The Island of Cyprus, Sovereignty, and International Law in the Early Decades of British Rule (1878-1923)

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Abstract

By drawing attention to a number of points from current debates in critical international legal scholarship, the present article discusses aspects at the intersection of Cypriot, Balkan and Middle Eastern history, through an innovative angle enriched with insights from a legal perspective. With the 1878 Congress of Berlin and the signing of the Treaty of Lausanne in 1923 at the epicentre, the article builds an argument in favour of revisiting the early period of British rule on the island, as a means to obtain an improved understanding of the constitutional framework for Cypriot independence and by extension, the complexity of international relations in the Eastern Mediterranean to this day.[2]

Keywords: Cyprus, public international law, legal history, sovereignty, Ottoman Empire, British Empire, Balkans, Middle East

> *'The amnesiac quality of modern law's origins avoids a momentous paradox. An advanced Occidental law, wedded in its apotheosis to freedom and a certain equality, becomes thoroughly despotic when shipped to the rest of the world in the formal colonizations from the late eighteenth to the early twentieth centuries'.*[3]

Prologue

The Island of Cyprus belongs to those regions of the world that are difficult to locate and define within a singular geography. Lying just a few miles off the shores of western Asia, Cyprus also falls within the periphery of the European continent. Consequently, its history is a continuous alteration of influences from all major civilisations, empires and peoples that have periodically dominated the Eastern Mediter-

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2 The present article is an elaborate version of a paper entitled 'The Island of Cyprus and the Eastern Question in the Early Decades of British Colonialism: An International Law Perspective', presented at the Colonial Cyprus (1878-1960) International Conference, at the University of Nicosia in February 2020.

3 Peter Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992) 107.

ranean. This makes the island a permanent feature of the history of the region, albeit often only through broader regional geopolitical debates. Therefore, it comes as no surprise that even though Cyprus is a textbook example in numerous ongoing doctrinal debates in public international law, neither the island has surfaced prominently in the 'historical turn' observed in international legal scholarship,[4] nor have Cypriological Studies benefited from the innovative questions and approaches deriving as a result of said historical turn.

This is potentially also due to the traditionally rigid stance towards and engagement with public international law among in Cyprus, caused by the subtle and fragile political and diplomatic balances formed in the two decades following the establishment of the Republic of Cyprus in 1960, in the shadow of a persistent, unresolved conflict. Despite the fact that this reluctance to engage with public international law is gradually being reversed at present, with rising expertise in various areas of public international law among the younger generation of Cypriot lawyers, the difficulty to engage with the most controversial historical, legal and political aspects of the island's history remains. Such efforts are often met with scepticism by a portion of legal professionals and the general public. Hence, Cyprus remains outside the scope of current critical debates in international law, unlike some of its nearest middle eastern neighbours, failing to benefit from innovations committed to uncover the historical shortcomings and prejudices of international law.

With the above in mind, the present article is a brief, law-oriented, historical overview of the earlier period of British rule on the island, in an attempt to draw attention to the added benefits of opening up an inquiry into the colonial and pre-colonial *legal history* of Cyprus. The chosen angle for the present paper is that of the principle of sovereignty,[5] since the principle lies at the core of both classical international law and international relations, despite differences in understanding what exactly the principle entails. Even though the legal meaning of Sovereignty is narrower than that in political discourse, understood as an attribute of a State as opposed to a criterion for statehood,[6] in both disciplines Sovereignty is closely intertwined with a State's estab-

[4] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge University Press, 2001) 9.

[5] Samantha Besson, 'Sovereignty' *Max Planck Encyclopedia of International Law* (2011) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1472?prd=MPIL> (last accessed 6 February 2020) para 1.

[6] James Crawford, *The Creation of States in International Law* (2nd ed., Oxford: Oxford University Press, 2007) 32-33, 89.

lishment and subsequently, history. Thus, this angle gives the opportunity to touch upon a broad spectrum of international legal rules, that are central to the history of the Island of Cyprus, during the period 1878-1923.

The transition of Cyprus from an Ottoman Province in 1878 to a Crown Colony in 1925 is one of the less-discussed periods of Cypriot history, compared to other periods of colonial rule. This however, is a period of rapid development for international law, in the face of an expanding colonialism, and shrinking power within Europe's century-long empires. In this regard, I isolate in the present paper two events which are formative for South Eastern Europe, but whose relevance to Cyprus has been considerably toned down in existing literature. The 1878 Congress of Berlin, which was decisive in the process of state-building in the Balkan region, and the signing of the Treaty of Lausanne in 1923, which formally sealed the end of the Ottoman Empire. There are of course previous analyses of Greco-Turkish relationships regarding this period.[7] The present article however, aims to illustrate how elements of *legal* significance surrounding those two legal instruments offer help explain the impact of the law on later developments in Cyprus.

The article starts with an overview of the colonial origins of international law, as illustrated primarily by critical international legal scholars, so as to introduce the reader to the ongoing debates on the subject. It then turns to the 1878 Congress of Berlin, during which the Ottoman Empire agreed to hand over the administration of Cyprus to the United Kingdom (UK), and the legal complications this agreement led to, up to the island's formal annexation by the UK in 1914. Lastly, it proceeds with a brief overview of the relevance of the 1923 Treaty of Lausanne for Cyprus, bridging developments surrounding that event to Cypriot independence in 1960.

As discussed below, throughout this period the European Powers, in pursuit of their own interests, raised concerns regarding the fate of the predominantly Christian, underdeveloped regions of the western territories of the Ottoman Empire. This led to a number of innovative, yet in the long-term highly detrimental approaches regarding the handling of minorities in the newly-established States in the region. Consequently, the mindset that dominated the field of international law and international relations at the time, it is hereby suggested, has had a direct impact on the constitutional settlement agreed for the independence of Cyprus, including the prominent

[7] *See e.g.* Andreas Theophanous, 'The Cyprus Problem in the Broader Greco-Turkish Rivalry: Implications for Stability in the Eastern Mediterranean' (1997) *The Cyprus Review* 9 (1) 44.

role of the principle of bi-communality enshrined in the 1960 Cyprus Constitution, and the issue of Guarantees.

The Colonial Origin of International Law

Even though it is recognised that the development of inter-state relations goes far back to antiquity, the seminal moment in the development of classic international law is considered the signing of the Peace of Westphalia in 1648, which concluded the Thirty Years' War among the sovereigns of Western Europe. This is the first instrument that recognised separate rights for sovereign territorial entities, namely States, and in particular the principles of territorial delimitation and non-intervention in the internal affairs of the State.[8] By the end of the 19th century, public international law had grown in a systematised legal order of positive legal rules, employed in principle by all major European Powers, most prominent among them Austria, Prussia, Russia, Great Britain and France, which together established in 1818 the Concert of Europe.[9]

Contrary to the modern conception of the global order today however, expressed primarily in the form of international organisations like the United Nations, the World Trade Organisation and others, no 'real international society'[10] existed at that time, beyond the limited circle of States recognised as sovereign in western Europe, plus Russia. In the same spirit, international law was not considered a self-standing discipline during the 19th century. Instead, it was rather an 'amateur science' holding primarily the interest of lawyers and philosophers in France, Germany and less so Britain, engaging with elements of philosophy, diplomacy, public and civil law.[11]

From the late 18th century through the better part of the 19th century, it was common for written works on the subject of international law to refer to a 'European International Law', even though the independence of the United States of America in the late 18th century suggested that international law had started to expand beyond the boundaries of the European continent.[12] At the same time, in the colonies the Eu-

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[8] Besson (no 3) para 13.

[9] Sina Van den Bogaert, 'Berlin Congress (1878)' *Max Planck Encyclopedia of Public International Law* (2011) < https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e687 > (last accessed 24 August 2020) para 3.

[10] Koskenniemi (no 2) 98.

[11] Ibid. 28-35.

[12] Hugh McKinnon Wood, 'The Treaty of Paris and Turkey's Status in International Law' (1943) 37(2) *American Journal of International Law* 262.

ropean States would exercise their power and pursue their interests from a 'position of superiority' through a system of capitulations, consular jurisdiction and a series of colonial wars; all of which 'had become banal aspects of the international every day'.[13]

The late 19th century was the height of the period of colonisation in Africa. European penetration deeper into previously unknown to them territories, brought them in contact with societal and cultural forms which they could not understand, leding to the marginalisation of those non-European societies, which failed to comply with the common understanding of a perceived European identity.[14] As a result, the arbitrary division of the world between an exotic Orient and an advanced Occident, led to a rigid racial—and by all standards racist—categorisation of the world's peoples into the 'civilized' on the one side, and the 'uncivilized' on the other. Or the rational and philosophical Aryans, as opposed to the emotional and religious Semitics.[15]

The civilised/uncivilised categorisation was not a satisfactory one however, considering that while some "Orientals" were "pirates and even cannibals",[16] others had long-lasting established relations with the West[17] forming an intermediate "semi-civilised" category of "barbarians" (including primarily the Ottoman Empire, China, Japan, Siam and Persia) positioned between the "civilised" and the "savages"; the latter term reserved usually for the peoples of the African continent.[18] This had a direct impact on how European powers would treat the rulers of the non-European States, who 'could never really become European'.[19] Regardless of how much the non-Europeans tried, decisions about their position within the global order would depend on what and whom the Europeans would approve of.[20] Effectively therefore, though sovereign States are the traditional subjects of international law, in the late 19th century the status and participation of non-European States in the international legal system was dependent upon those who held the keys from the inside.

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[13] Koskenniemi (no 2) 98.

[14] Ibid. 101-105.

[15] Johann C Bluntschli, 'Arische Völker und arische Rechte'*Gesammelte kleine Schriften* [Aryan People and Aryan Rights] (2 Vols, Nördingen: Beck Buchhandlung, 1879) 66 (in German) cited in Koskenniemi (no 2) 103.

[16] Travers Twiss, 'Rapport (1879-1880)'*Annuaire Institut du Droit International*, 301 [Annual Report 1879-1880 Institute of International Law (in French) cited in Koskenniemi (no 2) 133.

[17] Koskenniemi (no 2) 133.

[18] Ibid. 132-136; Umut Özsu, 'Ottoman Empire' in Bardo Fassbender and Anne Peters (eds) *Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012) 429, 433.

[19] Koskenniemi (no 2) 135.

[20] Ibid.

Even though the above categorisations survive in one form or another, it is less likely for this aspect of the genealogy of modern international law to have a strong impact over international legal discourse in States like Cyprus.[21] Relatively newly-established states, which perceive themselves as members of an enlarged European community, which gradually expanded over the course of the 20th century. The above aspect of international law's development should not be underestimated and unproblematised, however, as it forms an integral part of the legal history of the island as a geographical region, and of the Republic of Cyprus as such. Even more so with due regard to the original constitutional framework of 1960.

With the above considerations in mind, the year 1856 is widely accepted as the moment the Ottoman Empire became the first non-European State to formally obtain the status of a subject of international law through the signing of the 1856 Treaty of Paris, which signalled the end of the Crimean War. Evidence for this endorsement of the Ottoman Empire in the inner circle of the members of the international community was provided under article 7 of the Treaty of Paris, where the parties to the Treaty expressly admitted the Sublime Porte to 'the advantages of public law' within the Concert of Europe.[22] However, according to some commentators this formal recognition by then had no practical consequences and it was therefore a purely formalistic procedure, since the Ottoman Empire had already been maintaining diplomatic relations and signing treaties with European powers.[23] Indicatively, slightly more than a month earlier, Sultan Abdulmejid I had issued the *Hatt-ı Hümâyûn* Reform Edict, in the middle of the *Tanzimat* period, during which a series of significant internal reforms, strongly influenced by the French and British legal systems, took place from 1836 to 1871. The need to align to the European legal standards of the time, is thus evident. The *Tanzimat* constitutes a highly significant part of the history of Cypriot domestic law as well,[24] as it led to the most significant legal reform on the island,

[21] A member of the European Union since 2004, the Republic of Cyprus falls within the Asia -Pacific Group of United Nations members, which it joined in 1960. An indication of the peculiarity of geographical areas that do not fit comfortably within a single category.

[22] The original wording of Article 7 in French reads: 'déclarent la Sublime Porte admise à participer aux avantages du droit public et du concert Européens.' [declare the Sublime Porte admissible for participation in the advantages of public law and the Concert of Europe]; McKinnon Wood (no 10) 263.

[23] McKinnon Wood (no 10) 262.

[24] Andreas Neocleous, *Neocleous's Introduction to Cyprus Law* (Limassol: Andreas Neocleous & Co LLC, 2010) 14-15.

half a century before the completion of the harmonisation of the Cyprus legal order with the English Common Law and the Principles of Equity in 1935.[25]

The civilising mission of the European Powers of the late 19th century was at the heart of the development of international law and had a profound effect on the empires and the territories that lay beyond Europe. It is possible, however, that the effect of this process was reinforced for the Ottoman Empire, by virtue of its geographical expansion from the Balkan peninsula to the Levant and the Middle East, bridging the West with the East. There were also other factors that contributed to this development, including the Empire's century-long commercial ties with leading Powers in the Mediterranean, such as the Venetians, and the Christian faith of a significant proportion of its subjects.

Until recently, there has been a reluctance on behalf of many international law scholars to examine the discipline's development in the 'extra-European world', despite the fact that the latest period of the Ottoman Empire led to a number of doctrinal and conceptual innovations in international law.[26] In the period from 1878 onwards to the Interwar years, the Balkans are being increasingly referred to as a site of experimentation for a number of new legal mechanisms, including the earliest forms of fact-finding, peacekeeping and the administration of population exchanges, under the coordination of the League of Nations. Legal mechanisms that developed further thereafter, in the period of decolonisation.[27] As it is frequently the case with the study of history in general, it took considerable time also for international lawyers to fully appreciate the benefit of analysing and assessing the history of their own discipline, especially at the present moment in time, with many of the ongoing intractable conflicts around the world reaching new levels of increased tension.

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[25] Article 49, A Law to Make Better Provision for the Administration of Justice and to Reconstitute the Courts of the Colony (Law No 38/1935), *The Cyprus Gazette 1935;* Its provisions confined the application of the common law and the principles of equity to those which applied in England in 1914; George M Pikis, *An analysis of the English Common Law, Principles of Equity and their application in a former British Colony, Cyprus* (Leiden: Brill, 2017).

[26] Umut Özsu and Thomas Skouteris, 'International Legal Histories of the Ottoman Empire: An Introduction to the Symposium' (2016) *Journal of the History of International Law* 18(1) 1.

[27] Ntina Tzouvala, '"These Ancient Arenas of Racial Struggles": International Law and the Balkans, 1878-1949' (2019) *European Journal of International Law* 29(4) 1149; Jean d'Aspremont, 'The League of Nations and the Power of 'Experiment Narratives' in International Institutional Law' (2020) *International Community Law Review* 22, 275; Nicholas Tsagourias, 'The League of Nations and Visions of World Order' (2020) *International Community Law Review* 22, 291.

On a separate note, even though the Island of Cyprus does not belong to the Balkans in geographical terms, its modern history is closely intertwined with that of Greece and Turkey, especially from the establishment of the modern Greek State in 1830. One could argue therefore, that history has made the island a Balkan territory "by proxy". Hence, starting from the 1878 Congress of Berlin, when the Porte leased the island to Britain, we will see how events leading up to the Treaty of Lausanne in 1923 impacted Cyprus from that time onwards, with an emphasis on developments concerning international law.

The Congress of Berlin 1878

We elaborated in the previous section how States would become or not recognised members of the international community in the 19th century based on a Eurocentric understanding of civilisation. We also looked at the peculiar position of the Ottoman Empire during that time in its relation with the European Powers, by way of introduction to the events which took place on the Balkans and Cyprus from 1878 to 1923. In order to proceed with the developments which took place at the Congress of Berlin however, it is important to have a clear understanding on the general atmosphere in South East Europe and the Eastern Mediterranean at the time.

The rise of the idea of the nation-state, as a result of the Enlightenment, and the American and French Revolutions at the end of the 18th century, did not leave unaffected the various ethnic peoples within individual empires, with the Ottoman and the Austro-Hungarian Empires being most central to the developments in Eastern Europe. The non-ruling subjects of the empires, knew all too well that autonomy or the establishment of their own sovereign nation-state, would give them power for self-rule. In this context, the end of the Napoleonic Wars led the European powers to prioritise their internal problems. However, the Eastern Question, which concerned the fate of the predominantly Christian territories under Ottoman rule in eastern Europe, was an exception to this trend.[28]

The Congress of Berlin took place from 13 June to 13 July 1878, following a series of uprisings on the Balkans in the 1870s and the Russo-Turkish war of 1877, during which the Russian Empire aspired to recover territories lost during the Crimean War (1853-1856). The violent repression of the uprisings and the fact that Russian troops had almost reached Constantinople alarmed the other powers, and in particular the UK, who had become wary of potential Russian domination over the Suez Canal, the

28 Koskenniemi (no 2) 110.

Dardanelles and Bosporus Straits, and the Persian Gulf.[29] It was becoming evident that there was an urgent need for the Great Powers to find a compromise regarding the fate of the Balkan territories of the Ottoman Empire, satisfying everyone's competing interests in the region.

For the British Empire, following increasing naval movement in the eastern Mediterranean after the opening of the Suez Canal in 1869, the Eastern Question had become an issue of imperial defence.[30] As a result, despite the fact that the Congress was seen primarily as one concerning the Ottoman Empire and the Balkan peoples, control over Cyprus was highly relevant.[31] The broad geographical scope of these concerns is obvious in the words of Prime Minister Benjamin Disraeli, Earl of Beaconsfield, who stated "In taking Cyprus, the movement is not Mediterranean; it is Indian," in an attempt to convince his peers at the House of Lords on 18 July 1878 that taking over the administration of Cyprus was essential for the welfare of the British Empire and the preservation of peace within it.[32]

It was these defence considerations on behalf of the UK that led to secret negotiations with the Sultan, parallel to the formal negotiations of the Congress, which led to the secret Cyprus Convention (of Defensive Alliance between Great Britain and the Ottoman Empire) of the 4th of July 1878. Under the Convention, the UK bound itself to assist the Ottoman Empire in the event of a Russian attack against Ottoman territories in the Caucasus and Eastern Anatolia. In exchange, the Ottoman Empire was to transfer the *occupation* and *administration* of the island to the British, while the Sublime Porte would retain its *Sovereignty* over the island. Both parties benefited from the agreement, since the UK ensured the possession of a military stronghold in the Eastern Mediterranean, while the Ottomans acquired protection from Russian expansionism in the Black Sea and its remaining north-eastern territories from the Caucasus towards Persia. Hence, in this subtle manner, through the mechanics of international law and diplomacy, Cypriot modern history obtained a double regional relevance. The developments on the Balkans on the one side—in particular, but not only, the relationship of Greece and Turkey—and the colonial developments in the Levant and beyond towards the East, on the other. Even though this has been

[29] Van den Bogaert (no 7) paras 8-9.

[30] Dwight E. Lee, *Great Britain and the Cyprus Convention Policy of 1878* (Cambridge, MA: Harvard University Press, 1934) 11.

[31] Ibid. vii.

[32] Ibid. 113.

prevalent throughout the island's history, existing literature does not always take into account the full spectrum of events and relevant factors, frequently obscuring the significance of one region over the other.

Administering a given territory without de facto annexing it strikes one as unusual today. Nevertheless, it was a phenomenon that had occurred on a number of occasions around the world within a decade from Britain's assumption of the administration of Cyprus. Given the centrality of the Principle of Sovereignty in international law however, this phenomenon raised serious concerns among international lawyers at the time. Whereas deciding on paper that the Sovereignty of a territory was going to lie with one State, but its administration was going to be exercised by another seemed straight forward, a series of practical problems occurred, since Sovereignty allocated rights as well as duties, obligations and responsibility under international law.

In the literature, parallelisms are frequently drawn between Cyprus and Austria-Hungary's lease of Bosnia-Herzegovina, which was also agreed upon at the Congress of Berlin. Even though it lasted only until 1908, the Austria-Hungarian lease of Bosnia-Herzegovina was very similar in form.[33] Another example with regard to the UK specifically, includes the case of Egypt, also formerly an Ottoman province, de facto ruled by the UK as of 1882 and declared a British protectorate in 1914.[34] Similarly, in 1898 the UK leased Kowloon from China for 99 years, which eventually became the colony of Hong Kong, and from which the British withdrew in 1997.[35] In all these cases since the territory did not formally belong to the UK, British law would not apply. Thus, the administering State could avoid compliance with international legal rules, essentially subjecting the respective territories to multiple legal vacuums, as illustrated below.

In his 1928 *Treatise on International Law*,[36] prominent international lawyer Lassa Oppenheim referred to both Cyprus and Bosnia-Herzegovina in this period as a 'cession of pieces of territory'.[37] A consensual agreement between two States to trans-

[33] Lee (no 28) 106.

[34] Koskenniemi (no 2) 152.

[35] Oliver Döit, 'Cession' *Max Planck Encyclopedia of International Law* (2006) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1377?rskey=dqFULN&result=1&prd=MPIL > (Last accessed 25 August 2020) para 4.

[36] Lassa Oppenheim, *International Law: A Treatise Vols 1 and 2* (London: Longmans, Green and Company, 1928).

[37] Oppenheim, *International Law: A Treatise Vol. 2* 363 cited in George Hill, *A History of Cyprus, Vol.*

fer territory from one to another.[38] This, according to Oppenheim had taken place for practical purposes. Even though he recognised that legally speaking the territories in question still belonged to the former owner-State, which in both of these instances was the Ottoman Empire, he concluded that only the Sovereignty of the State exercising administration was being exercised in practice.[39] The UK and Austria-Hungary respectively, in the present example.

More recently, Crawford admitted that the variety of different types of dependent status and the accompanying terminology tend to be confusing, arguing that 'the legal incidents of a given relationship are to be determined [...] from an examination of the constituent documents', as opposed to the label attached to it.[40] He clearly states however, that the Ottoman Empire did have a 'residual Sovereignty' over Cyprus, which involved the retention of extensive rights over the island.[41] In practice, the persisting lack of clarity on the issue of Sovereignty deriving from such 'administrative cessions'[42] led to gaps between 'appearance and reality', with different types of de facto annexations leading to varying consequences in practice.[43] The issue of the status of Cyprus in the aftermath of the 1878 Treaty of Defensive Alliance did arise in the case of *Parounak v Turkish Government*[44] before the Anglo-Turkish Mixed Arbitral Tribunal in 1929, indicating how the direct impact of the arrangement between the Ottoman Empire and the UK was both substantial and a long-term one.

Moreover, the agreement had an immediate impact on the island's population. For instance, Hill mentions that event though Cypriots were entitled to British protection *beyond the Ottoman borders*, they were not regarded as British subjects at all, since the UK never disputed the legal Sovereignty of the Ottoman Empire over the island.[45] Conversely, when travelling across territories *under direct Ottoman control*, Cypriots were legally considered Ottoman subjects, but not necessarily treated as such.[46] The author estimates that an accurate legal analysis on this point may require additional detailed research on Ottoman Law and practices under the *millet* system.

IV (Cambridge: Cambridge University Press, 1952) 285.

38 Döit (no 33) para 1.

39 Hill (no 35) 285.

40 Crawford (no 4) 284.

41 Ibid. 327.

42 Döit (no 33) paras 3-5.

43 Koskenniemi (no 2) 151-152.

44 *Parounak* v *Turkish Government* (1929) 9 Rec MAT 748; 5 ILR 25 cited in Crawford (no 4) 288.

45 Hill (no 35) 285.

46 Hill (no 35) 408.

Nevertheless, Hill correctly points out, albeit in very broad terms, that the local population[47] fell within an obvious legal vacuum, that put them in a precarious position in terms of any protection that could have been afforded to them by either the UK or the Ottoman Empire.

Correspondingly, this situation put foreign Consuls serving in Cyprus in an awkward position as well, and affected the century-long practice of Capitulations. These 'pledges' *(ahdnameler)*, which were unilaterally granted to or revoked from non-Muslim sovereigns by the Sultan, extended to them and their subjects privileges regarding residence, safe passage, tax and custom duty exemptions through the territories ruled by the Ottoman Empire.[48] They further secured the immunity of Western citizens from the jurisdiction of Ottoman courts, preventing them from being subjected to the provisions of Ottoman Law.[49] As a result, Europeans would be tried under their country's law, through extraterritorial consular jurisdiction.[50] Hence, despite their well-established presence, Consuls on Cyprus were the first 'shock absorbers',[51] who found themselves in a position where they had to seek recognition from the British government to exercise their duties, while technically still serving on the territory of a different State. This led to further uncertainty on whether or not they would enjoy the privileges and protection which had been afforded to them for centuries.[52]

These brief examples illustrate the level of ambiguity persisting in international law in the late 19th century as well as the practical problems that derived because of it. Furthermore, they show how Cyprus was remotely implicated and affected by the international developments and the power dynamics of the late 19th century. Upon the arrival of the British, many Ottoman officials returned to Constantinople, with the majority Muslim population opting to stay on the island instead, despite arrange-

[47] The reference to 'locals' here is made without due regard to any categories of persons which may have enjoyed special privileges, such as Ottoman or foreign officials, or individuals of Cypriot origin covered by consular or other protections. The literature consulted for the present paper does not offer detailed information on the matter.

[48] Özsu, *Ottoman Empire* (no 16) 430-431.

[49] Ibid. 431.

[50] Ibid. 434; Umut Özsu, 'The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory' in Anne Orford and Florian Hoffmann (eds) *Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016) 123, 130-132.

[51] Robert Holland, 'Why the Levant?' in Anastasia Yiangou, George Kazamias and Robert Holland (eds) *The Greeks and the British in the Levant* (London: Routledge, 2019) 25, 28.

[52] Hill (no 35) 404.

ments to facilitate their voluntary relocation.[53] An early instance, one can say, of the mass transfer of populations initiated on the Balkans after the end of the First World War (WWI), and the establishment of the Turkish Republic.

At the same time, the abuse of the Capitulations by European and local protégé merchants across the Empire, was one of the factors fuelling Turkish nationalism, which regarded the system as a 'humiliating sign of decline',[54] and 'evidence of exclusion from the "family of nations"'.[55] The issue of the Capitulations was not to be resolved completely until 1923 and the Lausanne Peace Treaty.[56] Thus, we start to observe already in the period following the Congress of Berlin the very early, remote seeds of the phenomena that led to the widespread violence in the Balkan region and Asia Minor in the first two decades of the 20th century.

From the 1914 British Annexation of Cyprus to the 1923 Peace Treaty of Lausanne

The unclear status of Cyprus under international law changed at the beginning of WWI in 1914, when the Ottoman Empire joined the war on the side of Germany and Astro-Hungary, against the UK and its allies. Due to WWI, the Cyprus Convention of 1878—an alliance—was no longer effective. Thus, King George V issued the *Cyprus (Annexation) Order in Council*,[57] which formally brought the island under full British control.

Strictly speaking in legal terms however, this still did not amount to the island coming under British Sovereignty, as such. Given the belligerent status between the UK and Turkey, the Order could qualify as an act of *belligerent annexation*,[58] which subsequently, in legal terms turned the status of the British administration of the is-

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53 Hill (no 35) 293.

54 Özsu, *Ottoman Empire* (no 16) 432.

55 Ibid. 438.

56 Article 28, *Treaty of Peace between the British Empire, France, Italy, Japan, Greece, others and Turkey* (Lausanne Peace Treaty), 24 July 1923, League of Nations Treaty Series, Vol. XXVIII, No 701, p. 11; A total of 14 Treaties were signed on 24 July 1923 in Lausanne, regulating a broad range of territorial and other arrangements in the region, including the regime governing passage through the Bosporus and Dardanelles Straits and the Sea of Marmara.

57 *Cyprus (Annexation) Order in Council*, 5 November 1014 available at United Kingdom, Hydrographic Office Archive (Ref no HD 1914/638).

58 Frank Hoffmeister, 'Cyprus' *Max Planck Encyclopedia of International Law* (2019) < https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1273?rskey=ZcU4oy&result=1&prd=MPIL > (last accessed 24 August 2020) para 2.

land into that of belligerent (i.e. military) *occupation*.[59] The situation where one State exercises effective control over the territory of another State, without the latter State's consent.[60] As a result of these developments, and considering that the UK already had had administrative control over Cyprus for more than three decades, the status of Cyprus remained uncertain until the signing of the Treaty of Lausanne in 1923.

The exact determination of the status of Cyprus during WWI is of little practical importance, since there are no known incidents implicating the island directly in the hostilities between the belligerent parties. Had any issues arisen between the UK on the one side and Turkey, Germany or the Austro-Hungarian Empire on the other implicating the island, then this question would obtain high importance.

Cyprus was spared the violence on its territory in both World Wars. But the horrors experienced by troops and civilian populations on the Balkans, Asia Minor and the Caucasus—from the Balkan Wars in 1912-13, to the Armenian Genocide during WWI and the Fire of Smyrna in September 1922, as the last chapter of the Greco-Turkish War of 1920-1922—are well-known and deeply embedded in the collective consciousness of the next generations in all these regions. Naturally therefore, these events had an impact on the Cypriots, among whom there are ethnic Greeks, Turks and Armenians to this day, with the earliest inter-ethnic clashes between the Greek and the Turkish communities of the island being traced back to this period.[61] Thus, it comes as little surprise that this period eventually had a broader, albeit rarely discussed, *legal* effect on later developments on the island, beyond the historical and emotional baggage still burdening each ethnic group; often exploited for political gains in the construction of narratives of victimhood or national pride, depending on the speaker, the audience and the surrounding circumstances.

[59] Eyal Benvenisti, 'Occupation, Belligerent', *Max Planck Encyclopedia of International Law* (2009) < https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e359?rskey=rSAFwb&result=1&prd=MPIL > (last accessed 24 August 2020); Adam Roberts 'What is a military occupation?' (1984) *British Yearbook of International Law* 55(1) 249, 261-262.

[60] Benvenisti (no 62) para 1.

[61] Asmussen has written on the Limassol Riots of 1912, occurring after the Ottoman defeat from Italy and two shooting incidents in Dali and Pyla in October 1922 in Jan Asmussen, 'Early Conflicts between the Greek and Turkish Cypriot Communities in Cyprus' (2004) *The Cyprus Review* 16(1) 87; Peter Loizos discusses the burning of the Turkish Cypriot coffee shop in the village of Argaki in Peter Loizos, 'Correcting the record: Memory, Minority Insecurity and Admissible Evidence' in Rebecca Bryant and Yiannis Papadakis (eds), *Cyprus and the Politics of Memory* (London: I.B Tauris, 2012) 195.

The 1919 *Treaty of Neuilly*[62] and the 1923 *Treaty of Lausanne Concerning the Exchange of Greek and Turkish Populations*[63] contained mechanisms for the exchange of populations across the Greco-Bulgarian[64] and the Greco-Turkish[65] borders, respectively. These led to a 'formalisation of displacement',[66] as a means to homogenise the populations of the new States established on the Balkans, throughout the gradual process of the dissolution of the Ottoman Empire. Eastwards across the Mediterranean, the formerly Ottoman Middle Eastern territories were deemed unable to govern themselves,[67] and were thusly awarded a new status under international law as Mandates, regulated under article 22 of the Covenant of the League of Nations. Their administration, which was colonial in all but name,[68] was to be supervised by the victors of WWI, who allocated the former, non-European Ottoman and German territories among themselves. Under this new post-WWI world order, the rights of minorities would be *guaranteed* by the newly-established League of Nations,[69] which was also tasked with directly supervising the administration of the Mandates.

A significant detail for consideration here is that under paragraph 3 of Article 22, the Mandate System recognised that 'Certain communities formerly belonging to the Turkish Empire' had 'reached a stage of development', roughly along the lines of civilised, barbarian, and savage categorisation mentioned in the beginning of this article, 'where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone'. To these territories, usually referred to as Category A Mandates, belonged all of the immediate Eastern neighbours of Cyprus; Syria,

[62] *Convention between Greece and Bulgaria Respecting Reciprocal Migration* (Treaty of Neuilly), 27 November 1919, League of Nations Treaty Series, Vol. 1, No 9, p. 67.

[63] *Convention between Greece and Turkey Concerning the Exchange of Greek and Turkish Populations and Protocol* (Treaty of Lausanne, Exchange of Populations), 30 January 1923, League of Nations Treaty Series, Vol. XXXII, No 807, p. 75.

[64] Tzouvala (no 25).

[65] Umut Özsu, 'A thoroughly bad and vicious solution': humanitarianism, the World Court, and the modern origins of population transfer' (2013) *London Review of International Law* 1(1) 99.

[66] Umut Özsu, *Formalizing Displacement: International Law and Population Transfers* (Oxford: Oxford University Press, 2014).

[67] Ruth Gordon, 'Mandates' *Max Planck Encyclopedia of International Law* (2013) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1066?rskey=nlzhPq&result=1&prd=MPIL > (Last accessed 24 August 2020).

[68] Ibid. para 1; Koskenniemi (no 2) 170-172.

[69] Helmer Rosting, 'Protection of Minorities by the League of Nations' (1923) *American Journal of International Law* 17(4) 641.

Lebanon, and Palestine. It is hereby unknown whether Cyprus was ever mentioned even in passing in the discussions pertaining to the allocation of the Mandates, or whether the fact that the island was already under British control completely excluded such a scenario. Besides, the majority Greek Cypriot population had already made clear since 1878 that their aspiration was to be unified with Greece. What can be said with some certainty though is that following WWI, contrary to other areas in the region, independence was definitively not on the table as far as Cyprus was concerned.

The direct impact of the above post-WWI arrangements to Cyprus is thus, seemingly limited in scope and rather remote, since neither the Great War, nor the Greco-Turkish War immediately afterwards brought any major changes for the island, which continued to be administered by the UK. Nevertheless, out of a total of 143 articles contained in the Lausanne Peace Treaty, two of them did refer to Cyprus. Article 20 recognised the annexation of Cyprus proclaimed by the British in November 1914, resolving the uncertainty over the island's Sovereignty by formally passing it over to the UK, and Article 21 regulated the nationality of Turkish nationals ordinarily resident in Cyprus in the context of other post-war arrangements.[70] Since Mandates had already been allocated to the Mandatories in 1919,[71] and given the fact that retention of the island by the British derived out of a direct recognition of the UK's annexation in 1914, the way was clear for the establishment of the Crown Colony of Cyprus on 10 March 1925.[72]

Contemporary relevance of 1878-1923

Between the signing of the Treaty of Lausanne in 1923, and the establishment of the Republic of Cyprus in 1960, the Second World War (WWII) and the establishment of the United Nations in 1945 had led to a new era in international affairs. A period characterised by the process of decolonisation and the Cold War. However, according to some commentators, this common emphasis on WWII as a threshold period in international law and international relations, fails to fully appreciate the continuities observed from the 19th century, to the Interwar period, and then the international legal order following WWII, in terms of ethos, tools and ideological com-

[70] Lausanne Peace Treaty (no 54).

[71] Crawford (no 4) 533.

[72] Letters Patent passed under the Great Seal of the United Kingdom constituting the Office of the Governor and Commander-in-Chief of the Colony of Cyprus and providing for the Government thereof, 10 March 1925, *The Cyprus Gazette* (No 1691, 1925).

mitments.[73] Indeed, there is considerable scope to argue that this is also illustrated in the case for Cyprus, where historiographical, political and other assessments of key events, frequently underestimate or fail to grasp completely the importance of earlier aspects of its history, including the period on which the present article focuses on. Therefore, before concluding, I hereby attempt to bridge the period 1878 to 1923, with important aspects of the island's later history.

Firstly, already shortly after the Lausanne Peace Treaty was signed, commentators had recognised Cyprus as the remaining outstanding issue in Greco-Turkish relations.[74] Reference is made in particular to the issue of the security of the 'non-Greek minority', emphasising how the Near East is 'notorious' for the need to protect minorities against the 'dominant nationality' in a given region.[75] In the 1930 *Greco-Bulgarian Communities*[76] Advisory Opinion of the Permanent Court of International Justice (PCIJ) in The Hague, which dealt with the exchange of populations on the Greco-Bulgarian border, one of the questions raised before the Court was the meaning of the term 'community' for the purposes of the Treaty of Neuilly.[77] The PCIJ gave the following definition:

> "community" is a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of *race*, *religion*, *language* and *traditions* in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.[78]

One can easily observe how this was closely reflected 30 years later, in the 1960 bi-communal Constitution of the Republic of Cyprus, still in force today albeit heavily amended in practice, which under Article 2, paragraphs 1 and 2, read:

> (1) the Greek Community comprises all citizens of the Republic who are of *Greek origin* and whose *mother tongue* is Greek or who share the *Greek cultural traditions* or who are members of the *Greek-Orthodox Church*;

[73] Tzouvala (no 25) 1151.
[74] Arnold J Toynbee, 'The East after Lausanne' (1923) *Foreign Affairs* 2(1) 84, 89-93.
[75] Ibid. 91.
[76] *Greco-Bulgarian 'Communities'* Advisory Opinion,1930 PCIJ Series B, No. 17, p. 4.
[77] Ibid. 5.
[78] Ibid. 21 (emphasis added).

> (2) the Turkish Community comprises all citizens of the Republic who are of *Turkish origin* and whose *mother tongue* is Turkish or who share the *Turkish cultural traditions* or who are *Moslems*.[79]

Thus, the bi-communal arrangement of 1960 was potentially a reaction to those early concerns, offering a solution which reflected more closely the spirit enshrined in the Advisory Opinion of 1930, instead of the legal order which started developing after WWII. Another example of how the vast literature engaging with Cyprus' history of the 20th century, rarely considers the relevance of the events, the legal and political discourse surrounding the period of the Lausanne Treaty. One major exception has been the argument raised by Turkey and the Turkish Cypriot leadership on various occasions that the end of British rule should have led to the restoration of Turkish rule. Considering the dissolution of the Ottoman Empire, the provision under Article 20 of the Lausanne Peace Treaty, and the major changes that followed in the region of the Eastern Mediterranean until the 1960s, also through the process of decolonisation, from a legal perspective this is a weak argument. From a historical perspective however, it is a lead towards obtaining clearer understanding of the processes that eventually defined Cypriot independence in 1960.

Second, I would like to now turn to the issue of guarantees, as one of the cornerstones of Cypriot independence. To date the issue remains one of the most difficult aspects for a future resolution of the Cyprus Problem. The existing literature, while extensive in discussing the problems deriving out of the Treaty of Guarantee, a valid and necessary discussion, fails to give a satisfactory explanation on the rationale, the context and the legal practice behind the use of this particular legal tool. Guarantees had already been used in different forms for centuries, including in the form of Capitulations as described in section 2 above, from the time of Charlemagne and the Byzantine Emperors, in the relationship between European, or European and non-European rulers.[80] We have also seen in section 3 above how the League of Nations assumed the role of a guarantor for the protection of the minorities in the new States and the Mandates that were established with the dissolution of the Ottoman Empire. Hence, it would not be tfar-fetched to argue that in 1959, when the London-Zurich Agreements for the independence of Cyprus were negotiated, pre-1945

[79] Art 2, Republic of Cyprus Constitution 1960 (emphasis added).

[80] Rosting (no 67) 641-645; Davide Rodogno, 'European Legal Doctrines on Intervention and the Status of the Ottoman Empire within the 'Family of Nations' Throughout the Nineteenth Century' (2016) *Journal of the History of International Law* 18(1) 5, 21-25.

practices resurfaced, albeit adapted to the realities of the post-WWII world order, with Greece, Turkey and the UK eventually guaranteeing the 'independence, territorial integrity and security'[81] of the newly-established Republic of Cyprus.

Of relevance here is also Crawford's reference to the concept of 'internationalised territories' as a form of organisation for territories which are 'disputed between States on strategic, ethnic or other grounds' and as a result became autonomous under a form of 'international protection, supervision or guarantee'.[82] He gives a plethora of examples, with an emphasis on the Free City of Danzig, which was established in 1919[83] at the end of WWI, further arguing that the limitations imposed on Cypriot Sovereignty, by way of the three treaties constituting the Republic's independence,[84] Cyprus is essentially a case of an 'internationalised territory' 'by the back door', adapted to the post-1945 needs and global order.[85] Hence, through the concept of 'internationalised territories' we can once again see a WWI phenomenon, surviving in the case of Cyrus well into the second half of the 20th century.

Lastly, in the face of all the post-WWI developments in terms of concepts and mechanisms relating to Sovereignty, the PCIJ had ruled in 1923 that a sovereign State could waive part of its sovereign rights, adding that what constituted Sovereignty was not fixed, and it was a matter of international relations, as opposed to a matter of international law.[86] The ability of a State to bind itself under international law, was characteristic of its sovereign character in itself.[87] Thus, regardless of the status of the Republic of Cyprus in terms of the form of territorial organisation it assumed in 1960, it was a sovereign State under international law, albeit admittedly one of limited capacity. This however, was not the result of an ambiguous conspiracy by the great powers of the post-colonial world to divide and rule as the usual narra-

[81] Art II, *Treaty of Guarantee*, Nicosia, 16 August 1960, *United Nations Treaty Series*, vol 382, No 5475, p. 3 available from https://treaties.un.org/doc/Publication/UNTS/Volume%20382/v382.pdf .

[82] Crawford (no 4) 233.

[83] Ibid. 236.

[84] One of the three is the Treaty of Guarantee mentioned above. The other two are the *Treaty Concerning the Establishment of the Republic of Cyprus* (Nicosia, 16 August 1960, *United Nations Treaty Series* vol. 382, No 5476, p.8 available from https://treaties.un.org/doc/Publication/UNTS/Volume%20382/v382.pdf and the *Treaty of Alliance between the Kingdom of Greece, the Republic of Turkey and the Republic of Cyprus* (Nicosia, 16 August 1960, *United Nations Treaty Series*, vol 397, No 5712, p. 287 available from https://treaties.un.org/doc/Publication/UNTS/Volume%20397/v397.pdf .

[85] Crawford (no 4) 241-244.

[86] Koskenniemi (no 2) 173; *SS 'Wimbledon'* 1923 PCIJ Series A, No. 1.

[87] Koskenniemi (no 2) 173.

tive suggests. It was rather the result of an international legal order which in its very nature contained unfavourable prejudices and practices as well as normative rules which allowed to be bended just enough so as to adapt to the needs and interests at stake. As one of the major tools employed in international politics, international law and its history can inform our understanding of current international problems. For them to be effectively used however, the acknowledgment of and practical engagement with the inherent prejudices deriving from the darkest periods of its development is a prerequisite.

Conclusion

As I have attempted to illustrate above, elements of critical legal scholarship can contribute to our broader understanding of historical, political and international legal considerations at the intersection of Cypriot, Balkan and Middle Eastern history. The need for such an analysis derives from a long-term reluctance to engage with controversial and highly contested aspects of international law. In a volatile political environment such as the one experienced in Cyprus from the very establishment of the Republic such an approach may be justified, to a certain extent, due to the role traditionally expected of the law. Law's assumption of the position of a neutral arbiter that will determine who is right or wrong, guilty or innocent. Such an approach however, fails to acknowledge that the law is also one of the main tools in the design and implementation of international policies. As seen above, there are continuously growing criticisms today, from international lawyers and historians alike, of the legal arrangements that took place in the early 20th century.

Whereas the Congress of Berlin can be seen as the ultimate event of European state-making in the Balkan region at the end of the 19th century, the population transfers in the aftermath of WWI had a lasting effect deep into the 20th century also affecting Cyprus.[88] Since 1923 the Treaty of Lausanne keeps resurfacing in the broader Eastern Mediterranean region. As early as December 1922, Lord Curzon had stated with regard to the exchange of populations during the negotiations for the Treaty of Lausanne, that this was 'a thoroughly bad and vicious solution, for which the world would pay a heavy penalty for a hundred years to come'.[89] The closer we approach the centenary of the Treaty of Lausanne in 2023, the more some political circles entertain the idea of a need to rectify the injustices the Treaty of Lausanne and other develop-

[88] Özsu, *Bad and vicious solution* (no 63) 126.
[89] Ibid. 126-127.

ments from that time led to. Lord Curzon's dark prediction is not therefore out of place. International developments at the turn of the 20th century have led to numerous political problems in the region, and extensive human suffering. However, the solution does not lie in throwing the blame on 'the other' depending on one's standing point. The solution lies in a critical engagement with the deeper implications of the legal and other relevant factors that led to those developments from the first place.

One question to reflect on in that direction is whether the independence of Cyprus in 1960 was one of the many acts of granting independence in a rapidly decolonising world, or whether it was the last act in the disintegration of the Ottoman Empire. To look for a black and white answer would be insufficient, as arguing in favour of either side of the balance would fail to appreciate the complexity of the full picture. As the legal-historical survey above suggests. there is a need to jointly assess different aspects of Cypriot history, under the broader umbrella of the dissolution of the Ottoman Empire. Expanding from the Eastern Mediterranean to the Balkan region, over a broader chronology, which looks for answers beyond the narrow scope of the 1950s.

The law does carry an 'amnesiac quality', as mentioned by Fitzpatrick in the opening lines of this article. Like any other discipline, international law too has its parallel history, ontological challenges, and epistemological inadequacies. To overlook them however, would mean to reject a broader scope of factors that have contributed extensively to the formation of today's realities.

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