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Fabricating Fidelity: Nation-Building, International Law, and the Greek–Turkish Population Exchange

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Abstract
Supported by Athens and Ankara, and implemented largely by the League of Nations, the Greek–Turkish population exchange uprooted and resettled hundreds of thousands. The aim here was not to organize plebiscites, channel self-determination claims, or install protective mechanisms for minorities – all familiar features of the Allies' management of imperial disintegration in Europe after 1919. Nor was it to restructure a given economy and society from top to bottom, generating an entirely new legal order in the process; this had often been the case with colonialism, and would characterize much of the Mandate System in the *interbellum*. Instead, the goal was to deploy a unique legal mechanism – not in conformity with European practice, but also distinct from most extra-European governance regimes – in order to resolve ethno-national conflict by redividing land, reshaping national identities, and unleashing new processes of capital accumulation.

Key words
minority protection; nation-building; Near East; population exchange; semi-periphery

1. Introduction

> The exchange of commodities begins where communities have their boundaries, at their points of contact with other communities.
>
> Marx[1]

In the autumn of 1922, some three years after the commencement of the Paris Peace Conference, Fridtjof Nansen left for Istanbul. He went as League of Nations High Commissioner for Refugees. Once settled in the city, then under Allied occupation, he wrote to Eleftherios Venizelos, until recently prime minister of Greece and a leading figure in European diplomatic circles, to propose measures for the resettlement of Greek refugees. Among these proposals was a comprehensive exchange of populations between Greece and Turkey, which Nansen described as being 'within the scope of the mission with which the League of Nations' had entrusted him.[2]

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1 K. Marx, *Capital: A Critique of Political Economy*, Vol. 1 (translated by B. Fowkes) (1990), 182.

2 Quoted in R. Huntford, *Nansen: The Explorer as Hero* (1997), 526.

Venizelos replied swiftly, asking the distinguished Norwegian to speak to Turkish officials with a view to laying the groundwork for an exchange.

Nansen was a natural choice for the job. A seasoned diplomat, he would receive the Nobel Peace Prize later in 1922 for his efforts to repatriate and secure asylum for refugees fleeing war in Russia and Asia Minor.[3] As the League's first High Commissioner for Refugees, he was well positioned to design and supervise an exchange of the sort envisioned by Greek, Turkish, and west European authorities alike. But Nansen left for Istanbul not simply as a decorated representative of the 'international community'. Having achieved fame for his expeditions to the Arctic, conducted groundbreaking research as a natural scientist, made a name for himself as a monarchist in his native Norway, and subsequently embarked upon a diplomatic career, first as Norwegian envoy to London and then with the League, he was a polymath with formidable organizational talents. He had used these talents to begin assisting Russian, Armenian, and Assyrian refugees after the First World War,[4] creating a new travel document for displaced persons in the process.[5] Now he would see to it that the Greek–Turkish War of 1919–22, a conflict that had nearly brought the British Empire to blows with Bolshevik Russia, was resolved peacefully.

Nansen was not entirely comfortable with an exchange. The coercive mechanisms it was bound to call forth ran counter to his identity as a 'Great Humanitarian' and 'Citizen of Mankind'.[6] Although the causes he deemed worthy of support were not always laudable – he had backed the tsar's attempt to counter the 'yellow race' in Siberia[7] – he generally preferred the 'soft power' of behind-the-scenes bargaining to the 'hard power' of state-sanctioned force. While cutting his political teeth in Christiania, for instance, he had lauded Norway and Sweden for dissolving their union with a plebiscite in words that foreshadowed his later involvement in the Near East: 'The most important event in the history of the two countries' had 'been settled without a single drop of blood' – a possible indication that the world was 'gradually advancing in culture and civilisation'.[8] Ultimately, though, Nansen would co-ordinate much of the exchange between Greece and Turkey. Shuttling between cities for months prior to and during the 1922–23 Conference of Lausanne, at which a peace settlement with Turkey would be concluded, he would immerse himself

3 See F. Nansen, 'The Suffering People of Europe', in F. W. Haberman (ed.), *Nobel Lectures: Peace 1901–1925* (1972), I, 361.

4 For his own account of Armenia, see F. Nansen, *Armenia and the Near East* (1928). For analysis, see D. Kévonian, *Réfugiés et diplomatie humanitaire: Les acteurs européens et la scène proche-orientale pendant l'entre-deux-guerres* (2004), especially at 298–315.

5 J. Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (2000), 127–9; O. Hieronymi, 'The Nansen Passport: A Tool of Freedom of Movement and of Protection', (2003) 22 *Refugee Survey Quarterly* 36.

6 H. G. Leach, 'Fridtjof Nansen', (1948) 14 *University of Kansas City Review* 167, at 167, 173.

7 F. Nansen, *Through Siberia, the Land of the Future* (translated by A. G. Chater) (1914), 352–3.

8 F. Nansen, *Norway and the Union with Sweden* (1905), 153. Please note that I use 'Near East' in roughly the same sense in which it was generally employed at the time of the Greek–Turkish exchange, namely as a geographical term primarily denoting the Balkans and Asia Minor. The term is both orientalist, having gained wide currency in late nineteenth-century Europe in connection with the 'Eastern Question', and notoriously ambiguous, with a range of application that fluctuates radically from one source to another. But it captures many of the assumptions held by those involved in or commenting upon the exchange, and so I have chosen to retain it.

in nearly every facet of the endeavour, from its initial design through to its final implementation.

Nansen's voyage to Istanbul was both symbolically charged and logistically pivotal. But he was no thaumaturge, and what is of interest in his expedition is not its 'heroism', or even the influence it enabled him to wield with his personal charisma and professional competence. Rather, it is the fact that it encapsulated, in a kind of precis, a much broader mission to reconstitute Greece and Turkey in accordance with modernist imperatives of order and progress. From Europe's north-westernmost tip to its south-easternmost extremity, Nansen would go to calculate and taxonomize his way into an 'unmixed' Near East.[9] In his train would follow a barrage of others. Humanitarian organizations – some formed to facilitate Nansen's earlier efforts, some with deep roots in Anglo-American missionary movements[10] – would be involved. And a new international civil service, centred in the League's Geneva headquarters but with tentacles extending elsewhere, would be tasked with overseeing important facets of the operation. These and others worked with authorities in Greece, as well as a Turkish nationalist elite determined to transform the state apparatus it had inherited from its Ottoman predecessor into a fully 'modern' nation-state. Convinced that such a state would be possible only with a significant degree of ethno-national homogeneity, most members of this elite supported the exchange as a means of overcoming Turkey's 'backwardness'.

Reconstituting nations and states was nothing new. The Ottoman Empire's dismemberment had been long in the making,[11] and even the notion of a population exchange was not unknown to pre-Versailles lawyers.[12] To be sure, no exchange had ever been undertaken on anything approaching the level envisioned here. But resettlement programmes were ubiquitous,[13] and experience had been gained with small-scale transfers and exchanges in the Balkans, one of which would find its way into the Permanent Court of International Justice's docket as the *Greco-Bulgarian 'Communities'* case.[14] Indeed, as noted by Schmitt – who saw Turkey's 'radical

9 The term was one of which he was fond; see, e.g., R. Huntford, *Fridtjof Nansen and the Unmixing of Greeks and Turks in 1924* (1998), 8.

10 The best first-hand account is J. L. Barton's *Story of Near East Relief (1915–1930): An Interpretation* (1930).

11 A 1914 compendium detailed no less than 100 proposals for partition over the centuries; the 'list of contributors' included an Erasmus or Leibniz for every Metternich or Garibaldi. See T. G. Djuvara, *Cent projets de partage de la Turquie (1281–1913)* (1914).

12 A young Nicolas Politis would observe that, during the 1897 Greek–Turkish War, fought over Crete, the Ottomans had had recourse to mass expulsion of Greeks – a measure that may have 'tombée en désuétude' over the years but was nevertheless 'licite à la condition d'être exercée humainement'. N. Politis, *La guerre gréco-turque au point de vue du droit international: Contribution à l'étude de la question d'Orient* (1898), 21.

13 Particularly in Russia, where public administrators engineered far-reaching land reforms. P. Holquist, '"In Accord with State Interests and the People's Wishes": The Technocratic Ideology of Imperial Russia's Resettlement Administration', (2010) 69 *Slavic Review* 151.

14 *The Greco–Bulgarian 'Communities'*, Advisory Opinion, PCIJ Rep., (1930) Series B No. 17. Four sets of movements – three of which never truly made it past the planning stage – have conventionally been deemed precedents. Each of these experiences – the first projected for Bulgaria and Turkey in 1913, the second planned for Greece and Turkey in 1914, the third and most comprehensive implemented between Greece and Bulgaria in 1919, and the fourth designed for Greece and Turkey again, this time in 1919 – laid the legal and logistical groundwork for the much more ambitious 1923 exchange. Though traditionally understood to typify a different kind of phenomenon, the Armenian genocide was co-ordinated by many of the same Turkish policy makers and driven by much the same technology of demographic engineering. For detailed

expulsion of the Greeks' as evidence that 'actual democracy' requires the 'eradication of heterogeneity'[15] – manipulation of territory in accordance with principles like *cujus regio ejus religio* had distinguished the European land order – and the international legal order it threw up – since at least the Reformation.[16]

Yet, here, in Greece and Turkey, in the heart of what nineteenth-century commentators had termed the 'Eastern Question', international lawyers would be pushed to new limits. The compulsory exchange was a mechanism whose status under international law was imprecise. Many were sceptical of its legality. Robert Redslob dismissed it as a political, and not a legal, solution to the 'problème des nationalités'.[17] Others spoke of it as 'une régression regrettable dans l'évolution du droit des gens',[18] as a 'brutale mesure' that fell foul of the 'principes élémentaires qui sont à la base du droit public des nations civilisées',[19] or as contrary to the League Covenant and 'l'évolution diplomatique, doctrinale et jurisprudentielle du droit des gens'.[20] Others, however, differed in their assessment, recognizing the compulsory exchange as broadly legal, though not necessarily desirable. Writing for the Permanent Court, Huber explained that the exchange was governed by a binding international treaty and that the issue before the Court therefore concerned a proper 'question of international law'.[21] British authorities in mandate-era Palestine were so impressed by the endeavour that they considered implementing an exchange there. In the words of the Peel Commission's final report, whereas, formerly, 'the Greek and Turkish minorities had been a constant irritant', the 'ulcer has been clean cut out', placing relations between the two states on much firmer footing.[22]

Regardless of where they stood, though, almost all international lawyers recognized that here, in Greece and Turkey, there was no viable alternative to the exchange. In 1906, Westlake had already voiced exasperation: 'extreme misgovernment in Turkey is a nuisance to the neighbouring European States,' he wrote, adding that 'if the Sultan cannot keep order in his own dominions, or if to keep order he has recourse not to civilised means of repression but to massacre, he loses all claim to be regarded as a ruler to whom international law can apply'.[23] By the time the

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analysis of the 1919 Greek–Bulgarian exchange, see S. P. Ladas, *The Exchange of Minorities: Bulgaria, Greece and Turkey* (1932), Part I; A. Wurfbain, *L'échange gréco–bulgare des minorités ethniques* (1930). From a rapidly growing literature examining these movements, the Armenian genocide included, see especially F. Dündar, *Modern Türkiye'nin Şifresi: İttihat ve Terakki'nin Etnisite Mühendisliği (1913–1918)* (2008).

15 C. Schmitt, *The Crisis of Parliamentary Democracy* (translated by E. Kennedy) (1988), 9.

16 C. Schmitt, *The* Nomos *of the Earth in the International Law of the* Jus Publicum Europaeum (translated by G. L. Ulmen) (2003), 128.

17 R. Redslob, *Le principe des nationalités: Les origines, les fondements psychologiques, les forces adverses, les solutions possibles* (1930), 168.

18 C. G. Ténékidès, 'Le statut des minorités et l'échange obligatoire des populations gréco-turques', (1924) 31 RGDIP 72, at 86.

19 A. Devedji, *L'échange obligatoire des minorités grecques et turques en vertu de la convention de Lausanne du 30 janvier 1923* (1929), 84.

20 S. Séfériadès, 'L'échange des populations', (1928/IV) 24 RCADI 307, at 331.

21 *Exchange of Greek and Turkish Populations (Lausanne Convention VI, January 30th, 1923, Article 2)*, Advisory Opinion, PCIJ Rep., (1925) Series B No. 10, at 17.

22 Palestine Royal Commission, Report, Cmd. 5479 (1937), 390. For analysis, see M. Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (2009), 134.

23 J. Westlake, 'The Balkan Question and International Law', (1906) 60 *The Nineteenth Century and After* 889, at 892.

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terms of the Greek–Turkish exchange were concluded in early 1923, it had become obvious that minority protection, as developed by the Concert of Europe during the long nineteenth century and augmented by the Allies after 1919, was not going to be enough to 'civilize' Greece and Turkey. A new batch of protective mechanisms would, admittedly, be introduced for minorities. But something else was necessary if the region was to have peace and prosperity. It was no less clear, however, that this 'something else' could not take the form of a top-to-bottom reconstitution of whole economies and societies – a reconstitution of the type that had been undertaken throughout the colonial world. The reason for this was simple, but crucially important: while dependent upon the West, Ottoman Turkey had never been colonized *sensu stricto*, and Turkish nationalists would not countenance anything smacking of out-and-out, externally induced reconstruction. As a *via media* solution of sorts, the population exchange thus steered a course between two extremes. On the one hand, there was the typical European scenario of minority protection in an equilibrated state system that permitted limited expressions of self-determination but was otherwise underwritten by a background commitment to *uti possidetis juris*.[24] On the other hand, there was the standard colonial case of total reconstruction, the sort of case exemplified most grotesquely in the sordid history of the 'Congo Free State'. Between the two is what occurred in Greece and Turkey, long an unstable region on the semi-periphery of the international legal order and now wracked by the destruction of the *pax ottomanica*.[25]

As the first legally structured compulsory endeavour of its scale and sophistication, the sheer ambition of the exchange was staggering: over one million Greeks (or those identified as such) were uprooted from Asia Minor and eastern Thrace immediately before and during the formal exchange, which began in 1923 and ran through the remainder of the decade, and something in the vicinity of 350 000 Turks were expelled from Greece's mainland and islands over the same stretch of time.The formal exchange negotiated at Lausanne followed the expulsion of large numbers of Greeks from Asia Minor in 1922, and has therefore sometimes been presented as merely an *ex post* endorsement of an already existing reality.[26] This is deeply misleading: not only did the formal exchange call for entirely new movements (nearly

24 A fundamentally intra-European phenomenon, minority protection was instituted in one form or another in a string of states from the Baltic to the Mediterranean, the so-called 'minorities belt'. Iraq is sometimes considered an exception, as it was made to declare its commitment to minority protection as a condition for Britain's formal withdrawal as a mandatory power, but this declaration quickly proved makeshift and toothless. S. Pedersen, 'Getting Out of Iraq – in 1932: The League of Nations and the Road to Normative Statehood', (2010) 115 *American Historical Review* 975, at 992–9.

25 The terminology of 'semi-periphery' on which I rely derives mainly from world systems theory, whose adherents have analysed eighteenth- and nineteenth-century Ottoman history as an exemplary case of politico-economic peripheralization or semi-peripheralization; from a voluminous literature, see especially R. Kasaba, *The Ottoman Empire and the World Economy: The Nineteenth Century* (1988), 5, 37–8, 48, 54. This terminology finds something of a parallel in the nineteenth-century 'standard of civilization', that fluctuating metric for calibrating international legal personality that was frequently deemed to require a specific category for 'semi-barbarous' or 'semi-civilized' states. Arguably the most famous illustration is offered by Lorimer, for whom Turkey, like China, Japan, Persia, Siam, and 'other separate States of central Asia', demanded 'partial political recognition' – recognition of a sort that Lorimer could not countenance extending to 'savage' regions and *terrae nullius*. J. Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (1883), I, at 101–2, 239.

26 For a classic statement, see J. B. Schechtman, *European Population Transfers 1939–1945* (1946), 17.

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all 350 000 Turks and roughly 200 000 of the concerned Greeks), but it lent the full weight of international legal legitimacy to earlier movements, establishing a comprehensive legal regime to organize relief and resettlement efforts. This was an exercise both in producing new forced migrations and in *juridifying* the dispossession and displacement that had already occurred.

The exchange showcased the pragmatism of the post-1919 order – an increased willingness on the part of lawyers and politicians alike to adapt legal doctrines to local conditions, bringing greater, more sophisticated institutional resources to bear on crafting functionally suitable solutions to pressing problems.[27] It also signalled the increased palatability of a new mode of non-military nation-building, one premised on the forensic rebuilding of sovereign but politico-economically weak states. The chief aim here was not to organize plebiscites, channel self-determination claims, or install protective mechanisms for underresourced or underrepresented minorities – all important aspects of the Allies' management of imperial disintegration in Europe. Nor was the aim to restructure all facets of a given economy and society in order to generate an entirely new legal system; this had often been the case with colonialism in Asia and Africa, and would characterize much of the League's system of mandates. Instead, the aim of the Greek–Turkish exchange was to redivide land, reshape national identities, and unleash new processes of capital accumulation with a view to facilitating nation-building through regionally suitable means. If Greece and Turkey were to be refashioned by way of an exchange, this was in no small part due to the semi-peripheral character of the region, which both permitted and demanded reliance on a distinct procedure. This was a unique region – neither European nor non-European, neither at the centre nor at the periphery of the international system. Nothing less than an equally unique response would do.

In this article, I examine the *travaux préparatoires* of the convention by which the exchange was governed – a convention annexed to the Lausanne Peace Treaty as a key element of the package of instruments that comprised the general peace settlement between Turkey and the Allied Powers after the First World War.[28] Reading statements from various delegates,[29] I consider two of the most illuminating, though least closely scrutinized,[30] aspects of Lausanne's negotiating history: the various

27 On the general shift, see D. Kennedy, 'The Move to Institutions', (1987) 8 *Cardozo Law Review* 841. See further T. Skouteris, *The Notion of Progress in International Law Discourse* (2010), Chapters 2 and 3.

28 For the convention regulating the exchange, see Convention concerning the Exchange of Greek and Turkish Populations and Protocol, signed at Lausanne, 30 January 1923, 32 LNTS 75. For the peace treaty, see Treaty of Peace, signed at Lausanne, 24 July 1923, 28 LNTS 11. For the entire package (often termed the 'Treaty of Lausanne'), see Treaty with Turkey and Other Instruments, signed at Lausanne, 24 July 1923, (1924) 18 AJIL Sup. 1.

29 For the minutes in English, see *Lausanne Conference on Near Eastern Affairs (1922–1923): Records of Proceedings and Draft Terms of Peace*, Cmd. 1814 (1923). For the French, see *Conférence de Lausanne sur les affaires du Proche-Orient (1922–1923): Recueil des Actes de la Conférence*, 6 vols. (1923).

30 Recent years have seen a resurgence of interest in the Greek–Turkish exchange among historians. From a growing literature, see especially R. Hirschon (ed.), *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange between Greece and Turkey* (2003); M. Pekin (ed.), *Yeniden Kurulan Yaşamlar: 1923 Türk–Yunan Zorunlu Nüfus Mübadelesi* (2005); O. Yıldırım, *Diplomacy and Displacement: Reconsidering the Turco–Greek Exchange of Populations, 1922–1934* (2006). However, informed legal analysis of the exchange is exceedingly rare. One overview can be found in M. Barutciski, 'Les transferts de populations quatre-vingts ans après la Convention de Lausanne', (2003) 41 *Canadian Yearbook of International Law* 271. For analysis of Lausanne

delegations' views on the relation between law and nationalism in the exchange, and the exchange's design as a mechanism geared toward a particular (and particularly demanding) region.

First, I argue that debates regarding the exchange were informed by a profound ambiguity with regard to ethno-nationalism. On the one hand, the exchange was a characteristically technocratic effort to bracket ethno-nationalism, or at least to minimize its attraction by ensuring that the movements already under way were governed by law. On the other hand, it tethered the sovereignty of Greece and Turkey to the ethnicities of their 'founding peoples', recruiting – and legitimizing – the very ethno-nationalism that had made the exchange procedure necessary. Second, I argue that the exchange comprised a method of nation-building with a distinct range of spatial application. If some doubted the wisdom of implanting minority protection in central and eastern Europe, room for doubt was that much greater in the case of Greece and Turkey, where the need for a 'more radical remedy' to the 'minorities problem' was widely felt.[31] Likewise, while the idea of a mandate had been floated in 1919,[32] winning support even among some Turks,[33] establishing a mandate over predominantly Turkish territory had never been more than a remote possibility. Neither with the techniques to which European jurists had become accustomed in Poland nor with those they were working to develop for Palestine would imperial dissolution be managed in Greece and Turkey.

I develop this argument eclectically, marshalling a range of material from legal history, historical sociology, and international positive law. And, following Bourdieu, I ground the legal disputes in question in a contextualized account of the Conference of Lausanne as a distinct 'social space' – an arena of action that both defined and was defined by competition between different actors in possession of different quantities of material and symbolic capital.[34] The Greek–Turkish exchange was debated and devised against the background of a number of political and economic struggles, nearly always translated into legal terms and waged within a social arena bounded in part by the conceptual and normative structures of international law. Only a

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from the standpoint of self-determination, see C. J. Drew, 'Population Transfer: The Untold Story of the International Law of Self-Determination', Ph.D. dissertation, University of London (2005), 93–110. I engage with the international law of self-determination only tangentially here, as I am not persuaded that it offers the most illuminating lens for explaining the exchange as a distinct mode of nation-building. What made this mechanism distinctive, particularly in the present context, was not so much the fact that it showed up unsavoury features of self-determination – a concept whose status under the international law of the period was still somewhat nebulous – but the fact that it deviated both from minority protection and from neo-colonialism of the mandatory variety – and in a way that can be appreciated only through close attention to the socio-historical and politico-economic characteristics of the context at hand.

31 A. A. Pallis, 'The Exchange of Populations in the Balkans', (1925) 97 *The Nineteenth Century and After* 376, at 377.

32 Report of the American Section of the International Commission on Mandates in Turkey, reproduced in *Papers Relating to the Foreign Relations of the United States: The Paris Peace Conference 1919* (1947), XII, at 751.

33 See, e.g., S. J. Shaw, *From Empire to Republic: The Turkish War of National Liberation 1918–1923: A Documentary Study* (2000), II, 429–37. For related proposals, see T. Z. Tunaya, *Türkiye'de Siyasal Partiler* (1986), II, at 245–63.

34 P. Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (translated by R. Terdiman), (1987) 38 *Hastings Law Journal* 805. I have attempted elsewhere to sketch the implications of such an approach for the study of international law; see U. Özsu, 'The Question of Form: Methodological Notes on Dialectics and International Law', (2010) 23 LJIL 687, especially at 697–702.

contextualized socio-legal account can explain the exchange's negotiating history in a way that is adequate to its complexity, significance, and ongoing resonance.

2. Bargaining ethno-nationalism

The exchange's relationship to nationalism raised an array of issues that were approached from two distinct angles. The first such angle elided ethno-nationalism in the name of 'unmixing' peoples through the most rational means available. Frequently employed by the great powers, but also finding a home in some of Turkey's demands, this was a strategy driven by a preponderantly managerial analysis of the territorial frontiers and demographic compositions of the two states to be reconstructed by the exchange. The argument on its behalf had as its major premise the conjecture that the exchange could be conceived and implemented *in abstracto* – as a fundamentally self-contained enterprise, fuelled by the 'constructive and practical idealism' then being developed by League officials.[35] This enterprise would, to be sure, bump up against ethno-nationalism. Yet, it would retain an irreducibly 'scientific' core of intentional design, strong enough to impede, or at least defer, the international system's disintegration in the face of such nationalism.[36]

Thus, as emphasized by Nansen, who would inaugurate discussion on the exchange, the impetus behind moving hundreds of thousands from one end of the Aegean to the other was a fundamentally pragmatic one: 'the Great Powers are in favour of' an exchange 'because they believe that to unmix the populations of the Near East will tend to secure the true pacification of the Near East', this being 'the quickest and most efficacious way of dealing with the grave economic results which must result from the great movement of populations which has already occurred'.[37] Lord Curzon, chief British delegate and former viceroy of India, would assure the Turks – to whom he was otherwise openly hostile[38] – that '[n]o one wanted to interfere with their independence or sovereignty'.[39] On the contrary, 'everyone wanted to build up a sovereign independent Turkish State',[40] convinced as they were that the exchange would result in 'the question of the minorities' being 'to a certain extent simplified'.[41] Such statements rendered the exchange ascetic and unassuming – something of a sterile, mechanical exercise that lay at a considerable distance from the dirty business of attending to conflicting ethno-national aspirations and

35 A. D. McNair, 'Equality in International Law', (1927) 26 Mich. LR 131, at 135.

36 Cf. N. Berman, '"But the Alternative is Despair": European Nationalism and the Modernist Renewal of International Law', (1993) 106 *Harvard Law Review* 1792.

37 Minutes of the Territorial and Military Commission (TMC) on 1 December 1922, in *Lausanne Conference*, *supra* note 29, at 111, 114.

38 An American delegate would write that 'Curzon seemed to have no understanding of the Turkish national aspirations; he did no good to the cause of the Allies by browbeating Ismet at the conference table as if the latter had been one of his "natives" in India'. J. C. Grew, *Turbulent Era: A Diplomatic Record of Forty Years, 1904–1945* (edited by W. Johnson) (1952), I, 553. Similarly, the memoirs of Turkey's second-highest-ranking delegate speak of the Allies' lack of appreciation for the Turks' 'new mentality'. R. Nur, *Lozan Hatıraları* (1999), 50 (translation mine).

39 TMC minutes (13 December 1922), in *Lausanne Conference*, *supra* note 29, at 204, 214.

40 Ibid.

41 TMC minutes (12 December 1922), in *Lausanne Conference*, *supra* note 29, at 173, 177.

grievances. The socio-historical context within which the exchange would unfold was to be given short shrift – or at most no more consideration than was required to ensure that the process yielded a successful outcome.

However, most of those present in Lausanne were also wont to see ethno-nationalism as deeply integral to the exchange. The Turkish delegation generally preferred to throw its weight behind the proposition that debates relating to the exchange's legal form could never be disconnected from questions concerning the ethnic composition of the future Turkish state. In Turkish delegates' eyes, much of the violence accompanying the Ottoman state's dissolution had been linked to Western powers exploiting extraterritorial privileges afforded by consular jurisdiction or exercising treaty-based rights of guardianship over Christian communities.[42] For İsmet Paşa, the principal delegate, Turkey's support for a compulsory exchange followed from its 'legitimate desire to prevent minorities . . . becoming weapons in the hands of foreigners'.[43] So long as it harboured resourceful non-Muslim communities, willing and able to assist Russia or Britain as fifth columnists, Turkey would be as unable to achieve domestic stability as it would to contribute to international order.

Statements from other participants can be read in similar terms – as attempts not to shirk ethno-nationalist politics so much as to *harness* it to a project of legal nation-building. Curzon 'deeply regretted' the exchange,[44] thought it 'a thoroughly bad and vicious solution, for which the world would pay a heavy penalty for a hundred years to come',[45] and claimed that Western powers 'had attempted to do no more than to act in the rôle of mediators', intervening only after it had become unavoidable so as 'to secure the conclusion of an agreement capable of practical application'.[46] He also portrayed the exchange as a method of effecting Turkish withdrawal from Europe, suggesting that '[i]n Europe the greater part . . . of the Turkish population in Greek territory . . . will cease to be a minority population because they will *return* to Turkey'.[47] As the only Turks to whom this comment could apply were natives of the Balkans, the implication was clearly that Turkish presence in Europe remained – after nearly six centuries of Ottoman presence in the Balkans and several centuries of earlier Turkic *Völkerwanderungen* – an essentially, irredeemably, alien one. After all, even those episodes of apparent interpenetration between the 'public law of Europe' and the *dār al-Islām* spearheaded by the Ottomans, such as Turkey's controversial

42 Russia's move in the early nineteenth century to merge its 'humanitarian' interest in the Balkans with a distinctly post-Napoleonic appeal for national independence for Slavic peoples is a classic case in point. B. Mirkine-Guetzévitch, 'L'influence de la Révolution française sur le développement du droit international dans l'Europe orientale', (1928/II) 22 RCADI 295, at 424.

43 TMC minutes (13 December 1922), *supra* note 39, at 207.

44 Ibid., at 212.

45 Ibid.

46 TMC minutes (27 January 1923), in *Lausanne Conference*, *supra* note 29, at 406, 412. It is a matter of some interest, though, that Curzon attempted to partition Bengal by segregating Hindus and Muslims. E. D. Weitz, 'From the Vienna to the Paris System: International Politics and the Entangled Histories of Human Rights, Forced Deportations, and Civilizing Missions', (2008) 113 *American Historical Review* 1313, at 1337.

47 TMC minutes (12 December 1922), *supra* note 41, at 177 (emphasis added). Curzon was given to making such statements; see, e.g., M. MacMillan, *Paris 1919: Six Months that Changed the World* (2003), 373.

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admission into the European state system in the 1856 Treaty of Paris,[48] owed more to *raison d'état* than to any 'cultural' or 'civilizational' bond, Istanbul having acquired the attendant 'advantages' largely to maintain the continental balance of power. Unlike the first approach, then, a managerial, technocratic approach to the exchange, this second approach saw the exchange as a messy, even sinister, affair – something to be broached not only with 'scientific' acumen, as though entire nation-states might be created by sheer dint of will, but also, and at least equally, by attending to ethno-nationalism's lure.

It is worth underscoring the complexity of the diplomatic context within which these approaches were articulated. The exchange was negotiated on the basis of a variety of legal struggles pitting Turkey against the Allies – and this despite the fact that most delegates at Lausanne were career diplomats rather than trained lawyers. Curzon secured the position of the conference's president and, wielding enormous symbolic power, would direct most discussions as *primus inter pares*. He had, as he himself put it, 'the art of getting on with Orientals',[49] and this 'art' was bolstered by the work of British code-breakers supplying him with a constant stream of intercepted telegrams.[50] France had largely broken ranks with Britain, adhering to those portions of the Sykes–Picot Agreement that had dealt with the partition of predominantly Arab territories but otherwise supporting Turkey.[51] Italy had to drop its earlier demands for territorial compensation due to Anglo-French indifference and Mustafa Kemal's growing strength,[52] though Mussolini's personal presence at the conference assured Italian control over the Dodecanese.[53]

The Ottoman state had been Britain's *cordon sanitaire* on the road to India.[54] Now that it had collapsed, the responsibility of shielding the 'Jewel in the Crown' had been shifted to Greece, which had received British support during the Greek–Turkish War.[55] But this was a gamble, and not one to which the Foreign Office had committed itself blindly. Any number of reasons can be cited for this: among others, a desire to maintain nominally cordial relations with the French, insufficient domestic support for another costly adventure, divided opinion on the merits of the Treaty of Sèvres, the short-lived peace treaty that the Ottoman government signed

48 Art. 7 accorded Turkey the right 'à participer aux avantages du droit public et du concert Européens' – a notoriously ambiguous statement, but one conventionally understood to entail entry into the European state system. General Treaty for the Re-Establishment of Peace between Austria, France, Great Britain, Prussia, Sardinia and Turkey, and Russia, signed at Paris, 30 March 1856, 114 CTS 409, at 414.

49 Quoted in H. Nicolson, *Curzon: The Last Phase 1919–1925: A Study in Post-War Diplomacy* (1934), 298.

50 G. H. Bennett, *British Foreign Policy during the Curzon Period, 1919–24* (1995), 91. Curzon had experience in this regard, having established a battery of intelligence agencies in India. R. J. Popplewell, *Intelligence and Imperial Defence: British Intelligence and the Defence of the Indian Empire 1904–1924* (1995), Chapter 2.

51 See, e.g., M. L. Smith, *Ionian Vision: Greece in Asia Minor 1919–1922* (1998), 240.

52 H. J. Burgwyn, *Italian Foreign Policy in the Interwar Period 1918–1940* (1997), 11, 14.

53 D. Barlas, 'Friends or Foes? Diplomatic Relations between Italy and Turkey, 1923–36', (2004) 36 *International Journal of Middle East Studies* 231, at 233.

54 See, e.g., V. Chirol, 'Our Imperial Interests in Nearer and Further Asia', in *The Empire and the Century: A Series of Essays on Imperial Problems and Possibilities by Various Writers* (1905), 728, at 728.

55 T. Karvounarakis, 'End of an Empire: Great Britain, Turkey and Greece from the Treaty of Sevres to the Treaty of Lausanne', (2000) 41 *Balkan Studies* 171, at 172.

after the Great War but that Kemal's nationalists repudiated.[56] Above all, though, it was a calculated assessment of the risks involved in the Greek occupation of western Anatolia. Protracted conflict in Turkey could lead to full-blown rebellion in India, where support for Kemal, generally careful to portray himself as engaged in a *jihād* to save the caliphate, was strong.[57]

All of this strengthened Turkey's hand. Rather than arriving in Lausanne as representatives of a defeated Central Power, the Turks postured as the commanding force on most issues. State sovereignty, they maintained, was inviolable, an absolute point of reference conditioned solely by the need to conserve the structural integrity of the international system. In espousing this strong interpretation of sovereign equality – which has always attracted charges of positivism[58] – the Turks received support from the Bolsheviks, who had signed a 'treaty of friendship' with Ankara the year before[59] and who backed many of the Kemalists' substantive claims.[60] Owing much to the Soviets' desire to shore up their southern flank,[61] the alliance supplied the Kemalists with additional leverage and irked delegates from other parties,[62] perhaps none more so than Curzon, who had previously chaired a British governmental committee formed to combat Bolshevism in Asia.[63] Indeed, it allowed them to treat the negotiations as a prolongation of war by other means. A large Greek army was, after all, positioned to march on Istanbul,[64] and İsmet, a general during the Greek–Turkish War, likened the conference to a military struggle 'which the Turkish delegation mobilized for and worked 24 hours around the clock'.[65]

Consider the proceedings themselves. Nansen was invited to address the conference on 1 December 1922 on the grounds that he 'had for some time been in negotiation with both Turkey and Greece on the subject'.[66] He took the opportunity to recount his experiences and press for the immediate implementation of a total

56 Treaty of Peace between the Allied Powers and Turkey, signed at Sèvres, 10 August 1920, (1921) 15 AJIL Sup. 179.

57 A. Özcan, *Pan-Islamism: Indian Muslims, the Ottomans and Britain (1877–1924)* (1997), Chapter 6. Efforts to win support among Muslims in India and elsewhere were not new; they had been made repeatedly and with great success by Abdülhamid II, the last sultan to wield effective authority. See especially K. H. Karpat, *The Politicization of Islam: Reconstructing Identity, State, Faith, and Community in the Late Ottoman State* (2001), 211–14, 233–9.

58 See, e.g., A. M. de Zayas, 'International Law and Mass Population Transfers', (1975) 16 *Harvard International Law Journal* 207, at 224.

59 Treaty of Friendship between Russia and Turkey, Moscow, 16 March 1921, 118 BFSP 990.

60 First, that respecting the Turkish straits; see, e.g., TMC minutes (8 December 1922), in *Lausanne Conference*, *supra* note 29, at 154–65. Cf. A. Fuad, *La question des Détroits: ses origines, son évolution, sa solution à la Conférence de Lausanne* (1928), 135–43; S. Kabbara, *Le régime des Détroits (Bosphore et Dardanelles) avant et depuis le traité de Lausanne* (1929), 88–98.

61 See especially B. Gökay, *A Clash of Empires: Turkey between Russian Bolshevism and British Imperialism, 1918–1923* (1997), 109–12.

62 See, e.g., TMC minutes (14 December 1922), in *Lausanne Conference*, *supra* note 29, at 216, 217.

63 J. Fisher, 'The Interdepartmental Committee on Eastern Unrest and British Responses to Bolshevik and Other Intrigues against the Empire during the 1920s', (2000) 34 *Journal of Asian History* 1, at 2.

64 Cf. D. Dakin, 'The Importance of the Greek Army in Thrace during the Conference of Lausanne 1922–1923', in *Greece and Great Britain during World War I: First Symposium Organized in Thessaloniki (December 15–17, 1983) by the Institute for Balkan Studies in Thessaloniki and King's College in London* (1985), 211.

65 Quoted in F. M. Göçek, 'The Politics of History and Memory: A Multidimensional Analysis of the Lausanne Peace Conference, 1922–1923', in I. Gershoni, H. Erdem, and U. Woköck (eds.), *Histories of the Modern Middle East: New Directions* (2002), 207, at 214.

66 TMC minutes (1 December 1922), *supra* note 37, at 113.

exchange, 'of real importance to the peace and economic stability of the Near East'.[67] He stressed that the exchange had won support among elites in Greece and Turkey, as well as from the great powers. Unlike the Mandate System, it would not be a more or less exclusive outgrowth of Western diplomacy, but would involve all concerned actors.[68] Turkey was not a member of the League, but Nansen felt comfortable suggesting to his 'Turkish friends that they could confide their interests in this matter to the Council of the League with absolute confidence'.[69]

At root, what was of greatest importance for Nansen was that all of the state parties should get on with the business of organizing the exchange. On the table was not ethno-nationalism *in extremis*, but a 'matter',[70] a 'question' that demanded 'quick and efficient' resolution 'with a minimum of delay'.[71] Moreover, it was 'the economic aspect of the matter'[72] that was of paramount importance:

> Such an exchange will provide Turkey immediately and in the best possible conditions with the population necessary to continue the exploitation of the cultivated lands which the departed Greek populations have abandoned. The departure from Greece of its Moslem citizens would create the possibility of rendering self-supporting a great proportion of the refugees now concentrated in the towns and in different parts of Greece.[73]

The associated 'difficulties' were 'immense'.[74] Among other things, 'the displacement of populations of many more than 1,000,000 people' necessitated:

> uprooting these people from their homes, transferring them to a strange new country, . . . registering, valuing and liquidating their individual property which they abandon, and . . . securing to them the payment of their just claims to the value of this property.[75]

But these were 'technical difficulties', and certainly 'not insuperable'.[76] The commission responsible for overseeing the 1919 Greek–Bulgarian exchange had assured him of as much.[77] The treaty that had governed this earlier exchange could, in fact, 'be taken as a model'.[78]

It is striking that Nansen, anything but reticent on the exchange's 'machinery',[79] had little to say about the fact that it would involve the legalization and legitimation of a large-scale reconfiguration of the Near East's ethno-confessional make-up. Obviously, any exchange would need to be a product of methodical calculation and, in highlighting the need for such caution, Nansen was reiterating a point around which a rough-and-ready consensus had already formed. But the exchange would also need

67 Ibid.
68 Ibid., at 114.
69 Ibid., at 117.
70 See, e.g., ibid., at 113.
71 Ibid., at 116–17.
72 Ibid., at 115.
73 Ibid.
74 Ibid., at 114.
75 Ibid.
76 Ibid., at 115.
77 Ibid.
78 Ibid., at 116.
79 Ibid.

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to wrestle with – and to enlist – a considerable measure of *völkisch* romanticism. This rendered it far less cut-and-dried an affair than the rather arid procedures on which Nansen pinned his hopes.[80]

None of this was lost on İsmet. Although Turkey, not yet having joined the League, could attach no more than a 'personal character' to Nansen's remarks,[81] it agreed that progress needed to be made on the exchange. However, from Ankara's vantage point, the exchange recruited a much wider range of issues than Nansen suggested, and its terms could not be negotiated in the abstract. Indeed, İsmet maintained, the problem of determining the form of the exchange could not be decoupled from 'the question of minorities in Turkey' even slightly.[82]

It quickly became apparent that this attempt to link the issue of the exchange tightly to that of minorities had serious implications for Turkey's view of nationalism. İsmet had argued already, on 1 December, that any exchange would need to include Greeks resident in Izmir and Istanbul – both cosmopolitan centres of vital importance to eastern Mediterranean commerce, and both linchpins of the *Megali Idea* of achieving a 'greater Greece'.[83] In a long statement that he read on 12 December,[84] he went further. He ran the gamut from Mehmed II's grant of privileges to non-Muslims after the conquest of Constantinople to the high-water mark of secessionist nationalism in the late nineteenth century and finally to 'the lamentable Armenian question'.[85] Studded with passages from Voltaire[86] and a litany of legal treatises,[87] the statement was intended to establish that '[i]ntervention in the name of the Christian religion' had marked Turkey's relations with the West for centuries.[88] While the Ottomans had 'never failed to acknowledge the rights of the non-Moslem elements so long as the latter did not abuse the generosity of

80 One searches in vain in Nansen's transcribed speech for an indication that 'the economic aspect' was not of greatest significance. A search of the French minutes yields similar results; see 'Séance du vendredi 1er décembre 1922', in *Conférence de Lausanne*, I, *supra* note 29, at 95, 96–9.

81 TMC minutes (1 December 1922), *supra* note 37, at 117. Turkey adopted this stance frequently when dealing with League officials; for a revealing case, see K. D. Watenpaugh, 'The League of Nations' Rescue of Armenian Genocide Survivors and the Making of Modern Humanitarianism, 1920–1927', (2010) 115 *American Historical Review* 1315, at 1333–6.

82 TMC minutes (1 December 1922), *supra* note 37, at 117.

83 Ibid., at 120.

84 'Statement read by Ismet Pasha', annex to TMC minutes (12 December 1922), *supra* note 41, at 190–204.

85 Ibid., at 197.

86 Ibid., at 191.

87 Chief among them, P. M. Brown's *Foreigners in Turkey: Their Juridical Status* (1914). Brown's book – a slim study growing partly out of his time in the American embassy in Istanbul – lent support to İsmet's position; see, e.g., ibid., at 23–4, 118. For İsmet's reference, see 'Statement', *supra* note 84, at 190–1.

88 Ibid., at 192. The claim was not without basis, as humanitarian intervention's doctrinal crystallization had been related integrally to great-power involvement in the Near East. 'L'origine et le développement de l'idée d'intervention d'humanité paraissent liés dans une certaine mesure à l'histoire de la question d'Orient', declared one jurist, adding 'c'est au fur et à mesure des excès commis par le gouvernement turc que la diplomatie tente de cette idée de timides applications et que la doctrine se précise'. A. Rougier, 'La théorie de l'intervention d'humanité', (1910) 17 RGDIP 468, at 472. It was Turkey, argued another, that was '[t]he particular case thinly concealed behind most of the generalities concerning humanitarian intervention', observing that 'the discussion of humanitarian intervention has become so bound up with atrocities in the Near East that it may be doubted whether it would have been quite so freely admitted by its supporters in the case of barbarities incidental to internal disputes in any other State'. P. H. Winfield, 'The Grounds of Intervention in International Law', (1924) 5 BYIL 149, at 161–2. A particularly vocal exponent of such views at the time of the exchange was André Mandelstam, who argued that '[l]a cause principale de l'intervention constante des grandes Puissances en Turquie a été dans le caractère despotique de l'Empire ottoman' and

the country in which they lived in comfort' (a claim purportedly evidenced by the fact that Jews had only seldom complained of Turkish rule),[89] they had been forced to quell uprisings among subject nationalities collaborating with Russia and other powers when the empire went into decline.

For İsmet, the exchange guaranteed development, curbing external interference and securing internal order. Ankara believed that 'the amelioration of the lot of the minorities in Turkey' depended 'above all on the exclusion of every kind of foreign intervention and of the possibility of provocation coming from outside'.[90] This could be achieved most effectively with an exchange, and 'the best guarantees for the security and development of the minorities remaining' after the exchange 'would be those supplied both by the laws of the country and by the liberal policy of Turkey with regard to all communities whose members have not deviated from their duty as Turkish citizens'.[91] An exchange would also be useful as a response to violence in the Balkans; 'there were', in any event, 'over a million Turks without food or shelter in countries in which neither Europe nor America took nor was willing to take any interest'.[92]

In sum, Lausanne's *travaux* reveal a striking degree of vacillation in regard to the nature and purpose of ethno-nationalism in the exchange's design and implementation. Whether the exchange was to be understood as a technocratic response to a potentially overwhelming security and economic crisis, or instead as a submission to the ethno-nationalist movements that had led to en masse migration and expulsion – at Lausanne, this was not a question to be answered so much as an ambiguity to be formalized.

3. An enterprise neither European nor non-European

That the exchange marked a significant departure from more standard European practices of nation-building, and 'would have been impossible in Central-Europe',[93] was brought to the fore in two closely related positions that İsmet adopted during the Lausanne negotiations. The first stemmed from the belief – common among Turkish nationalists after Sèvres – that minority protection would not be up to the task of ensuring peace in the Near East. The League's protective mechanisms aimed to shield minorities *in situ*, ensuring a modicum of security without uprooting peoples from their 'ancestral homes'.[94] While the Turkish delegation saw the question of

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that 'les Puissances se pénétraient peu à peu de la conviction que le respect du droit humain ne devait pas être imposé aux seuls Turcs'. A. Mandelstam, 'La protection des minorités', (1923/I) 1 RCADI 363, at 373, 382.

89 'Statement', *supra* note 84, at 201 and similarly at 203–4.

90 Ibid., at 204.

91 Ibid.

92 TMC minutes (12 December 1922), *supra* note 41, at 189.

93 E. Loewenfeld, 'The Protection of Private Property under the Minorities Protection Treaties', (1930) 16 *Transactions of the Grotius Society* 41, at 41.

94 As outlined in the *Minority Schools in Albania* opinion, the system had two objectives: to 'secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it', and to preserve 'the characteristics which distinguish them from the majority'. *Minority Schools in Albania*, Advisory Opinion, PCIJ Rep., (1935) Series A/B No. 64, at 17.

the exchange as linked tightly to that of minorities, and while it conceded that some protective instruments would need to be installed, it was adamant on restricting their application to non-Muslims. In line with the Ottoman *millet* system, which afforded non-Muslim communities a measure of internal sovereignty as 'nations' in return for their loyalty to Istanbul,[95] protection was to be extended solely to Turkey's non-Muslim citizens; non-Turkish Muslims simply would not be recognized as members of minorities. Further, whatever protective instruments would ultimately be introduced would be diluted by the fact that the number of non-Muslims in Turkey had fallen sharply during the decade beginning with the Balkan Wars and closing with the Greek–Turkish War, and was fated to fall even further with the impending formal exchange.

The second position concerned the ambit of Turkey's sovereignty – or, more precisely, the felt need to eradicate all forms of extraterritoriality so as to acquire and safeguard 'the same rights as every nation that was sovereign, independent and master of its destinies'.[96] In addition to according administrative autonomy to its non-Muslim minorities through the *millet* system, the Ottomans had granted wide-ranging immunities to subjects of non-Muslim states resident on Ottoman territory via an elaborate system of capitulations.[97] International lawyers had long pointed to the capitulations when discussing the Ottoman state's anomalous status under international law,[98] and a formal termination of the extraterritorial jurisdiction they made possible was now required. This, in turn, was an objective that stood a much greater chance of being achieved with the exchange. For, once the latter had been finalized, most of the material conditions that had justified the conservation of the capitulatory regime would have evaporated: because the commercial 'colonies'[99] set up by European merchants and maintained partly by local non-Muslims would have disappeared, the capitulations would quite literally have come to be stripped of their institutional foundations.

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95 The most comprehensive analyses remain those in B. Braude and B. Lewis (eds.), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, 2 vols. (1982).

96 Minutes of the Commission on the Régime of Foreigners (CRF) on 2 December 1922, in *Lausanne Conference*, *supra* note 29, at 465, 469.

97 The two systems – the one designed for the *zimmi* (the non-Muslim subject of an Islamic sovereign), the other for the *müstemin* (the non-Muslim foreigner resident on Islamic soil) – intermeshed to form complex jurisdictional arrangements; see, e.g., L. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (2002), 108–9. Still, their relation is open to interpretation and not entirely clear; see, e.g., M. H. van den Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls and* Beratlıs *in the 18th Century* (2005), 30–1, 55–6.

98 See, e.g., F. Martens, *Das Consularwesen und die Consularjurisdiction im Orient* (translated by H. Skerst) (1874), 320; Lorimer, *supra* note 25, at 313–14; J. Westlake, *Chapters on the Principles of International Law* (1894), 101–3; E. Root, 'The Basis of Protection to Citizens Residing Abroad', in E. Root, *Addresses on International Subjects* (edited by R. Bacon and J. B. Scott) (1916), 43, at 48; L. Oppenheim, *International Law: A Treatise* (edited by R. F. Roxburgh) (1920), I, 34.

99 The term was employed loosely by Allied delegates in reference to commercial establishments, a feature of eastern Mediterranean trade at least as far back as the *fondachi* operated for trading and tax-farming purposes by Genoese, Venetian, and other merchants during the Renaissance. For references to such 'colonies', see, e.g., CRF minutes (28 December 1922), in *Lausanne Conference*, *supra* note 29, at 480, 484. For their proto-history, see K. Fleet, *European and Islamic Trade in the Early Ottoman State: The Merchants of Genoa and Turkey* (1999), especially at 134–41.

Consider the first position. İsmet was not opposed to minority protection, at least so long as it did not entail 'exceptional treatment more rigorous than that applied to other countries'[100] and Turkish authorities remained free to adapt the relevant 'provisions to the local needs and special position of the minorities in Turkey'.[101] But he emphasized that Turkey could not grant minority status to its non-Turkish Muslims. There simply 'were no Moslem minorities in Turkey', as 'no distinction' of any kind 'was made either in theory or in practice between the various elements of the Moslem population'.[102] Moreover, İsmet was convinced that minority protection would never be enough to keep Muslims and Christians from 'tear[ing] themselves to pieces for nothing but the advantage of political interests'.[103] If the Allies insisted on minority protection alone, post-Ottoman Turkey would find itself in much the same situation as its imperial predecessor: just as the Sultan's court had tried to fend off attempts to splinter the empire, so too would Ankara need to counter efforts on the part of Western powers or League authorities to exploit the issue for less-than-altruistic ends. The Turks had come to Lausanne prepared to give some ground on minority protection but committed above all to the exchange. İsmet's delegation was, in fact, under orders that the exchange was to be its 'main objective' with regard to minorities.[104]

It is revealing that, in staking out this position, İsmet took note of the letter that Georges Clemenceau had sent to Warsaw along with the Polish Minority Treaty in 1919.[105] İsmet pointed in particular to Clemenceau's assurance that the League would take greater care than the Concert of Europe had to adhere to the principle of non-intervention.[106] He stressed that Clemenceau's approach, though popular,[107] was predicated on the view that minority protection was applicable to some, but not all, states.[108] And he voiced dissatisfaction with the promise of impartial monitoring: 'The present organisation of the League of Nations does not, in spite of the opinion of

100 TMC minutes (13 December 1922), *supra* note 39, at 210.
101 TMC minutes (9 January 1923), in *Lausanne Conference*, *supra* note 29, at 289, 292.
102 Ibid., at 301.
103 'Statement', *supra* note 84, at 203.
104 B. N. Şimşir (ed.), *Lozan Telgrafları: Türk Diplomatik Belgelerinde Lozan Barış Konferansı* (1990), I, at xiv (translation mine).
105 'Letter addressed to M. Paderewski by the President of the Conference transmitting to him the Treaty to be signed by Poland under Article 93 of the Treaty of Peace with Germany', reproduced in H. W. V. Temperley (ed.), *A History of the Peace Conference of Paris* (1921), V, 432.
106 Ibid., at 434. See also 'Statement', *supra* note 84, at 202.
107 See, e.g., H. Rosting, 'Protection of Minorities by the League of Nations', (1923) 17 AJIL 641, at 647; P. E. Corbett, 'What Is the League of Nations?', (1924) 5 BYIL 119, at 145.
108 With the institution of new modes of minority protection after 1919, wrote an early republican international lawyer, 'powerful states were held to one standard, while other states were held to another'. This demanded a decision: 'Europe must choose between two paths: either everyone within a state must be as much a subject of the nation as a subject of the state, or else borders must be redrawn and population exchanges undertaken in accordance with nations in order to remedy the situation. There can be no state within a state.' M. C. Bilsel, *Lozan* (1998), II, at 266, 269 (translations mine). Sentiments such as these gained wide currency in the 1930s; for an assessment, see C. Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878–1938* (2004), Chapters 10 and 11. And they remained with Turkish jurists for some time to come: for an aggressive illustration, see Y. M. Altuğ, *Turkey and Some Problems of International Law* (1958), 153 (asserting that '[t]he minority is subordinate to the sovereignty of the state and it must respect the juridical order on which its rights depend').

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the French statesman, appear to be such as to avoid this serious defect.'[109] This much had become clear, he added sharply, from 'the aggressive designs of Greece on Turkish Asia Minor', an exemplary 'campaign of devastation and carnage intermingled with all kinds of abominable crimes'.[110] The only way forward, then, was to take concrete steps to render 'certain minorities inaccessible to provocations from outside'[111] – that is, to implement a total population exchange, 'the most radical and humane remedy' of all.[112] Once an exchange had been completed, neither foreign powers nor the League would be able to undermine 'the unity and indivisibility of Turkey'.[113] If all 'rights, duties, advantages and obligations' were now 'to be shared by all Turkish citizens alike', this was so because the situation on the ground was to be altered with a view to 'bringing about perfect understanding between all Turkish citizens'.[114]

Though they too supported an exchange, Allied delegates often tried to persuade İsmet that Turkey should align itself more closely with minority protection. Curzon recounted the various privileges that the *millet* system had extended to the Ottoman Empire's non-Muslims. He argued that, even when the empire launched its first modernization programmes in the early nineteenth century, it did not strip non-Muslims of these privileges but instead confirmed and reinforced them. That these privileges be enshrined anew – and that any Turkish laws following therefrom be placed under League supervision – ought to be mandated at Lausanne.[115] A particularly interesting variation on this theme came from a Balkan delegate. İsmet had foregrounded external pressures when sketching the dissolution of Ottoman authority in south-east Europe, playing up Russia's role and marginalizing nationalist forces endogenous to the region itself. In response, the new Serb–Croat–Slovene state's representative turned İsmet's argument on its head by insisting that he had ignored a 'second factor', namely 'the feeling of the Christian nationalities in the Balkans, who were unable to forget their national ideals'.[116] It was this 'national feeling' that had 'played a decisive rôle in the creation of all modern States', and that now drove 'the present birth of a new, Kemalist, national Turkey'.[117] The implications were obvious: just as minority protection had been introduced into central and eastern Europe, so Turkey would now have to submit to the 'practical system' that had 'been adopted by all civilised nations'.[118] There had been an 'evolution' in 'the legal ideas and institutions of Europe as regards the international problem of minorities' and '[t]he days of individual or collective intervention' were 'over'.[119] So

109 'Statement', *supra* note 84, at 202.
110 Ibid., at 202–3.
111 Ibid., at 202 and similarly at 203.
112 Ibid., at 203.
113 TMC minutes (9 January 1923), *supra* note 101, at 302.
114 Ibid.
115 For the argument in full, see TMC minutes (14 December 1922), *supra* note 62, at 222–3.
116 TMC minutes (12 December 1922), *supra* note 41, at 187.
117 Ibid.
118 Ibid., at 188.
119 Ibid.

long as 'she really desire[d] to take her place among modern States', Turkey could not 'exclude herself from' this 'new régime of universal international law'.[120]

Comfortable though he was with reform, İsmet rejected the claim that Turkey should conform, without reservation or equivocation, to this 'new régime'. It was the exchange, and not minority protection, that would do the hard work of curbing violence. Physical segregation of Greeks and Turks would yield functional stability; minority protection would serve as an ancillary mechanism, minimizing whatever tensions might still remain after the exchange.

In addition to this first position, İsmet also maintained that international law permitted Turkey to abrogate the capitulations. For one thing, a careful analysis of the documentary record supported the decades-old Turkish argument that the capitulations were 'essentially unilateral acts'.[121] Some European jurists may have understood them, anomalous though they were, to be international treaties, but, in truth, they could not be characterized as such, at least if 'treaty' meant an instrument imposing legally binding obligations on all signatories. The capitulations were decree-like grants of privileges by the Sultan, of a limited and revocable nature. That Turkey was now exercising its right to revoke them could not, therefore, be held against it.[122] Further, even if the capitulations were characterized as treaties, the circumstances that had given rise to them had been subject to fundamental change. Hence, *rebus sic stantibus* trumped the otherwise general rule of *pacta sunt servanda*, enabling Turkey to break with the capitulations without breaching international public law.[123] Both lines of reasoning, particularly the latter, were supported by a third, more sweeping argument: once the capitulations were situated within their historical contexts, approached as legal artefacts intelligible only within the specific temporal and spatial circumstances that had produced them, it became obvious, İsmet argued, that they were informed by a conception of personal law that had long since become 'an anomaly and an anachronism'.[124] Since 'modern legal conceptions' mandated that 'each State, in order to be considered as an independent State, must enjoy, within the limits of its frontiers, a complete and full independence', Ankara could 'in no wise agree to the re-establishment of the Capitulations'.[125] Once again,

120 Ibid.

121 'Memorandum read by the Turkish Delegate at the Meeting of December 2, 1922, of the Commission on the Régime of Foreigners', annex to CRF minutes (2 December 1922), *supra* note 96, at 471, 478.

122 That the capitulations were treaties was often assumed rather than argued. The most comprehensive pre-Lausanne study, for instance, began with the proposition that '[l]a condition des étrangers dans l'Empire Ottoman est réglée par une série de traités intervenus entre la Porte et la plupart des Etats chrétiens de l'Europe et de l'Amérique, auxquels on donne communément le nom de Capitulations'. G. P. du Rausas, *Le régime des capitulations dans l'Empire ottoman* (1902), I, at 1. This assumption was often shared by Allied delegates at Lausanne: see, e.g., CRF minutes (6 January 1923), in *Lausanne Conference*, *supra* note 29, at 508, 516 (an Italian delegate arguing that 'the Capitulations were nothing more nor less than conventions'). For contemporaneous discussion of the question, which was never resolved definitively, see, e.g., S. S. Liu, *Extraterritoriality: Its Rise and Its Decline* (1925), Chapter 9; M. Essad, *Du régime des capitulations ottomanes: Leur caractère juridique d'après l'histoire et les textes* (1928).

123 'Memorandum', *supra* note 121, at 478–9. More than a hint of the influence of contemporaneous German legal thinking can be felt here; see especially M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001), Chapter 3.

124 'Memorandum', *supra* note 121, at 479.

125 Ibid.

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İsmet was on direct orders from Ankara to stand his ground on the issue – and to walk out of the talks should this prove necessary.[126]

In railing against the capitulations, İsmet took note that 'no such régime exists in any of the other European countries, not even in Greece and the other Balkan States'.[127] For İsmet, the war to which an end was to be put had been 'carried on contrary to all rules'; time after time, 'the Turkish nation had been completely disarmed and deprived of the resources which international law placed at the disposal of nations desirous of peace'.[128] As 'the Turkish people, like all other peoples, was ... obliged to be extremely jealous in all that concerned its existence, independence and rights',[129] it now sought to make full use of modern international law in order to bolster its sovereign power. The Young Turks had moved to abrogate the capitulations in 1914,[130] at a time when Turkish-Muslim publicists regularly touted *Weltpolitik* and denounced international law.[131] But this had fallen on deaf ears, securing recognition from no Western capitals save Berlin and Vienna.[132] Now the capitulations were to be eliminated once and for all.

Neither İsmet nor his interlocutors sought explicitly to link the question of the capitulations to that of the population exchange. Nevertheless, it was evident that the exchange, once concluded, would alter the distribution of powers and peoples in the Near East so totally and irreversibly as to render impossible the continuation of the capitulations. The 'colonies' that European nationals had operated with the help of local protégés had diminished dramatically, both in size and in strength, during the preceding years. Even the Jews, a British delegate noted with alarm, 'members of a non-Moslem community of which the Turkish delegation themselves admit that Turkey has never had reason to complain, are liquidating their property and leaving Smyrna'.[133] As a result, the putative rationale for the capitulations had lost much of its bite: there were far fewer European merchants in the empire, far fewer local non-Muslims to assist them, and so far less need for a capitulatory regime.

The Allies were willing to recognize the formal abrogation of the capitulations, if only grudgingly. In return for this recognition, though, they insisted that Turkey launch a series of reforms designed to shield non-Muslims. Among other things,

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126 Şimşir, *supra* note 104, at xiv.

127 'Memorandum', *supra* note 121, at 479.

128 TMC minutes (13 December 1922), *supra* note 39, at 206–7.

129 Ibid., at 207.

130 Ottoman Circular Announcing the Abrogation of the Capitulations, 9 September 1914, reproduced in J. C. Hurewitz (ed.), *Diplomacy in the Near and Middle East: A Documentary Record: 1535–1956* (1956), II, 2.

131 M. Aksakal, 'Not "by those old books of international law, but only by war": Ottoman Intellectuals on the Eve of the Great War', (2004) 15 *Diplomacy and Statecraft* 507. For the context, see especially Ş. Hanioğlu, *A Brief History of the Late Ottoman Empire* (2008), 167–82.

132 For analysis, see J.-A. Mazard, *Le régime des capitulations en Turquie pendant la guerre de 1914* (1923); N. Sousa, *The Capitulatory Régime of Turkey: Its History, Origin, and Nature* (1933), 195–6; A. Rechid, 'La condition des étrangers dans la République de Turquie', (1933/IV) 46 RCADI 165, at 180–2. Germany had been dangling the carrot of terminating the capitulations for some time already. See, e.g., H. İnalcık, 'Imtiyāzāt', in B. Lewis et al. (eds.), *The Encyclopaedia of Islam: New Edition* (1986), III, at 1179, 1188; R. Bullard, *Large and Loving Privileges: The Capitulations in the Middle East and North Africa* (1960), 32. This was contemporaneous with the *Drang nach Osten*, a long-term strategy of expansion aimed in part at gaining control over Near Eastern markets. See, e.g., Ş. Pamuk, *The Ottoman Empire and European Capitalism, 1820–1913: Trade, Investment and Production* (1987), 68–72, 79–81.

133 CRF minutes (28 December 1922), *supra* note 99, at 487.

the Allies demanded that Turkey staff courts presiding over civil and criminal suits involving foreigners with foreign judges 'recommended to the Turkish Government by the Permanent International Tribunal [*sic*] of The Hague'.[134] Since its 'machinery of justice' was fundamentally 'defective',[135] Turkey needed to provide 'such guarantees as regards legislation and the administration of justice' as would 'inspire confidence' in those 'obliged to have recourse thereto'.[136]

Incremental reductions in extraterritorial jurisdiction in states where capitulatory and unequal treaty regimes were operative had generally been conditioned on the ability and willingness of local elites to ensure that contracts were enforced, property rights respected, and pro-Western reforms undertaken. If Turkey were permitted to do away with the capitulations for good, it would need to bind itself to similar commitments, putting at ease those who had 'established themselves in Turkey and built up important enterprises there in reliance on the guarantees offered to them by the [capitulatory] treaties'.[137] It had taken some time for comparable programmes to reach maturity in Japan,[138] and a similar 'transitory period'[139] was needed for Turkey to suppress *Kadijustiz*, promulgate new codes, and cultivate a well-trained judiciary not beholden to *Sharī'a*.[140] Any attempt to nationalize its economy in one fell swoop would undermine investor confidence and generate unprecedented capital flight, doing irreparable damage to the '[g]reat business houses' of Istanbul and Izmir and reducing Turkey 'to the condition, not of a great and prosperous nation, but of a little country lost in the wastes of Asia'.[141]

The Turkish delegation feared that these demands were ruses with which to preserve, or even buttress, the capitulations' substance while doing away with their form.[142] Turkey had 'been at work on reorganisation and reform for half a century',[143] and under no circumstances could it accept 'outside interference' with 'the drafting of Turkish internal legislation'.[144] İsmet was willing to make certain concessions, such

134 Ibid., at 482.

135 Ibid., at 497. At their most extreme, such assessments were accompanied by sweeping denunciations like the claim that 'un Droit Turc n'a jamais existé' and that 'l'admission de la Turquie comme membre de la famille des Nations européennes' had been 'une déplorable erreur'. C.-H. Lebeau, *Essai sur la justice en Turquie (à propos du Traité de Lausanne)* (1924), 87–8, 89. Cf. L. Ostrorog, *The Angora Reform: Three Lectures Delivered at the Centenary Celebrations of University College on June 27, 28 and 29, 1927* (1927), 70 (describing Ankara's post-Lausanne reforms as 'such a Revolution as the world of Islam had never seen'); G. Sauser-Hall, 'La réception des droits européens en Turquie', in *Recueil de travaux publié à l'occasion de l'Assemblée de la Société suisse des juristes à Genève, du 4 au 6 septembre 1938* (1938), 323, at 345 (arguing that Turkey's importation of continental codes 'complètement transformé son armature juridique').

136 CRF minutes (2 December 1922), *supra* note 96, at 467.

137 Ibid.

138 Ibid., at 470; CRF minutes (28 December 1922), *supra* note 99, at 483.

139 Ibid.

140 The Japanese analogue had particularly deep roots: C. Aydın, *The Politics of Anti-Westernism in Asia: Visions of World Order in Pan-Islamic and Pan-Asian Thought* (2007), Chapter 4; R. Worringer, '"Sick Man of Europe" or "Japan of the Near East"? Constructing Ottoman Modernity in the Hamidian and Young Turk Eras', (2004) 36 *International Journal of Middle East Studies* 207.

141 CRF minutes (28 December 1922), *supra* note 99, at 497–8. This was a common sentiment: see, e.g., F. Nansen, 'Reciprocal Exchange of Racial Minorities between Greece and Turkey', C. 736. N447. 1922, (1923) 4 LNOJ 126, at 129; A. J. Toynbee, 'The East after Lausanne', (1923) 2 FA 84, at 95.

142 CRF minutes (2 December 1922), *supra* note 96, at 468. Cf. A. N. Karacan, *Lozan Konferansı ve İsmet Paşa* (1943), 106.

143 CRF minutes (6 January 1923), *supra* note 122, at 510.

144 TMC minutes (14 December 1922), *supra* note 62, at 226.

as obligating Turkish authorities to draw on the expertise of European legal advisers and agreeing to allow certain issues of personal status involving Allied nationals to be decided by courts of Allied states.[145] But he insisted on the capitulations' formal abolition. In the words of another delegate, the exchange would make it possible for 'Turkey to have a judicial system' that would 'be one and the same for all people in her territory – foreign and Turkish alike'.[146]

In combination, both of these positions – the one concerned with minority protection, the other with the capitulations – situated the exchange at a considerable distance from the more familiar European practices of the time. Given İsmet's firmness in the face of complaints that he was 'highly sensitive respecting questions of supervision',[147] it is not surprising that Turkey should have succeeded in resisting Western pressure. What is surprising is that it was with a largely untested mechanism, one whose legal status had not been fixed, whose application was limited to the Near East, and whose precedential force under international law was ambiguous,[148] that Turkey should have made the transition from empire to republic.

4. Two tensions enshrined

The package of international legal instruments ultimately produced by the Conference of Lausanne would reflect the two tensions that pervaded the negotiations – that concerning the place of ethno-nationalism in the exchange and that relating to its regionally specific character. Concluded in January as a prerequisite to a lasting peace, the Convention concerning the Exchange of Greek and Turkish Populations (and a related agreement on the restitution of interned civilians and exchange of prisoners of war) would be annexed to the Peace Treaty when it and 14 other instruments were finally signed in July 1923.

In keeping with Ottoman tradition, the Peace Treaty contained no stipulation that Turkey recognize Kurds, Arabs, or any of its other non-Turkish Muslim communities as national minorities. Nor did it make allowance for Kurdish autonomy or an Armenian 'national home', as had the Treaty of Sèvres.[149] The Turks had remained firm in the face of half-hearted demands of this sort, meeting 'all the questions put to them' on these matters 'with an absolute and clear refusal'.[150] Reflecting this, the Peace Treaty restricted minority status to those non-Muslim groups that had commanded dominant positions within the *millet* system but that had recently seen their

145 CRF minutes (28 December 1922), *supra* note 99, at 485; CRF minutes (27 January 1923), in *Lausanne Conference*, *supra* note 29, at 521, 523.

146 Ibid.

147 TMC minutes (14 December 1922), *supra* note 62, at 219.

148 An American delegate raised this issue explicitly, stating that 'new precedents which tend to establish the right of nations to expel large bodies of their citizens to become burdens upon other nations must be carefully considered before countenance is given them, lest a new and unwholesome principle find foothold to vex international law and justice'. TMC minutes (12 December 1922), *supra* note 41, at 187.

149 Treaty of Sèvres, Arts. 62–4, 88–93, *supra* note 56, at 192–3, 198–9.

150 TMC minutes (9 January 1923), *supra* note 101, at 308. For reaction, see especially the documents reproduced in the American Committee Opposed to the Lausanne Treaty's *The Lausanne Treaty, Turkey and Armenia* (1926).

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numbers reduced drastically: the Greek, Armenian, and Jewish communities.[151] Article 39 was the touchstone here, requiring that Turkey supply its non-Muslim citizens – a reference understood to be limited to these three communities – with the same civil and political entitlements as its Muslim citizens. This and other issue-specific provisions – Articles 37 through 44[152] – fixed the parameters within which Turkey would henceforth address minority protection: to preclude violation of the general right to equality enshrined in Article 39, it was provided that non-Muslims could practise their religion freely (Art. 38), make full use of their native languages in private and in public (Art. 39), maintain educational and charitable foundations without undue state interference (Art. 40), and so on.[153] Minority protection was thus introduced into Turkey. But it came in an attenuated and problematic form. Not only was its application restricted to demographically negligible groups of non-Muslims, thereby underscoring the primacy of a specifically Turkish-Muslim *ethnos*, but this restricted application followed directly from the population exchange, which made it factually impossible and normatively implausible for a genuinely robust minority-protection regime to be put into effect.[154] The Lausanne agreement, one jurist wrote, presupposed 'a completely different way' of resolving ethno-national conflict from that which minority protection did.[155]

Some aspects of the Lausanne settlement, such as the apportionment of the Ottoman public debt,[156] the limitation of tariffs and related measures for a number of years,[157] and the temporary posting of 'European legal counsellors' to Izmir and Istanbul,[158] betrayed the ongoing influence of the capitulations.[159] Yet, their most visible features were eliminated by Article 28 of the Peace Treaty, which formalized 'the complete abolition of the Capitulations in Turkey in every respect'.[160] If enacting and enforcing legislation is 'one of the most obvious forms of the exercise of sovereign power',[161] the capitulations' formal abolition marked a key moment in the augmentation of Turkey's capacity to exercise such power over the length and breadth of its territory.

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151 Curzon glossed this with apprehension: 'The sub-commission originally pressed for the inclusion of all racial minorities, Moslem and non-Moslem – for instance, the Kurds, Circassians and Arabs. The Turkish delegation insisted that these minorities required no protection, and were quite satisfied with their lot under Turkish rule. I hope that this will be the case.' TMC minutes (9 January 1923), *supra* note 101, at 296.

152 Lausanne Peace Treaty, *supra* note 28, at 31–7.

153 Ibid., at 31–3.

154 That pressure was applied to non-Muslim communities in following years to renounce their rights under Lausanne only compounded these difficulties. For the Greek case, see, e.g., A. Alexandris, *The Greek Minority of Istanbul and Greek–Turkish Relations 1918–1974* (1992), Chapter 4; S. Akgönül, *Türkiye Rumları: Ulus-Devlet Çağından Küreselleşme Çağına Bir Azınlığın Yok Oluş Süreci* (translated by C. Gürman) (2007), 67–74.

155 L. Leontiades, 'Der griechisch–türkische Bevölkerungsaustausch', (1935) 5 ZaöRV 546, at 552 (translation mine).

156 Lausanne Peace Treaty, Arts. 46–57, *supra* note 28, at 37–51.

157 Commercial Convention, signed at Lausanne, 24 July 1923, 28 LNTS 171.

158 Declaration relating to the Administration of Justice, signed at Lausanne, 24 July 1923, 36 LNTS 161.

159 Indeed, it has been maintained that, despite having secured its political independence, Turkey was in some respects 'one of the few countries where "Open Door" conditions actually held', at least for a limited period after 1923. Ç. Keyder, *The Definition of a Peripheral Economy: Turkey 1923–1929* (1981), 9, 69–71 for details. On these short-term limitations on protectionism, see also K. Boratav, *Türkiye'de Devletçilik* (2006), 33–5.

160 Lausanne Peace Treaty, *supra* note 28, at 27.

161 *Legal Status of Eastern Greenland (Denmark v. Norway)*, PCIJ Rep., (1933) Series A/B No. 53, at 48.

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The text of the Exchange Convention is equally revealing. Its first two articles called for the institution of a compulsory exchange between 'Turkish nationals of the Greek Orthodox religion' and 'Greek nationals of the Moslem religion', but also allowed exceptions for Greeks in Istanbul and Muslims in western Thrace.[162] On any account, this was a rather murky attempt to align ethnicity with territory: it was often unclear which of the two states had been assigned control over a given community,[163] and the exceptions created dangerously vulnerable enclaves, with the Greeks of Istanbul (*les établis*) becoming a bone of contention before long.[164] Article 7 explained that those subject to the exchange would be stripped of their previous citizenship and transformed into nationals of the state to which they had been transferred.[165] This was to be a process of automatic renationalization, and, as such, a far cry from other ways of dealing with problems of state succession. No plebiscites – a mechanism of limited application even in Europe[166] – were organized. And the 'right of option', namely the right of people inhabiting territories transferred from one sovereign to another to choose between retaining their existing nationalities (in which case they would be expected to move) and becoming nationals of the new sovereign (in which case they would remain where they were), had little traction.[167] Finally, the entire process was to be co-ordinated by a mixed commission, staffed by international civil servants wielding control over a small army of technical specialists – lawyers, naturally, but also architects, agronomists, cartographers, and others.[168]

5. Conclusion

Though it had its roots in the Near East, an archetypically semi-peripheral region, the population-transfer mechanism travelled to other jurisdictions with remarkable rapidity, experiencing something of a successive 'globalization' in the process. In the late 1930s and early 1940s, Nazi diplomats concluded numerous transfer and exchange treaties, asserting Germany's 'protective right' over its ethnic kin. Shortly thereafter, the Allies made heavy use of compulsory transfer to remove ethnic Germans from central and eastern Europe. The partition of British India in 1947 was

162 Exchange Convention, *supra* note 28, at 77. Greeks resident on two islands allotted to Turkey were also exempted; see Lausanne Peace Treaty, Art. 14, *supra* note 28, at 17.

163 The Karamanlides/Karamanlılar, Turkish-speaking Orthodox Christians in central Anatolia, were, for example, subject to the exchange. R. Clogg, 'A Millet within a Millet: The Karamanlides', in D. Gondicas and C. Issawi (eds.), *Ottoman Greeks in the Age of Nationalism: Politics, Economy, and Society in the Nineteenth Century* (1999), 115, at 115, 131–2.

164 Disagreement regarding the scope of the exception lay at the heart of the dispute in *Exchange of Greek and Turkish Populations*, *supra* note 21.

165 Exchange Convention, *supra* note 28, at 79.

166 S. Wambaugh, *Plebiscites since the World War, with a Collection of Official Documents* (1933), I, at 42 ('[T]he Allies avoided a plebiscite in every region of first importance save that of Upper Silesia, and . . . when they resorted to a plebiscite it was as a method of compromise, to escape from a dilemma rather than as a deliberate choice').

167 Of the contexts to which the leading contemporaneous study found this right inapplicable, foremost was that of reciprocal emigration, 'une voie radicale pour arriver à une solution du problème des minorités nationales'. J. L. Kunz, 'L'option de nationalité', (1930/I) 31 RCADI 107, at 134.

168 Exchange Convention, Arts. 8–17, *supra* note 28, at 79–85.

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followed by the expulsion of south Asians from Uganda in 1972. This, in turn, was followed by the *ex post* juridification of forced migration in Cyprus in 1974 and in Bosnia in the early 1990s. In most cases, the Greek–Turkish exchange was cited as a critical precedent.[169] What was initially a distinctly semi-peripheral mechanism, reinforced by the support of burgeoning international organizations, not the least ambitious of which was the League of Nations, developed in leaps and bounds into a 'global legal commodity'[170] – one among a number of conflict-resolution methods that circulates even today on the conceit of being able to deliver regional security and inter-state co-ordination.

Today, it is generally agreed that compulsory transfers and exchanges are illegal under international humanitarian law and international human rights law. Express prohibitions or language with similar effect can be found in the Universal Declaration of Human Rights,[171] the Fourth Geneva Convention,[172] the 1951 Refugee Convention,[173] and other instruments.[174] Yet, transfers and analogous forms of mass expulsion remain popular, with legal legitimacy nearly always being sought for such exercises, particularly when couched in 'voluntary' terms. If a member of the Institut de droit international could argue in 1952 that '[d]u point de vue du droit international, il existe, en cette matière, liberté d'action absolue des Etats pourvu que les lois sur l'humanité ne soient pas violées',[175] so too could a UN rapporteur (and current judge of the International Court of Justice) suggest as late as 1997 that, in certain contexts, 'population transfers are lawful if they are non-discriminatory and are based upon the will of the people'.[176]

If we are to understand the enduring allure of population transfer, we must come to grips with its origins in a semi-peripheral region with distinct traditions and institutions. Regardless of where this or that group of interwar jurists and policy makers may have stood on the legality of the exchange, the feeling that ethnonational conflict in Greece and Turkey called for measures stronger than minority protection but not as heavy-handed as mandatory rule was widely shared. Efforts to reconstruct the Near East through means believed to be commensurate with its semi-peripheral character were supported and facilitated by regional actors, great powers, League of Nations agencies, and philanthropic organizations alike. That the mechanism that was crafted and refined in this process should retain a place in

169 See, e.g., Kévonian, *supra* note 4, at 126–9; N. M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (2001), 108, 110, 171.

170 O. Korhonen, 'The "State-Building Enterprise": Legal Doctrine, Progress Narratives and Managerial Governance', in B. Bowden, H. Charlesworth, and J. Farrall (eds.), *The Role of International Law in Rebuilding Societies after Conflict: Great Expectations* (2009), 15, at 15ff.

171 Universal Declaration of Human Rights, GA Res. 217A (III), UN Doc. A/810 (1948), at 71, Arts. 9, 13, 15, at 73–4.

172 Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, 75 UNTS 287, Arts. 49, 147, at 318, 388.

173 Convention relating to the Status of Refugees, signed at Geneva, 28 July 1951, 189 UNTS 150, Arts. 32–3, at 174–6.

174 See generally J.-M. Henckaerts, *Mass Expulsion in Modern International Law and Practice* (1995).

175 M. J. Spiropoulos's contribution to G. B. Pallieri, 'Les transferts internationaux de populations', (1952/II) 44 *Annuaire de l'Institut de droit international* 138, at 185, 186.

176 A. S. Al-Khasawneh, Human Rights and Population Transfer: Final Report of the Special Rapporteur, UN Doc. E/CN.4/Sub.2/1997/23 (1997), at 19.

our own legal and political imaginations is, perhaps, all the more distinctive and disconcerting on that account. Indeed, if the late Ottoman Empire comprised 'an interesting laboratory for the study of the dynamic changes in international law', such that it was in this, 'perhaps better than in any other single area', that one could observe at close hand 'the terrific forces which make for international change',[177] it should come as no surprise that Europe's south-eastern margins continue to serve as a 'laboratory' for state-building and humanitarian intervention.[178]

177 W. W. White, *The Status in International Law of the Fragments of the Ottoman Empire* (1938), 331.

178 See, e.g., M. Pandolfi, 'From Paradox to Paradigm: The Permanent State of Emergency in the Balkans', in D. Fassin and M. Pandolfi (eds.), *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (2010), 153, at 168; D. Chandler, *International Statebuilding: The Rise of Post-Liberal Governance* (2010), Chapter 5.