LEGAL RELATIONS BETWEEN CEYLON AND THE PEOPLE'S REPUBLIC OF CHINA 1949-1971

The object of this paper is to examine and discuss the international legal relations between the People's Republic of China (hereinafter referred to as China) and Ceylon, since the Communist revolution in China. Significantly, there have been no occasions on which the two countries have had to settle their disputes or differences by reference to an International Court or an International Tribunal. On the other hand, there have been diplomatic incidents in which reference has been made to international law by both parties. However, in general the tendency has been to canvass foreign policy objectives and principles rather than to insist on legal rights. Nevertheless, there are some aspects of the international relations between China and Ceylon which can be fruitfully examined from a legal angle and which can be evaluated in legal terms.

The areas which will be examined here concern:

(i) the recognition of the Communist government of China by Ceylon;

(ii) the question of two Chinas, which involved also the seating of Communist China in the United Nations and the membership of Taiwan in the United Nations;

(iii) the stand taken by Ceylon in the Sino-Indian dispute;

(iv) the incident connected with Mao badges;

(v) treaty relations;

(vi) agreements between China and state enterprises in Ceylon.

(1) *Recognition of the Communist Government of China*

The government of Ceylon accorded *de iure* recognition to Communist China on 5th January 1950, simultaneously terminating recognition of and relations with the Chinese nationalist government.[1] It would seem that Ceylon was merely following the policy of the United Kingdom in recognizing Communist China. The United Kingdom in fact recognized the new regime on the same day and withdrew recognition from the Taiwan regime also on the same day.

The British line of action in this regard was influenced by many factors, apparently, as far as its diplomatic policy went. Among these factors the position of the United Kingdom in Hongkong was undoubtedly

1. See Hansard (H.R.), 1951, Vol. 10, Coll. 1713-1714.

important. Also relevant were the large commercial interests which she had in mainland China and the possible reactions of Chinese populations in the areas of South East Asia which were controlled by the United Kingdom. However, the British recognition of the Communist regime in China came at the time it did for two special reasons. One was the fact that the Indian government had decided to recognize the new regime in late December 1949 [2] and the other the recommendation of a conference of British diplomats held in Singapore which had suggested that the communist regime should be recognized before the end of 1949 in order to prevent disturbances which might have occurred among the Chinese groups in South East Asia. Apparently, consultations on the matters had been going on between the United Kingdom, the Commonwealth, the United States and other States since August 1949. Also the question had been discussed at a meeting of the Commonwealth High Commissioners in London and the British decision to recognize Communist China had been known to the representatives of the Commonwealth states.[3] Thus, the weight of evidence leads one to the conclusion that as far as the mechanics of the recognition of Communist China were concerned, Ceylon merely followed the lead given by the United Kingdom.

Recognition of Communist China was clearly regarded as a case of recognizing a revolutionary government by both the United Kingdom and Ceylon. It was not a question of recognizing a new State. In so far as recognition was withdrawn from the nationalist government by both these states, it was clear that the act of recognizing the communist government amounted to an intimation that these two states regarded the communist government as being the sole authority capable of representing the State of China in its international relations with these two States. In this connection it was equally clearly indicated, that these two States did not regard the nationalist government as having any international legal status in regard to the representation of the State of China which merely continued its existence irrespective of the revolution. By its acts of recognition of the communist government and of withdrawal of recognition from the nationalist government Ceylon unequivocally took the position that the communist government alone could represent what had been, was and now is the State of China.

From a legal point of view it would have been of interest definitely to know whether the act of recognition on the part of Ceylon was regarded as being merely declaratory or as being constitutive of a status and whether the act was performed in pursuance of a legal duty to recognize or as a mater of political expediency. The act of recognition itself did not contain any declaration as to what it was intended to be on either score. It may be safe to assume that, following British practice,[4] Ceylon was acting on a constitutive view of recognition but this can be no more than an assumption. It would also seem that

2. For the Indian attitude see Misra, in 55 *A.J.I.L.* (1961) pp. 398 ff.

3. On the whole question of British policy see Kodikara, in 2 *South Asian Studies* (1967) p. 103 at 107 ff.

4. See Lauterpacht, *Recognition in International Law* (1947) pp. 87 ff.

the test regarded as relevant in this case of recognition was that of effectiveness. This is to say, recognition was accorded primarily because the communist government was in fact capable of securing the habitual obedience of the bulk of the population in China. It was not dependent on any added requirement, such as that the Chinese government was willing to fulfil its international obligations, which seems to be a requirement insisted on by the United States of America in the matter of recognition in general.

As to the legal duty to recognize once the factual requirement of effectiveness was satisfied, it is not quite clear whether the Ceylon government conceded such a duty in its actions or whether it acted purely from a sense of political expediency. It is unlikely that in 1950 the Ceylon government would have turned its attention to that question at all, but it would seem that Ceylon did in fact rather mechanically follow the British example, as pointed out earlier. The question then naturally arises whether the British act of recognition was governed by any sense of duty. As indicated, there were many policy factors which may have influenced the British decision to recognize at the particular time at which it did recognize. However, Lauterpacht has expressed the opinion[5] that British practice in regard to recognition had earlier been based on the belief that there was a legal duty to recognize when the factual conditions necessary for establishing that a government was an effective government were satisfied. It is, therefore, possible that in spite of the numerous policy reasons that the United Kingdom may have had for granting recognition at the time, she was primarily motivated by a conviction that there was a legal duty to recognize the communist government because it was the effective government of China.

The question of diplomatic relations between China and Ceylon subsequent to recognition does not really touch the question of the legality or otherwise of the act of recognition. Recognition opens the way for full diplomatic relations but it does not compel them as part of the act of recognition, nor does the validity of an act of recognition necessarily depend on the commencement of diplomatic relations. However, it is interesting to note the attitude of the two States to this question of diplomatic relations.

Ceylon seemed at this stage to be reluctant to establish diplomatic relations with China. The Prime Minister of Ceylon had indicated a desire to enter into diplomatic relations with China in his letter conveying Ceylon's recognition of the communist regime. In response to this the Chinese Foreign Minister had invited Ceylon to negotiate with a view to establishing such relations.[6] This response was regarded as unusual by the Prime Minister of Ceylon who intimated to the Chinese government that for the present Ceylon would use the good offices of the diplomatic representatives of the United Kingdom.[7] The matter

5. *Op. cit.* pp. 158 ff.

6. *Hansard* (H.R.), 1951, Vol. 10, Coll. 1713-1714.

7. *Ibid.*

was allowed to rest there by both parties, while the United Kingdom and China entered into protracted negotiations prior to the appointment of a representative by the British government to look after its interests in China. The failure of Ceylon to enter into full diplomatic relations at this early stage cannot be attributed entirely to the stand taken by China, although the Prime Minister of Ceylon at the time implied that this was the case; for two years later his successor, Mr. Dudley Senanyake, stated in Parliament that it was Ceylon's financial position that did not permit the opening of an embassy in Peking.[8] Sir John Kotelawala who succeeded Mr. Senanayake as Prime Minister soon after gave as his reason for not entering into full diplomatic relations with China the fact that visiting communists were apt to disseminate more harm than goodwill.[9] His view was that relations with China should be restricted to trading. This did not mean, however, that relations between China and Ceylon were not cordial. Indeed, after the Bandung Conference Kotelawala's attitude towards China had improved considerably, though it was still his declared view that the dissolution of the Cominform was an essential prerequisite for the establishment of diplomatic relations between Ceylon and China.[10] Despite all this China had been allowed to set up a Trade Agency in Ceylon in 1953, but without diplomatic status. Actually, it was Kotelawala's successor, Mr. Bandaranaike, who belonged to a different political party from that to which Ceylon's Prime Ministers had hitherto belonged, that decided to establish diplomatic and cultural relations with China in 1956.

(2) *Seating the Communist Government in the United Nations and the Question of Two Chinas*

There are really three aspects connected with the problem of seating the communist government of China in the United Nations. The first concerns the representation of China in the U.N., the second concerns recognition of Taiwan, and the third involves the admission of Taiwan to the United Nations. The stand taken by Ceylon was always unequivocal. Her views were expressed clearly in the United Nations. There was also one occasion on which the Prime Minister made a statement in Parliament on the issue of two Chinas.

In the United Nations the following statement was made by the representative of Ceylon in October 1967:-

> "We have referred to the fact that the United Nations has now come of age. In all these years, however, it has failed to repair its gravest omission, the proper representation of the 700 million Chinese people. We associate ourselves unequivocally with those delegations which have preceded us in this General Debate and which have urged the seating of the People's Republic of China in this Organization as the lawful representatives of the Chinese people. We have maintained in the past, and we still maintain, that this is a simple matter of credentials, that what we are called upon to approve is the restoration of the lawful rights of the People's Republic of China and that the Government of the People's Republic of China is alone entitled to represent that country and its people. There should be no doubt

8. *Hansard* (H.R.), 1953, Vol. 14, coll. 483-484.

9. Kotelawala, *An Asian Prime Minister's Story* (1956) p. 115.

10. *Hansard* (H.R.), 1955, Vol. 22, col. 707.

as to our policy in regard to Taiwan. Ceylon does not subscribe to the theory of two Chinas. The recent events in China have no bearing at all on the right of the People's Republic of China to the seat intended for China in this Assembly and in the Security Council. They neither strengthen nor weaken that right. We hope this Organization will not defer any longer the seating of the People's Republic of China. With this achievement to its credit, the United Nations would be better equipped to face the future with faith in its mission and with confidence in its ability to discharge its sublime trust".[11]

A longer statement was made by Ceylon's representative to the U.N. in November 1967 when certain draft resolutions concerning the representation of China in the U.N. were discussed.[12] In 1968 the problem was adverted to again and the representative of Ceylon reiterated what had been said earlier:

"All efforts at international co-operation, especially on questions of such moment as non-proliferation and disarmanent, would have only a limited effectiveness without the participation of the People's Republic of China in the work of this Organization. We have heard it said that the present occupant of China's seat has an unchallengeable right to remain in the Organization as a founder member of the United Nations. This argument totally ignores the elementary principle that the members of this organization are the peoples of the world. It ignores the fact that the Government that represented the people of China at the time of the founding of the United Nations was replaced by the Government of the People's Republic of China. The Government of the People's Republic of China alone are the legal representatives of the peoples of China whom they have governed for 19 years. It is the restoration of the lawful rights of the people of China that calls for the admission of the People's Republic of China to membership as the sole representatives of the people of China. We have also heard it said that in the admission of the People's Republic of China the practical problem arising out of the position of the Chiang-kai-Shek regime in Formosa has to be considered. An organization founded on principles of justice and international law owes its first duty to the observation and enforcement of those principles. Practical problems cannot be accommodated at the expense of such principles. Our overriding obligation is to such principles and the discharge of that obligation demands the immediate restoration of their lawful rights to the People's Republic of China. We hope that those who claim to be genuinely interested in securing the membership of the People's Republic of China in the United Nations will not be so indifferent to their avowed wish as to insist that the question of the restoration of the lawful rights of the People's Republic of China be treated as an important one. If it is important, we should find every means of ensuring it rather than support the surest way of preventing it".[13]

Similar sentiments were reiterated in the debate in the General Assembly in 1971.[14]

On another occasion the Embassy of the People's Republic of China raised the question of Taiwan with the Ministry of Defence and External Affairs in Ceylon and the reply was given that Ceylon did not recognize Taiwan as a separate State nor did it subscribe to the

11. *Ministry of Defence and External Affairs Press Release,* 28th October 1967.

12. Statement on the Representation of China by the Permanent Representative for Ceylon in the General Assembly on November 27, 1967.

13. *Ministry of Defence and External Affairs Press Release,* 6th November 1968.

14. See Speech of the Permanent Representative of Ceylon to the U.N., Mr. H.S. Amerasinghe, circulated by the Ceylon Mission to the U.N.

doctrine of two Chinas.[15] The matter was also raised by the opposition in Parliament and to this the Prime Minister gave a more detailed explanation of the position taken by Ceylon.[16]

The position taken by Ceylon on the three aspects of the matter appears clearly from these statements.

(i) On the matter of representation, it is abundantly evident that Ceylon considered the communist government to be the sole representative of what was and is the continuing State of China. It does not believe that the former State of China has split up into two entities, both with right of succession to what was the State of China, as was probably the case with the division of India into India and Pakistan. Nor has the position been accepted that the nationalist government of Chiang-kai-Shek is the proper government of what was the State of China. It follows that since the communist government is the proper government of China, it alone can claim to represent China in the United Nations. The position taken by Ceylon is in keeping with her earlier recognition of the communist regime as the government of China. Ceylon also did not consider the matter as one of expelling Taiwan. The matter was entirely one of representation.[17] In 1971 Ceylon voted for the Albanian resolution which succeeded in putting the government of the People's Republic of China in place of the government of the Republic of China.

On the question how the change in representation at the United Nations could be effected, the position taken by Ceylon was that the matter was not an important question for the purposes of Article 18 of the Charter and that a simple majority would have sufficed to seat the communist government of China in place of the nationalist government of Taiwan. Further in 1971 it was pointed out that Ceylon regarded the resolution directed at classifying the question as an important one as being contrary to the Charter because the Charter in Article 18(3) provided for "categories of questions" and not "single questions" to be put into the class of questions to be decided by a two-thirds majority. In 1971 Ceylon voted against the resolution which aimed at making the "expulsion of Taiwan" as important question and which was not carried.

(ii) On the question if recognition of Taiwan as a separate State, Ceylon takes the stand that this is not a possible alternative for her. It does not and has not recognized Taiwan as a separate State from China, nor does it recognize the nationalist government as an international entity representing a State different from China. Ceylon has made it clear that it has dealings with the regime located in Taiwan

15. *Press Communique of the Ministry of Defence and External Affairs* (August 23, 1967), replying to *Note of the People's Republic of China* (PO-41/67) of August 22, 1967 and *Press Communique of the Ministry of Defence and External Affairs* (September 13, 1967) replying to *Note of the People's Republic of China* (PO-45/67) of September 13, 1967.

16. *Hansard* (House of Representatives) November 21, 1967, Columns 2609-2615.

17. See Address to the General Assembly of the Permanent Representative of Ceylon to the U.N. made in 1971 by Mr. H.S. Amerasinghe, and circulated by the Ceylon Mission to the U.N.

and engages in trade with it but all this without prejudice to its stand relating to recognition of the Taiwan regime and the State of Taiwan. Particularly important is the fact that it does not recognize Taiwanese passports but merely issues special visas for entry into Ceylon to those who produce such passports. Ceylon has also denied that sending a government official to a conference organized by an international organization in Taiwan does involve the granting of recognition to the regime in Taiwan or to Taiwan as a State.

The question whether Taiwan qualifies for recognition as a separate State is, indeed, a difficult one. Although the government of the People's Republic of China has not given up all hopes of subjugating the regime and people of Taiwan, it would seem that the realization of the hope is only a remote possibility as things now stand. It is, thus, possible to argue that the nationalist government in Taiwan is a break-away regime which has succeeded in establishing itself in Taiwan, is independent, commands the habitual obedience of the bulk of the population of Taiwan, and is, therefore, the effective government of Taiwan. Hence, if there is a duty to recognize a state and regime that has established itself as an independent entity, the situation seems to warrant the incidence of such a duty in this case. But there is room for difference of opinion on the question, particularly, of independence so that no categorical answer can be given to the problem.

(iii) In keeping with her view that Taiwan is not a separate State with an effective government, Ceylon takes the position that there can be no question of admitting Taiwan to the United Nations as an independent state.

(3) *Ceylon's Position in the Sino-Indian Dispute*

In 1957 when Chou En-Lai visited Ceylon, he explained Chinese foreign policy on the basis that:

> "countries large or small, strong or weak, are all equal and should have the right to implement their own independent and sovereign foreign policies. They also have the obligation not to infringe on other countries' sovereignty, nor to interfere in the internal affairs of other coutries".[18]

But these principles seem to have been flouted by the Chinese in their dealings with Tibet in 1959 and India in 1962. China took action in 1959 to incorporate Tibet as an integral part of China. In response to this action several Buddhist organizations in Ceylon held public meetings in Ceylon to condemn China. Pressure was being brought to bear on the government to take a stand on the matter which would have involved severely reprimanding China but Prime Minister Bandaranaike considered that the Tibetan question was an internal affair of the Chinese and refused to take the side of the Tibetans in the matter, nor was he prepared to initiate international action.

In the case of the Sino-Indian dispute of 1962, Prime Minister Mrs. Bandaranaike was unwilling to succumb to pressure from within

18. *Asian Recorder,* vol. 3(7), p. 1293.

the government party as well as from outside to condemn China as the aggressor. The Prime Minister took the lead in summoning the Colombo Conference of six non-aligned nations to discuss ways and means of conciliation and of bringing India and China to the conference table with a view to settling the dispute. Certain proposals were formulated which were communicated to both the Chinese and Indian governments. The Indian government approved of the proposals but the Chinese government made certain reservations before accepting the proposals. No positive results in the way of settlement of the dispute were achieved but, at least, the disputants had time to reconsider their positions. The effect of Ceylon's stand has been assessed as follows:-

> "Ceylon's role as a peace maker in the Sino-India conflict was motivated by her manifest desire to prevent the continuation of hostilities between two countries with both of which she had close political and economic ties, and with neither of which she could have afforded a breach of the existing goodwill and friendly relations. Indeed, Ceylon's role and neutralist stand in this dispute seems to have been greatly appreciated in China .... In a Joint Communique issued by the Prime Ministers of Ceylon and China in Peking on 8 January 1963, it was affirmed that:
>
> > Ceylon and China are bound by many ties of friendship, economic co-operation and cultural and religious exchanges. The two Prime Ministers are determined to strengthen these ties, further develop economic co-operation between the two countries and to work together in international relations in the cause of Asian-African solidarity and world peace".[19]

Ceylon's neutralist stand in this case served to bring Ceylon and China closer together rather than to accentuate their differences and foster disputes.

(4) *The Mao Badges Incident*

There was an incident in August 1967 in which allegations about the withholding of Mao badges by the government of Ceylon played an important part. The incident involved, in brief, the pilfering of goods from a Chinese vessel in the Colombo harbour and the withholding by the authorities in Ceylon of Mao badges sent to the Chinese embassy in Ceylon by the Chinese government. There are several aspects, however, to this incident which require separate treatment. The incident, it may be noted, occurred at a time when the cultural revolution in China was at its height.[20]

(i) The Chinese government implied that the government of Ceylon had failed to take the necessary action to prevent thefts of its property and even instigated the thefts, thus becoming internationally responsible for the delinquencies committed by private individuals.[21] The response given by the government of Ceylon to these allegations made assumptions

19. Kodikara, in 2 *South Asian Studies* (1967) p. 103 at p. 124.

20. The four documents concerned in the incident are (i) PO-39/67 *(Note from The People's Republic of China);* (ii) SEA/CHI/1/46 *(Note from the Ministry of Defence and External Affairs of Ceylon);* (iii) PO-44/67 *(Note from the People's Republic of China);* (iv) SEA/CHI/46/1 *(Note from the Ceylon Ministry of Defence and External Affairs).*

21. PO-39/67.

which were in keeping with the usual theories of international law.[22] Apart from the fact that the allegation of direct complicity could not be proved, the government of Ceylon clearly pointed out that there was no negligence on its part in allowing the thefts to take place and that adequate measures had been taken to bring the culprits to book and punish them at law. It was stated that:

> "the man arrested with the 12 locks in his possession has been charged in a Court of Law, convicted and sentenced by the Joint Magistrate, Colombo, on 3rd August. Contrary to the Chinese Embassy's allegation that the Police authorities had failed to afforod the necessary protection for the cargo, the police have executed their duties and secured the punishment of those found to be guilty. Similar action, in accordance with the laws of Ceylon, will be taken against any others found guilty".[23]

It would seem that, in so far as the Chinese Embassy did not raise this particular matter again, it had failed to substantiate its charges of State responsibility by complicity, while the Ceylon government gave ample evidence of its *bona fides* and absence of any neglect of duty, in bringing the criminals to book and having them dealt with by the law, so that there could be no international delinquecy because of any failure to take the necessary action in the case of a private offence.[24]

(ii) The Chinese government alleged that certain books and periodicals addressed to private parties had been detained by the Customs authorities, but no evidence was produced to substantiate this allegation. The Ceylon government while pointing out that there was no evidence of this sort of action stated that the Customs authorities had full power under the law of Ceylon to decide whether literature offends against the laws of Ceylon and to ban its import.[25] In maintaining that the powers vested in the Customs authorities were not to be interfered with, the government of Ceylon was taking the position that the law of Ceylon on the point was not in violation of international law. It cannot be denied that customs laws of this nature are not an infringement of international law. There can be no question of a violation of the international minimum standard in the case of the laws of Ceylon which pertain to prohibited literature such as obscene works or works likely to incite to violence.

(iii) The Chinese government stated in its protest that:

> "All plots and intrigues to undermine the friendship between the peoples of China and Ceylon and to carry out anti-China provocations will certainly be knocked severely on the head by the Chinese people and will be completely smashed".[26]

22. SEA/CHI/1/46.

23. Ses *ibid.*

24. For the International Law on this point see the *Noyes Claim* (1933) 6 U.N.R.I.A.A. 308, the *Janes Claim* (1926) 4 *ibid.* 87 and Amerasinghe, *State Responsibility for Injuries to Aliens* (1967) pp. 51-52, 54.

25. See SEA/CHI/1/46.

26. SEE PO-39/67.

The government of Ceylon pointed out in its reply that:

> "The Ministry has examined this statement carefully, and is constrained to say that it constitutes an unwarranted interference in the sovereignty and internal affairs of Ceylon, which is unacceptable".[27]

Clearly, the Chinese threats were of interference in the internal affairs of Ceylon. What the Chinese government was proposing to do was a violation of international law. Hence the reaction of the Ceylon government was not unwarranted.

(iv) The Chinese government complained that the withholding of the Mao badges by the Customs authorities was a violation of international law, since it was property of the Chinese government destined for the Chinese embassy in Ceylon. The acts of the Ceylon government in this regard were described as "a serious infringement on the Embassy's diplomatic privileges and a crude trampling upon the elementary principles guiding international relations. . ."[28] and it was stated that:

> "The Chinese Embassy is a diplomatic mission .... and it is entitled to get everything it needs from its own country. It is all the more the Embassy's sacred and inviolable right to get badges with the profile of our great leader Chairman Mao sent from China, in which the Ceylon government has no right whatsoever to intervene .... The presentation of these badges by the Chinese Embassy to the friendly Ceylonese people is entirely a normal function for prompting the friendship between the two peoples and is in full accord with international practice",[29]

The position taken by the Ceylon government was that it was acting in accordance with international law and practice "which vests in the host Government the right to determine the manner and extent of the privileges which will be accorded to unaccompanied baggage of foreign diplomatic missions".[30] Apart from the fact that there appears to have been some misconduct on the part of the Chinese government in regard to the declaration of the contents of the baggage containing the Mao badges, the Ceylon government stated that:

> "The Embassy would be aware that under international law and practice, while Foreign Missions may import articles in reasonable quantities for their personal and official use, they are not permitted to dispose of, or distribute, such articles within the host country. In the circumstances, while the Ministry is quite prepared to permit the clearance of a reasonable quantity of badges for the use of members of the Chinese Embassy, it cannot agree to the clearance of some 300 badges — the bulk of which could be distributed among residents of Ceylon".[31]

The stand taken by the government of Ceylon was, undoubtedly, in keeping with current notions of international law and practice, as far as release of the goods for import into Ceylon was concerned. It is

27. See SEA/CHI/1/46.

28. See PO-44/67.

29. *Ibid.*

30. See SEA/CHI/1/46.

31. *Ibid.* See also SEA/CHI/46/1.

also significant that in keeping with the law the Ceylon government was prepared to allow the excess badges to be shipped back to China.[32] Even though the goods involved may have been of a somewhat trivial nature so far as the working of the Chinese Embassy and the effect on the country of their distribution was concerned, the legality of the action of the Ceylon government cannot be questioned.

(v) The Chinese government made the charge that the government of Ceylon had made use of and instigated reactionary newspapers to spread rumours on the incident so as to whip up anti-Chinese sentiment which amounted to provocation, against China.[33] The government of Ceylon denied these charges categorically, pointing out that there was a free press in the country, which could report news and express its opinions provided this was within the law.[34] Here again the Chinese government was on weak ground in so far as it could not substantiate its allegation of fact. On the law, it cannot be denied that the kind of criticism made of the Chinese government would have been permissible and not provocative, even if officially published by the government of Ceylon, in so far as it was not motivated by a malicious intention but rather by a sense of self-defence. International law would not prohibit justifiable self-defence against foreign propaganda. It is only where the limits of self-defence are exceeded that the action would be prohibited.

(vi) The Ceylon government referred to acts committed by certain elements in China against the Embassy of Ceylon in China. It was said that:

> "Ceylon's Embassy in Peking was subjected to a four-hour hostile demonstration, during which and subsequently, offensive posters were also affixed to the walls of the Embassy".[35]

While these acts may have been perpetrated by non-official elements in China, international law requires that the host state should take adequate care to see that Embassy property is not treated in a manner which is humiliating to the foreign government. In so far as no such steps were taken as might have been taken by the Chinese police to prevent the acts described, it may be argued that China was in violation of international law.

(5) *Treaty Relations*

There have been numerous treaties entered into between Ceylon and China since the revolution in China. On the whole those in Ceylon concerned with the implementation of these treaties are of the view that, though China may drive a hard bargain before a treaty is concluded, she is as punctilious in fulfilling her obligations under a treaty as she is determined in exacting strict respect for her rights arising from a treaty. So far there have been no disputes of a serious nature which

32. *Ibid.*

33. PO-44/67.

34. SEA/CHI/1/46.

35. *Ibid.*

have arisen from the treaties that have been concluded, so that there is no means of gauging how China might react to a difficult point of law that might arise in such a dispute. It is interesting, however, to see what kinds of clauses appear in the treaties concluded in relation to specific problems.

Among the agreements concluded have been a trade agreement (1953), an air transport agreement (1959), several trade and payments agreements (1957-1968), an economic aid agreement (1957), a loan agreement for flood relief (1958), an agreement for economic and technical cooperation (1965), and a maritime transport agreement (1963). This last agreement has not been published in printed form by the government of Ceylon, although it was tabled in Parliament. Hence it assumes special importance. Apart from this agreement, the trade agreement and the trade and payments agreements are the most important. Some clauses of the air transport agreement are also interesting.

In the trade agreement of 1953, Article vi stated that the agreement was valid for one year from the date of ratification, while it could be extended for further periods by agreement between the parties. Article vii stated that during the period of its validity, revision of the agreement could only be done by agreement between the parties. Article viii allowed for extension of the agreement through negotiation and agreement, provided the suggestion for extension was made by one of the parties two months prior to the date of expiry of the agreement. Article v which dealt with arrangements for payments specified that

> "All the payments for the trade between the two countries shall be conducted in Ceylon Rupees; On the balancing of the account at the end of each year, the surplus, if any, accumulating to the credit of either party shall be settled by merchandise or by conversion into a third currency or carried forward to the succeeding year, as may be agreed between the parties".

The payments arrangements were clearly based on a barter system.

In the air transport agreement apart from the fact that both States parties to the agreement limit their territorial sovereignty to some extent, there are some interesting provisions relating to the modification of terms, breach of terms, interpretation and termination of the agreement. Article 15, dealing with the modification of provisions, makes it possible for a party to request for consultations with the other party with a view to modification of the treaty. Thereupon the other party must come to the conference table within sixty days, while new provisions only come into effect if they are agreed upon by the parties. Article 16, dealing with breach of the treaty, provides that where one party or its airline fails to comply with the terms of the treaty, the other party may withhold or revoke the rights exercised by such party or its airline, such action to be taken only after consultation between the parties. Differences as to interpretation are, according to Article 19, to be settled through consultations and negotiations in a spirit of friendliness and mutual understanding. There is no provision for international arbitration or for reference to the International Court of Justice, in the case of disputes. According to Article 20 the agreement came into force on the date of signature and termination was possible on notice being given by either party provided a year had elapsed from

the date of signature. The agreement is to terminate one year after such notice is given, unless by agreement the notice given is withdrawn three months prior to the expiry of the year.

The more important clauses in the 1968 trade and payments agreement[36] are Article viii which incorporates a most-favoured nation clause, Article ix dealing with payments and Article x which deals with the coming into force of the agreement and extension of its period of validity. There seems to be no provision for the settlement of disputes. In the maritime transport agreement[37] Articles 2 and 3 incorporate most-favoured nation clauses, Article 8 provides that settlement of disputes arising from the interpretation of the agreement must be by negotiation, while Article 9 deals with the coming into force of and extension of the treaty. Here again there is no provision for settlement of disputes by reference to international arbitration or to the International Court of Justice.

(6) *Agreements between China and State Enterprises in Ceylon*

The contract of 1968 between the China National Chartering Corporation, which is a state enterprise and may be regarded as an arm of the Chinese state, and the Ceylon Petroleum Corporation is an example of this kind of agreement. The agreement is for the sale of fuel oils by the Ceylon Petroleum Corporation to the Chinese corporation. There have been no disputes arising from the contract so far. The main features are the payments clause, the arbitration clause and the clause pertaining to the duration of the contract.

By section 6 payment by the Chinese Corporation is to be done in accordance with the terms relating to payment of the trade and payments agreement in force between China and Ceylon. There are two other agreements with State agencies in Russia and Rumania, both communist countries, for the purchase of petroleum products from those agencies by the Ceylon Petroleum Corporation, in which the payments clauses spell out the manner of payment in greater detail, unlike the Chinese contract. However, those agreements also refer to trade and payments agreements between Ceylon and those States under which payment is to be made.

In section 8 provision is made for the settlement of disputes. That section reads as follows:-

> "In the event of any dispute or difference arising between the two parties to this Contract in the implementation of this Contract, or, in the interpretation thereof, both parties to this Agreement shall first consult each other and make their best endeavour to resolve it. Such disputes or differences shall unless settled between the parties by mutual agreement be referred to arbitration. All matters pertaining to such arbitration shall be mutually agreed upon by the parties to this Contract. Decisions arrived after such arbitration shall be final and binding on both parties."

36. *Treaty Series No. 2 of 1968.*

37. Unpublished. See Appendix I. This agreement caused some controversy in political circles. It was discussed in Parliament: see *Hansard* (H.R.), 1963, vol. 53, coll. 986; 1965, vol. 60, coll. 1168-70.

This clause is similar to the arbitration clause which appears in the Russian and Rumanian agreements.

Section 9 makes provision for the duration of the agreement:

> "This Agreement shall continue to be in force until such time as it is terminated by either party by giving to the other, three clear months written notice of its intention to terminate the Contract. On the expiry of three months from the date of the aforesaid notice the Contract shall terminate. The parties hereunto agree that any alterations, variations or changes to the provisions of this Agreement shall be agreed upon between the said parties and on their being incorporated in an addendum and signed by both parties the provisions of the addendum shall take effect as if they have been herein written."

There is a force majeure clause in the Chinese contract as there is in the Russian and Rumanian contracts. Section 7(c) reads as follows:

> "Neither the Seller nor the Buyer shall be responsible for any failure to fulfil any term of this Contract if fulfilment has been delayed, hindered or prevented by any circumstance whatsoever which is not within the control of the Seller or the Buyer as the case may be or by any curtailment, failure or cessation of supplies from any of the Seller's then existing or contemplated sources of supply or by compliance with any order or request of any national, port, transportation, local or other authority or any body or person purporting to be or acting for such authority. The Buyer shall be free to purchase from other oil suppliers any deficiency of deliveries caused by the operation of this condition."

C. F. AMERASINGHE *

* M.A., LL.B. Ph.D., LL.D. (Cambridge), LL.M. (Harvard), Ph.D. (Ceylon), of the Legal Department of the International Bank for Reconstruction and Development; Sometime Second Professor of Law, University of Ceylon, Colombo; Smuts Fellow-elect of the University of Cambridge and Research Fellow of Harvard University Law School.

The views expressed in this paper do not represent the views of the International Bank for Reconstruction and Development.