

A Slippery Sovereignty: International Law and the Development of British Cochin

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INTRODUCTION

In the interwar years, the historic Cochin harbor in southwestern India, often remembered as the site of the first European settlement in South Asia, was finally opened up to steamships through the much-celebrated Cochin Harbor Project.¹ Among the last grand infrastructure projects executed during colonial rule, it was this development scheme that allowed Cochin (now known as Kochi) to emerge as one of India's most important ports at the time of independence.² The project's significance is widely acknowledged in both popular and academic narratives; less known is that by the time it was completed in 1936 the port had ceased to be fully British, for part of it was in the hands of the Cochin State, which shared its name and its boundaries with the port. How had a princely state established its sovereignty over a British port in the final years of colonial rule? This article engages this question and examines the various means through which the Cochin State increased its influence over the harbor starting in the late

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¹ The Cochin Harbor Project executed between 1920–1936 involved deepening the Cochin harbor through extensive dredging.

² For histories of the Cochin Harbor Project, see Robert Bristow, *Cochin Saga: A History of Foreign Government and Business Adventures in Kerala, South India, by Arabs, Romans, Venetians, Dutch and British Together with the Personal Narrative of the Last Adventurer and Epilogue* (London: Cassell and Company, 1959); D. Babu Paul, *A Queen's Story: Five Centuries of Cochin Port* (New Delhi: Vikas Publishing House Private Limited, 1987); Hans Schenk, *Views on Alleppey: Socio-Historical and Socio-Spatial Perspectives on an Industrial Port Town in Kerala India* (Amsterdam: University of Amsterdam, 1986); Bristow Centenary Celebrations Publications Committee, eds., *Bristow Remembered* (East West Publications, 1981).

nineteenth century, culminating in its remarkable utilization of international law to assert partial sovereignty over the British port on the eve of the inauguration of the Cochin Harbor Project. In so doing, the article probes the promise of international law for semi-sovereign states like Cochin at the turn of the century, and the forms of claim-making generated by it among both European and non-European powers during this critical period. At the same time, it situates such invocations of international law in the wider context of the economic and political aspirations of semi-sovereign states during the early twentieth century, a period associated with both the consolidation of territorial sovereignty and the articulation of novel political imaginaries, including anti-colonial internationalisms and federation.³

Princely states were partially autonomous territories within India that had not been brought under direct British control. As Lauren Benton notes, within the wide spectrum of semi-sovereign polities, these states were seen to represent “an intermediate case in the continuum from subordinate society to semiautonomous and potentially independent state.”⁴ Governed by local rulers, colonial authority was exercised in these territories through the presence of a British Resident who oversaw many important aspects of their internal and external affairs. Within South Asian historiography the degree of autonomy wielded by these states has remained a subject of much debate.⁵ While some important works have portrayed them as hollow crowns that lacked any real authority, others viewed them as important sites for the articulation of “alternative modernities” in opposition to the colonial state.⁶ Recent scholarship has moved beyond this framework and is paying closer attention to the differences among these states and to their actual legal status. Inspired by Benton’s work on quasi-sovereignty,

³ See Manu Goswami, “Imaginary Futures and Colonial Internationalisms,” *American Historical Review* 117, 5 (2012): 1461–85; Priyasha Saksena, “Building the Nation: Sovereignty and International Law in the Decolonization of South Asia,” *Journal of the History of International Law* 23 (2021): 52–79.

⁴ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires 1400–1900* (Cambridge: Cambridge University Press, 2009), 238–39. On how the concept of semi-sovereignty was itself deliberately kept vague to be utilized and deployed differently in different contexts, see Yuan Yi Zhu, “Suzerainty, Semi-Sovereignty, and International Legal Hierarchies on China’s Borderlands,” *Asian Journal of International Law* 10, 2 (2020): 293–320.

⁵ For a survey of the scholarship on the princely states, see Chitrallekha Zutshi, “Re-Visioning Princely States in South Asian Historiography: A Review,” *Indian Economic & Social History Review* 46, 3 (2009): 301–13.

⁶ See Nicholas B. Dirks, *The Hollow Crown: Ethnohistory of an Indian Kingdom*. Cambridge South Asian Studies (Cambridge: Cambridge University Press, 1988); and Manu Bhagavan, *Sovereign Spheres: Princes, Education and Empire in Colonial India* (New Delhi: Oxford University Press, 2003) for representative examples of these respective positions. Other important texts that look at this question include Ian Copland, *The Princes of India in the Endgame of Empire, 1917–1947* (Cambridge: Cambridge University Press, 1997); Barbara Ramusack, *The Indian Princes and Their States* (Cambridge: Cambridge University Press, 2008); Janaki Nair, *Mysore Modern: Rethinking the Region under Princely Rule* (Minneapolis: University of Minnesota Press, 2012); Waltraud Ernst and Biswamoy Pati, eds., *India’s Princely States: People, Princes and Colonialism* (New York: Routledge, 2007).

several scholars have, for instance, turned their attention to the jurisdictional complications generated by princely states' relationship with the colonial state. While analyzing the borders separating these states from British India as important sites of state-making, they have also highlighted the critical role played by international law in this process.⁷ As Priyasha Saksena notes, however, this scholarship has engaged with these issues almost exclusively from the perspective of the colonial state.⁸ Saksena, on the other hand, demonstrates how princely states themselves utilized international law to articulate a clear vision of sovereignty in order to resist colonial interventions. Benton and others have shown how the language of international law and fuzzy imperial boundaries allowed the British to mark these states as anomalous legal spaces over which they could assert control through forms of divisible sovereignty marked by multiple levels of political authority. Saksena, however, shows how these states responded by mobilizing international law to articulate a vision of territorial sovereignty in which jurisdictional powers within a territory were seen to rest with a single authority.⁹ Eric Lewis Beverley has similarly attempted to transcend the narrow focus on the colonial state to argue not only that, contra Benton, indeterminate boundaries were never fully consolidated, but also that these fuzzy frontier spaces could provide individuals and princely states with opportunities to resist the reach of the colonial state.¹⁰ While Saksena and Beverley successfully highlight the importance of interrogating international law and imperial boundaries from the perspective of the princely states, they have focused largely on how these states used international law to resist encroachments by the colonial administration.

The same focus is evident in recent analyses of the importance of international law for semi-sovereign territories like the Ottoman Empire and Qing China. This scholarship has shown how these states proactively familiarized themselves with international law over the course of the late nineteenth century and sought to utilize it in disputes with European powers.¹¹

⁷ Benton, *Search for Sovereignty*; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2005); Sudipta Sen, "Unfinished Conquest: Residual Sovereignty and the Legal Foundations of the British Empire in India," *Law, Culture and the Humanities* 9, 2 (2013): 227–42; Sarath Pillai, "Fragmenting the Nation: Divisible Sovereignty and Travancore's Quest for Federal Independence," *Law and History Review* 34, 3 (2016): 743–82.

⁸ Priyasha Saksena, "Jousting over Jurisdiction: Sovereignty and International Law in Late Nineteenth-Century South Asia," *Law and History Review* 38, 2 (2020): 409–57.

⁹ *Ibid.* Also see Pillai, "Fragmenting the Nation."

¹⁰ Eric Lewis Beverley, "Frontier as Resource: Law, Crime, and Sovereignty on the Margins of Empire," *Comparative Studies in Society and History* 55, 2 (2013): 241–72; and *Hyderabad, British India, and the World: Muslim Networks and Minor Sovereignty*, c. 1850–1950 (Cambridge: Cambridge University Press, 2015).

¹¹ See, for instance, Richard S. Horowitz, "International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century," *Journal of World*

While these interventions have enabled us to appreciate the importance of international law for non-European states, they have mostly been concerned with defensive actions aimed at either securing borders from colonial intrusions or resisting the principle of extraterritoriality.¹² But as Yuan Yi Zhu has recently shown, in the early twentieth century states like China were also trying to utilize international law to consolidate and expand their territorial limits.¹³ Zhu analyzes such efforts in relation to weaker states like Mongolia and Tibet, where the degree of nature and extent of Chinese suzerainty had never been properly clarified. The present article, though, will use a close case study of a princely state's mobilization of international law to secure greater rights over British Cochin to show that such efforts could be targeted not only at weaker peripheral domains but significantly at the colonial state itself. I will show how under certain conditions international law could provide some semi-sovereign states with the vocabulary and the means to assert and even expand their sovereign rights in opposition to the colonial state in the twentieth century, when the precise nature and contours of the emergent international order based on territorial sovereignty were still being worked out.¹⁴ We will see that in the case of Cochin such assertions were made possible by the port's blurry physical and political boundaries and a complicated history involving three European powers.

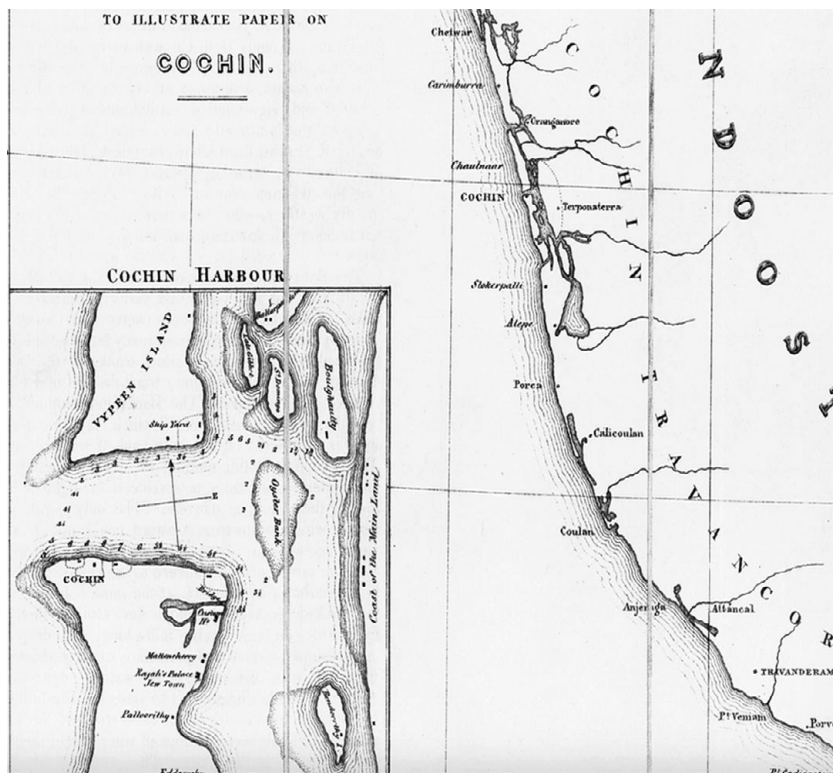
Situated at the tip of a narrow barrier island, surrounded by the sea on one side and an intricate network of lagoons or backwaters on the other, the Cochin harbor was lodged amidst the two princely states: Cochin State and Travancore (See [Map 1](#)). Prior to the lengthy period of European control that began sometime around 1500 CE, the harbor had been part of the Cochin State's territory. The princely state had first ceded the valuable port to the Portuguese in order to secure an alliance against their powerful and aggressive northern neighbors, the Zamorins of Calicut. The harbor was then transferred to the Dutch in the seventeenth century before it was ultimately conquered by the British in 1795. While the British consolidated their control over the harbor in the following decades, much of the port's hinterland remained within the region's princely states. As a result, British Cochin's physical and political frontiers were hard to define and almost impossible to separate. Moreover, the port's coastal

History 15, 4 (2004): 445–86; and Mostafa Minawi, "International Law and the Precarity of Ottoman Sovereignty in Africa at the End of the Nineteenth Century," *International History Review* 43, 5 (2020): 1098–121.

¹² For a fascinating glimpse into the creative use of international law by non-state actors in the Indian Ocean to resist British intrusions on the high seas, see Fahad Ahmad Bishara, "'No country but the ocean': Reading International Law from the Deck of an Indian Ocean Dhow, ca. 1900," *Comparative Studies in Society and History* 60, 2 (2018): 338–66.

¹³ Zhu, "Suzerainty."

¹⁴ For an analysis of the formation and reconfiguration of the "international" during this period, see Stephen Legg, "An International Anomaly? Sovereignty, the League of Nations and India's Princely Geographies," *Journal of Historical Geography* 43 (2014): 96–110.



MAP 1: Map showing the Cochin harbour and the surrounding princely states. Inset: Cochin Harbor Mouth and adjoining islands. Source: F. C. Brown, "On Natural Advantages of Cochin as a Place of Trade," *Journal of the Royal Geographical Society of London* 3 (1833): 268–70.

configuration continued to shift due to periodic accretions and erosions of land. In the late nineteenth century, as the movement of people and goods intensified owing to the region's closer integration with the expanding global economy, the harbor's fluid surroundings and its proximity to the princely states raised various jurisdictional complications necessitating novel forms of intervention.

The next section will highlight some of these complexities, and then analyze how ecological and legal ambiguities allowed the princely state of Cochin to closely involve itself with the British port's commerce over the late nineteenth century. We will then examine how these processes ultimately paved the way for the state's mobilization of international law to challenge British sovereignty over a port that had been under European control since the early sixteenth century. I will not assess these attempts simply in terms of success and failure, but instead interrogate the kinds of claims generated by international law

and examine how states like Cochin utilized their partial inclusion in the international order to reimagine their future and their past as sovereign states. Following the logic of the claims that Cochin made, I argue, allows us to recognize and interrogate international law as a critical tool of state-making for non-European powers in the early twentieth century. As recent scholarship has highlighted, this was a period when multiple political futures were being imagined, with the nation state not having yet emerged as the obvious or only plausible alternative to the imperial status-quo.¹⁵ This was also a time when water was increasingly being territorialized, with international law playing a critical role in the extension of territorial boundaries over water bodies.¹⁶ I will use the territorial dispute over the waters surrounding Cochin to explore how these processes intersected to provide the Cochin State with a reason and an opportunity to assert and extend the territorial scope of its sovereignty. This will illustrate Andrew Fitzmaurice's contention that "international law needs to be understood as something more than a liberal instrument created for the domination of global political society," but will also underscore the importance of situating such utilizations of international law in the broader context of processes of state-formation among semi-sovereign states in the early twentieth century.¹⁷ Before examining these important legal and political developments, let us first look at key changes that took place in Cochin State's economic relationship with the British port over the latter half of the nineteenth century.

PERILOUS PASSAGES

In 1851, the Diwan or chief minister of Cochin State, Sankaran Warriar, wrote to British authorities to complain about rampant smuggling in the vicinity of the Cochin harbor. The Cochin State had established monopolies over some of the region's most coveted commodities, including tobacco and pepper, and the Diwan claimed that these were being regularly flouted by smugglers who were illicitly importing or exporting these goods through patches of British territory strewn across the backwater. While this was a long-standing concern in a region where state frontiers often intersected over water, this problem had intensified in the mid-nineteenth century because of an increase in the circulation of these commodities in the global economy, and local fiscal policies which we will analyze shortly.

¹⁵ See, for instance, Goswami, "Imaginary Futures."

¹⁶ Philip E. Steinberg, *The Social Construction of the Ocean* (Cambridge: Cambridge University Press, 2001), 136–37.

¹⁷ Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (Cambridge: Cambridge University Press, 2014), 272.

The immediate trigger for the Diwan's protest was provided by an incident involving a small island situated in British Malabar. Earlier that week, as their nightly vigil over the backwaters was coming to an end, police personnel from the state had noticed three suspicious boats over the horizon.¹⁸ These vigils were necessitated by the growing incidence of smuggling in the area, and the alert policemen gave chase hoping to catch some culprits red handed. Much to their frustration, however, the men managed to evade arrest by jumping into the water and seeking refuge on the adjoining island—for on this spot where the backwaters gave way to land, the domain of the Cochin State yielded to that of British Malabar. The State's personnel could only watch helplessly as the men made their escape through British territory, though they did manage to recover some pepper the fugitives left behind. This was not an isolated incident, and Warriar claimed that the island in question, known as Ramanathurthy or Candle Island, had become a depot for the contraband trade in pepper and tobacco.

Jurisdictional complications of this sort were quite common in colonial India.¹⁹ As Eric Lewis Beverley argues, boundaries between princely states and British India are best understood as fuzzy frontiers that were never fully consolidated and around Cochin an ever-changing and fluid physical environment had only added to the indeterminacy of these blurry boundaries.²⁰ Sankaran Warriar asserted that a lack of control over Candle Island had made it impossible for his administration to stop smuggling in the area.²¹ The island, while relatively small and insignificant, was ideally located just off Cochin's harbor to make it "a convenient receptacle" for smuggled goods, especially tobacco. The Diwan claimed that tobacco was brought to the island by sea in the dead of the night, where it was stored until a favorable opportunity was found for transporting it further. Stating that the island's strategic location made close surveillance absolutely essential, he urged colonial authorities to allow his government to secure it from the activities of smugglers. Candle Island, situated in British Malabar, had been rented out to a private individual, and it was its subsequent neglect that had, according to Warriar, allowed the island to be turned into a storehouse for the illicit trade. In order to exercise close supervision over the island, the Cochin State offered to rent it from British authorities on the same terms that had been extended to the present holder of the lease. Anxious to stop the

¹⁸ Letter from Diwan Sankaran Warriar to British Resident, W. Cullen, 3 Jan. 1851, file P-20, Kerala State Archives, Cochin (hereafter KSAC).

¹⁹ See, for instance, Benton, *Search for Sovereignty*; and Kate Boehme, "Smuggling India: Deconstructing Western India's Illicit Export Trade, 1818–1870," *Journal of the Royal Asiatic Society* 25, 4 (2015): 685–704; Mark Condos, "The Indian 'Alsatia': Sovereignty, Extradition, and the Limits of Franco-British Colonial Policing," *Journal of Imperial and Commonwealth History* 48, 1 (2020): 101–26.

²⁰ Beverley, "Frontier as Resource."

²¹ Letter from Diwan Sankaran Warriar to British Resident, W. Cullen, 3 Jan. 1851, file P-20, KSAC.

clandestine movement of goods that had been affecting its own revenues, authorities in British Malabar acceded to the princely state's request and transferred the lease with little hesitation. But Candle Island was just one among many points along the coast through which goods were carried across state frontiers without the payment of duties. And while a fairly simple adjustment could help strengthen surveillance around the island, stopping the unauthorized passage of commodities across the coast would call for more sweeping changes.

In recent years, historians working on South Asia and other parts of the world have highlighted the need to interrogate the economic and political context in which certain commercial activities have come to be designated as smuggling.²² They have also called attention to the entanglements between smuggling and the consolidation of state boundaries.²³ Such linkages can be easily discerned in mid-nineteenth-century Cochin, where the existence of complicated fiscal arrangements between British Malabar and the region's princely territories had led to the imposition of a whole host of duties and restrictions on goods moving across the region, thereby encouraging the development of an illicit commercial network.

Since British authorities treated Travancore and Cochin State as foreign territories, trade between the three states was liable to the payment of customs duties, which many attempted to evade. This illicit trade intensified in the second half of the nineteenth century, following the signing of an interportal agreement in 1848 that made trade between British ports duty-free.²⁴ This agreement had turned the Cochin harbor into the cheapest and most convenient outlet for transporting goods from Malabar to other parts of British India. It therefore not only provided additional incentives for surreptitiously carrying goods from the two states to British Cochin and vice-versa, but it also helped channel the rest of the region's produce towards the harbor.

As maritime states, both Cochin and Travancore had important ports of their own. Travancore had systematically developed Alleppey (now known as Allapuzha) as its primary trading center, while the Cochin State had begun to rely on smaller ports like Malipuram and Paliport after losing its right to trade through the harbor in the early years of British rule.²⁵ Over the course of the

²² See, for instance, Amar Farooqui, *Smuggling as Subversion: Colonialism, Indian Merchants and the Politics of Opium* (New Delhi: New Age International, 1998); Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States along a Southeast Asian Frontier, 1865–1915* (New Haven: Yale University Press, 2005); Philip Thai, *China's War on Smuggling: Law, Economic Life, and the Making of the Modern State, 1842–1965* (New York: Columbia University Press, 2018); Johan Mathew, *Margins of the Market: Trafficking and Capitalism across the Arabian Sea* (Oakland: University of California Press, 2016).

²³ See Tagliacozzo, *Secret Trades*.

²⁴ Correspondence relating to the 1865 interportal trade convention, file C-107, KSAC.

²⁵ For an account of Alleppey's development, see Hans Schenk, *Views on Alleppey: Socio-Historical and Socio-Spatial Perspectives on an Industrial Port Town in Kerala India* (Amsterdam: University of Amsterdam, 1986).

nineteenth century, each time the two states had feared a diversion of their trade toward the British harbor they had responded by lowering duties at their own ports and increasing supervision at frontier posts to tax British Cochin's trade. Since such measures could adversely affect the latter's revenues, the colonial state had from time to time been forced to execute a series of ad-hoc measures to provide some concessions to the states in order to ease the passage of commodities around the harbor.

In the latter half of the nineteenth century, with the signing of the interportal trade agreement drawing much of the region's trade towards the British port, the princely states of Malabar began to once again resort to these tactics, lowering the duties at their ports and establishing frontier ports along their boundaries with British Cochin to tax the trade passing through the harbor. With these measures adversely affecting their port's revenues and obstructing commerce in the region at a time when the demand for the region's commodities was growing significantly, the local colonial administration was forced to consider a more far-reaching and permanent solution for these recurring concerns. Finally, in 1865, after a lengthy period of negotiations, the Madras government agreed to extend the interportal trade agreement to the princely states of Malabar, ending the differential fiscal treatment of the neighboring states. Through this concession, the Madras government also offered to grant the two states a share in British Cochin's customs revenues in exchange for the abolition of frontier posts and the raising of customs duties at ports belonging to the two states. Travancore declined this offer, choosing to retain some of its frontier posts in order to continue conducting its trade through the port of Allepey. The tiny state of Cochin, however, agreed to all the terms of the settlement in exchange for a 50 percent share in British Cochin's revenues. Henceforth, the state's fiscal claim over British Cochin would be equal to that of the Madras government, fundamentally reconfiguring its relationship with the harbor.²⁶

Significantly, then, whether it was through the transfer of jurisdiction over Candle Island or the extension of the interportal agreement to the region's princely states, increased regulation of "illicit" commerce around Cochin was attempted not through a consolidation of political boundaries but through an acknowledgment of their porous nature. Since "smuggling and processes of border formation were inherently linked," as Eric Tagliacozzo has highlighted, states in Malabar chose to try and control the illicit trade around Cochin by dissolving the port's boundaries to some extent.²⁷ While these measures helped curb smuggling around the port, they also enabled the Cochin State to assert unprecedented claims and influence over a British port.

²⁶ Ibid.

²⁷ Tagliacozzo, *Secret Trades*, 362.

These legal changes coincided with other, equally significant commercial developments which further strengthened the princely state's linkages with the harbor. The late nineteenth century, as historians have pointed out, was marked by an intensification in world trade and agrarian productivity.²⁸ Often associated with the rise of a "global countryside," this is a period in which large parts of Asia and Africa began to produce primary commodities for industries and markets in Europe and America.²⁹ Keen to exploit novel opportunities generated by these transformations, the two princely states of Malabar executed a series of measures to increase the productivity of their domains from the 1860s onward. Both states, for instance, passed historic land reform legislations to expand agricultural production and invested heavily in infrastructure within their territories.³⁰ With its other ports having been rendered redundant following the interport agreement, the Cochin State, for its part, took proactive steps to improve British Cochin's connectivity, investing heavily in the construction of roads, canals, and even a railway line to the port.³¹ It has been pointed out that the British utilization of a "standard of civilization" to rank Indian princely states and other non-European semi-sovereign territories encouraged such states to execute various reforms aimed at creating interventionist bureaucracies in order to minimize colonial interventions.³² Such concerns were certainly reflected in both Cochin and Travancore, but the actions of the two states were also motivated and shaped by a keen interest in maximizing the commercial potential of their domains at a time when the global economy was becoming ever more closely entangled. Spurred by these agricultural and infrastructural improvements, British Cochin experienced a commercial revival, emerging at the century's turn as the most significant port on the Malabar coast and the third busiest port in southern India, behind only Madras and Tuticorin.³³

The expansion in the port's commerce in the late nineteenth century strengthened demands for a harbor modernization project that would open up British Cochin to modern steamships. The inauguration of the Suez Canal in 1869 had necessitated such projects in ports across the world due to a significant

²⁸ See Andrew Sartori, *Liberalism in Empire: An Alternative History* (Berkeley: University of California Press, 2014); and Tariq Omar Ali, *A Local History of Global Capital: Jute and Peasant Life in the Bengal Delta* (Princeton: Princeton University Press, 2018); Sven Beckert, *Empire of Cotton: A Global History* (New York: Alfred A. Knopf, 2014).

²⁹ Beckert, *Empire of Cotton*.

³⁰ For a discussion of some of these developments, see Heather Lovatt and Peter de Jong, *Above the Heron's Pool: Short History of the Peermade/Vandiperiyar District of Travancore* (London: BACSA, 1993).

³¹ For a comparison of infrastructure development in different parts of the Cochin, Travancore, and British Malabar, see P. Ibrahim, "The Development of Transport Facilities in Kerala: A Historical Review," *Social Scientist* 6, 8 (1978): 34–48.

³² See Saksena, "Jousting over Jurisdiction"; and Horowitz, "International Law."

³³ "The Investigation for a Deep Sea Harbor in Tuticorin," 1916, British Library, W5806.

increase in the size and scale of shipping. While Cochin had traditionally been famous for its capacious natural harbor, a sandbar at its mouth had made this anchorage inaccessible to all but small country crafts. The removal of this ridge of sand had come to be seen as essential if Cochin were to function as an important port from the late nineteenth century onward. Following the opening of the Suez Canal, therefore, several influential individuals and organizations had begun petitioning the provincial government in Madras to invest in the development of a deep-water port in Cochin.

By the turn of the century, and with its commercial interests becoming ever more closely tied with those of the British port, the Cochin State also became involved with this issue, joining the growing chorus of voices urging the colonial state to undertake significant harbor improvement works at Cochin. Having already invested in improving the port's connections to its thriving hinterland, the Cochin State of course had much to gain from an expansion in the port's capacity and commerce. But this was not the only reason for the princely state's growing interest in the British port's development during this time. Over the preceding decades, the susceptibility of the harbor's surroundings to coastal erosion had become increasingly apparent.³⁴ While a part of this coastline, including the harbor itself, lay in British Malabar, much of the area threatened by the sea remained in the Cochin State. Under pressure from local inhabitants who were losing their lands and livelihoods to surging waters, the state was keen to execute coast protection works with assistance from the local colonial administration, which was similarly struggling to stem the sea's surge. Convinced that developing the port and expanding its commerce would provide the requisite funds for undertaking expensive protective works along the eroding coastline, the princely state urged the Madras government to take the lead in executing a joint coast protection and harbor development project. The colonial administration, however, refused to spend money on either. Dismissing threatened coastal areas as "low value" agrarian lands, and the need for another large port in southern India, the Madras government refused to either protect the coastline or to develop the port.³⁵ The fact that the port's revenues were shared equally with the Cochin State further discouraged the colonial administration from taking an active interest in the port since its development had the potential to divert trade from other colonial ports like Madras and Bombay. Even as the Cochin State was becoming progressively more interested in maximizing the port's revenues, therefore, the colonial administration continued to dismiss all calls for intervention around Cochin.

³⁴ On coastal erosion and its role in shaping harbor development at Cochin, see Devika Shankar, "A Perilous Port: Nature Sovereignty and Development at the Edge of British India," PhD diss., Princeton University, 2019.

³⁵ *Ibid.*

Frustrated at this attitude, in 1911 the Diwan of the Cochin State, A. R. Banerji, wrote a lengthy letter to the Government of India, accusing it of wasting Cochin's commercial potential by neglecting its threatened coastline and failing to invest in its development.³⁶ Highlighting the urgent need for coast protection around Cochin and the port's potential for development, Banerji expressed his administration's keen interest in the future of the British port and its willingness to participate in a joint scheme with British authorities to protect and develop the port. After touching on various dimensions of this proposed scheme, Banerji concluded his missive with a rather provocative suggestion, declaring that if the colonial state was unwilling or unable to develop Cochin, it should cede the port to the princely state instead, which, he claimed, was ready to invest in the port as long as it was given territorial rights over it. The Diwan's rather extraordinary offer to assume responsibility for the British port prompted a sharp rebuke from a senior official in the Madras government who stated, "The Cochin port, whether improved or not, will remain entirely British and its improvement is a matter which will be kept altogether in the hands of the British government."³⁷ Within just a few months, however, a seemingly innocuous dispute over fishing rights escalated into a full-blown crisis of colonial sovereignty, raising questions about the very nature of British claims over the port. In the next section we turn to this dispute in order to compare the ways in which both the Madras government and the Cochin State attempted to utilize the language of international law to increase their claims over the harbor in the first quarter of the twentieth century.

SIGNS OF SOVEREIGNTY

In the summer of 1911, one of the foremost merchant houses of Cochin, Aspinwall and Company, wrote to A. R. Banerji to draw attention to several red flags that were seen floating in the backwaters adjacent to the harbor.³⁸ These flags marked sites that the Cochin State proposed to auction for planting fishing stakes, and an order publicizing this auction had only recently appeared in the local gazette. The company was particularly anxious about sites marked parallel to the western foreshore of Candle Island. During periods of low water this was the only part of the backwater that afforded sufficient depth for navigation, and the company claimed that these stakes, when planted, would greatly hinder free navigation. Forwarding this letter to the Port Officer, the company asked British authorities to support their claim over waters that they assumed fell within British jurisdiction. Fishing with stakes was a common

³⁶ From Diwan of Cochin State to Resident, Travancore and Cochin, 24 Oct. 1911, file 128/20, Revenue R. Dis. Kerala State Archives, Kozhikode (hereafter KSAK).

³⁷ File 128/20, Revenue R. Dis. KSAK.

³⁸ "Correspondence relating to Backwater Jurisdiction Dispute Between the Madras and Cochin Governments," file C-82, KSAC.

practice all along India's western coast. It involved tying nets between partially submerged pairs of wooden poles. But the problems that this mode of fishing posed to navigation had led port authorities across the region to impose various restrictions on stake placement.³⁹

In this instance, the flags marking future sites of stakes were held to be floating in British waters. The Port Officer of Cochin accordingly wrote to the Diwan asking him to remove them immediately and to pay heed to the "recognized boundary limits" of British Cochin. According to the limits he now defined based on an attached gazette notification from 1858, the area that the Cochin State had proposed to auction fell within British territory, and the official asked the princely state to be more careful in the future. Such confusion about territorial limits was fairly common around the harbor, where the territories of Cochin State and British Malabar intersected at various points over a dynamic terrain. Like on previous occasions, the issue seemed to have been resolved with little difficulty when Banerji, acknowledging the stakes had been inadvertently planted in British waters, asked his fisheries inspector to stop the proposed auction. But just before local authorities could declare the case closed, Banerji sought a clarification on the port limits of Cochin, after noticing that the limits defined by the Port Officer included parts of the backwater that lay in the princely state's domain. He now asked British authorities "to furnish [him] with clear information as to the limits of the Cochin port ... and the Government order or authority by which they are fixed."⁴⁰

Forced to clearly define their rights over Cochin, local British officials began to search for documents to help them establish their claims, with one suggesting that this disagreement could provide an opportunity to "bring more of the backwater under British control."⁴¹ With Cochin's commercial importance growing steadily, the port's imprecise boundaries were fast turning into liabilities. The time seemed to have come to once and for all clearly establish and enlarge British claims by utilizing treaties and agreements signed with the rulers of Cochin over the course of the previous century. As Anthony Anghie has pointed out, in the late nineteenth century European powers repeatedly mobilized treaties signed with local rulers to legitimize and expand their claims across the colonized world.⁴² In most such instances, Anghie argues, a reliance on the wording of the treaties without an acknowledgment of the violent context in which they were signed provided European powers with a "legal" means to increase their presence. But in the case of Cochin, the treaty signed between the princely state and the English East India Company in the first quarter

³⁹ In Bombay, for instance, an "Obstructions in Fairways Act" was passed in 1881 that gave port authorities the power to regulate the planting of stakes.

⁴⁰ *Ibid.*

⁴¹ File 127/7, Revenue R. Dis., KSAK.

⁴² Anghie, *Imperialism*, 67–74.

of the nineteenth century merely confirmed rights over the harbor that were originally ceded by the state to the Portuguese in or around 1500 CE. These rights had first been transferred to the Dutch, as part of an alliance against the Portuguese in the seventeenth century, and ultimately to the British who had emerged as the preeminent European power along the coast by the end of the eighteenth century. As the British struggled to find this original document of cession involving the Portuguese, however, local officials became less optimistic about expanding territorial claims around Cochin and more concerned about retaining rights they had long taken for granted.

In 1914, in response to repeated reminders from the Diwan, the British Resident confessed that the “government have not been able to reach any conclusion on the material before them and have ordered a further search into the records.”⁴³ A few months later, he finally addressed a letter to the Diwan clarifying his government’s stand on the apportionment of rights over the backwaters, but, crucially, he provided no additional documents to support British claims. His letter asserted that the Madras government “attached great importance to the gazette notification of 1858 and its practical interpretations by the Port Officers of the port of Cochin.”⁴⁴ But since the Cochin State had cast doubts on the latest interpretation, the Resident clarified that British claims over “a large portion of the backwaters at Cochin” were based on the application of the median line principle.⁴⁵ According to this convention, also known as the equidistance principle, when two states occupy opposite banks of a stream, in the absence of a treaty or evidence of prior occupation by one state, the title of each of the states would “extend to the middle of the main channel of the stream.”⁴⁶ While this doctrine was only codified in international law later in the twentieth century, it had already emerged as the preferred means for determining riparian boundaries a century earlier.⁴⁷

A number of scholars have recently highlighted and interrogated the unique position occupied by princely states in international law and the law of nations.⁴⁸ As Priyasha Saksena notes, the idea of divisible sovereignty popularized by colonial jurists in the late nineteenth century had effectively blurred the

⁴³ “Correspondence relating to Backwater Jurisdiction Dispute Between the Madras and Cochin Governments,” file C-82, KSAC.

⁴⁴ Letter from British Resident to Diwan of Cochin, 25 June 1914, file C-82, KSAC, 71.

⁴⁵ *Ibid.*

⁴⁶ File IOR/L/PS/13/1278, India Office Records, British Library, 10.

⁴⁷ On the use of the median line principle in the nineteenth and twentieth centuries, see Whittemore Boggs, “Problems of Water-Boundary Definition: Median Lines and International Boundaries through Territorial Waters,” *Geographical Review* 27, 3 (1937): 445–56. For its codification in international law in the second half of the twentieth century, see M. Lando, *Maritime Delimitation as a Judicial Process*, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2019), 102–66.

⁴⁸ For three important engagements with this question, see Benton, *Search for Sovereignty*; Beverley, *Hyderabad*; and Saksena, “Jousting over Jurisdiction.”

boundary between imperial and international law, “leading to a saturation of the south Asian landscape with the language of international law and sovereignty.”⁴⁹ In the dispute surrounding Cochin’s port limits, this recourse to international law had occurred at a critical point in the port’s history, and this was no coincidence. With coastal erosion intensifying around the harbor and with the port’s commercial importance rising steadily, the Madras government had finally begun to consider some form of technological intervention around the port after rejecting all such demands for decades. The invocation of the median line principle in this context was clearly an attempt to enlarge and secure British claims over the port at a time when various technological solutions were being considered for its protection and development. In relying on the median line principle to assert its rights, however, the Madras government had ensured that principles derived from international law would henceforth be recognized as the most legitimate basis for asserting and determining the rights of both contending parties, opening the door in the process, for the Cochin State’s own mobilization of the international legal framework.

LAWS OF CONQUEST

By 1914, A. R. Banerji had been replaced to the post of Diwan by Joseph Bhore, but the hard line adopted by the princely state remained unchanged. Bhore, accordingly, responded by flatly rejecting the applicability of the median line principle to the dispute. Asserting that the state had long exercised sovereign jurisdiction over large parts of the backwaters, a fact recognized and countenanced by British authorities, he pointed out that the median line principle could only be applied in cases where no such rights are known to exist over waters dividing the territories of two states.⁵⁰ Bhore furthermore cited correspondence surrounding the lease of Candle Island to the Cochin State in 1851, discussed earlier in this article, to argue that this lease had been secured precisely because the surrounding backwaters fell within his state’s domain. He also pointed out that a map published by the Madras revenue department in 1893 showed Candle Island as an isolated patch of British territory. It was only in 1913, after the present dispute had arisen, that a topographical map published by the government of Madras marked, for the first time, a traverse line between the island and Vypeen which lay just across the water. The Diwan claimed that this was a belated attempt at asserting British claims over the intervening backwaters.⁵¹ The Cochin State’s claims over these waters were further bolstered by the fact that it

⁴⁹ Saksena, “Jousting over Jurisdiction,” 434; Also see Lauren Benton and Lisa Ford, *A Rage for Order: The British Empire and the Origins of International Law* (Cambridge: Harvard University Press, 2016), for a similar observation about the British Empire in the nineteenth century.

⁵⁰ Letter from Diwan to British Resident, 15 Mar. 1915, file C-82, KSAC.

⁵¹ *Ibid.*

had been renting out portions of these waters to fishermen for planting fishing stakes for decades. The Cochin State pointed out that while the British, drawing on a long European tradition going back to Roman law, largely placed water outside the realm of property rights, it treated waters between stakes as land.⁵² Even after the British conquest of parts of Malabar, the Cochin State had, as a result, continued to rent out parts of the backwater much like other forms of landed property and these transactions were registered in the state's registry offices. In 1897, the state had removed stakes planted on these disputed sites at the behest of the colonial administration when these were held to be obstructing navigation. But the areas occupied by these stakes, known locally as Azhimokathu and Ramaathoruthu, were, according to the state, among the most valuable "fishing places in the whole Cochin backwater" and the administration was as a result anxious to restore them, having taken some steps to safeguard the interests of navigation.⁵³ According to the Diwan, the renting out of parts of the backwater for planting fishing stakes and the colonial administration's dependence on his administration for their removal in 1897 provided strong evidence for the Cochin State's claims over these waters.

These assertions were backed by Rash Behari Ghose, a renowned lawyer who had served two terms as the president of the Indian National Congress.⁵⁴ Having gone through available records, on being approached by the Cochin State, Ghose had declared that the British had no legal claims over the backwaters in question. In fact, he proclaimed that these disputed areas were part of the princely state's territorial waters and the colonial administration had absolutely no legitimate claims on them. He moreover argued that the median line was inapplicable in the present case because, under international law, the principle of "prior occupancy" allowed the Cochin State, which had controlled land on both sides of the backwaters before 1500 CE, to retain all those rights that had not been explicitly ceded to a European power.⁵⁵ Ghosh had based this opinion on the works of Henry Wheaton and Henry Philip Farnham who, in their widely cited treatises, had suggested that in cases where the original proprietor had merely granted property on one side of the river, it would retain rights over the intervening waters unless these were explicitly relinquished.⁵⁶ Influential legal judgments in the United States had also

⁵² "Report on the Fishing Stakes of Cochin," Aug. 1909, file R-41, Printed Records, KSAC, 12.

⁵³ Letter from Diwan of Cochin State to the British Resident, 18 Feb. 1914, file C-82, KSAC.

⁵⁴ Letter from Diwan of Cochin State to the British Resident, 3 May 1916, file C-82, KSAC.

⁵⁵ Legal scholars have so far analyzed the principle of "prior occupancy" largely as the basis for claims based on indigeneity in international law. See, for instance, Jeremy Waldron, "Indigeneity? First Peoples and Last Occupation," *New Zealand Journal of Public and International Law* 1, 1 (2003): 55–82.

⁵⁶ Henry Wheaton, *Elements of International Law with a Sketch of the History of the Science* (Philadelphia: Carey, Lea and Blanchard, 1836); Henry Farnham, *The Law of Waters and Water Rights: International, National, State, Municipal, and Individual, Including Irrigation, Drainage, and Municipal Water Supply* (Rochester: Lawyer's Cooperative Publishing Company, 1904).

affirmed this position.⁵⁷ He declared that without proof of some such agreement through which a portion of the waters surrounding Cochin had been ceded to the Portuguese and subsequently inherited by the Dutch and the British, the median line principle could not be invoked. A turn to the port's history thus allowed Ghosh to conclude that, according to all accepted principles of international law based either on prescription, occupation, or treaty agreement, only the Cochin State had legitimate claims over these waters. Encouraged by such an emphatic legal opinion expressed in its favor at a time when steps to modernize the port were being contemplated, the Cochin State now made an almost audacious claim and stated that the sovereignty over the entire length of the backwaters, including sections that fell within port limits, rested exclusively with it.⁵⁸ What had started as an attempt to utilize international law to defend itself from the claims of the Madras government had instead ended up revealing a set of principles through which the Cochin State could try to reclaim certain rights over the harbor that it had lost decades if not centuries before.

While the tiny princely state was consulting lawyers to establish its rights, local colonial officials were busy writing to their superiors in Bombay and Madras asking them to provide documents that would help confirm British claims over these very waters. Much to their frustration, no such documents were forthcoming. In their replies, officials from both Madras and Bombay conceded that none of the documents in their possession clarified the question of sovereignty over the backwaters adjoining Cochin. With historical documents proving to be elusive, the actual history of European control over the harbor remained a matter of speculation.

British rights over the harbor and some neighboring islands were, as previously mentioned, secured not from the Cochin State directly, but from the Dutch, who the British had ousted in 1795. Following their military victories at the end of the eighteenth century, the English East India Company had inherited Dutch possessions along the coast including the Cochin harbor, a transfer that was later recognized and confirmed through a treaty with the Cochin State.⁵⁹ Significantly on the eve of their surrender, the Dutch were themselves embroiled in a boundary dispute with the princely state.⁶⁰ In this dispute, too, the original treaty with the Portuguese was brought up time and again. While a number of Dutch and British officials on various occasions claimed to have seen

⁵⁷ On the use of international law for riparian disputes in the United States see, William Van Alstyne, "International Law and Interstate River Disputes," *California Law Review* 48, 4 (1960): 596–622.

⁵⁸ *Ibid.*

⁵⁹ Madras Government, *Papers Relating to Cochin with Special Reference to the Dutch Possessions and Claims and to the British Rights Arising Therefrom* (Madras: Government Press, 1915).

⁶⁰ File /F/4/482, India Office Records, British Library.

this treaty, it seems to have eluded European powers each time a dispute arose. It is unlikely that this treaty would have cleared up issues raised in these later disputes anyway, since the purpose of this original agreement, as far as the Portuguese were concerned, seems to have been simply to secure rights to trade and build around the harbor. The precise areas where the Portuguese could construct their fort and other buildings were left hazy.⁶¹ This indeterminacy continued during the Dutch period, and in the early years of British rule, English East India Company officials frustratedly concluded that the boundary between Dutch Cochin and the princely state had never been properly demarcated. This enduring uncertainty had ultimately prompted the English East India Company to conduct a survey in 1812 to ascertain the limits of their domain, but this survey was almost exclusively concerned with land, and claims over water were left undefined.⁶²

As already noted, European powers had historically recognized a fundamental opposition between land and sea.⁶³ This distinction, going back to Roman Law, was sharpened by early modern figures like Grotius and Blackstone, who argued that the unique properties of water demanded distinct legal approaches.⁶⁴ As a result, water came to be placed outside of not only the domain of property relations but also conventional forms of territorial sovereignty. As Tvedt, Woldetsadik, and McIntyre have argued, even in the treaty of Westphalia, long considered to be the foundational text of territorial sovereignty, the exercise of exclusive territorial jurisdiction was seen to be less than ideal or impractical in case of water bodies like rivers.⁶⁵ The very materiality of water was seen to render “processes of bordering” especially difficult.⁶⁶ In colonial India, therefore, it is no surprise that early surveys focused largely on land, with rights over water being determined in a more ad hoc manner. In the case of Cochin’s fluid physical and political landscape, however, this early modern approach to water created serious complications for the colonial state in the first quarter of the twentieth century, a period associated with the increasing territorialization of the sea and other water

⁶¹ K. M. Panikkar, *Malabar and the Portuguese: Being a History of the Relations of the Portuguese with Malabar 1500–1663* (Bombay: Taraporevala Sons., 1929), 52–53.

⁶² File /F/4/482, India Office Records, British Library.

⁶³ For the most extreme example of this orientation, see Carl Schmitt, *Land and Sea: A World Historical Meditation* (New York: Telos Press, 2015). Also see Lauren Benton and Nathan Perl-Rosenthal, eds., *A World at Sea: Maritime Practices and Global History* (Philadelphia: Pennsylvania University Press, 2020), for discussion of the enduring legacy of this divide.

⁶⁴ See Renisa Mawani, *Across Oceans of Law: The Komagatamaru and Jurisdiction in the Time of Empire* (Durham: Duke University Press, 2018).

⁶⁵ Terje Tvedt, Tadesse Woldetsadik, and Owen McIntyre, eds., *A History of Water*, series 3, vol. 2 (London: I. B. Tauris, 2015), 4–10.

⁶⁶ Philip Steinberg and Kimberley Peters, “Wet Ontologies, Fluid Spaces: Giving Depth to Volume through Oceanic Thinking,” *Environment and Planning D: Society and Space* 33, 2 (2015): 247–64.

bodies. While international law had by this time emerged as an important tool for extending territorial sovereignty over water in different parts of the world, in Cochin the failure of British officials to find evidence to support their claims hindered their invocation of the median line principle. As we have seen, in derivative modes of acquisition where land on one side of a river or other water body had been acquired through a treaty signed with a power occupying the opposite bank, influential figures in international law and important previous judgments had held that rights over intervening waters rested with the prior occupant unless some portion of these rights had been explicitly given up. The median line or equidistance principle could thus only be invoked in disputes where there was either no state that could claim prior occupancy or some evidence to show that a portion of these rights had been transferred from one state to the other. On both these counts, the Cochin State had strong grounds for rejecting the principle's applicability to the dispute surrounding the Cochin harbor, even as it could utilize the invocation of the principle by colonial authorities to reassert its statehood in the present as well as the past.

The application of the median line principle presented other, more practical difficulties in Cochin. After all, in a region where the territories of the two states intersected at various small islands in the backwater, where and how was this median line to be drawn? The British Resident had, for instance, defined Cochin's port limits in 1914 on the basis of this principle assuming that two islands on the backwater, Ramanathuruthy or Candle Island, and a much smaller island known as Cheria Ramanathuruthy (or small Ramanathuruthy) belonged to the British. There were, however, still some disagreements over the ownership of the smaller island, and some documents seemed to suggest that it belonged to the Cochin State. To add to the confusion, by 1911 the island was under water.⁶⁷ Senior officials in the Government of India informed the Madras government that their claim to the median line principle rested on very weak foundations—a treaty that could not be located, and shaky territorial claims over an island that was now submerged.⁶⁸ While British officials were confident that their long-standing exercise of jurisdiction around the harbor would enable them to counter the Cochin State's claims to the whole backwater, they also recognized that their rights would be confined to a limited area.

TRAILING TREATIES

In very different ways, Anthony Anghie, Lauren Benton, and Sudipta Sen have shown how, over the course of the nineteenth century, European powers repeatedly used vague and ambiguous treaties to subvert and encroach on the

⁶⁷ Note on letter from Port Officer, Cochin, 5 Dec. 1912, file 127/7, Revenue R. Dis., KSAK.

⁶⁸ Letter from J. B. Wood, Secretary to the Government of India to L. Davidson, Acting Chief Secretary to the Government of Madras, 30 Aug. 1917, file 163, Various Departments, KSAK.

sovereignty of princely states.⁶⁹ Jennifer Pitts points out that these transgressions went hand in hand with the exclusion of non-European powers from international law, which became increasingly restrictive from the nineteenth century onward.⁷⁰ However, the dispute over the backwaters surrounding Cochin should alert us to the continuing relevance of treaties and international law in settling questions surrounding sovereignty until the very end of colonial rule. As Martii Koskenniemi shows, European powers coveted treaties signed with native rulers since these were seen to provide an “irreproachable moral-legal basis” for their rule.⁷¹ Throughout the late nineteenth century international jurists wrestled with the contradictions arising out of this attempt to secure a legal basis for European imperialism. And as Anghie argues, the recognition of unequal treaties signed by local rulers under duress was one of the main ways in which positive law reconciled these tensions. But if such a resolution usually allowed international law to be utilized for further expanding imperial claims, Cochin’s complicated political history and its fluid ecology ended up not only thwarting these attempts but also allowing the state to utilize the language of international law to make claims on the British port.

We have seen that this was largely because the “unequal treaty” that the East India Company had signed with the Raja of Cochin in the first quarter of the twentieth century had merely ratified provisions embodied in earlier agreements, while focusing exclusively on terrestrial rights.⁷² C. H. Alexandrowicz has argued that in treaties European powers signed with Asian rulers before the nineteenth century, the latter were “recognized as full participants in a universal law of nations,” with relations between the two being “founded on the reciprocal recognition of sovereignty.”⁷³ It was with the subsequent triumph of positivism over natural law that those powers sought to exclude Asian states from a Eurocentric international law framework. Alexandrowicz’s reading of early modern treaties has been criticized for failing to acknowledge that, even in the early centuries of European expansion, there was no consensus about the status of non-European states in the emerging “law of nations,” and that many treaties were far from equal.⁷⁴ What is clear, however, is that in treaties signed before the nineteenth century, European powers were less interested in asserting

⁶⁹ Anghie, *Imperialism*; Benton, *Search for Sovereignty*; Sudipta Sen, *Distant Sovereignty: National Imperialism and the Origins of British India* (New York: Routledge, 2002).

⁷⁰ Jennifer Pitts, “Empire and Legal Universalisms in the Eighteenth Century,” *American Historical Review* 117, 1 (2012): 92–121.

⁷¹ Martii Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Hersch Lauterpacht Memorial Lectures (Cambridge: Cambridge University Press, 2001), 138.

⁷² On unequal treaties, see Anghie, *Imperialism*; and Horowitz, “International Law.”

⁷³ Discussed in Robert Travers, “A British Empire by Treaty in Eighteenth-Century British India,” in Saliha Belmessous, ed., *Empire by Treaty: Negotiating European Expansion, 1600–1900* (Oxford: Oxford University Press, 2014).

⁷⁴ See, for instance, Pitts, “Empire and Legal Universalisms.”

sovereignty solely on the basis of strictly defined territorial limits. Since their primary interest lay in monopolizing trade, establishing territorial limits was important only insofar as it furthered this end, and exercising a shared sovereignty was often preferred to defining limits of exclusive control.⁷⁵ In the case of Cochin, the treaties with the Portuguese and the Dutch were signed, as officials belonging to the princely state liked to argue, not after conquest or defeat but as part of an alliance against the Zamorin of Calicut and the Portuguese, respectively. Short on specifics, these treaties seem to have confined themselves largely to a vague transfer of some rights to the respective European powers. Similarly, the agreement reached with the English East India Company in the nineteenth century only confirmed British claims over Dutch territories without clarifying what their rights were. But with the original treaty signed with the Portuguese, which formed the basis of these subsequent agreements, proving to be elusive British attempts to expand their claims over the waters surrounding Cochin ran into problems at a time when treaties had emerged as important sources of legitimacy for colonial claims.⁷⁶ Recent scholarship has highlighted the value of engaging with the materiality of documents like treaties and their impact on different forms of claim-making.⁷⁷ In this particular instance, though, it was the absence of the actual document that allowed the Cochin State to make certain kinds of claims, with the treaty's phantom presence forcing the colonial administration to recognize the sovereign rights that state retained "as the original riparian owner."⁷⁸ Sudipta Sen has pointed out that the ad hoc nature of imperial domination in India left local rulers with a form of "residual sovereignty," consisting of unforfeited powers.⁷⁹ While Sen himself does not develop this insight, the dispute at issue here illustrates ways in which international law offered opportunities for non-European states, at particular historical conjunctures, to resurrect and mobilize what Sen calls the "undigested remainders of indigenous regimes." The Cochin State strongly asserted its rights on the basis of prior occupancy, a fact impossible to deny and a principle recognized by international law, and thereby put the Madras government on the defensive. While it continued to claim some rights over the waters based on prescription, it was compelled to take the Cochin State's claims over the harbor seriously.

⁷⁵ Benton, *Search for Sovereignty*, 3–4, 37.

⁷⁶ For a discussion of the increased importance of treaties following the Berlin Conference of 1885, see Belmessous, *Empire by Treaty*.

⁷⁷ See, for instance, Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham: Duke University Press, 2010); and Matthew Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012).

⁷⁸ Letter from Government of India to the Madras Government, 30 Aug. 1917, file 163, Various Departments, KSAK.

⁷⁹ Sen, "Unfinished Conquest."

It is striking that no serious disputes around the harbor arose between British Malabar and the Cochin State in the nineteenth century, despite the haziness surrounding rights over water.⁸⁰ For almost a century, conflicts were avoided not just because the British could establish their dominance easily but also because the region's unique environmental and political situation had made the strict demarcation of boundaries both difficult and counterproductive. Neither authority was keen to sharply define the port's boundaries, and each was instead happy to make impromptu adjustments when commercial interests demanded. The transfer of sovereignty over Candle Island in 1851 and the Interportal Trade Agreement reflected this need and desire to soften political frontiers around the port in the nineteenth century. But, having emerged as the region's foremost port by the century's turn, Cochin had become too important to be left with vague and ill-defined boundaries. The boundary dispute that arose in 1911 and intensified over the following years must be seen as part of a process to define the port's limits and to assert ownership over it at a time when it was poised to be significantly transformed. Commercial and technological developments converged to make the port's development possible even as coastal erosion threatened its very existence. The port's improved prospects, as well as the problems confronting it, had pushed both states toward a more proactive approach, and the attempt to clearly demarcate boundaries that had been left hazy for more than a century was a step in that direction. But if the boundary dispute had resulted from an attempt by British authorities to consolidate and expand their authority over the port, the Cochin State's use of the principle of prior occupancy to stake a claim on the surrounding waters ended up highlighting the myriad ways in which the British port was connected to the neighboring princely state.

The Cochin State had previously attempted to pressure the colonial state to invest in the harbor's modernization by threatening to open up new ports and withdraw from the Interportal Trade Agreement. These threats were never taken seriously. But with its successful assertion of rights over the waters surrounding British Cochin, the princely state was now in a position to profoundly affect the port's commerce. A senior official from the Madras government pointed out that "divided jurisdiction between the backwater and the coastline in the vicinity of British Cochin would involve intolerable complications."⁸¹ Nervous about the damage that the dispute and the Cochin State's political assertiveness could inflict on their port's commerce, this official maintained that a jointly executed harbor modernization project could in fact form the "basis for a compromise that

⁸⁰ Some disputes did arise over other boundaries between the two states, but this was the first major dispute over the boundaries of the port after some initial confusion over port limits was overcome in the early years of British rule.

⁸¹ Extract from notes connected with G.O. no. 342, Public (Marine), 15 Aug. 1917, file 163, Various Departments, KSAK.

would be profitable” to both parties. While the Cochin State would benefit from the harbor’s development and secure rights over the port, British authorities would gain from having to bear only half the cost.⁸² The territorial dispute, which was yet to be fully resolved, would eventually cease to be important, with both sides coming together to develop the port jointly. This opinion gradually gained acceptance within the colonial administration as more British officials conceded that, if the port was to be developed, no settlement reached over territorial limits could change the fact that the greater portion of it would lie within the princely state.⁸³ Just a few years after being admonished by a British official for offering to participate in harbor development at Cochin, then, the Cochin State was in 1919 invited to do just that, and became a partner in the Cochin Harbor Project. If over the course of the nineteenth century, the permeability of the physical boundaries around Cochin had come to be reflected in dissolving political frontiers, in the first quarter of the twentieth century the port’s eroding coastline would come to be mirrored by the erosion of exclusive colonial sovereignty over the port.

CONCLUSION

The Cochin Harbor Project, inaugurated in the 1920s, provides a rare instance of a jointly executed development project in an area under direct British control. Such projects were common in princely states and other semi-sovereign territories, where they often provided European powers with a means to extend their jurisdiction into these partially sovereign territories. The Suez Canal provides the most striking illustration of how control over strategic infrastructure could become the means to enhance colonial power over local states. But in the case of the Cochin harbor this usual pattern had been reversed. Here was a British port over which a princely state had secured important rights through its participation in a development project. Not only did the state play a critical role in shaping the port’s future, but once the project was completed in the 1930s it refused to transfer jurisdiction over those parts of the port that lay within its territory. While the colonial state repeatedly chastised the princely state for attempting to subvert the usual norms governing the execution of such projects in princely states, the Cochin State remained unmoved. Sovereignty and jurisdiction emerged as extremely crucial considerations for the princely state during a time when significant political reforms were beginning to appear on the horizon.⁸⁴ If colonial power over princely states was usually expressed and

⁸² Ibid.

⁸³ Ibid.

⁸⁴ For an analysis of just how important the question of sovereignty had become for princely states during the interwar period when significant political reforms were being debated and executed, see Pillai, “Fragmenting the Nation.” See also Sunil Purushotham, “Federating the Raj: Hyderabad, Sovereign Kingship and Partition,” *Modern Asian Studies* 54, 1 (2020): 157–98.

enhanced through a divisible approach to sovereignty in territories belonging to local rulers, as scholars have highlighted, the Cochin State had forced the colonial administration to extend this flexible approach to a port under direct British rule as well.

But the Cochin State's ability to utilize the language of international law to make such claims over the harbor, in the first quarter of the twentieth century, should not be read as sign of colonial powerlessness or of the equality of international law. The international legal framework, as various scholars have pointed out, was highly asymmetrical and often functioned as a tool of empire. Indeed, it was perhaps its repeated utilization for increasing imperial power across the world that had prompted the local colonial administration to invoke it in Cochin through the median line principle. But once the applicability of international law to this dispute had been affirmed by colonial authorities, the long and uneven history of European sovereignty over the harbor and the lack of clarity over rights over water not only thwarted colonial attempts at expansion, but they also provided the Cochin state with a set of principles through which it could assert its own claims over British Cochin. The asymmetries of power in colonial India were such that over the course of the development project, the colonial state found several ways to push the project's costs on to the Cochin State. For the Cochin State, therefore, its hard-won rights over the harbor came at a heavy price. The principle of prescription also allowed the colonial state to dismiss the princely state's claims over the entire backwater and remain the dominant power in the project. And yet, the significance of the Cochin State's assertion of rights around the British port and its participation in a development project in British India should not be denied. Neither should the role of international law in this process be overlooked. Rather than merely asking whether this attempted utilization of international law was ultimately successful, I have highlighted the importance of engaging closely with the forms of claim-making enabled by international law and the ways in which different states tried to mobilize them. In the dispute surrounding the Cochin harbor, such an approach allows us to see that, by the turn of the twentieth century, when territorial sovereignty had assumed unprecedented significance, international law had ceased to simply be a defensive tool against imperial expansion for non-European states. It had also emerged as the site upon which these states could reimagine themselves as sovereign actors and redefine the nature of their own statehood, at a time when their political futures were still unsettled.

Abstract: British Cochin was a port in southwestern India surrounded by princely states. This article uses a dispute surrounding its limits to interrogate the role international law played in generating novel forms of political claim-making among European and non-European powers at the turn of the twentieth century. Cochin was located in an area where both physical and political boundaries were hard to define. Situated at the tip of a narrow coastline surrounded by water, it was also lodged amid territories belonging to two princely states—Cochin State and Travancore. Its ever-shifting coastline and proximity to princely states forced colonial authorities to adopt a flexible approach to the port's boundaries, allowing the tiny princely state of Cochin to become progressively more involved with the British port's development over the nineteenth century. The article starts by examining the forces that shaped these entanglements, and then explores a territorial dispute involving British Cochin to illuminate the ways in which, during the twentieth century's first quarter, both the colonial administration and the Cochin State deployed the language of international law to try to extend their powers over the port. By highlighting the Cochin State's partially successful attempts at claiming sovereignty over the waters surrounding the harbor in order to become involved with the development of a port in British India, this article shows how international law emerged as a site through which semi-sovereign territories began testing and even extending the limits of their sovereignty.

Key words: international law, sovereignty, princely states, port cities, water law, Cochin, British India, colonial law, territoriality