in some territories on behalf of the local rulers or more or less impotent Mughal Emperor in Delhi. After innumerable wars between

themselves and other rulers, in which they were defeated several times but always recovered, political entanglements, unscrupulous intrigues, the English East India Company not only soundly defeated the French, but in the course of a little more than 100 years, by 1818, came to occupy a large part of the country, In the meantime, they had started ruthlessly exploiting the country's resources indulging again and again in organized loot and plunder by a mercantile company and its servants. It is also important to note that although the Mughal Empire had vanished and the Mughal Emperor was powerless and only a prisoner of others, he still remained the sole source of legitimacy. All the rulers in different parts of the country, including the English East India Company, A Bfelt secure only if they received a royal decree or order, called *firman*, from the imperial power giving them authority to rule in their territory, meaning thereby that the Mughal Emperor was still the head of a national state. In 1833, the East India Company was eliminated and the British Parliament took over the responsibility of the government in India. However, the ruthlessness of the English East India Company led to a mass revolt in the Country in 1857 which was suppressed with a very strong hand and the British Crown took direct charge of the British government in India. The British Government also took over more than 600 Princely States as part of British India, which had signed treaties with the East India Company and later the British Government, surrendering part of their sovereignty and independence and were supposed to be within British suzerainty.

It is important to mention that even during all these turbulent times rules of international law continued to apply between the independent states in India and the European companies acting on behalf of their countries. Nobody ever questioned the

right of the Indian states to make war or peace, conclude treaties, send embassies, or exercise their jurisdiction within their territories. Not only Hugo Grotius, but other classical jurists of Europe, testified to this state of affairs.

India Becomes a British Colony :

With the establishment of the British rule in India, for the first time in its long history, India lost its identity and became just a part of the British Empire. India had been conquered earlier several times, but the invaders, if they did not leave immediately with their loot, were absorbed into India and they all became Indians. India had never lost its independence. It had never been enslaved. She had never been subjected to a ruling class which was, and remained, permanently alien in origin and character. The whole ideology of the British rule in India was that of a master race. India became merely a political and economic appendage of England with all the control being exercised from outside. Not only was India exploited to the hilt but its economy was transformed to serve only the interests of her masters. From an industrialized country India was reduced to an agricultural economy producing raw materials for the British industry. The village community, which was a basis of Indian political economy, was destroyed and the British introduced landlord system depriving village community and Indian farmers of all control.

The exploitation of Indian economy largely helped Britain achieve industrial revolution. Moreover, with tremendous Indian resources, Britain extended its rule to other parts of Asia and later Africa. Under the general and overall control of India and protection of its navy in the Indian Ocean, all Europe profited and Europeans started

expanding into various countries in Asia. Riches of Asian and American trade led to Industrial Revolution in Europe which, in turn, was largely responsible for the creation of huge colonial empires in Asia and Africa.

Once Europe became dominant over the crumbling and disintegrating Asian states, Europeans started feeling that they were invincible, the white race was superior, and had a *natural* right to rule over the Asian and other coloured races. They had no doubt left that they were the only « civilized » people of the world, and they must rule over the « uncivilized » and « savage » peoples living in Asia and Africa. Indeed, they started believing that they must rule over the other races and countries to « civilize » the backward peoples who were half devil and half child. This was indeed a sort of ‘sacrifice’ they must make, « The White Man’s burden » they must carry.

It was during this period of European domination that modern international law developed during the nineteenth century. International law was said to be applicable only among European Christian states or states of European origin in America. Asian states, with whom Europeans had been having intimate trade and political relations for the last several centuries, were suddenly declared to be outside the family of nations. In fact states outside the European Christian family of nations must be formally recognized by the European states before they could be accepted as members of the family of nations. Several Asian states on the subcontinent of India and Southeast Asia, having been defeated, had already lost their identity. But even those that survived, like Turkey, Persia, Siam, China and Japan, came to be defaced and began to be treated as outside the family of « civilized » nations. « Civilization », undefined and as understood by the Europeans, provided the legal title and determined the circle within which international law applied.

Practically any conduct towards the « uncivilized » people, or aggression of their territories, was considered as valid and was accepted beyond the scope of international law. This led to what has been referred to ruler's law for the subjugation and colonization of Asian and African peoples.

World Wars, Establishment of International Organizations and India:

Such a situation could not last for ever. Change is beyond any law and is the law of life. The intense rivalry between European states for extension of their rule and colonization in extra-European areas, led to terrible tensions and an arms race supported by military-industrial complexes in Europe. Two Hague Peace Conferenes, organized under the auspices of the Czar of Russia, to call a halt to the arms race did not help much. As clash of aspirations increased among European countries, a European « civil war » started in Europe in 1914, which engulfed the whole world and was called the First World War.

With all the terrible destruction and loss of life, which left Europe in ruins, it was felt that an international organization must be established to avert war in future. At the Paris Peace Conference in 1919, US President Woodrow Wilson was in the forefront of statesmen who suggested the establishment of a League of Nations to avoid war in future. Although India was still a British colony, part of the British Empire, because of its tremendous contribution in war effort and supply of hundreds of thousands of soldiers who fought for the cause of peace, Great Britain insisted that India be invited at the Paris Peace Confereenc to sign the Peace Treaty. The purpose of Great Britain in insisting on the participation of British Dominions and India was, of course, to get more influence and votes in the Conference. Once India signed the Peace Treaty, however,

India was permitted to become an original member of the League of Nations, even over the opposition of President Woodrow Wilson and several other countries. India's anomalous position under international law as a colony of Great Britain becoming member of the League, open only to independent or self-governing states, was too conspicuous to go unnoticed. In fact several statesmen and members of the US Congress strongly objected to India becoming a member of the League, the whole purpose of which was, they rightly said, only to provide another vote to Great Britain. Even the nationalist opinion in India was strongly against India's membership since it would not provide any international status to India. Although the British delegation gave an assurance at the Paris Conference that the British Government was trying rapidly to advance India into a self-governing colony, nobody trusted them.

After 1919, India began to function as a separate entity, participating in some international conferences, and signing some multilateral treaties. But all this did not satisfy the national opinion in India and they started demanding, with greater vehemence, at least a self-governing status for India. There was also a great resentment in India against the manner in which India was represented in the League and its representatives chosen or nominated by the Secretary of State for India in London.

Unable to control the avariciousness and jealousies of European states and Europeanized Japan, and hampered by the absence of the United States, the League failed miserably and Europe drifted towards the Second World War in 1939, which was even more ferocious and destabilizing. Although India was automatically drawn into the war when Britain declared war on Germany, Indians were not in favour of joining the war effort. The Indian political leaders, while sympathetic to the cause of democracy and

freedom for which the Allied powers said they were fighting, did not want to join the war without declaration of their independence. They did not feel bad when Britain lost fights and felt particularly jubilated when they were defeated by the Japanese on several fronts. They intensified the freedom movement which was strongly repressed by the British in 1942. But soon thereafter, Japan helped an Indian national leader, Subhash Chandra Bose, who had escaped from India, to form Indian National Army and in 1943, it advanced with the Japanese army to the very frontiers of India. Unrest was also spreading in the Royal Indian Navy.

Indian independence could not be withheld for too long after the war by the already weakened British Government and in the new international environment when Europe was trying to recover from a devastating war. On July 1, 1947, the British Parliament passed Indian Independence Act agreeing to transfer power on 15 August, 1947. But as a parting gift, relying on internal division in the Indian society, Britain divided British India into two independent states, India and Pakistan. This led to uprooting of millions of people on both sides of the border, creating almost insurmountable refugee problem in the new states and creating extreme tension between them.

But even more difficult issue, which could have led to utter chaos in the country, arose when the Indian Independence Act declared that, with the lapse of the British suzerainty over some 600 and odd Princely states, covering almost two-fifth of the Indian territory, they had become independent and they were not part of the newly carved states. Although the Interim Government of India immediately declared and let the international community and the United Nations know that they would not recognize the independence

of any Princely state in India, the Princes and former rulers were not so amenable. The Princely states had the option, it was made clear, either to join India or Pakistan. The almost intractable problem was solved by the heroic efforts of India's new Home Minister, Sardar Vallabh bhai Patel, helped by his Secretary, and almost all the states, with a few exceptions, decided to accede to the Indian Union by 1949. But this did not end the problem of Hyderabad, the largest state, and Kashmir. India had to use force to make Hyderabad realize that it could not declare independence, and accept accession with the Indian Union. In the case of Kashmir, although the Ruler accepted accession with India, it was subjected to aggression by tribesmen from Pakistan with the help of the Pakistan army. India could have repulsed aggression without much difficulty, when the Prime Minister of Independent India, Jawaharlal Nehru, on the advice of the British Governor-General, Lord Mountbatten, agreed to submit the issue of Pakistan aggression to the United Nations. There it got stuck and, even after three wars with Pakistan, it has still not been solved.

On the basis of its membership of the League of Nations, India became a founding member of the United Nations, even though it was still a British colony. It was invited to participate in the San Francisco Conference in 1945 for drafting of the UN Charter. Although British India sent an Indian delegation, selected by the British Government, and it did participate in San Francisco, the role of the Indian delegation, as that of other smaller countries, was insignificant. Moreover, the Indian national opinion was vehemently against the Indian delegation since it had been selected by the British Indian Government.

India in the United Nations :

But once it became independent, India has been a great supporter of the United Nations. Although it was a new India which emerged after independence, India was accepted as the original member of the United Nations. It was only Pakistan which was deemed a new state and had to apply for membership. India always believed in universal membership of the United Nations and helped overcome the veto of the Big Powers on the membership issue of the newly-independent countries. Prime Minister Nehru persuaded the Soviet leaders, on their trip to India in 1955, to refrain from exercising veto for admission of new members and that broke the ice and numerous newly-independent states from Asia and Africa were admitted in the United Nations. As a parting gift to their host, recognizing “India’s importance and of Nehru’s role in the world”, the Soviet leaders agreed to withdraw the Soviet veto and permit the entry of all except Mongolia and Japan.⁹ Under a new current of self-determination, in which India played a fairly active role, most of the Asian-African countries acquired independence and became members of the « civilized » family of nations.

Most of Asia and later Africa had lost their independence once India was defeated, occupied and colonized in the nineteenth century. As India emerged as an independent state, it gave impetus and momentum to the collapse of colonialism and re-emergence of Asia and Africa. . As Michael Brecher said, “with the loss of its imperial bastion [India], England could no longer retain its paramount influence in the Arab world” of the Middle East.¹⁰ India, under the dynamic and progressive leadership of Jawaharlal Nehru and other enlightened leaders, like Mahatma Gandhi, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad and others, played an important role in the process. But it is important to

⁹ S.Gopal, *Jawaharlal Nehru : A Biography Vol II 1947-1956* (New Delhi, 1979), p. 254

¹⁰ See Michael Brecher, *Nehru—a Political Biography* (London, 1959), p. 592.

mention here specifically about the role Jawaharlal Nehru, as the first Prime Minister of Independent India, played in the formulation of India's policy in international relations and law. Although he was not an international lawyer, as a keen observer and practitioner of international affairs, as the Foreign Minister of India and chief spokesman of the newly-independent Asian countries, he influenced the development of international law in no uncertain degree. There is no doubt at all about his influence in the formulation of India's foreign policy. As Michael Breacher said :

« In no other state does one man dominate foreign policy as does Nehru in India. Indeed so overwhelming is his influence that India's policy has come to mean in the minds of people everywhere the personal policy of Pandit Nehru. And justifiably so, for Nehru is the philosopher, the architect, the engineer and voice of his country's policy towards the outside world. »¹¹

Nehru was “the most articulate spokesman for a deep-seated urge to reassert Asia's rightful place in the world community.”¹² Even before India became formally independent in March 1947, Jawaharlal Nehru called the Asian Relations Conference to challenge European imperialism and to put pressure on the international community to accept Indonesia's independence which was sought to be re-occupied by Holland after the Second World War. He emphasized that “imperialism” of Europe was over and “as that domination goes, the walls that surrounded us fall down and we look at one another again and meet as old friends long parted.”¹³ He asserted:

“For too long have we of Asia been petitioners in Western courts and chancelleries. The story must now belong to the past. We propose to stand on our own legs and to co-operate with all others who are prepared to co-operate with us. We do not intend to be the playthings of the others...The countries of

¹¹ Ibid, p. 564.

¹² Ibid, p. 593,

¹³ Jawaharlal Nehru, “Asia finds herself again”, Inaugural speech at Asian Relations Conference, New Delhi, March 23, 1947, Vol I, p 300

Asia can no longer be used as pawns by others; they are bound to have their own policies in world affairs.”¹⁴

He further stressed that India and Asia must help others to get the political freedom they deserve:

“We of Asia have a special responsibility to the people of Africa. We must help them to their rightful place in human family. The freedom that we envisage is not to be confined to this nation or that or to a particular people, but must spread out over the whole human race.”¹⁵

The Dutch were reluctant to relinquish their control over Indonesia and India felt a special involvement in the Indonesian struggle. The Interim Indian Government, under the leadership of Nehru in September 1946, withdrew Indian troops from Indonesia where, as part of the Allied forces of occupation, they had clashed with the nationalist forces. Seeing that no solution to the Indonesian problem was imminent, two years later, Nehru organized another emergency Conference of Asian States in Delhi to bring pressure to bear upon the Dutch and the United Nations and champion the independence of Indonesia. which was sought to be re-occupied and re-colonized. Nehru called it,

“A challenge to a newly awakened Asia which has so long suffered under various forms of colonialism. It is also a challenge to the spirit of man and to all the progressive forces of a divided and distracted world.”¹⁶

He warned the international community that “Asia, too long submissive and dependent and a plaything of other countries, will no longer brook any interference with her freedom.”¹⁷

¹⁴ Nehru, *ibid.* p. 301.

¹⁵ *Ibid.*, p. 303.

¹⁶ Nehru, “Crisis in Indonesia”, Presidential speech delivered in New Delhi inaugurating the 18-nation conference on Indonesia, January 20, 1949, *ibid.* p. 324.

In fact acting as a representative of the newly-independent Asian countries, he was determined to speed up the end of colonialism and left no one in doubt that Asia was wide awake and could no longer be taken for granted. End of colonialism was his goal because he and India deemed colonialism as a permanent form of aggression under international law, which could no longer be tolerated. Law must change with the changing circumstances and could not remain static. But although India considered colonialism not merely as illegal in an age of freedom under the United Nations Charter, but immoral, Nehru was very much against the use of force for the achievement of freedom for the colonized countries unless there was absolutely no other choice. Under the mounting international pressure, Dutch withdrew and Indonesia joined the family of independent nations in 1949, and also became a member of the United Nations in 1950.¹⁸ India, along with 41 other countries, later moved a Declaration on the Granting of Independence to Colonial Countries and Peoples which was unanimously adopted by the General Assembly on December 14, 1960,¹⁹

Liberation of Goa :

Within its own territory, India had small colonial enclaves of France and Portugal. While France realized the changed international situation, and was persuaded to agree to hand over Pondicherry and its other small possessions to India in 1954, Portugal refused to accept such advice. After waiting for more than fourteen years, India had no choice but to use very limited force against Portugal to liberate Goa in 1961. While most Members of the United Nations, especially the newly-independent states, supported

¹⁷ Nehru, *ibid.* p 325. in *Jawaharlal Nehru's Speeches*, vol. One, (Delhi, 1949),p 300.

¹⁸ See H. S. Josh, "India, decolonization, and the United Nations", in S. C. Parasher, *United Nations and India* (New Delhi, 1985),p. 279.; See for more details about Dutch attempt to re-occupy Indonesia after the war, Karunakaran, n.326, pp. 219-233.

¹⁹ See *UN Official Records of the General Assembly, 15 th Session, 1960, Resolution No. 1514 (XV)*

India's action, some of the Western countries strongly criticized it as an aggression under the UN Charter and a violation of international law. They contended that the merits of the dispute over Goa were not the issue, but the issue was the use of force forbidden by the Charter. As Stevenson of the United States, discounting the problem of colonialism altogether, said:

What is at stake today is not colonialism; it is a bold violation of one of the most basic principles in the United Nations Charter.”²⁰

He went on to give the grim warning:

“Tonight we are witnessing the first act in a drama which could end with the death of the organization. The League of Nations died, I remind you, when its Members no longer resisted the use of aggressive force... we have witnessed tonight an effort to rewrite the Charter, to sanction the use of force when it suits one's own purposes.”²¹

Apart from the fact that such a warning did not sound very convincing in a world where countries, especially the big powers, give little heed to the principles of the Charter when their own interests are involved, the newly-independent states were more inclined to agree with Soviet Ambassador Zorin, who said:

“If the United Nations does not defend the colonial countries and peoples, but tries to defend the colonial system and the most reactionary representative of that system, then this indeed may mean the collapse of the United Nations.”²²

India refused to accept the Western contention that the use of force in Goa by India was an “aggression” under the Charter and claimed that it had acted only in self-

²⁰ *Security Council Official Records*, 16th year 987th meeting, 18 December 1961, para 75.

²¹ *Ibid.* 988th meeting, paras 130-31.

²² *Ibid.* para 140. But see Quincy Wright, “The Goa Incident”, *American Journal of International Law*, Vol. 56 (1962), p. 617.

defense against the long-standing ‘aggression’ of Portugal against India and its people.

As India’s ambassador, C. S. Jha, trying to drive home the real issue, said:

“It must be realized that this is a colonial question. It is a question of getting rid of the last vestige of colonialism in India. That is a matter of faith with us. Whatever anyone else may think... that is our basic faith which we cannot afford to give up at any cost”.²³

The newly independent Asian-African states, comprising a vast majority of the new international community, have made it clear beyond doubt that whatever the legal validity of colonialism under traditional European international law, it can no longer be accepted as valid. At the first Asian-African Conference at Bandung in 1953 they declared that “colonialism in all its manifestations is an evil which should speedily be brought to an end”.²⁴ In 1960 the General Assembly of the United Nations declared, without a dissenting vote, that “all peoples have an inalienable right to complete freedom” and solemnly proclaimed “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.”²⁵ In 1963, the Charter of Organization of African Unity declared as one of the objectives of the Organization the eradication of “all forms of colonialism from Africa” and the member states solemnly declared their “absolute dedication to total emancipation of the African territories which are still dependent”. {Art. 3(5)} Asian and African states believe that even the use of force, if other means fail, for the elimination of colonialism is an act of “self-defense” and, being in accordance with the declared objectives of the United Nations, is not

²³ Ibid, 987th Meeting, 18 December 1961, para 40.

²⁴ *Selected Documents of the Bandung Conference* (Institute of Public Relations) (New York, 1955), p. 34.

²⁵ Declaration on granting of Independence to Colonial Countries and Peoples, Res. 1514 (XV) 14 December 1960. *United Nations Review* (January 1961), p.6.

prohibited under the UN Charter.²⁶ There is, or should be, no doubt that old European law has come to be modified. To defend colonialism in the age of freedom is, to say the least, harping on the past European law which was always unreasonable and challengeable, and now has altogether lost its validity. International law is no longer the exclusive preserve of the European countries or countries of European origin. It must change with the changing and changed times. India has always supported international law, but it could not accept « rulers' law » which accepted colonialism and racialism as valid.

Racialism Decried:

If new India and Nehru, as its representative, could not tolerate colonialism any more, they abhorred racialism even more which had been the basis of much of modern international law during the nineteenth and the first half of the twentieth centuries. European civilization not only provided legal title to the position of dominating power, but also determined the circle within which the law of nations applied because it did not apply to uncivilized and semi-civilized nations of Asia and Africa. Unfortunately, racialism continued even after the independence of numerous Asian and African states in the worldwide community of states in the form of *apartheid* in a few countries like South Africa and Rhodesia. Nehru condemned this practice in unmistakable terms, especially the treatment of Indians and black people as second-class citizens in South Africa. He said:

²⁶ ²⁶ See report of the Special Committee on principles of International Law Concerning Friendly Relations and Cooperation among States, *General Assembly Official Records, 23rd Session* (New York, 1968), pp. 37-8,53,63. The Friendly Relations Declaration was later adopted by the General Assembly by consensus on 24 October, 1970. For a doctrinal study of the Declaration see V.S. Mani, *Basic Principles of International Law: A Study of the United Nations Debates on the Principles of International Law concerning Friendly Relations and Cooperation among States* (New Delhi, 1993).

“It is a matter which concerns us all. It is not merely a question of Indians or South Africans, but it is a matter of vital significance to the world. If that is to continue in the world, then there is bound to be conflict and conflict on a big scale, because it is a continuous challenge to the self-respect of a vast number of people in the world and they will not put up with it.”²⁷

India accepted and Followed International Law Rules:

Despite the clear bias of numerous international law rules because it was largely a “ruler’s law” during its formative years, India was all in favour of accepting its tenets. In fact none of the newly independent countries rejected international law on the ground that it was European in its origin and bias. India and other newly independent countries mostly accepted the treaties concluded by the European countries on their behalf and before their independence. All they wanted and demanded was that international law, like all law, must change with the changing circumstances. For one thing, what has been called the “geography” of international law has changed. International law is “no longer the almost exclusive preserve of the peoples of European blood”²⁸ by whose consent, it used to be said, “it exists and for the settlement of whose differences it is applied or at least invoked.”²⁹ As it must now be assumed to embrace other peoples, it clearly requires their consent no less. The creation of international law is no more “the prerogative of countries bearing the cultural heritage of the West but the common task of all members of the international community.”³⁰ The new majority has naturally new needs and new demands and they want international law to serve their needs and heed to their demands.

The alteration in the sociological structure of the international society, it is stressed, must

²⁷ Nehru, “Our Objectives”, in Nehru, Vol I, n.38, p. 265.

²⁸ R. B. Pal, *Yearbook of the International Law Commission* (1957), Vol. 1, p. 158.

²⁹ Weslake, quoted in Pal, *ibid.*

³⁰ R.B. Pal, “Future Role of the International Law Commission in the Changing World”, *United Nations Review* Vol. 9 (September 1962), p. 31.

be accompanied by an alteration in law.³¹ “International law, if it is to be effective”, said Nehru, “has to be related to the realities of international life; otherwise it becomes merely an academic exercise of some professor or pandit sitting in an university.” Referring to the phenomenal developments in political, economic, scientific and technological fields, Nehru felt:

“It may be said that international organization and international law have not kept pace with this advance which is posing many problems before us. We have to catch up before the gap widens, and there is always a possibility of cracking up, of disaster. This aspect of the matter is of vital significance in that the effectiveness of international law is of concern to every single individual.”³²

The Constitution of India, in Part IV relating to the Directive Principles of State Policy, which may be considered “as a commandment to the Union of India”,³³ provides in Article 51:

“The State shall endeavour to---

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.”

Principles of Peaceful Co-existence or *Panch Sheel*:

India not only emphasized the importance of peaceful settlement of international disputes, but formulated along with China in a treaty on Tibet signed in 1954, five

³¹ See Anand, *Origin and Development of the Law of the Sea : History of International Law Revisited (The Hague, 1983)*, pp. 45 ff.

³² Nehru, Inaugural Address at the Indian Society of International Law, *Indian Journal of International Law*, Vol. 1 (1960), p 6.

³³ P. Chandrasekhara Rao, *The Indian Constitution and International law* (New Delhi, 1993), p.5.

principles of peaceful co-existence or *Panch Sheel*, as they were called. Based on Article 2 of the United Nations Charter, these “wholesome principles”, in Nehru’s words, as laid down in the bilateral treaty provided:

- (i) Mutual respect for each other’s territorial integrity and sovereignty;
- (ii) Mutual non-aggression;
- (iii) Mutual non-interference in each other’s internal affairs;
- (iv) Equality and mutual benefit; and
- (v) Peaceful coexistence.

If these principles were followed amongst states, he believed, “a great deal of the trouble of the present-day world would disappear.”³⁴ If you want peace in the world, said Nehru,

“It cannot be done through threats. Once you recognize...that war is no solution, and that the two major protagonists are too powerful to be dismissed one by the other, then you have to coexist, you have to understand, you have to be restrained and you have to deal with each other. If you reject coexistence, the alternative is war and mutual destruction.”³⁵

In Support of the United Nations:

India had tremendous faith, at least in the early years of its independence, in the United Nations. As its spokesman, Nehru, said it was “a great and powerful organization and it has a Charter that lays down its ideals and objectives in language so impressive that it can hardly be bettered.” He emphasized that--

« We have always been a staunch supporter of the United Nations. As a member of that august body, India has undertaken its full measure of responsibility in all aspects of UN activities. The UN is the one hope of the world for bringing peace and freedom to humanity.”³⁶

³⁴ Nehru, “Agreement on Tibet”, *Nehru’s Speeches*, Vol. III, pp. 262-63.

³⁵ Nehru, “The South-east Asia Treaty Organization”, *Ibid.* p.273.

³⁶ Nehru, “United Nations in India”, *World Focus* (New Delhi, Oct.-Dec. 1997), p. 59.

The world organization had been founded, he believed, “for the great nations as well as the small.”³⁷ It might not be “a perfect organization but ...it was a step in the right direction, because ...its objectives were right.” It might have made mistakes, and it was distressing to see that it moved away from its ideals, but that could not prove “the need for such an organization”. He felt that,

“if the UNO ceased to function today, it would be a disaster for the world. For the world cannot afford to do without some such organization.”³⁸ It could not be denied that the UN was “dominated more or less” by certain nations of Europe and the United States with the result that the main problems discussed there were the problems of Europe and America while the other parts of the world and their concerns were generally ignored.³⁹ In his address to the United Nations General Assembly on November 3, 1948, Nehru said:

“May I say, as a representative from Asia, that we honour Europe for its culture and for the great advance in human civilization which it represents? May I say that we are equally interested in the solution of European problems; but may I also say that the world is something bigger than Europe, and you will not solve your problems by thinking that the problems of world are mainly European problems. There are vast tracts of the world, which may not in the past, for a few generations, have taken much part in world affairs. But they are awake, their people are moving and they have no intention whatever of being ignored or being passed by.”

He went on to tell the UN delegates:

“Today I do venture to submit that Asia counts in world affairs. Tomorrow it will count much more than today.”⁴⁰

³⁷ Nehru, “Peace or War”, *Nehru's Speeches*, Vol. II, p.169.

³⁸ Nehru, “We will not compromise”, *ibid.* p. 199.

³⁹ Nehru, “Our objectives”, *Nehru's Speeches*, vol. I, p. 257.

⁴⁰ Nehru, “To the United Nations”, *ibid.* p. 317-18.

India Supports Communist China's Recognition and Representation in the United Nations:

India was the foremost champion of the recognition of the Communist Chinese Government and its representation in the United Nations. The emergence of a united and forceful China free from Western domination was a matter of satisfaction and pleasure for India. It was the second non-Communist state to recognize the government of Mao Tse-Tung.⁴¹ Prime Minister Nehru was the most vociferous critic of the United States' policy of non-recognition policy and urged the West time and again to accept the 'facts of political life' in East Asia.⁴² He helped China, supported by Chou En-lai's charm and skilful diplomacy, to emerge as an important and respected member of the Asian-African group at Bandung.⁴³

India acts as a bridge between the power blocs in the United Nations:

Although India was totally dissatisfied with the UN role in Kashmir dispute, it did not run away from the world body. On the contrary, it played a very active and positive role in the United Nations. Non-aligned to any of the power blocs, and claiming to be on good terms with all of them, it acted as a mediator and helped reach agreements in several disputes, such as Korea, Suez crisis, Congo and Rhodesia. Even more important, for the first time in history, independent India sent its armed forces out of the country to various trouble spots not to fight any body or conquer other states,⁴⁴ but as messengers of peace, to restore peace and help the United Nations and the international community in the establishment of peace and security

⁴¹ Burma was the first. See Brecher, n. 10, p.588

⁴² Brecher, *ibid.*

⁴³ See also Brecher, *ibid.*, p.588.

⁴⁴ See how British sent Indian armed forces "to conquer and suppress other peoples", Jawaharlal Nehru, *Discovery of India*, (New York, 1946), p. 448.

India has been a great supporter of the United Nations and had tremendous faith in it, especially in the early years of its independence. It agreed to refer its Kashmir dispute to the United Nations Security Council. Despite its utter disappointment and disillusionment with the world body, because of the partisan and anti-India attitude of some of the Western countries, it never thought of running away from the world body. In fact India tried to play a very active, positive, and helpful role in the United Nations.

‘Group of 77’ in the United Nations:

India has also been playing a very active role as a member of the « Group of 77 » in the United Nations, and outside, in the development, modification and codification of international law. Although the earlier enthusiasm for changing international law through the UN General Assembly is no longer evident, because it has come to be realized that it is not and cannot be « world legislature », it is still the only body where smaller and weaker states of the third world can have any say and influence. It is still used by newly independent states for collective legitimization of their claims, actions and policies. So, whether it is denunciation of colonialism or racialism, criticism of unwarranted use of force against the smaller and weaker states, demands for a new international economic order, calls for changes and development of outdated and outmoded rules of traditional international law, or expressions of needs for new, universal, equitable and just law for outer space, deep sea, or environmental control, initiatives are still taken by third world countries in the General Assembly where they enjoy « legal equality » with the old and still powerful countries and, of course, numerical superiority. They are well aware that the resolutions of the General Assembly are merely recommendatory, form only what has been called soft law, and are more often than not ignored and disregarded. But this is

the only forum where they can ask the strong and powerful countries to explain their conduct and the latter must respond. This is the only forum where they ask for the redressal of the old wrongs. This has been the only forum through which they have been able to bring about whatever changes have been made in international law. A United Nations in which the small countries dominate was never conceived by its founders. But this is a body in which the smaller countries can seek and get attention. And they do not want to be ignored and passed by again.

