
‘These Ancient Arenas of Racial Struggles’: International Law and the Balkans, 1878–1949

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Abstract

This article revisits the disintegration of the Ottoman Empire and the emergence of national statehood in the Balkans. It traces this transitional process between the Congress of Berlin in 1878 and the United Nations involvement in the Greek Civil War (1946–1949). I show that this transition from empire to the nation-state was overdetermined by the partial and fragmented, yet influential, internationalization of significant questions regarding state building, including decisions about autonomy and independence, the drawing of boundaries, the protection of minorities and the continuation of economic relations. In fact, the Balkans became a site of experimentation for international legal techniques, such as fact-finding, peacekeeping missions or the administration of population exchanges, that would later acquire wider significance in the process of decolonization. The image of international law emerging from this account troubles the liberal understanding of international law and institutions as benevolent, cosmopolitan forces opposing, restraining and taming ‘nationalist passions’. Rather, it was precisely because the relationship between nationalism and internationalism was one of cooperation and co-constitution, as much as one of antagonism, that this multitude of international legal techniques conditioning sovereignty in the Balkans arose.

1 Introduction

The revival of ethnic nationalism is turning out to be one of the most consequential evolutions of the late 20th and early 21st centuries.¹ From Brexit to Donald Trump

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¹ In nationalism studies, ethnic nationalism is commonly juxtaposed to civic nationalism. In the case of the former, the nation is defined based on (perceived) common descent and hereditary links, while the latter emphasizes political kinship. Anthony D. Smith, who is considered the ‘father’ of the distinction, stresses that real-existing nationalisms combine civic and ethnic elements that are in a dynamic, changing relationship to each other. A.D. Smith, *National Identity* (1991), at 13.

and to the opposition to admitting refugees into Europe, nationalism and its political corollary – the nation-state – appear to have re-emerged as hegemonic forces in international politics. The majority opinion in international law treats this evolution as being antagonistic to the international legal order and to the ideas that this legal order is perceived to be structured around, such as peace, democracy and free trade.² In this time of uncertainty and concern, I turn to the Balkans as a region often associated with ethnic strife and understood to be in need of international legal intervention in order for this strife to be prevented, managed and overcome.³ In doing so, I focus on a period stretching from the Congress of Berlin in 1878 to the involvement of the United Nations (UN) in the Greek Civil War.

In terms of political history, this period is characterized by the gradual collapse of the Ottoman Empire and the growing involvement of the Great Powers in the transition from empire to nation-states in the region. In fact, it was during this period that ‘the Balkans’ emerged as a distinct region to be managed, ordered and pacified. The Cold War largely undid this arrangement by pushing the Balkan states into different sides of the ideological, political and geopolitical divide. In regard to international law, my analysis is demarcated by the rise of international law as a distinct discipline and profession and the stabilization of a paradigm of a differentiated, hierarchical model of inclusion in the realm of international law.⁴ In this context, different political communities were understood as enjoying varying degrees of international legal personality depending on their conformity with the ‘standard of civilization’.⁵ Crucially, these seven decades between 1878 and 1952 are also characterized by the increasing use of international legal instruments, such as treaties or the legal infrastructure of international organizations, as the legal basis for a series of techniques aiming at the

² See, e.g., the call for papers for the 2017 meeting of the Australian and New Zealand Society of International Law. Australian and New Zealand Society of International Law, *Sustaining the International Legal Order in an Era of Rising Nationalism* (2017), available at www.anzsil.org.au/resources/2017%20Conference/2017%20ANZSIL%20Conference%20Call%20for%20Papers.pdf. For a critique of international lawyers’ self-image in the post-Cold War era that resonates today, even if the prevalent sentiment today is that of anxiety and not optimism, see Orford, ‘Embodying Internationalism: The Making of International Lawyers’, 19 *Australian Yearbook of International Law* (1998) 1.

³ On the emerging international legal thinking on regions and regionalism, see Anghie, ‘Identifying Regions in the History of International Law’, in B. Fassbender and A. Peters, *Oxford Handbook of the History of International Law* (2012) 1058; Vecoso, ‘Assessing Regionalism in International Law’, 35(2) *L’Observateur des Nations Unies* (2013) 7; Orford, ‘NATO, Regionalism and the Responsibility to Protect’, in I. Shapiro and A. Tooze (eds), *Charter of the North Atlantic Treaty Organisation Together with Scholarly Commentaries and Essential Historical Documents* (2017) 302.

⁴ M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001), at 33.

⁵ On the question of differentiated international legal personality, see Parfitt, ‘Empire des Nègres Blancs: The Hybridity of International Personality and the Abyssinia Crisis of 1935–1936’, 24 *Leiden Journal of International Law* (2011) 849; Wheatley, ‘Spectral Legal Personality in Interwar International Law: On New Ways of Not Being a State’, 35(3) *Law and History Review* (2017) 753. On the ‘standard of civilization’, see Lorimer, ‘La doctrine de la reconnaissance, fondement du droit international’, 16 *Revue de droit international et de législation comparée (RDILC)* (1884) 333; Tzouvala, ‘Civilisation’, in J. d’Aspremont and S. Singh (eds), *Concepts for International Law: Contributions to Disciplinary Thought* (forthcoming).

management of the 'national question' in the region. Both international lawyers and the Great Powers proposed and occasionally implemented plans of limited internationalization, peacekeeping, fact-finding and ordered population exchange.

This periodization is a counter-intuitive one, to the extent that it does not understand the UN Charter and the Universal Declaration of Human Rights (UDHR) as moments of rupture in the international legal order.⁶ Indeed, this article seeks to highlight the continuities between the ethos, tools and ideological commitments of the post-war international legal order and its interwar and 19th-century predecessors. This choice exposes the limitations of approaches that over-emphasize World War II, the Holocaust, the establishment of the UN and the passing of the UDHR as moments of rupture and regeneration for the international legal order.⁷ First, I examine the process of the dissolution of the Ottoman Empire and the emergence of nation-states in the Balkan region, emphasizing the role of legalized international intervention. I do so by focusing specifically on Macedonia, which comprises three Ottoman vilayets (administrative units) that had Salonika, Monastir and Skopje as their administrative capitals.⁸ I revisit the 1878 Treaty of Berlin that decisively internationalized the 'Eastern question'; the Mürzsteg Agreement, which, following an ill-fated nationalist uprising in Macedonia, introduced a proto-peacekeeping mission in the region and the 1919 Treaty of Neuilly.⁹ Second, I turn to the interwar period and the role of the Permanent Court of International Justice (PCIJ) in promoting ethnic homogeneity in the Balkans. Third, I map the reaction of the UN to the Greek Civil War that threatened to destabilize the region, in what is now seen as one of the first (if not the first) incidents of the Cold War.

I argue that the UN's intervention, which emphasized heavily the destabilizing potential of minorities, refugees and unsettled borders and proposed mechanisms such as population exchanges and border treaties as ways of pacifying the region, was part of a long history of international legal intervention in the Balkans. Since the last quarter of the 19th century, there has existed a contradictory relationship between international law and Balkan nationalism. On the one hand, both the Great Powers and leading international lawyers considered the Christians of the Ottoman Empire as needing protection but as not being ready for unconditional independence. Therefore,

⁶ Universal Declaration of Human Rights, GA Res. 217, 10 December 1948.

⁷ In this respect, this article is closely aligned with revisionist international legal histories that remain unconvinced about the importance of the late 1940s as an indisputable moment of rupture. Berman, 'In the Wake of Empire', 14(6) *American University International Law Review* (1999) 1521; S. Moyn, *The Last Utopia: Human Rights in History* (2010).

⁸ My focus on Macedonia is due to both space limitations and my interest in the Greek Civil War that initially prompted this inquiry. Admittedly, such focus sidelines other important developments at the time, most notably the authorization by the Berlin Conference of the occupation of Bosnia-Herzegovina by the Austro-Hungarian Empire.

⁹ Treaty between Great Britain, Austria-Hungary, France, Germany, Italy, Russia and Turkey for the Settlement of Affairs in the East (Treaty of Berlin), 13 July 1878; Mürzsteg Agreement between the Austro-Hungarian Empire and Russia, 2 October 1903, reprinted in N. Lange-Akhund, *The Macedonian Question, 1893–1908, from Western Sources* (1998); Convention between Greece and Bulgaria Respecting Reciprocal Migration (Treaty of Neuilly), 27 November 1919.

they showed a strong preference for manufacturing forms of limited international legal personality as steps towards independence and/or for conditioning sovereignty upon schemes of internationalization. On the other hand, ongoing interventions (legal or not) further destabilized the empire and objectively assisted the nationalist aspirations of its subjects. By the interwar period, the idea that ethnically homogeneous nation-states were essential for the maintenance of peace and security in the region had become hegemonic. Crucially, international law and institutions, such as the PCIJ or the UN General Assembly, positioned themselves as the guardians and coordinators of this process of ethnicization, thereby entangling international law, the nation and the state in unappreciated ways.

2 From Empire to State(s): The Macedonian Question from the 19th Century to the Cold War

A From Dhimmis to Victims and Then to Nationalists: The Gradual Collapse of Ottoman Legal Pluralism and the Rise of International Intervention

Even though an exhaustive history of the Balkans surpasses the purposes of this article and requires detailed engagement with hotly contested issues, the relative absence of an international legal history of the region warrants some engagement with the issue. In this section, I highlight three main points. First, I point to the dissimilarities and discontinuities between the structures of hierarchical communal coexistence of the Ottoman Empire and the subsequent system of minority management and protection under the newly founded nation-states, especially since international legal discourse has been so successful in obscuring the fundamental differences between the two. Second, I pay attention to the conflictual and precarious nature of bordered, ethnically homogeneous statehood in the region, which persisted well into the 20th century and defined the thinking both of domestic and international actors. Finally, I illustrate the foundational role of international law in this emergence of national statehood and ethnic nationalism in the Balkans. This role was enabled and conditioned by the peculiar position occupied by the Ottoman Empire and the states that emerged from its disintegration, such as Greece, Bulgaria and Turkey, within the ‘civilizational’ spectrum that dominated international law at the time.¹⁰ Being categorized as ‘semi-civilized’ enabled extensive international intervention in the form of not only the use of force but also the imposition of administrative reforms, foreign presence in the gendarmerie or minority treaties and internationally supervised minority exchanges.

Importantly, the Balkans and their inhabitants were generally not equated with their ‘Oriental’ rulers or with other peoples of the East. The fact that the Balkans were

¹⁰ For the position of the Ottoman Empire within the spectrum of civilization, see Özsu, ‘Ottoman Empire’, in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012) 429, at 429–448.

imagined to be 'on the doorstep of Europe' and were predominantly Christian elevated their inhabitants into a higher 'civilizational' position. It was partly due to this liminality – this hybrid position between East and West – that made the Balkans not only too 'advanced' for direct colonial rule but also unfit for independence, and this was also at the root of the legal innovation and experimentation in regard to the region. What is more, the competing interests of the Great Powers, coupled with the fact that no such power was willing either to outright annex the region or to stop interfering in its affairs, meant that multilateral solutions had to be devised so as to order the region according to the imperatives of the balance of power, to safeguard the interests of European capital and to respond to the demands both of the domestic public opinion, especially in Britain, and of the rising nationalist movements in the region. Legal tools such as minority protection, population exchanges and international territorial administration and trusteeship were first conceived and deployed to manage the 'Macedonian question'.

International law, however, was not the first or only force aspiring to order territories and populations in the Balkans, even though 19th-century rhetoric about the barbarity and lawlessness of the Ottomans has obscured the nuances of the Ottoman legal and administrative system.¹¹ The non-Muslim populations of the Ottoman Empire were organized into a system of communal authority known as *millets*. Karen Barkey and George Gavrilis have described the millet system as a non-territorial system of communal autonomy based on religious and cultural autonomy as well as on legal pluralism.¹² Even though the meaning and dynamics of millets were fundamentally transformed by the gradual rise of nationalism since the 18th century, their organizing principle initially was religion.¹³ Ethnicity played a conceptually secondary, yet locally important, role since community and religious leaders shared the linguistic, cultural and customary particularities of their communities.¹⁴ In this context, political and religious community leaders were delegated important intermediary functions between their communities and the empire. This was 'a form of indirect rule based on religious difference' that functioned successfully for centuries and was, in fact, adapted and adopted by the Russian and Austro-Hungarian empires in their dealings with their own populations.¹⁵ To complicate matters even further, some communities were exempted from the special taxation paid by non-Muslims

¹¹ Depending on their political inclinations and sympathies, international lawyers have painted a more or less unfavourable picture of 'Oriental despotism' in regard to the empire and proposed more or less radical ways of dealing with the 'Eastern Question'. See T. Twiss, *The Law of Nations Considered as Independent Political Communities* (1861), at 86–88; J. Lorimer, *Of the Denationalisation of Constantinople and Its Devotion to International Purposes* (1876). For an unusually positive account, see Hornung, 'Civilisés at Barbares', 17 *RDILC* (1885) 5, at 8–10.

¹² Barkey and Gavrilis, 'The Ottoman Millet System: Non-Territorial Autonomy and Its Contemporary Legacy', 15 *Ethnopolitics* (2016) 24, at 29.

¹³ Braude and Lewis, 'Introduction', in B. Braude and B. Lewis (eds), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society* (1982), vol. 1, at 12.

¹⁴ Karpat, 'Millets and Nationality: The Roots of the Incongruity of the Nation and State in the Post-Ottoman Era', in Braude and Lewis, *supra* note 13, 141, at 149. In fact, the existence of Kurdish and Turkment *millets* indicated a de facto recognition of ethnic differentiation even amongst Muslims.

¹⁵ Barkey and Gavrilis, *supra* note 12, at 26, 28–29.

because they offered specialized services that the empire needed (falconry, protection of roads, construction and maintenance of bridges) or, in some instances, because they were too belligerent for the Sublime Porte to assume control over them.¹⁶

Overall, it was the evolving and dynamic intersection of religion, ethnicity and contribution to the administrative needs of the empire that determined the legal relationship between different communities and the Sublime Porte. These legal and de facto arrangements of hierarchical co-existence and extensive communal autonomy can be conceptualized as being identical to the subsequent systems of minority protection only through anachronistic thinking and dehistoricization of the uniquely expansive role of the modern state in relation to its population and its territory. To begin with, it is worth noting that in the Ottoman Empire structures of political power, hierarchy and oppression were not necessarily understood through a pattern of majorities and minorities, at least not before the 19th century. In fact, after the expansion of the Ottomans at the expense of Byzantium and before their successes in the Arab world, the empire consisted of a Christian majority and a Muslim minority, which did not upset its Islamic orientation and communal structures. Moreover, minority protection schemes, like other structures linked to what later came to be understood as human rights, have the modern, bureaucratic and expansive state, with its unprecedented capacity and tendencies to order space and to count, discipline, administer and kill human beings, as their referent point. As I will show later, the PCIJ performed a crucial role in the reinterpretation of this community system under the Ottoman Empire as historically unchanging and essentially identical to interwar systems of minority protection.

This is not to say that there was no continuity between the millet system and nationalism in the Balkans but, rather, that this relationship was much more recent and dynamic than the PCIJ intimated. In fact, since the 18th century, the power configurations of the empire had been shifting due to both internal developments and external pressures.¹⁷ Exposure to the forces of mercantile capitalism, the expansion of foreign trade and its domination by Christians and, to a lesser extent, by Ottoman Jews meant that the Muslim subjects of the empire increasingly found themselves in a position of economic disadvantage. What is more, changes in land tenure and efforts in administrative reform upset the relations between the different social classes and Ottoman bureaucracy, throwing the empire into protracted crisis.¹⁸ Simultaneously, the millet system underwent significant transformation as local religious leaders lost their prominence and political leaders (the primates) came to dominate communal affairs. Furthermore, the intellectually inclined sons of rich merchants were sent to Europe

¹⁶ Karpat, *supra* note 14, at 150.

¹⁷ For the importance of the 18th century for the transformation and eventual decline of the Ottoman Empire, see K. Barkey, *The Empire of Difference: The Ottomans in Comparative Perspective* (2008), at 197–200.

¹⁸ For an overview of social transformations in the Ottoman Empire between the later 18th to the early 20th century, see Karpat 'The Transformation of the Ottoman State, 1789–1908', 3 *International Journal of Middle East Studies* (1972) 243.

to study, and, upon returning, they brought with them ideas of secularism, liberalism and nationalism. While the majority of the peasantry remained largely indifferent to such ideas, these shifts in the social and economic structure both of the empire, as a whole, and of the millet, in particular, laid the seeds for inter-communal strife along ethnic, and later national, lines. The introduction of equal Ottoman citizenship as the way of managing the relationship between the empire and its subjects was a failure,¹⁹ and it further destabilized the millet system that was incompatible with the universalist aspirations of citizenship.

Direct foreign intervention also destabilized the Ottoman Empire. Russia exhibited clear expansionist tendencies, and it used the empire's Christians and, subsequently, its Slavic populations as a pretext for intervening in the domestic affairs of the Ottomans, occasionally through the use of military force. The unexpected success of the Greek War of Independence (1821–1833) led to the establishment of the first independent state in the former territories of the empire. Moreover, the armed intervention by France, Britain and Russia that culminated in the 1827 Battle of Navarino and paved the way for Greek independence became the blueprint for subsequent interventions in the empire, not least because it established a multilateral *modus operandi* that would thereafter become prevalent in the West's dealings with the Ottomans. While the Ottoman Empire had participated in the system of European affairs for centuries, the beginning of the 19th century marked both its economic and political decline and its status downgrade to a 'semi-civilized' state. The Ottomans were increasingly perceived as 'barbarous', 'ruthless' and 'bloodthirsty' and as being incapable of governing the Christian populations under their authority. In this context, the spectre of 'massacre' was repeatedly invoked to justify armed intervention in the affairs of the empire, including the intervention of France in the name of the Lebanese Maronite Christians in 1860 or the 1867–1869 intervention by France and Russia in assistance of Cretan Christians.²⁰

The parallel rise of Bulgarian, Serbian and Turkish nationalisms combined with the expansionist aspirations of Greece and Western and Russian imperialism created an explosive situation in Macedonia. In 1871, the ascendance of Bulgarian nationalism culminated in the establishment of a separate Bulgarian church, the Bulgarian Exarchate. After that point, a bitter conflict erupted between the Exarchate and the Greek Patriarchate for the control of as many Macedonian Christians as possible, since the strength of the respective churches was seen as supporting the competing national claims of Bulgaria and Greece over Macedonia. Within this context, the 1878 Treaty of San Stefano boosted Bulgarian claims in the region. Following the

¹⁹ 'By 1910 the ideology of Ottomanism had more or less collapsed as a way of holding the empire together, and as nationalism spread among its Christian population, it gained ground among Muslims too.' M. Mazower, *Salonica City of Ghosts: Christians, Muslims and Jews 1430–1950* (2004), at 280.

²⁰ See D. Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire* (2011). For the contemporary purchase of humanitarian intervention especially in the United Kingdom, see O'Donoghue and Murray, 'Toward Unilateralism? House of Commons Oversight of the Use of Force', 65 *International and Comparative Law Quarterly* (2016) 305.

1877–1878 Russo-Turkish war and the defeat of the Ottomans, Russia forced the creation of a Bulgarian state that was not only de jure tributary to the empire but also de facto independent and, indeed, encompassed parts of Eastern Thrace and almost the entirety of Macedonia.²¹

However, the other Great Powers, and especially Britain, quickly reacted to this arrangement. The marquis of Salisbury made Britain's objections patently clear: 'By the Articles erecting the New Bulgaria, a strong Slav State will be created under the auspices and control of Russia, possessing important harbours upon the shores of the Black Sea and the Archipelago, and conferring upon that Power a preponderating influence over both political and commercial relation in those seas.'²² Importantly, he mobilized the language of international law to argue that the Treaty of San Stefano unilaterally altered previous legal arrangements regarding the Ottoman Empire, a reality that ran contrary to the principle of the inviolability of treaties.²³ Only a conference of the Great Powers could amend such pre-existing legal arrangements, and Otto von Bismarck was quick to offer to convene one in Berlin. Notably, Bismarck's invitation was exclusively addressed to the signatories of the 1856 Treaty of Paris and the 1871 Treaty of London.²⁴ This meant that apart from the Ottoman Empire no other directly affected states, autonomous principalities or peoples were formal participants in the Congress or signatories of the Treaty of Berlin.²⁵

Apart from creating an autonomous Bulgarian state confined to much more modest borders, the Treaty of Berlin created the province of Eastern Rumelia, which was supposed to operate as a buffer zone between the Ottoman Empire and Bulgaria, and even though it remained technically part of the empire, it was to be administratively autonomous and governed by a Christian governor.²⁶ Notably, a European Commission

²¹ For the delimitation of the border, see Art. 6 of the Preliminary Treaty of Peace Signed between Russia and Turkey (Treaty of San Stefano), 9 February and 3 March 1878.

²² 'Circular Addressed by the Marquis of Salisbury to Her Majesty's Embassies Abroad with reference to the Preliminary Treaty of Peace concluded between Russia and Turkey on 3rd of March 1878, and the Proposed Meeting of a Congress to deliberate Thereupon. Foreign Office, 1st April, 1878', reprinted in E. Herslet, *The Map of Europe by Treaty* (1891), at 2703.

²³ *Ibid.*, at 2702–2703.

²⁴ 'Despatch from Count Muenster to the Marquis of Salisbury, Inviting the Powers Parties to the Treaties of 1856 and 1871 to Meet in Congress at Berlin to Discuss the Stipulation of the Preliminary Treaty between Russia and Turkey, signed at San Stefano on the 3rd March, 1878. London, 3rd June, 1878', reprinted in Herslet, *supra* note 22, at 2721. Treaty between Her Majesty, the Emperor of Germany, King of Prussia, the Emperor of Austria, the French Republic, the King of Italy, the Emperor of Russia, and the Sultan, for the Revision of Certain Stipulations of the Treaty of March 30, 1856, 13 March 1871.

²⁵ For Westlake, this was a manifestation of political inequality that, however, did not effect legal equality amongst states: 'No doubt all these arrangements were subsequently accepted by the states concerned. ... Still, when no such acceptances were thought to be even necessary to a declaration of the will of Europe on several matters, we can appreciate what political inequality is compatible in the European system with legal equality.' Westlake, 'Chapters on International Law', in L. Oppenheim (ed.), *The Collected Papers of John Westlake* (1914), at 101. Treaty of Berlin, *supra* note 9.

²⁶ Treaty of Berlin, *supra* note 9, Art. XIII. For the significance of the migration moves from and to Eastern Rumelia and the impact of administrative reforms, therefore, for the solidification of the thinking along minority/majority lines, see Mirkova, "'Population Politics'" at the End of Empire: Migration and Sovereignty in Ottoman Eastern Rumelia 1877–1886', 55 *Comparative Studies in Society and History* (2013) 955.

was also established with the purpose of promulgating an organizational charter for the semi-autonomous province.²⁷ Moreover, this European Commission was charged with administering, along with the sultan, the finances of Eastern Rumelia until the promulgation of such a charter,²⁸ as well as with general consultation regarding similar organizational charters for the rest of the European possessions of the Ottomans.²⁹ Even though Eastern Rumelia was a short-lived experiment and was incorporated into Bulgaria in 1885, its conception and design pointed at the heavily conditioned sovereignty not only of the Ottoman Empire but also of the polities that were to arise from its dissolution.³⁰ Political autonomy and international supervision were intrinsically linked in the Balkans in ways that paved the way for later experiments in international territorial administration.³¹ Moreover, the Treaty of Berlin set a blueprint for the schemes of interwar minority protection. Article V of the treaty proclaimed that non-discrimination based on religion and religious freedom were to form 'the basis of the public law of Bulgaria'.³² Finally, the treaty conditioned self-government in the Balkans on the protection of Western capital. No less than three articles (Article X, XXI and XXXVIII) were exclusively dedicated to safeguarding the continuity of railway concessions of the Ottoman Empire in Bulgaria, Eastern Rumelia and Serbia, respectively. After all, around that time, railways amounted to approximately one-third of all foreign direct investment in the Ottoman Empire, and French, Austrian, German and, to a lesser extent, British capital had significant interests in the uninterrupted protection of their investments.³³ Similarly, the treaty ensured that the new independent and autonomous states of Bulgaria (Article IX), Montenegro (Article XXXIII) and Serbia (Article XLII) would assume a proportion of the Ottoman public debt.

²⁷ 'This Commission will have to determine, within three months, the powers and functions of the Governor-General as well as the administrative, judicial and financial system of the province taking as its basis the various laws for the vilayets and the proposals made in the eighth sitting of the Conference in Constantinople.' Treaty of Berlin, *supra* note 9, Art. XVIII.

²⁸ *Ibid.*, Art. XIX.

²⁹ *Ibid.*, Art. XXIII.

³⁰ During the same period, the Ottoman Empire was subjected to mechanisms of international legal control that were difficult to square with its nominal admission 'in the advantages of Public Law and System of Europe' by Art. 7 of the 1856 Treaty of Paris. General Treaty of Peace between Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, 30 March 1856. These included the so-called 'capitulations', which imposed a system of extraterritoriality for Western subjects residing in the empire, and the 1881 scheme of the Ottoman Public Debt Administration, which established a creditor-run bureaucracy at the heart of the Ottoman administration to secure the service of foreign debt. See Özsu, *supra* note 10; M. Birdal, *The Political Economy of Ottoman Public Debt: Insolvency and European Financial Control in the Late Nineteenth Century* (2010).

³¹ The cases of Bosnia and Kosovo are the starkest examples of this entanglement between sovereignty and international tutelage in the Balkans. On the contemporary legacies on this intervention in the constitutional structure of Bosnia, see Cirkovic, 'Architecture of Sovereignty: Bosnian Constitutional Crisis, the Sarajevo Town Hall, and the Mêlée', 27 *Law and Critique* (2016) 33.

³² Treaty of Berlin, *supra* note 9, Art. V.

³³ N. Geyikdagi, *Foreign Investment in the Ottoman Empire: International Trade and Relations 1854–1914* (2011), at 74–80.

B From Berlin to Neuilly: Entangled Nationalisms and Internationalisms in the Balkans

The Treaty of Berlin was of paramount importance for the settlement of the ‘Macedonian question’ and signalled the peak of the hegemony of the Great Powers in the region. On the level of diplomacy, the Congress of Berlin made it clear that unilateral solutions, such as that promoted by Russia in the Treaty of San Stefano, were neither possible nor desirable. On the level of international law, the Treaty of Berlin constituted a decisive internationalization and legalization of decisions pertaining to the future of the Balkans and drew the attention of the leading international lawyers of the time.³⁴

The treaty itself subsequently operated as the basis for pro-interventionist arguments, as the case of the work and argumentation of the Balkan Committee illustrates. The Committee was a liberal association that exerted considerable influence on the British foreign policy of the Edwardian era, especially through its close ties with the Liberal Party.³⁵ Its purpose was to undo, or at least relativize, what its founders perceived as inflexible British inactivity regarding the Balkans. Notably, John Westlake, the renowned Whewell professor of international law, presided over the Balkan Committee between 1905 and 1913 precisely due to his legal expertise and with the purpose of countering anti-interventionist arguments in British public life.³⁶ For Westlake, as well as for other prominent figures of the Balkan Committee, the Treaty of Berlin had created over Macedonia a qualified title for the Ottoman Empire. Since it was the treaty that restored its sovereignty over the region, Ottoman authority was conditional upon the observance of the terms pertaining to the sultan’s Christian subjects.³⁷ This international constitution of Ottoman sovereignty in the Balkans also went hand in hand, according to Westlake, with the international legal conditioning of its sovereignty in other territories based both on various articles of the Treaty of Berlin and on general principles of international law.³⁸ Therefore, for Westlake, both the Treaty of Berlin and general international law allowed for extensive British intervention in the Ottoman Empire. After all, the argument went, anti-intervention norms applied only between essentially similar polities, such as the European states, while the governing structures of the Ottomans were dissimilar and inferior to those of European states.³⁹ If anything, Westlake’s argumentation was modest in comparison

³⁴ Amongst many, see Bluntschli, ‘Le Congrès de Berlin and sa Portée au Point de Vue du Droit International’, 6 *RDILC* (1879) 1; Engelhardt, ‘Le Droit d’Intervention et la Turquie: Etude Historique’, 7 *RDILC* (1880) 363; C. Calvo, *Le droit international théorique et pratique: précédé d’un exposé historique des progrès de la science du droit des gens* (1888), at 96–99, 316–324.

³⁵ For an appraisal of its influence on British foreign policy, see Perkins, ‘The Congo of Europe: The Balkans and Empire in Early Twentieth Century British Political Culture’, 58 *Historical Journal* (2015) 565.

³⁶ Symods, ‘The Balkan Committee 1905–1915’, in J. Fischer Williams (ed.), *Memories of John Westlake* (1914) 107.

³⁷ Westlake, ‘The Balkan Question and International Law’, 60 *Nineteenth Century and Beyond* (1906) 889, at 889.

³⁸ *Ibid.*, at 891–892.

³⁹ *Ibid.*, at 893–894.

to that of many of his fellows in the Balkan Committee, who were arguing that the Treaty of Berlin and similar earlier treaties, such as the Treaty of Paris, had vested Britain not only with the right, but also, in fact, with the obligation, to intervene to protect the empire's Christians. Using language not unfamiliar to contemporary international lawyers, the manifesto of the Balkan Committee stated that one of its main purposes was to educate the public about the 'grave responsibilities' that were imposed upon Britain with the Treaty of Berlin.⁴⁰

Importantly, this internationalization of the 'Macedonian question' was a trend that was broader than the Treaty of Berlin. For example, the arguments summarized above were articulated in reference to the short-lived Illinden uprising in 1903. Even though the uprising subsequently became foundational of Macedonian nationalism, it was suppressed quickly and brutally by the Ottoman authorities. Invoking the Treaty of Berlin, the Great Powers led by Russia and Austria intervened and forced the Sublime Porte to sign the Mürzsteg Agreement on 25 November 1905. Even though the agreement was largely dismissed as a failure, since it demonstrably failed to pacify Macedonia, recent appraisals point at its innovative character as a matrix of proto-peacekeeping and international territorial administration.⁴¹ Indeed, the agreement, albeit very short and vague, provided both for civil administrators with consultative duties regarding the promotion of liberal reforms and the protection of the Christian population (Article 1) and for the reorganization of the gendarmerie, under a foreign general (Article 2).⁴² Moreover, Article 3 mandated the 'modification in the administrative division of the territory in view of a more regular grouping of different nationalities'.⁴³

Following the Mürzsteg Agreement, the Great Powers, with the exception of Germany, divided Macedonia into different zones and assumed extensive administrative duties with varying degrees of success. Shifts in the balance of power, including the rapid decline of Russia's influence after its defeat in the Russo-Japanese war, and defects in the design of the agreement, including the ill-defined relationship between civil administrators and military delegates, severely undermined the effectiveness of the agreement. However, the Mürzsteg Agreement materialized the understanding that local actors, be they Ottomans, Macedonians, Greeks or Bulgarians, were not capable of managing their own affairs and that pacification and 'good government' could only be achieved through international administration. In this respect, the Mürzsteg Agreement was in line with imperial and colonial practices and their invocations of native 'unruliness' and 'brutality'. As Anne Orford has argued, this equation of local actors with violence, ethnic strife and disorder and of their international counterparts with order, peace and good government was the defining feature

⁴⁰ N. Buxton, *Europe and the Turks* (1907), at 136.

⁴¹ Lange-Akhund, *supra* note 9, at 146–200; Brooks, 'A "Tranquilizing" Influence? British "Proto-Peacekeeping" in Ottoman Macedonia 1904–1905', 36 *Peace and Change* (2011) 172; Akhund, 'Stabilizing a Crisis and the Mürzsteg Agreement of 1903: International Efforts to Bring Peace to Macedonia', 3 *Hungarian Historical Review* (2011) 587.

⁴² For the full text of the agreement, see Lange-Akhund, *supra* note 41, at 142–143.

⁴³ *Ibid.*, at 143.

of argumentation in support of (neo-liberal) interventionism after the 1990s, not least in the Balkans.⁴⁴ However, the historical specificity of the agreement lies in its fundamentally multilateral character at a time when imperial projects were national enterprises as well as in the embeddedness of the agreement within a broader nexus of policies that legalized and internationalized the Balkan question.

However, the Great Powers, their plans and their perceptions were not the only thing that was important for the future of the region. In 1912, Bulgaria, Greece, Montenegro and Serbia formed a military alliance and, after the decisive defeat of the Ottoman Empire, essentially ended its presence in Europe. Greece and Serbia secured extensive gains in Macedonia, a trend further consolidated after the Second Balkan War, when Bulgaria was defeated by its former allies. If we also factor in World War I, Greece emerged victorious during the first quarter of the 20th century in the race for Macedonia. This new situation was precarious. To enhance the demographic cohesion of the region, the Greek prime minister, Eleftherios Venizelos,⁴⁵ set in motion an earlier idea of his that involved a (nominally) voluntary population exchange between Greece and Bulgaria. The relevant articles of the 1919 Treaty of Neuilly later formed the background for one of the advisory opinions of the PCIJ that dealt with questions of minorities and state building in the interwar period.⁴⁶ More importantly, the idea of mass-scale population expulsions in the service of nation building and ethnic homogeneity was legitimized, normalized and transformed from a marginal idea held by eccentric writers during the 19th century into an acceptable tool of statecraft.⁴⁷ Having entered the toolkit of international law in 1919, it was subsequently utilized on multiple occasions.⁴⁸

This was a seemingly curious development. Liberal (legal) internationalism in the Balkans had historically been centred on the idea of ‘good government’ or of limited self-government, and Western policy-makers were notoriously suspicious of the capacity of Balkan peoples to independently govern themselves and form nation-states. Even William Gladstone, who fiercely campaigned for the rights of Bulgarians during the rebellion of 1876, suggested that local self-government in the Balkans should be combined with the safeguarding of Turkey’s territorial integrity as the only way of warding off foreign aggression.⁴⁹ However, after World War I, different mechanisms

⁴⁴ Orford, ‘Locating the International: Military and Monetary Interventions after the Cold War’, 38 *Harvard International Law Journal* (1997) 443.

⁴⁵ Eleftherios Venizelos (1864–1936) was one of the most controversial figures of Greek politics during the 20th century. As the leader of the Liberal Party, he pushed forward significant liberal social, economic and political reforms, while he was a firm supporter of territorial expansion. On Venizelism as the political expression of the liberal bourgeoisie and the professional classes, see G.Th. Mavrogordatos, *Stillborn Republic: Social Coalitions and Party Strategies 1922–1936* (1983), at 127–144.

⁴⁶ See Treaty of Neuilly, *supra* note 9; *Greco-Bulgarian ‘Communities’*, 1930 PCIJ Series B, No. 17, at 4.

⁴⁷ For the leading role of Venizelos in legitimizing population exchanges in the consciousness of liberal Europe, see M. Frank, *Making Minorities History: Population Transfer in Twentieth-Century Europe* (2017), at 35–40.

⁴⁸ For the most systematic analysis of population transfers and international law to date, see U. Özsu, *Formalizing Displacement: International Law and Population Transfers* (2015).

⁴⁹ W.E. Gladstone, *Bulgarian Horrors and the Question of the East* (1876), at 34. For an overview of the complicated attitudes of the British liberal establishment towards the Balkans, see J.A. Perkins, *British Liberalism and the Balkans, c. 1875–1925* (2014).

developed to ensure that national coherence, if not perfect ethnic homogeneity, and the stability of borders was constructed and put under the auspices of the League of Nations. Notably, as the case of the Greek Civil War will demonstrate, this embrace of population exchanges as a mechanism to deal with conflict and regional instability did not die away with the League, despite widespread belief to the contrary.⁵⁰ Rather, this entanglement between ethnic nationalism, population transfers and international law and organizations survived World War II and was mobilized anew in the wake of the Cold War.

3 Interwar Lineages: International Law and the Construction of National Statehood in the Balkans

Recent international legal histories have predominantly focused on the population exchange between Greece and Turkey that was stipulated in the 1923 Treaty of Lausanne.⁵¹ This was the first compulsory population exchange, and it gave rise to two PCIJ advisory opinions and constitutes an illustrative example of interwar entanglement between international law and ethno-nationalism.⁵² In this article, however, I will focus on a lesser-studied case – the population exchange between Greece and Bulgaria under the 1919 Treaty of Neuilly.

After the rapid territorial expansion of Greece in the first two decades of the 20th century, Macedonia's heterogeneity was an impediment to the plans of the Greek nationalist bourgeoisie represented by Eleftherios Venizelos' Liberals and, more broadly, to the consolidation of the state's presence in the region. The Treaty of Neuilly needs to be situated within this nexus of combined state and nation building. More specifically, if 'one could view the Balkans as the very birthplace of advanced international experimentation with the legal regulation of nationalist disputes', then the purpose of this experimentation was to make the state and the nation correspond to each other or, in other words, to safeguard the transition from multi-ethnic, multi-confessional empire to nation-state.⁵³ In other words, the Treaty of Neuilly did not simply recognize the right of individuals belonging to minorities to migrate and to receive state assistance when doing so.⁵⁴ Article 5 stipulated that emigrants would

⁵⁰ E.g., Frank states that '[s]hort of ever being a policy endorsed by the international community, population transfer as the option of last resort during the Cold War and in its immediate aftermath nevertheless serves as a barometer of political intractability', Frank, *supra* note 47, at 378.

⁵¹ See Özsü, "A Thoroughly Bad and Vicious Solution": Humanitarianism, the World Court, and the Modern Origins of Population Transfer', 1 *London Review of International Law* (2013) 99. Özsü notes the importance of the Greco-Bulgarian exchange as a precedent to the compulsory exchange between Greece and Turkey to the extent that the former 'succeeded in establishing a set of complex institutions for the management of the upheaval'. Özsü, *supra* note 47, at 56. Convention Concerning the Exchange of Greek and Turkish Populations 1923, [1923] UKTS 16.

⁵² *Exchange of Greek and Turkish Populations*, 1925 PCIJ Series C, No. 71-I; *Expulsion of the Ecumenical Patriarch*, 1925 PCIJ Series C, No. 9-II.

⁵³ Berman, "'But the Alternative Is Despair": European Nationalism and the Modernist Renewal of International Law', 106 *Harvard Law Review* (1993) 1792, at 1859.

⁵⁴ See Treaty of Neuilly, *supra* note 9, Arts 1, 2.

lose their original citizenship and acquire that of their new, ‘kin’ state once entering its territory.⁵⁵ Concomitantly, when confronted with the question of the purpose of the treaty, the PCIJ rejected Bulgaria’s argument that the treaty was a form of the protection of minorities and pronounced that:

[t]he general purpose of the instrument is thus, by as wide a measure of reciprocal emigration as possible, to eliminate or reduce in the Balkans the centres of irredentist agitation which were shown by the history of the preceding periods to have been so often the cause of lamentable incidents or serious conflicts, and to render more effective than in the past the process of pacification in the countries of Eastern Europe.⁵⁶

In fact, it had been clear from the beginning that the Treaty of Neuilly was in direct tension with Articles 50–57 of the 1920 Treaty of Sèvres pertaining to the protection of minorities in Greece.⁵⁷ As ethnic violence mounted in Greece, the League of Nations attempted to resolve the tension for the benefit of minority protection demanding that Greece sign the so-called Politis-Kalfov Protocol that recognized Greek Slavophones as Bulgarians and offering them specifically tailored minority protection.⁵⁸ However, the Greek Parliament never ratified the agreement, and, on 10 June 1925, the League annulled it. Therefore, the PCIJ’s pronouncement above must be read as part of a broader trend in the Balkans where the protection of minorities under the League of Nations gradually morphed into an effort to eliminate minorities in an orderly manner.

Moreover, the PCIJ performed a number of intellectual moves that are essential in order to understand the subsequent involvement of the UN in the Greek Civil War, to which we will return shortly. First, as was generally the case with the protection of minorities in the interwar period, the issue was presented as one concerning exclusively Eastern Europe. The Court conceptualized ‘communities’ as minority groups of ‘individuals of the same race, religion, language and traditions’ that had purportedly existed in the East since time immemorial.⁵⁹ The idea that minorities were a problem exclusive to Eastern Europe, or that such a problem needed to be managed through international law exclusively in that region, was central to this decision. In fact, by asserting the ‘factual’ character of the ‘communities’ in question and, therefore, dismissing Bulgaria’s argument that domestic law should be the arbiter of their existence and dissolution, the PCIJ elevated the Mixed Commission on Greco-Bulgarian Emigration (Mixed Commission) that was established under the Treaty of Neuilly

⁵⁵ ‘Emigrants shall lose the nationality of the country which they leave the moment they quit it and shall acquire that of the country of destination from the moment of their arrival there.’ *Ibid.*, Art. 5.

⁵⁶ *Greco-Bulgarian ‘Communities’*, *supra* note 46, at 3.

⁵⁷ Treaty Concerning the Protection of Minorities in Greece, 10 August 1920.

⁵⁸ The Protocol for the Protection of the Bulgarian Minority in Greece, 29 September 1924, was the League’s response to the Tarlis incident on 27 July 1924 when militia of Asia Minor refugees rounded up and killed 17 Bulgarians, prompting the relocation of the Bulgarian population of the village. For an analysis the protocol, see A. Tounta-Phergadi, *Ελληνο-βουλγαρικές μειονότητες. Το Πρωτόκολλο Πολίτη-Καλβόφ, 1924–1925: Μελέτη βασισμένη σε έρευνα των αρχείων του Ελληνικού Υπουργείου των Εξωτερικών* (1986).

⁵⁹ *Greco-Bulgarian ‘Communities’*, *supra* note 46, at 20.

in order to supervise the population exchange into such an arbiter, further internationalizing questions of minorities in the region.⁶⁰ Importantly, this refusal to render domestic law the benchmark of population exchanges was not an isolated incident but, rather, reflected the earlier refusal of the Court to allow Turkish legislation to determine who was 'settled' in Istanbul for the purposes of the population exchange under the Treaty of Lausanne.⁶¹

By rejecting Bulgaria's assertion about the object and purpose of the treaty as one of minority protection, the Court embraced a radical idea about the necessity of ethnic homogeneity and the elimination of minorities as preconditions for pacification, at least in Eastern Europe. The PCIJ was not alone in this line of thinking. A year earlier, the Mixed Commission had drawn attention to 'the possibility of immediate treats to international peace, of bloodshed and armed outbreaks' directly associating minorities to these calamities.⁶² This outlook merits attention to the extent that the Greco-Bulgarian population exchange of the interwar period was 'voluntary' only in the most legalistic sense of the word. As Stephen Ladas points out, the treaty was concluded in 1919, but, by June 1923, only 197 declarations of intention to migrate by Greek families in Bulgaria⁶³ and 166 by Bulgarian families in Greece had been registered by the Mixed Commission.⁶⁴ Even though both Ladas and the Mixed Commission attributed this unwillingness, especially by Bulgarians in Greece, to the irredentist rhetoric and direct pressures by Macedonian/Bulgarian nationalist groups,⁶⁵ the comparably low number of declarations from the other side of the border casts doubt upon this explanation, especially since the Greek government was committed to maximizing cross-border migration and ethnic homogeneity.

It was only after the arrival of the Asia Minor refugees and their settlement in Macedonia and Thrace that the numbers of such declarations soared. After the formal domestic displacement of thousands of Bulgarian families during the war between

⁶⁰ "The question whether, in deciding on the application of the Convention, a particular community does or does not conform to the conception described above is a question of fact which it rests with the Mixed Commission to consider having regard to all the circumstances." *Ibid.*, at 22. The Mixed Commission on Greco-Bulgarian Emigration (Mixed Commission) had four members: two were appointed by Greece and Bulgaria, while the other two were neutral members appointed by the Council of the League of Nations.

⁶¹ "The Court distinguished sharply between domestic and international law in rejecting a Turkish claim to the effect that the status of Istanbul's Greeks ought to be determined in light of Turkish law. This led it to relate national sovereignty to international order in a manner that mirrored the commitment of many humanitarian organizations to stabilize Anatolia and the Balkans by facilitating the consolidation of new states through international law." Özsu, *supra* note 51, at 109.

⁶² Mixed Commission, Memorandum on the Mission and Work of the Mixed Commission on Greco-Bulgarian Emigration, May 1929, at 7.

⁶³ For married couples, the declaration of the husband also 'covered' his wife, according to Art. 4 of the Convention. This alliance between nationalism and patriarchy is notable, especially in a region where families with complicated and diverse linguistic backgrounds were not uncommon.

⁶⁴ "The fact must not be overlooked that the Macedonian Organisation in Bulgaria from the commencement was strongly opposed, on political grounds, to any of its members availing themselves of the Emigration Convention to have their property in Greece liquidated by the Commission." Mixed Commission, *supra* note 62, at 6; S.P. Ladas, *The Exchange of Minorities: Bulgaria, Greece and Turkey* (1932), at 105.

⁶⁵ *Ibid.*, at 104.

Greece and Turkey, due to the fear that their presence would endanger national security close to the border and following intensified ethnic violence, thousands who had fled returned to find their houses occupied by refugees from Asia Minor. For these people, migration to Bulgaria through the system established by the 1919 treaty was the only realistic option that at least entailed some compensation for their properties. Even though the Mixed Commission put significant effort into securing the voluntary nature of such migration and, as late as 1929, insisted on the individual and voluntary character of emigration under the Treaty of Neuilly,⁶⁶ the de facto compulsory and violent character of the scheme was well established by 1930 when the PCIJ delivered its advisory opinion.

In its advisory opinion, the PCIJ imagined minorities as being ‘united by this identity of race, religion, language and traditions in a sentiment of solidarity’.⁶⁷ However, the operation of the Mixed Commission revealed a much more complicated and contradictory picture. The inclusion of individuals in these minorities was not at all straightforward since the different elements mentioned by the Court (race, religion, language and traditions) in fact pointed in the opposite direction. To offer but one example, the verbal records of the Commission are full of cases of individuals whose minority status was determined fairly arbitrarily through the weighting of different elements. For example, certain individuals whose ‘race’ and language were shown to be Albanian, but who were Greek Orthodox by religion, were pronounced to be Greek according to the spirit of the Treaty of Neuilly.⁶⁸ The subscription of the PCIJ to the myth of an always-already existing nation that was just a fact to be ascertained by an international commission did not make this true. Perhaps more accurately, it was a truth that created itself through the very work of the Mixed Commission. The stable national identities imagined by the PCIJ and by the Treaty of Neuilly itself were arguably not as widespread. However, as individuals submitted themselves to the jurisdiction of the Commission, the organ assessed, categorized into a binary scheme and gave legal effect to these identities by linking them authoritatively to a specific territorial matrix (the territory of the ‘kin state’) and to a specific nationality (an exclusive legal bond to this state). The importance of the PCIJ’s intervention was not simply that it missed the complexion of Macedonia’s demographics but also that by ‘missing’ them it contributed to their undoing.⁶⁹

⁶⁶ *Ibid.*, at 110; ‘One cannot sufficiently emphasize the *voluntary* and *individual* character of the emigration thus stipulated for in the Neuilly Convention (x), for one often hears the Emigration Commission spoken of – wrongly – as the Commission for “the exchange of Greek and Bulgarian populations”.’ Mixed Commission, *supra* note 62, at 2 (emphasis in original).

⁶⁷ *Greco-Bulgarian ‘Communities’*, *supra* note 46, at 33.

⁶⁸ *Ibid.*, at 78–79.

⁶⁹ ‘These procedures realized – in the sense of making real – the dominant vision of architects of nation-states, who preferred a modern subject that was the same from in side to outside, that was consistent in her or his “national” characteristics and practices ... and that was stable.’ Cowan, ‘Fixing National Subjects in the 1920s Southern Balkans: Also an International Practice’, 35 *American Ethnologist* (2008) 338, at 348.

Notably, the PCIJ and the Mixed Commission were not the only League of Nations actors who endorsed the idea of 'ethnic unmixing' as the only viable path to peace and stability in Macedonia. In October 1925, a minor border incident at the Greco-Bulgarian border escalated quickly when Greece, citing Bulgaria's 'unqualified aggression', invaded its neighbouring state.⁷⁰ The League reacted quickly, and under the pressure of the Council, the Greek troops withdrew, therefore avoiding the generalization of the conflict. What is important for our purposes is the establishment of a Commission of Inquiry under the leadership of Sir Horace Rumbold.⁷¹ The Rumbold report focused heavily on the question of minorities (or, more precisely, of their orderly elimination), which, in fact, monopolized its section of political recommendations. The report acknowledged that minority protection in the Balkans had de facto been abandoned in favour of population exchanges: 'In this way Bulgarians who did not see fit to avail themselves of the right, which has now lapsed, of emigrating under the convention might be led to renounce their Greek nationality, receiving in return, as compensation for the rights conferred on them by the Minorities Treaty, the value of their property calculated on a liberal scale.'⁷² Still, this much-desired national homogeneity remained incomplete and imperfect. Therefore, when the Greek Civil War became an international concern, similar anxieties about the management of the Balkans emerged.

4 The Greek Civil War and the UN: Ordering the Balkans

Considered to be the opening act of the Cold War, the Greek Civil War had complicated domestic as well as international origins that do not lend themselves to a brief summary.⁷³ For our purposes, it suffices to note that since 1944, and while Greece was still under Axis occupation, clashes between left-wing and right-wing guerrillas had been taking place. The liberation of the country did not resolve the mounting tensions. The situation deteriorated steadily after December 1944 when shooting against unarmed protesters led to armed clashes in the streets of Athens between the left-wing National Liberation Front (Ethniko Apeletherotiko Metopo [EAM]), on the one hand, and government and British forces, on the other. Political instability was rife, governments were short-lived and unable or unwilling to control the mounting far-right violence,

⁷⁰ J. Barros, *The League of Nations and the Great Powers, The Greek-Bulgarian Incident, 1925* (1970), at 11.

⁷¹ *Ibid.*, at 87.

⁷² League of Nations, Commission of Inquiry into the Incidents on the Frontier between Bulgaria and Greece Report (1925), at 13–14.

⁷³ On the Greek Civil War, see D.H. Close (ed.), *The Greek Civil War, 1943–1950: Studies of Polarization* (1993); G. Margaritis, *Ιστορία του Ελληνικού Εμφυλίου* (2001). On the international legal dimensions of the conflict, see Borchard, 'Intervention: The Truman Doctrine and the Marshall Plan', 41 *American Journal of International Law* (1947) 885; Howard, 'The United Nations and the Problem of Greece', *State Department Bulletin* (1947); Austin, 'Special Balkan Committee of the General Assembly of the United Nations', 23 *Notre Dame Law Review* (1948) 277; Campbell, 'The Greek Civil War', in E. Luard (ed.), *The International Regulation of Civil Wars* (1972); A. Nachmani, *International Intervention in the Greek Civil War: The United Nations Special Committee on the Balkans: 1947–1952* (1990).

while the state of the economy was desperate. Violence escalated on both sides, and even though neither the Communist Party nor the government intended to start an armed conflict, the Civil War was in full swing in Greece by the summer of 1946. Macedonia became one of the main epicentres of the conflict.

In December 1946, the Greek government sent a communication to the UN alleging that '[t]here is conclusive evidence that the whole guerrilla movement against Greece is receiving substantial support from the countries adjacent to Greece's northern boundaries, and particularly from Yugoslavia'.⁷⁴ More specifically, the Greek government claimed that Greece's communist neighbours were training and organizing guerrillas, allowing them to cross the border and providing medical care and political instruction to 'Greek fugitives from justice and anarchists'.⁷⁵ The UN Security Council responded to the letter by establishing the Commission of Investigation Concerning Greek Frontier Incidents (Frontier Commission).⁷⁶ The composition of the Frontier Commission included one representative of each of the 11 members of the Security Council, and its mandate only included ascertaining 'the facts relating to the alleged border violations along the frontier'.⁷⁷

After considerable friction among the Frontier Commission's members, the majority decided that the domestic situation in Greece was outside its terms of reference and only cross-border incidents in northern Greece ought to be examined. In its final report, the majority of the Frontier Commission asserted that the condition of internal disturbances in Greece did not amount to a state of civil war and that unrest was exclusively caused by 'the persistent effort of the Greek Communist Party, which directs the EAM coalition and the operation of the Greek guerrillas, to participate in the government without elections'.⁷⁸ Notably, this argument brought the work of the Frontier Commission in line with the British, US and Greek right-wing interpretations of the Greek Civil War that downplayed its domestic dimensions and attributed the conflict to Soviet expansionism, while, impressively, denying the existence of such a conflict in the first place.

Therefore, it is no surprise that existing literature has tried to make sense of the choices of the Frontier Commission and the UN Special Committee on the Balkans (UNSCOB) by associating them with the mounting tensions of the Cold War and the numerical supremacy of Western, capitalist powers within the UN.⁷⁹ Since Britain and, subsequently, the USA became actively involved in the conflict and were heavily invested in keeping Greece on the right side of the Iron Curtain, it is understandable that they steadily supported this narrative within the UN. Given the reality of the numbers in the UN prior to decolonization, the point of view advocated by the USA,

⁷⁴ Letter from the Acting Chairman of the Delegation of Greece to the Secretary-General, 3 December 1946.

⁷⁵ *Ibid.*

⁷⁶ SC Res. S/339, 19 December 1946.

⁷⁷ *Ibid.*

⁷⁸ Report by the Commission of Investigation Concerning Greek Frontier Incidents (Frontier Commission Report), UN Doc. S/360, 27 May 1947, vol. 1, 170.

⁷⁹ Nachmani, *supra* note 73, at 143–147; Margaritis, *supra* note 73, at 561–570.

and secondarily by Britain, was bound to prevail. What is more, the UN was still in its early phases, and it had not undergone the profound transformations promoted by Secretary-General Dag Hammarskjöld, and, therefore, its subsequent transformation to a distinctly 'international administration' should not be projected into the past.⁸⁰ Therefore, the explanatory purchase of theories that emphasize power politics and the specific balance of power within the UN in the late 1940s is considerable.

Nevertheless, even though the UN's involvement in Greece cannot be understood without taking into account the dynamics of the emerging Cold War, it also cannot wholly be reduced to them. Simultaneously, the realities of the conflict as such are also not sufficient to comprehend the specificities of the UN's intervention. Instead, I read the work of the Frontier Commission and UNSCOB within the broader context of international legal interventions, aiming, first, at managing the decline of the Ottoman Empire in ways that were compatible with the interests of the Great Powers and, increasingly, of Western capital and, subsequently, at consolidating both the existing borders and national statehood in the Balkans.

Indeed, only reading the work of the UN as a direct outcome of the anti-communist majority within the organization at the time does not explain why the majority report indulged in numerous references that attributed the tensions between Greece and its neighbours to 'passions which are already too high', 'traditional rivalries' between Greece and Albania, 'traditional sheep-stealing incidents' or the 'willingness of the authorities on both sides to magnify minor incidents into important skirmishes'.⁸¹ Even though both the members of the Frontier Commission and their governments understood that the stakes were high, Western perceptions about unruly, emotional Balkan people(s) and their inclination for conflict and unnecessary violence informed the outlook of the Commission. This attribution of conflict in the Balkans to the purported unreasonableness and immaturity of the Balkan peoples was hardly a novel approach. Following the Balkan Wars of 1912–1913, the Carnegie Endowment for International Peace, which was the liberal internationalist foundation that would later initiate the establishment of the Hague Academy of International Law, commissioned a report on the 'causes and the conduct' of the Balkan Wars.⁸² Even though the report was at points alive to the realities of the politics of the Great Powers, the competing interests and the dynamics of imperialism, it attributed the conflicts, at the end of the day, to 'hatred and jealousies', 'bitterness' and 'inflamed passions', while distinguishing clearly between the Balkans and the 'civilized world'.⁸³

Finally, the association of the war's violence with the Ottoman past of the region, rather than with the thoroughly modern destructive tendencies of the nation-state,

⁸⁰ For the indispensable role of Hammarskjöld in the transformation of the UN into an international administrative body, see A. Orford, *International Authority and the Responsibility to Protect* (2011).

⁸¹ Frontier Commission Report, *supra* note 78.

⁸² Carnegie Endowment for International Peace, Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars (1914).

⁸³ 'What then is the duty of the civilized world in the Balkans, especially of those nations who, by their location and history, are free from international entanglements?' *Ibid.*, at 273.

ran at the heart of the report: ‘The moralist who seeks to understand the brutality to which these pages bear witness, must reflect that all the Balkan races have grown up amid Turkish models of warfare. Folk-songs, history and oral tradition in the Balkans uniformly speak of war as a process which includes rape and pillage, devastation and massacre. In Macedonia all this was not a distant memory but a recent experience.’⁸⁴ In 1993, and as the dissolution of Yugoslavia was turning violent, the Carnegie Endowment for International Peace decided to reprint this 1913 report with an introduction by George Kennan, the US ambassador to the Soviet Union and Yugoslavia and architect of the US containment policy. Entitled ‘The Other Balkan Wars’ and containing arguments about the ‘undue predominance among the Balkan peoples’ of a belligerent and violent state of mind, the reprint points to the ongoing purchase of arguments linking political violence in the Balkans with the purportedly inherently violent and emotional Balkan psyche.⁸⁵ The outlook of the Frontier Commission should be read, I argue, within this broader trajectory of liberal (legal) representations of the Balkans.

Going back to the Greek Civil War, the proposals of the Frontier Commission focused on the need for clear and stable borders as well as for ethnic homogeneity and political inactivity around borderlands in order to safeguard peace and security. In this respect, the majority of the Frontier Commission suggested the establishment of a commission or the appointment of a commissioner who would not only investigate frontier violations and mediate for their resolution but who would also assist in the conclusion of frontier conventions, which were seen as being essential for the restoration of peace and order in the region.⁸⁶ What was absent from this account was that it was precisely the drive for territorially bound national statehood that had thrown the region in such a state of instability and conflict since the last quarter of the 19th century. Notably, apart from getting the borders right, getting the populations within these borders right was high on the list of priorities for the majority. The final recommendation of the report encouraged the UN Security Council to ‘study the practicability of concluding agreements for the voluntary transfer of minorities’ and encouraged the concerned states to facilitate the voluntary migration of such minorities under the supervision of the proposed commission/commissioner.⁸⁷

Refugees were seen by the Frontier Commission as a particularly dangerous group that needed to be isolated and moved far from the border. Even though the inevitability of refugee flows was acknowledged, the report asserted that ‘each Government should assume the obligation to remove them as far from the country from which they came as it is physically and practically possible’.⁸⁸ Moreover, the Frontier Commission confidently

⁸⁴ *Ibid.*, at 108.

⁸⁵ Carnegie Endowment for International Peace, *The Other Balkan Wars: A 1913 Endowment Inquiry in Retrospect with a New Introduction and Reflections on the Present Conflict* by George Keenan (1993), at 12–13.

⁸⁶ Frontier Commission Report, *supra* note 78, at 191.

⁸⁷ *Ibid.*, at 192.

⁸⁸ *Ibid.*

asserted that '[t]hese refugees should be placed in camps or otherwise segregated. The governments concerned should undertake to ensure that they should not be permitted to indulge in any political or military activity'.⁸⁹ What is notable here is not simply the demonization of refugees and the restriction of their most basic rights being proposed by a commission of the UN. The Frontier Commission was clear about its intention not to examine the domestic conditions of repression and violence in Greece, which were seen to be outside its jurisdiction as domestic matters, but it nonetheless felt that the geographical allocation, population structure and the civil rights of certain people under the jurisdiction of Balkan states were within the remit of its work. In fact, the Frontier Commission proposed that the segregation of the refugees be supervised by 'some international body authorized by the United Nations'.⁹⁰

Following the submission of the Frontier Commission's report to the UN Security Council in June 1947, the USA tabled a draft resolution endorsing these proposals and suggesting concrete steps for their realization. The Soviet Union responded with a counter-resolution that explicitly blamed Greece for the tense situation in the region and alleged that foreign intervention was indeed taking place but that Greece's communist neighbours were not to blame.⁹¹ This manifest incompatibility of views amongst the Security Council's permanent members meant that successive vetoes paralyzed the Security Council. Yet the story did not end there. The USA brought the matter to the UN General Assembly. On 21 October 1947, the General Assembly passed a resolution entitled Threats to the Political Independence and Territorial Integrity of Greece, which opened the second round of the UN's engagement with Greece.⁹² As is evident from its title, the resolution repeated the core assumptions and arguments of the majority of the Frontier Commission and, in fact, framed the issue as one of territorial integrity. Moreover, the resolution endorsed the basic recommendations of the Commission, including the establishment of a Special Committee with a mandate to observe and assist compliance with the said recommendations.⁹³ Therefore, the stabilization of borders, the transfer of minorities and the curtailment of the political action of refugees were endorsed by one of the principal organs of the UN as the appropriate means of safeguarding peace and security. Tellingly, the Special Committee established pursuant to the resolution was appropriately given the name of the United Nations Special Committee on the Balkans, thereby further internationalizing the problem from one of civil strife to one of intervention, territorial integrity and regional order.

The insistence on population exchanges between Greece and its neighbours not only perpetuated the association between minorities and conflict but also implicitly designated such minorities as national instead – for example, as ethnic or linguistic minorities. However, it is not at all certain that, at the time, all Slavophones of Greek

⁸⁹ *Ibid.*, at 191.

⁹⁰ *Ibid.*, at 192.

⁹¹ Even though the draft resolution was not explicit, the Soviet Union clearly referred to the role of Britain and the USA in Greece.

⁹² GA Res. 109(II), 21 October 1947.

⁹³ *Ibid.*, para. 6.

Macedonia had a uniform national identity, or a national identity at all, or that the logical or politically desirably conclusion of this identity would be their migration to Bulgaria or Yugoslavia and not, for example, the creation of an independent state or, much less ambitiously and controversially, their non-discriminatory treatment by the Greek authorities.⁹⁴ Still, the technique of population exchange was made imaginable and, in fact, readily available through the theory and practice of interwar international law. Therefore, when the UN was confronted with disorder in the Balkans, a certain conceptual framework and legal toolkit were in place in order to comprehend, analyse and manage the conflict. Even though the mounting tensions of the Cold War are indispensable in order to understand UN's intervention, the historic commitment to pacifying the Balkans through the manufacturing of nation-states and the conditioning of their sovereignty is also essential in order to comprehend the specificities of the intervention.

5 Conclusion

In December 1989, Alekos Xatzitaskos, a Greek (?) communist who fled to the Eastern bloc upon the end of the Civil War, died in Prague.⁹⁵ After 1982, the centre-left government of Panellinio Sosialistiko Kinima had allowed the return of the Civil War refugees and regulated property claims on their behalf. Crucially, this arrangement only concerned political refugees of 'Greek ethnicity' since concerns about the demographics of Greek Macedonia prevailed. Hence, those who fled during or after the Civil War and were not considered to be ethnically Greek were not granted the right to return or to claim compensation for their properties. Alekos Xatzitaskos, therefore, was one of the tens of thousands of refugees who never returned to Macedonia. Even though the proposals of the UN about minority exchanges were never officially implemented, the ideas and perceptions that informed them remained hegemonic decades later and led to the de facto ethnicization of Greek Macedonia and the almost complete elimination of minorities in this region.⁹⁶

More fundamentally, this contribution brings to light two under-appreciated aspects of the history of international law. First, my focus on the work of the UN in the context of the Greek Civil War manifests the problems of overemphasizing the rupture that the UN Charter purportedly brought about in the international legal order, particularly on issues of statehood, minority protection and ethnic nationalism. Second, by situating the work of the UN within the broader context of legal interventionism

⁹⁴ On the suppression of the Slavic dialects in Greek Macedonia that lasted from the interwar period to the 1970s, see T. Kostopoulos, *Η απαγορευμένη γλώσσα: Κρατική καταστολή των σλαβικών διαλέκτων στην ελληνική Μακεδονία* (2000).

⁹⁵ See Ios, *Μεσόβουνο: 23.10.1941: Η ανατομία μιας σφαγής* (2002), available at www.iospress.gr/ios2002/ios20021027b.htm.

⁹⁶ On connections between Greece's position on the name of the Republic of Macedonia and the surviving Slavic-speaking minority, see Skoulariki, 'La Crise Macédonienne at la Question des Slavophones en Grèce', 7 *Balkanologie* (2003) 147.

in the Balkans and the multiplicity of legal forms that this interventionism assumed, I have highlighted the significance of the liminality of the region as one between East and West for the construction of numerous legal tools, such as international territorial administration, minority protection, population exchanges or treaty-based mechanisms ensuring the continuing protection of foreign investment. Since these tools were subsequently deployed to manage, and, importantly, to constrain, the radical potential of decolonization, locating and studying their origins is an urgent, and fruitful, pursuit.