

THE DISCRIMINATORY NATURE OF TREATY PRACTICES IN THE 17TH TO 18TH CENTURY INTERNATIONAL LAW: THE CASE OF THE KANDYAN KINGDOM IN SRI LANKA WITH THE DUTCH EAST INDIA COMPANY

Punsara Amarasinghe

Abstract: The island of Sri Lanka formerly known as Ceylon was succumbed to the intense advancement of European colonialism since 16th century as many other Asian nations. Gutted by the continuity of Western domination which overpowered the native resistance in the coastal areas in the island, the last remaining polity the Kandyan kingdom fortified its status much cautiously. The kingdom of Kandy's relationship with European powers were driven by its own ambition in securing its existential rights as its former encounters with the Portuguese have drained the resources of the kingdom. Kandy's venture with the other European nations reflected their perineal fear on sovereignty while late comers such as Dutch and Danes looked for possibilities in beguiling the compatriots for their ends. The treaties espoused by Dutch and Danish were quintessential examples of the European attitude towards Non-European nations as the early practice of the law of nations filled with many unequal clauses.

Resumé: Ostrov Srí Lanka, dříve známý jako Cejlon, podlehl od 16. století intenzivnímu postupu evropského kolonialismu, stejně jako mnoho dalších asijských národů. Zničený kontinuitou západní nadvlády, která přemohla odpor domorodců v pobřežních oblastech ostrova, poslední zbývající politický subjekt, království Kandy, upevňoval své postavení velmi opatrně. Vztahy království Kandy s evropskými mocnostmi byly poháněny jeho vlastní ambicí zajistit si svá existenční práva, protože jeho dřívější střety s Portugalci vyčerpaly zdroje království. Jeho podnikání s ostatními evropskými národy odráželo jejich strach o suverenitu, zatímco opožděně přichází, jako byli Holanďané a Dánové, hledali možnosti, jak oklamat krajanů pro své cíle. Smlouvy, které podepsali Holanďané a Dánové, byly typickými příklady evropského postoje k neevropským národům, protože raná mezinárodněprávní praxe byla plná mnoha nerovných klauzulí.

Key words: International Law, Dutch, Indian Ocean, Kingdom of Kandy

About the Author:

Dr. Punsara Amarasinghe, LLB – Colombo, LLM – SAU New Delhi, MA-Moscow, PhD in Law (Pisa) is a post doctoral researcher attached to Institute of Law, Politics and Development in Scuola Superiore Sant Anna, Pisa. He held visiting fellowships at Sciences PO, Wisconsin Madison and Hebrew University, Jerusalem. His co-edited book “Thirty Years Looking Back: The Rule of Law, Human Rights and State Building in the Post-Soviet Space” was published in 2022. He is a Non-Residential Fellow of Global Peace Institute in London.

Introduction

“The Portuguese are not sovereigns of those parts of the East Indies to which Dutch sail, that is to say, Java, Ceylon and many of the Moluccas. This I prove by the incontrovertible argument that no one is sovereign of a thing which he himself has never possessed, and which no one else has ever held in his name. These islands of which we speak, now have and always have had their own kings, own government, their own laws and their own legal systems. The inhabitants allow Portuguese to trade with them, just as they allow other nations the same privilege”¹.

These words were authored by Hugo Grotius, the so-called father of international law, as a justification for the Dutch’s ambitious commercial pursuits in the East. It is a sheer irony that the same jurist who framed this articulation was later scrutinized for his own colonial prejudices and challenged the British claim to the East Indies in a contrasting manner to his previous position. The depiction of the Dutch jurist Grotius’s complexity is a mere one layer of the nuanced issues associated with the epistemology of international law. The recent currents in international law scholarship have produced a corpus of literature illuminating how international law soared its wings as an oppressor’s tool or in a more theatrical mode, Koskenniemi calls it a “Gentle Civilizer of Nations”.² The question that comes to the fore is what parameters were used by the early scholars to sanctify the notion of civility as civility itself was a subjective affair. Today’s international law scholarship is loaded with ample literature debunking the Eurocentrism prevailed in international law, which has opened the floodgates for many scholars from the Global South to trace their own legal encounters with the European colonizers in the past by refuting the benign sense of universality enshrined in international law³.

Grounded on the theoretical impetus in critiquing the coloniality and Eurocentrism behind international law, this article tends to take an approach exploring how the Kandyan kingdom, the last native polity of Sri Lanka encountered European treaty-making in the 17th century to 18th century. The epoch that has been chosen for this article was a crucial period in Sri Lanka’s history as it embodied a period of transformation from vigorous indigenous resistance to collaboration with European powers. This article carefully examines the events that befell the Kandyan kingdom in its existential struggle against the Portuguese who held their authority in the coastal areas of the island since the late 16th century and it unveils the treaties that Kandyan kings persuaded to sign with other European powers.

The treaties signed with the Dutch by Kandyan kings in the 17th to 18th century carry the central point of this study as it is a remarkable illustration of the 17th-century international law, in which the European powers condescendingly gazed at non-Europeans. While tracing the nature of Dutch attitude towards Sri Lanka in the 17th century as a part of their imperial pursuits driven by commercial desires, this article will illuminate how they used discriminatory clauses to deal with the King in the Kingdom of Kandy, which simply

¹ Grotius reader : a reader for students of international law and legal history, edited: L.E. Van Holk & C. G. Roelflofsen, Hague: Interuniversitair Institute Voor International Recht, 1977, p. 56.

² KOSKENNIEMI, M. *The Gentle Civilizer of Nations*, Cambridge: Cambridge University Press, 2001.

³ AMARASINGHE, P. Portuguese Policy in Sri Lanka as a reflection of the emergence of 16th century International Law, *Global Jurist*, Vol.24, No.1, 2024.

proved that European powers were reluctant to enter into equal treaties with Non-European kingdoms that existed beyond the reign of “Ius Publicum Europaeum”.

The first half of the article unveils how the Dutch East India Company known as VOC opened the discussion with King Rajasinghe II in the Kingdom of Kandy in Sri Lanka to expel the Portuguese from the island, which affirmed the bilateral concession to a treaty obligation between the two entities. The discussion emanates from this article will enlighten the reader on the dubious mechanism that pervaded the realm of international law in the 17th and 18th centuries that systematically excluded the non-European subjects as the “Other”. Kandyan Kingdom in Sri Lanka’s encounter with the Dutch East India Company, which was purely a commercial entity demonstrates the interwoven realities in the development of international law as a narrative, which legitimized commercial expansion, and empire as tools that went hand in hand.

The second half of this article reveals how the Kandyan kingdom got accustomed to the European practice of treaty-making with non-Westerners throughout the 17th to 18th centuries as Kandy finally yielded to its own sovereignty from European interference. To prove how Kandy insisted on the imperative of “sovereignty” at the same level as how Europe tried to uphold it, this article will elucidate the brief, yet fatal military engagement Kandyan kingdom had with the Dutch in 1766, which resulted in the further deterioration of Kandy’s sovereignty. The second half of this article testifies the robust transformation of Dutch position from a negotiating stance to a more superior one challenging the Kandyan kingdom and emergence of unequal treaties after taking military actions.

It is somewhat of a truism to say that the entire body of international law originated primarily as a European endeavor aimed at justifying their commercial interests and imperial ambitions in a lawful manner. This legal framework often excluded non-European nations from its protections and benefits. This article examines how the Dutch attempted to impose discriminatory clauses in their treaties, serving as a clear example of the unequal agreements adopted during the 17th and 18th centuries. It illustrates how Kandy confronted these legal challenges, as their primary concern was to preserve their sovereignty on equal terms.

Kingdom of Kandy

Besides its pristine beauty surrounded by ring of mountains and its own charm with the adorned architectural splendor of *Dalada Maligawa*, which is the palladium of the nation, Kandy is remembered as the last sovereign kingdom of Sri Lanka before the island lost its complete independence to British in 1815. Unlike the heyday of Sri Lanka as a distinct hydraulic civilization in the East under Anuradhapura-Pollonnaruwa (6th century BC to 1215 A.D), Kandy’s existence was a chaotic one in country’s most difficult period of history due to the Western invasions witnessed by the island nations since the 16th century. Located in the central region of the island, Kandy’s story as a kingdom began in the mid 16th century when the powerful Kingdom of Kotte in the West coast of the island became debilitated before the Portuguese influences. Kandy’s imperative rose to eminence due to the robust decline of Kotte and the ruthless anti-Buddhist attitude adopted by King Rajasinghe I in the rival kingdom of Sitawaka which compelled many of residents and Buddhist monks to seek protection from the regional ruler of Kandy, Vimaladharmasuriya I. In the words of a mid-nineteenth century historian of Ceylon, the Kandyan kingdom was protected by a ‘species

of natural circular fortification', which allowed the Kandyans to defy European modes of warfare for three centuries.⁴

Gutted by the constant invasions of Portuguese from 1594, Kandy's economy was waning, and it still dwelt in the old feudal order wherein the king personified the fullest divine command as the ultimate guardian of the people.⁵ It should be noted that the notion of freedom of thought and basic liberties that Europe began to enjoy during Age of Reason had not waned at the inhabitants of the Kingdom of Kandy as a result of its despotic nature where as people involved in an existential struggle by handing over their destinies to the King and native aristocrats around him.

Despite the sense of vulnerability that surrounded Kandy during its challenging times before the Western invasions, its cosmic significance remained unchanged. The kingdom of Kandy served as the last bastion separating the ravaged coastal regions under European colonizers from the Sinhalese people. Consequently, its structure seemed more celestial than merely a political entity, with the concept of sovereignty resting in the hands of the king. The king of Kandy was regarded as the ruler of what is known as the Tri Sinhala, which includes the Rajarata, Ruhunu, and Maya regions. Although it was an unrealistic aspiration, the Kandyan kings, from the onset of European invasions, were reluctant to accept the legitimacy of the Western invaders regarding the territories they had conquered.⁶ Treaties such as the one between Dharmapala and the Portuguese, which led to the complete subjugation of the Kotte kingdom to King Philip of Habsburg in 1580 A.D., had little impact on the later kings of Kandy. They did not feel bound by the treaties made by the Portuguese with the Sinhalese kings. Overall, the Sinhalese monarchs in the Kandyan kingdom were unfamiliar with the whole concept of "*Pacta Sunt Servanda*," which is closely associated with the early development of international law in Western thought.

When the earliest seeds of international law sprang within the Salamanca school of thought pioneered by stalwarts such as Vittoria and Suarez who conceived the idea of international law through topological lenses, Sri Lankan monarchs dwelled in the cosmic idea of kingship.⁷ Cosmic idea of kingship pervaded in Sri Lankan history had solid basis from Buddhist cosmology, which was by all means hierarchical in character with the Buddha standing at its apex, while below the Buddha is the world of the gods headed by the four guardian deities of the island namely, Natha, Vishnu, Kataragama and Saman. Beneath this plane of deities lies the world of other powerful deities, and finally there is the world of the demonic, inhabited by disordering spirits and ghosts. *Mahavamsa* and *Chulawamsa*, the chronicles elucidating the history of Sri Lanka from the earliest time to the advent of the European invaders project the duty of righteous king as the main defender of Buddhism from foreign invaders. This historiography is a typical depiction of clash between good and evil, in which the Buddhist cosmological authority had been vested within King.

⁴ SKINNER, T. *Fifty Years of Ceylon*, Caves: Colombo, 1891.

⁵ DEWARAJA, L. The Kandyan Kingdom: Secret of its Survival, *Journal of the Royal Asiatic Society of Sri Lanka*, 1986, Vol. 30:1, p. 120.

⁶ OBEYASEKERA, G. *The Doomed King: A Requiem for Sri Vickrama Rajasinghe*, Colombo: PereraHussain, 2017.

⁷ AMARASINGHE, P. Buddhist Cosmological Narratives: Hybrid Statehood in Sri Lanka and Myanmar, *Indian Yearbook of Comparative Law*, Vol. 12, 2023.

This archetypical narrative sanctifying king's own choice in governing kingdom's relations with foreigners was a stark contrast to striking features of the law of nations in the 16th century. The principle of *Ius Naturale* or sovereignty understood by Vittoria in in his Thomistic setting was nuanced one with its universal applicability for the whole world. As Vittoria states

*“From what has been said we may infer the following corollary: that the law of nations (ius gentium) does not have the force merely of pacts or agreements between men, but has the validity of a positive enactment (lex). The whole world, which is in a sense a commonwealth, has the power to enact laws which are just and convenient to all men; and these make up the law of nations. From this it follows that those who break the law of nations, whether in peace or in war, are committing mortal crimes, at any rate in the case of the graver transgressions such as violating the immunity of ambassadors. No kingdom may choose to ignore this law of nations, because it has the sanction of the whole world”*⁸

Buddhist cosmological hierarchy that lasted for centuries among the Sinhalese dynasties during different kingdoms in Sri Lanka made an inevitable impact upon the construction of the idea of kingship in the Kandyan kingdom.⁹ The possession of Buddha's Tooth Relic was emblematic of the authority to reign the island as king ensured that the royal palace was within the sacred premises that housed the relic; and rules regarding access to the Palace of the Relic were carefully regulated, just as the actual places of the kings were similarly monitored.

The Kandyan kings could not comprehend the significant changes that were occurring in Europe during the rise of international law, a transformation driven by the intellectual contributions of thinkers like Francisco de Vitoria and Hugo Grotius. Their worldview was fundamentally different from the linear perspective that characterized European thought. The Portuguese, who preceded the Dutch in the region, firmly believed that their claim to the Kotte kingdom and Kandy was supported by a legal entitlement derived from King Dharmapala's deed of gift to Philip II of Spain¹⁰. Although this belief was both palpable and unrealistic, the Kandyan kings maintained a conviction that their power was all-encompassing, grounded in the aforementioned cosmological narrative.

Dutch East India Company's Entry

The first Dutchman of any note to set foot in Ceylon was Admiral Joris Van Spilbergen, whose brief stint with the ruler of the Kandyan kingdom Vimaladharmasuriya I, laid the maiden foundation for Dutch penetration of the island much later¹¹. After gaining their independence from Habsburg Spain in 1580, the Dutch concentrated on forming their fleet to expand a naval empire in the East, which finally reached its realization when the Dutch East India Company was established in 1602 with the government's consent to carry out all the commercial ventures in Asia. In the words of Ben Phelan, the Dutch East India Company

⁸ ANGHI, A. Francisco Vittoria and the Colonial Origins of International Law, *Social and Legal Studies*, Vol. 5, No. 3, 1996.

⁹ MARASINGHE, M.L. Kandyan Law and British Colonial Law, *Law and Politics in Africa/Asia*, Vol. 12, No. 2, 1979.

¹⁰ AMARASINGHE, P. Portuguese Policy in Sri Lanka as a reflection of the emergence of 16th century International Law, *Global Jurist*, Vol. 24, No. 1, 2024.

¹¹ HULLUGALLE, H. *Ceylon of the Early Travellers*, Colombo: Caves Books, 1956.

was the world's first multinational company to own quasi-jurisdictional powers.¹² The company's desire to tap into an exchange of Indian cloth for fine spices from Java compelled the Dutch to forge their activities in the Indian subcontinent. In that context, the Dutch never reached Sri Lanka through serendipity as their tryst with the island nation was rooted in the commercial pursuits of the Dutch East India Company.

Early Dutch expeditions of the Dutch in the Indian Ocean faced severe threat from the Portuguese, who opted for the doctrine of *Mere Clausum*, which aimed to deny any non-Iberian ships to the Indian Ocean based on the territorial agreement brokered by the Pope in the Treaty of Tordesillas in 1494. Serving the interests of the Dutch East India Company, Hugo Grotius invoked *Mere Liberum* as a strong defence for the right of free navigation.¹³

The Dutch efforts to negotiate with the King of Kandy should be viewed within the broader context of their grand strategy for the Indian Ocean, along with all the associated challenges. When the Dutch embarked on their empire-building venture, the acceptance of international law was increasing in contemporary Europe, forming a set of norms among nations that adhered to Christianity. Consequently, the treaties formed among these nations were initially driven by strong theological motives, which later evolved into legal principles.

The Dutch East India Company was unshaken by the Portuguese claim over the Indian Ocean and their resistance in thwarting Dutch attempts to build relations with local rulers in the Indian subcontinent, as the strong legal argument of Grotius supported their maritime enterprises at an unprecedented level. Grotius refutes Vittoria's *terra nullius* principle, which was widely used by Spanish-Portuguese forces as redundant in the context of Dutch relations with India and Sri Lanka.

He states

"The Portuguese are not Sovereigns of those parts (of the East Indies) to which the Dutch have access (sail), that is to say Java, Ceylon (or Sumatra), the greatest part of the Moluccas—and this we prove by the most certain argument that nobody is Sovereign of a thing which he himself has never possessed and which no one else has possessed in his name"¹⁴.

The background that facilitated the Dutch East India Company's involvement in Kandyan affairs had many facets that were left to posterity. From a vantage point, the East India Company's cardinal aspiration in forging contacts with the Kandyan kingdom was akin to achieving its commercial profits, and Kandy's own interest in entertaining the Dutch was primarily focused on developing a defence partnership with a powerful European country against the Portuguese.

The first formal legal treaty espoused by the Dutch with the kingdom of Kandy was supposed to have been signed in 1612 as the Prince of Holland and its State-General sent an

¹² PHELEN, B. Dutch East India Company: The World's First Multinational Company, *Antique Roadshow*, <https://www.pbs.org/wgbh/roadshow/articles/dutch-east-india-company-the-worlds-first-multinational/>, 2016.04.12, (accessed date: 2025. 05.09).

¹³ ITTERSUM, M. The long Goodbye: Hugo Grotius' justification of just expansion, *History of European Ideas*, Vol. 36. Issue 4, 2010.

¹⁴ Grotius reader : a reader for students of international law and legal history edited: L.E. Van Holk & C.G. Roefflofsen, Hague: Interuniversitair Institute Voor International Recht, 1977, p. 67.

official delegate called “Marcelis Boschower” to Kandy.¹⁵ But, the Dutch effort did not see its accomplishment due to the peculiar nature of Kandyan statecraft in the chaotic 17th century. Although the king’s high impression of Boschower’s conditions upon starting a treaty with the Dutch, the king did not let him go.¹⁶ Senerath, the king of Kandy at that time informed the Dutch that in order to carry out the terms of the treaty scrupulously, it was necessary that he should have by him someone who could write letters in the Dutch language, which resulted in the detention of Dutch emissary Boschower in Kandyan territory for few years. The fate of this Dutchman remains one of the most intriguing affairs in Sri Lankan history as his later service to the King of Kandy in a bizarre manner created some legal complexities in the Dutch East India Company that questioned Boschower’s legal competency to represent Dutch interests in a non-European territory. For instance, Dutch authority in India Hans de Hase was rebuked by Boschower’s hobnobbing with the king of Kandy and the letters exchanged between the two simply denotes de Hase’s anger as he lambasts Boschower’s flippancy in forming a treaty with a heathen king without the consent from the Prince of Netherlands, which reflected Europe’s perception on law of the nations.

After Boschower’s ill-omened efforts to make Dutch diplomacy with the King Senerath in Kandy, Dutch interest in the island continued to grow significantly. The deplorable conditions of the Kandyan kingdom as a result of the continuous threat of the Portuguese were a compelling factor for the king of Kandy to seek external support to expel the Portuguese from the island, regardless of the archetypal conception of seeking Kingship as a cosmic position with the fullest authority in the island. Grotius’s impacts were echoed in the treaty making process that the Dutch East India Company involved in during the 17th century as Dutch began to regard Asian rulers equal to the European counterparts, which appeared to be a contrast to Salamanca school’s justification of complete Iberian authority over the conquered subjects as heathens, in which Indians were bound to prioritize the Christian delegates. For instance, Vittoria states

“ambassadors are by the law of nations inviolable and the Spaniards are the ambassadors of the Christian peoples. Therefore, the native Indians are bound to give them, at least, a friendly hearing and not to repel them”.¹⁷

Contrary to this rigid stance, Grotius became much more liberal by denying the Portuguese sovereignty over Java, Ceylon (or Sumatra), and the greater part of the Moluccas. He emphasizes that the communities in these territories have their own kings, state organization (*res publica*), and laws. The Portuguese may establish relations with them only by mutual arrangements. They are foreigners (*externi*) there and not sovereigns (*Domini*)¹⁸.

Legal historian C H Alexandrowicz contends that Grotius was aware of the existence of independent principalities in Asia, which propelled him to deny the Portuguese claim as the sovereigns of those territories¹⁹. Alexandrowicz is correct in his position as Grotius’s writings

¹⁵ OBEYASEKERE, G., *Many Faces of Kandyan Kingdom*, Colombo: Vijitha Yapa, 2019.

¹⁶ OBEYASEKERE, G., Recurring the History of a Defunct Kingdom, *Sri Lanka Journal of Sociology*, Vol. 01.1, 2019.

¹⁷ WORTELY.W. Vittoria and International Law Today, *Blackfriars*, Vol. 27, No. 319, 1946.

¹⁸ BOKUEMA, J.M. Grotius’ Concept of Law, *Archives for Philosophy of Law and Social Philosophy*, Vol. 69, No. 1, 1983.

¹⁹ ALEXANDROWICZ, C.H. *The Law of Nations in Global History*, New York: Oxford University Press, 2017.

reflected much nuanced attitude towards Asian nations in which he rejected Portuguese claims to the title of cession or conquest, provided it is affected by a just war. He also discards the title by conversion of Indians to Christianity or the title based on the Papal Donation as he firmly stated

*“These islands of which we speak, now have and always have had their own kings, their own governments, their own laws and their own legal systems”*²⁰

Moving one step further Grotius rejects Portuguese claim over Sri Lanka as their own discovery as an absurdity tracing Pliny the Elder’s reference to Sri Lanka in Roman period, which strongly suggest the level external connections that island of Sri Lanka maintained in the classical antiquity.

It is in this context that Dutch East India Company (VOC) turned its attention to Sri Lanka as a part of their commercial interest in Asia and hapless situation faced by ruler of Kandyan Kingdom in Sri Lanka, Rajasinghe II gave him no choice except seeking support Dutch, whose strong navy earned them reputation in Europe. The tremendous disparity of military technology between the Portuguese and Rajasinghe II’s troops convinced the king to accelerate ties with the Dutch. On the other hand, the decorations he carried as emperor of Ceylon, King of Jaffna and the owner of all the ports in the island seemed to be deceptive titles that allured him the mere recognition of the Dutch as the treaty that king concluded with Portuguese in Goa in 1634 had downgraded his status into a tributary king who would pay tribute to the Portuguese annually²¹.

Kandyan-Dutch Treaty of 1638

The Dutch were not aware of this treaty that the King signed with the Portuguese in 1634, and neither did the King reveal it to them. This incident again demonstrates how the Kandyan king perceives the notion of absolute sovereignty as a paragon limited to the king’s discretion, wherein the king himself could breach it, which was antithetical to the stringent mechanism of European treaty making under the law of nations at that time. Despite the salient bleakness that encircled the state of affairs in the Kandyan kingdom, Dutch Naval Commander Adam Westerwold and Rajasinghe II finally concluded a treaty in 1638²². The treaty, which enshrined typical characteristics of any contemporary European treaty, included nineteen Articles and a supplementary clause. The basic draft was in Dutch and translated into Portuguese, the language with which both parties were familiar. Article 1 of the treaty bound the king to acknowledge the Dutch not only as friends and allies, but also as the protectors of the Kandyan kingdom, so that they could help fully to defend the island. The phase “protector” in colonial international law has a benign sense of value as a legacy imbued with imperialism, which was often invoked by the British, French and Belgians in the 19th

²⁰ Grotius reader : a reader for students of international law and legal history, edited: L.E. Van Holk & C.G. Roelflofsen, Hague: Interuniversitair Institute Voor International Recht, 1977, p. 63.

²¹ GOONARATHNE, C. L. Some Historical Aspects of Leprosy in Ceylon During Dutch Period, *The Historical Journal*, Vol. 54, No. 2.

²² PAULUSUZ, J. H. The 1638 Wester Wolt Treaty in Ceylon: Charges of Dutch Deceit Disproved, *Bijdragen tot de Taal-, Land- en Volkenkund*, Vol. 56, No. 3, 1980.

century international law, wherein they tended carve the phase “protectorate” as a legal concept rationalizing the imperialism in East Africa²³.

Perhaps, it can be argued that the earliest seeds of the colonial notion of “protectorate” in international law reflected in what the Dutch produced before the King of Kandy in 1638, which intended to limit the king’s omnipotent authority over his subjects by giving superiority to the Dutch. The phase “protector” itself conceived a discriminatory status, which hampered the king’s position before his Dutch friends.

Article 3 and 4 referred to sharing the expanses for Dutch military expeditions against the Portuguese. It stipulates “If any of the forts or fortress should happen to be garrisoned by our officers and troops, the king shall likewise be bound defray pay their salaries”²⁴.

The overall nature of the treaty concluded between the Dutch and King Rajasinghe depicted a greater sense of homage to later emulating a typical oriental practice where the king is placed in a galactic manner filled with highest honors²⁵. Yet the cajoling remarks used by Dutch to appease the Kandyan monarch had concealed the ulterior motives that the East India Company strived to achieve, which truly challenged the sovereignty of the king over his own territory. Several Articles in the treaty carried ambiguous interpretations. For instance, Article 6 made the following stipulation

“His Majesty, if he should wish to try any war measures against the Portuguese or otherwise undertake any move, shall be bound first of all to consult with some of the highest officers of our armed services and support them in counsel and deed in order that everything may rebound to the welfare of His Imperial Majesty’s lands”.

The Article 11 required the king to send at least one, though preferably two shiploads of cinnamon, pepper and other valuable products to Batavia every year in exchange for the capital laid out by the Dutch East India Company.

The articulation used by the Dutch in crafting the treaty took an evasive approach as they portrayed the treaty as completely a subdued document before the power of the Kandyan monarch, but the underlying interpretations from many of the Articles had certainly curtailed the sovereignty that the king yearned to attain. It can also be remarked that this treaty displayed an equal status with the King of Kandy devoid of any ostensible racial superiority of the Dutch, which saw a steeping eclipse in the 19th century international law filled with civilizing rhetoric²⁶. Nonetheless, the treaty that the Dutch invoked with Rajasinghe II consisted of several discriminatory clauses proving the infancy stage of the European praxis of the unequal treaties with the non-European nations. The plethora of goodwill generated by the Dutch in the treaty towards the King Rajasinghe II in the Kandyan kingdom concealed the real motives of the East India Company in controlling the king’s rights to handle his foreign affairs. Notwithstanding Grotius’ vehement criticism on the Portuguese policy of excluding other European nations from any commerce with the Indian as a blatant violation of law of nations, Dutch treaty in 1638 had opted for the same pattern, which resulted in the decline of King’s sovereignty that further deteriorated the state dependency of the Kandyan

²³ GATHI, G. Imperialism, Colonialism and International Law, *Albany Law Review*, Vol. 23, No. 2, 2004.

²⁴ PAULUSUZ, W. The 1638 Wester Wolt Treaty in Ceylon: Charges of Dutch Deceit Disproved, *Bijdragen tot de Taal-, Land- en Volkenkund*, Vol. 56, No. 3, 1980.

²⁵ FALK, N.E. Wilderness and Kingship in Ancient South Asia, *History of Religion*, Vol. 13, No. 1, 1973.

²⁶ GOZZI, G. History of International Law and Western Civilization, *Bologna Law Review*, Vol. 6, No. 1, 2007.

kingdom²⁷. Without any remorse Dutch rationalized their mechanism based on a typical realist position wherein the Dutch considered the Portuguese to be their adversary, hence, their expulsion from dealing with the native Indian rulers in South Asia was a mandatory one, regardless of its violation of the Law of Nations.

In fact, King's own right to wage war against the Portuguese was limited in the treaty in a manner that conspicuously indicated that the Kandyan king should consult the Dutch before making any military moves. Indeed, the King Rajasinghe II was privy to all this enshrined within the treaty, yet he clung to the idea of forming an alliance with the Dutch for the greater good. Also, it should be borne in mind that the oriental practice of King's omnipotence or disregarding the treaty provisions may have induced Rajasinghe to ignore the awaited critical conditions in the treaty with the Dutch. Having realized Rajasinghe's ultimate ambition to crush the Portuguese, the Dutch aptly consolidated their position over the island by including the provisions mentioned above, which boomeranged upon the sovereignty of the Kandyan kingdom later.

The ubiquitous influence of the Dutch, which strongly grew in the aftermath of the 1638 treaty, confounded the Kandyan aspirations as they awaited the Dutch to hand over the coastal areas and their ports back to the King. On the contrary, Dutch presence in the coastal areas continued as a bulwark between the Kandyan kingdom and the rest of the territory, setting the trajectory for future escalations. Dutch fortified all the territories that they captured from the Portuguese by adopting a unilateral policy of keeping all the European powers from their center of gravity, which was a sheer sense of irony for what Dutch jurist Hugo Grotius advocated for freedom of navigation and respect of law of nature as the cardinal value in making contacts with other nations. It can be argued that the interplay of legal ideas and power dynamics remained visible in Dutch involvement in Sri Lanka after the conclusion of the treaty in 1638. When the law of nature with emphasis on state sovereignty began to be revered in the 18th century European legal thinking, their practice outside Europe chose a different path, which essentially focused on power and asset dominance²⁸. The Dutch attitude towards the Kandyan kingdom reflected these realities. In particular, the Dutch Governor to Sri Lanka in 1642, as a representative of the Dutch East India Company, Governor C.J. Simons, wrote in his memoirs.

*"The chiefpoints which demand attention . . . are the following viz.: (1) friendly relations with the Court or the King of Kandy; (2) prevention of the intrusion of all other European nations into Ceylon; (3) strict observance and watchful guard over the entire navigation of Ceylon"*²⁹.

Simon's acumen rationalised the whole Dutch policy later, and their initial strategy to stave off military confrontation with the Kandyan kingdom continued until 1766. However, during this period, the Dutch took the upper hand in the affairs with the Kandyan kingdom from the position of bilateral arrangement to unequal treaty making as an aggrandisement of the imperial building project.

²⁷ ALEXENDROWICZ, C.H. *The Law of Nations in Global History*, New York: Oxford University Press, 2017.

²⁸ KOSKENNEIMI, M., *Histories of International Law: Dealing with Eurocentrism, Rechtsgeschichte (Journal of the Max Planck Institute for Legal History and Legal Theory)*, 19, 2011.

²⁹ GOENS, L. H. *Memories*, Colombo, 1910.

Towards the stage unequal treaties: Dutch invasion of Kandyan Kingdom

The resentment of the Kandyan king towards the Dutch became quite visible within a few years after signing the treaty of 1638, which contained all the characteristics of silently increasing Dutch authority in the island. The strategic isolation of the Kandyan kingdom from the major harbours weakened the central authority of the Kandyan kingdom. However, the Dutch East India Company had successfully avoided a military clash with the Kandyan kingdom for more than a hundred years, but it became inevitable that the internal chaos within the Kandyan kingdom due to dynastic changes would undermine the Dutch ambition to stay away from open hostilities. The Dutch chose military means in 1764 as the last resort when they realised their authority in the coastal regions of the island would be at stake as King of Kandy, Keerthi Sri Rajasinghe considered the chances of allying with the British.

A visit paid by John Pybes, a representative from the British East Company to the Court of Kandy in 1762 added one more brick to Dutch suspicion over the Kandyan kingdom as the treaty concluded in 1638 had refrained Kandyan kings from making contacts with fellow European nations without consulting the Dutch. Even though Pybes's visit ended up in an unmitigated disaster, Dutch launched a military expedition in 1764. The whole scenario that occurred in this period demonstrates how the Dutch altered their position from being defence partners to the king of Kandy to invaders at an unprecedented level. At the end of military clashes between Dutch and Kandyan forces, later compelled to enter into a treaty with the Dutch due to the major debacles they suffered before European military superiority. The treaty signed between the Dutch and the King of Kandy in 1766 epitomises the emergence of unequal treaties in the late 18th century, which became a normal feature in the 19th-century law of nations. Regarding the treaty of 1766, Alexandrowicz states "Dutch policy, at first based on bilateral arrangements and later pursued on a non- treaty basis, reverted finally to treaty making"³⁰.

Unlike the first treaty that the Dutch signed in 1638, which established an equal relationship between Kandy and the Dutch, the second treaty signed in 1766 took a much more assertive approach, reinforcing Dutch imperial authority. The shift in the Dutch strategy, moving from friendly diplomacy to more aggressive methods following the Kandyan invasion, resulted in a legal document that required the Kandyan king to adhere to its terms to protect his remaining territory. Before examining the specific clauses of the 1766 Dutch-Kandyan treaty, it is essential to explore the historical foundations of unequal treaties in international law. Vattel distinguishes equal treaties connected with equality of promises and equal alliances with no difference in the dignity of the parties. An unequal treaty, on the other hand, would be one without equivalent promises and an unequal alliance would be concluded by parties with differences in status. According to Vattel unequal alliances could be further divided into those which impair or do not impair the sovereignty of one of the parties. For instance, an obligation not to go to war *against a certain nation* would not impair the sovereignty of the party concerned but an obligation not to go to war *against all other nations* would do so as it would stifle the external sovereignty of the particular State³¹.

The rise of unequal treaties from the 16th century onwards was attributed to the competition among the European powers and the Papal order stemmed from Treaty of

³⁰ ALEXENDROWICZ, C.H. *The Law of Nations in Global History*, New York: Oxford University Press, 2017.

³¹ VATTEL, E. *Le Droit des Gens*, transl. by CHITTY, J., 1834, p. 141.

Tordesillas by dividing the world between Portuguese and Dutch was accepted by the fellow European powers outside the Catholic sphere³². The Dutch largely disregarded the claims of Asian rulers, consistently establishing relationships that included clauses aimed at preventing the locals from interacting with the Portuguese. They also ensured that other European nations, such as the British or French, would not form alliances with these native populations through trade. The treaties the Dutch negotiated included provisions that legitimized their monopoly on trade in the region. This inclusion was a clear reflection of the discrimination that Europe began to practice during the early development of international law.

When it comes to the Dutch-Kandyan treaty in 1766, it appeared to be a legal document defining the sovereignty equally between the Dutch East India Company and the Kandyan king. Realistically, this was a mere deception as King was cut off from the control of the harbours and waterways and thus forced into isolation from the point of view of overseas relations. According to article X of the treaty the Company undertook to pay for the goods acquired in Ceylon, i.e. ivory, pepper, coffee, etc., and its purchases were to take place to the exclusion of all other nations.

Article XIV of the treaty was a blatant violation of the Kandyan kingdom's external sovereignty due to its coarse nature, which prohibited the King and any other officer in the Kandyan court from upholding external relations with the European powers or concluding treaties with the European nations. However, the foremost jurist of the 18th century, who advocated for the use of the law of nations, Vattel justified such treaties in *Droit des Gens* stating that such treaties are reasonable if they paid homage to the general interests of the mankind. Vattel states

"The Dutch by a treaty with the King of Ceylon have wholly engrossed the cinnamon trade; yet, whilst they keep their profits within just limits, other nations have no right to complain'. But when the necessaries of life were involved, other nations could react against the oppressor".³³

Unlike the international lawyers of the 19th century, who regarded non-European nations as uncivilized and lacking reason, Vattel had a more nuanced perspective. He believed that the validity of a treaty should not be determined by religious considerations. Instead, the legitimacy of a treaty, according to him, was based solely on the law of nature.

"Different people treat with each other in quality of men and not under the character of Christians, or of Mohammedans".³⁴

All in all, the last three decades of the 18th century emboldened the Dutch power position over Kandy in an astounding manner that finally set the trajectory for the erosion of its sovereignty, especially when the former compelled the latter to accept the terms and conditions of the unequal treaty of 1766.

³² WHEATON, H. *Elements of International Law*, Boston: Brown Company, 1855.

³³ VATTEL, *Le Droit des Gens*, transl. by J. CHITTY, J., 1834, p. 144.

³⁴ VATTEL, *Le Droit des Gens*, transl. by J. CHITTY, J., 1834, p. 144.

Conclusion

The status of the Kandyan kingdom in the aftermath of the 1766 treaty with the Dutch became much more deplorable due to the policy of encirclement adopted by the Dutch administration in Colombo cutting off all the major naval harbours. The discriminatory clauses enshrined in the treaty had weakened Kandy's position over its external sovereignty. But, it is worth noting that Dutch progress in monopolising their authority in the Kandyan kingdom was a slower process compared to what they attained in the Indonesian islands where they reduced the external sovereignty of the local rulers from the beginning. By emulating the practice, they implemented in South India, the Dutch East India Company gradually penetrated into the Kandyan polity in the most evasive manner, in which the treaty making seemed to be their trusted partner than arms and cannons. Treaty-making was part of the perplexing picture of political and military manoeuvring and formalised the consecutive power positions. It is in the process of taking stock after a ceasefire or truce that a legal stamp was usually put on a temporary balance of power.

The question that one should ask from the modern parameters of international law would be purely based on the structural issues pervading the discriminatory clauses of the treaties between the Dutch and the Kandyan kingdom. From the modern idea that the notion of whole treaties between Kandy and the Dutch East India Company stands unequal, it is evident that the background behind the treaty mechanism suggests the idea of sovereign equality was not fully functional in the 17th to 18th centuries. Europe's understanding of the Westphalian sense of sovereignty was alien to Kandy and its ideology of cosmic reality, in which the Sinhalese king's omnipotent authority was preposterous to the Dutch. Hence, it could be contended that the whole complexity that surrounded the treaty affairs between the two parties arose out of the peculiarities of each other. It was common with many South Asian treaties in the contemporary time that later provided the opportunities to European powers to exploit the treaty practice.

With regard to the Dutch East India Company, a commercial entity imbued with legal power through a charter issued by the Dutch monarch in 1602, it became evident that the Company's authority intended to form a treaty with the Kandyan kingdom as equals. Yet the latter's inability to fathom the treaty practice and the former's motive to exploit the later clearly paved the path for making such discriminatory treaty practices between the two parties.

This article discusses a tumultuous period in the Kandyan kingdom, which ultimately faced its decline in the 19th century due to the powerful British forces. This era can be regarded as the last phase of Kandy's genuine sovereignty before it fell under Dutch control in 1766. The shift in fortune that Kandy experienced in 1766 marked a turning point, preventing it from reclaiming its rightful sovereignty during subsequent interactions with the British. Especially, when The British acquired the coastal provinces of Sri Lanka from the Dutch under a stipulation of the Treaty of Amiens in Europe, The British considered Kandy as a mere vassal state within the island due to the legality of the 1766 Dutch treaty with King Keerthi Sri Rajasinghe, which had sharply curtailed the kingdom's sovereignty. Ultimately, it should be recognised that the discriminatory nature of treaty making in the 17th to 18th century law of nations primarily aimed at limiting the power of Asian rulers to form alliances with other nations. This reflected in the case of the Kandyan kingdom in its whole relationship with the Dutch East India Company.