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JOHNS HOPKINS UNIVERSITY STUDIES  
IN  
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EXTRA VOLUMES

NEW SERIES, No. 18

THE CAPITULATORY RÉGIME OF  
TURKEY

ITS HISTORY, ORIGIN, AND  
NATURE

LONDON: HUMPHREY MILFORD  
OXFORD UNIVERSITY PRESS

THE CAPITULATORY RÉGIME OF  
TURKEY

ITS HISTORY, ORIGIN, AND  
NATURE

BY  
NASIM SOUSA, PH.D.

BALTIMORE  
THE JOHNS HOPKINS PRESS

1933

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*To*  
*My Wife*  
*Mary Elizabeth Sousa*  
*this work is affectionately dedicated.*



رَفَعُوا الْبِنَاءَ عَلَى السُّيُوفِ فَلَمْ يَدُمُ  
 مَا لِلْبِنَاءِ عَلَى السُّيُوفِ دَوَامُ  
 ابْقَى الْمَالِكِ مَا التَّفَاهُمُ أَمَّهُ  
 وَالْعَدْلُ فِيهِ حَائِطٌ وَدَعَامُ  
 « تَرْقِي »

Mansions founded at the mouth of the cannon last not;  
 For buildings based on arms crumble fast  
 Only empires on the rock of understanding erected,  
 With justice for a base shall forever last.  
 —SHAWKY.



## PREFACE

The once mighty capitulatory institution which for centuries had formed the nucleus around which revolved most of the Turkish foreign relations is now dead—quite dead in Modern Turkey. There remain of it only the ashes of the great fires which had been kindling for decades on Ottoman soil. There remains the record of a continued struggle between the Western Powers, on the one side, and Turkey, on the other, the former striving with grim determination to continue the operation of the institution, the latter to abolish it.

It looked at one time as though the end of the World War had inaugurated the triumph of the Western Powers, but barely had these powers tasted the flavor of their victory when Turkey emerged from the debacle of defeat and humiliation filled with courage, carrying the banner of armed opposition. Fighting for the capitulations, however, was nowhere advocated; for the stain of human blood was still visible on the fields of battle. Finally, the Treaty of Lausanne of 1923 marked the complete abrogation of the capitulations, leaving to the world the historical account of the regime.

That this historical account has a great bearing on the future of similar institutions still operating in other Eastern countries can hardly be overem-

phasized. A Chinese envoy was reported to have visited Angora, the new Turkish capital, for the purpose of studying the abolition of the Turkish capitulatory regime, obviously with the intention of applying the same methods of abolition to the extraterritorial regime in China. (Toynbee and Kirkwood, *Turkey*, p. xiv.) The capitulations in Persia have been recently buried peacefully; this, not improbably, having been partly achieved through the effect of the abrogation of the Turkish capitulations. The capitulatory system, however, is still operating, in one form or another, in several other oriental countries, but the influence of the history of the Turkish capitulations on the fate of the system in these countries can hardly be ignored. Using the words of the French consul, Vadala:

The conditions accorded to Turkey will have a serious influence on the future relations of Europe in all the other countries where the capitulations still exist and where it is by no means a question of discussing them . . . The question of the capitulations in Turkey has thus several important aspects as it embraces in reality the future relations of the European collectivity with the Africans as well as with the Asiatics.<sup>1</sup>

Accordingly, it is the purpose of this volume to give a historical survey of the Turkish capitulations, explaining in a general way the origin and the nature of the capitulatory institution and discussing the various phases involved in the evolution, the development and the ultimate termination of the

<sup>1</sup> *Revue mondiale*, May, 1923, CLIV, 17.

system. In making this survey, special attention will be paid to American interest and participation. Hence, the present work does not pretend to go into the details of every phase of the subject; it is intended to give a brief account of the salient features in the history of the capitulations and to suggest fields which the writer believes will bear further exploration. For the latter purpose, ample references are given in the footnotes and the general bibliography which may prove of aid to the scholar who is interested in looking up the details of any particular point.

This study is divided into two parts: the first part dealing with the period preceding the outbreak of the World War; the second, with the period following the outbreak of the War. In the first part, it is attempted: first, to give an explanation of the origin of the capitulations wherein the writer takes the view, which is accepted by most authorities on the subject, that the capitulations have their origin in the once firmly established and universally accepted principle of " personality " of law, and that in no way is the Turkish religion or the Turkish system of laws to be viewed as the reason for the establishment of the capitulatory system as it has often been maintained by many writers; second, to give an account of the nature and the contents of the capitulations; third, to present a brief survey of the Turkish-American relations with regard to the capitulations ; and fourth, to record the historical evo-

lution of the international recognition of the capitulations. In presenting this latter phase, the writer takes the view that three periods seem to be quite distinct: namely, the first period embracing the early extritorial system which was voluntarily and *reciprocally* practiced and enforced by custom and usage; the second period involving the earliest capitulations conceded by the Turkish sultans which were *unilaterally* and *spontaneously* granted; the third period covering the latest capitulations in Turkey which were *unilateral* in the grant of privileges, but, being international in character, had somewhat the character of treaties.

In the second part of the work, it is attempted: first, to give a general account of the unilateral abrogation of the capitulations by Turkey in 1914; second, to describe briefly the situation during the War and the reestablishment of the capitulations by the Allied Powers after the close of the War; third, to present a short account of the Nationalist movement and of the Turkish opposition to the peace treaty of Sevres which reestablished the capitulations; fourth, to trace the steps leading to the complete abolition of the capitulations by the Treaty of Lausanne, discussing in this connection American interests and participation; and, finally, to discuss, from a legal point of view, the principles involved in the abrogation of the capitulations. This work does not pretend to go into the present situation of foreigners in Turkey as affected by the abrogation

of the capitulations or the present conditions of foreigners in the territories detached from Turkey after the War. The author is not unaware of the significance of this phase, but he feels that this should form the subject of a special and separate study, which he hopes a qualified scholar may take up.

The most important and numerous contributions on the subject, as the reader may notice on his first glance at the bibliography, are French, this being largely due to the early French interests in the Ottoman Empire and the early friendly relations between the French monarchs and the Turkish Sultans. Most of these French writers, however, devote the greatest part of their works to the relations concerned with France rather than discussing the subject from an international point of view. So far as the author knows, the whole subject has not been extensively considered in any English treatise. Professor Brown's little book, entitled *Foreigners in Turkey*, is indeed a very valuable contribution, but the work covers only the period preceding the World War. An excellent article by Mr. L. R. Thayer, entitled "The Capitulations of the Ottoman Empire and the Question of their Abrogation as it affects the United States," found in *The American Journal of International Law* of 1923, is another English contribution. Writers on international law, especially the French, have, as a rule, considered the subject in their writings, but usually very briefly. Most American writers do not even mention the capitula-

lions, this being largely due to the lack of vital political and commercial interests on the part of the United States in the Near East.

A part of this work was awarded in 1929 the Alexander Wilbourne Weddell prize of \$250 given every year by the George Washington University " for the best essay on the general subject of the promotion of peace among the nations of the world." The author makes mention of this with grateful acknowledgment as it awakened in him a greater interest in the subject and encouraged him to enlarge and develop the original essay into the present volume.

The author takes this occasion to express his grateful feelings to Professor Charles K. Hill of the George Washington University for first awakening in him appreciation of the importance of the present subject and for personal counsel, and to Dr. James Hart for reading the manuscript, and making suggestions. The writer has received valuable practical suggestions and helpful criticism from Professor Westel W. Willoughby, whose kind help is gratefully acknowledged.

N. S.

BALTIMORE, MARYLAND  
1930

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## ABBREVIATIONS

- A. J. I. L.*—American Journal of International Law (ed. by J. B. Scott and G. G. Wilson). Concord, N. H., 1907 et seq.
- Clunet.*—Journal du droit international (ed. by Clunet). Paris, 1874 et seq.
- Cur. Hist.*—New York Current History.
- For. Rel.*—"Papers relating to the Foreign Relations of the United States," published annually or thereabouts by the Government Printing Office, Washington, the last volume being for the year 11)17.
- Malloy.*—Malloy, William M., "Treaties, Conventions, International Acts, Protocols, and Agreements between the United States and other Powers (1776-1909)"; in three volumes.
- R. D. I. L. C.*—Revue de droit international et de legislation comparee (ed. by T. M. C. Asser, John Westlake, G. Rolin-Jacque-Myns, A. Rivier, Ed. Rolin and others). Bruxelles, 1869 et seq.
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- St. P.*—British and Foreign State Papers.
- Parl. P.*—Parliamentary Papers.

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## INTRODUCTION

### DEFINITION

The word " capitulation " is sometimes used to signify an agreement made " in time of war for the surrender to a hostile armed force of a particular body of troops, a town or a territory."<sup>1</sup> The term has also been used by French writers to denote the oath which the Holy Roman Emperor took before the college of electors on his election.<sup>2</sup> The sense in which the term will be used in this study, however, carries no concept of surrender or oath, but bears the idea of an extraterritorial agreement by which a foreigner is, to a certain extent, allowed to enjoy on foreign soil the laws of his own country. In this respect, therefore, it is an expression which is likely to deceive. " The term ' capitulation,' " says Du Rausas, " is commonly attributed to the condition of foreigners in the Ottoman Empire as regulated by a series of treaties concluded between the Sublime Porte<sup>3</sup> and most of the Christian states of Europe and America."<sup>4</sup> Other definitions have

<sup>1</sup> *Encyclopaedia Britannica*, ed. 11, V, 283.

<sup>2</sup> *Ibid.*, p. 283. Cf. also, *Dobson Encyclopedia*, 1798, IV, 138. The same term was also applied to agreements made regarding the enlistment of Swiss guards into the service of European powers. (See J. W. Foster, *The Practice of Diplomacy*, N. Y., 1906, p. 245.)

<sup>3</sup> The expression " Sublime Porte " is often used to denote the Ottoman Government.

<sup>4</sup> Du Rausas, *Le regime des capitulations dans l'empire ottoman*, I, 1.

been given by various authors;<sup>5</sup> these, however, do not give an understanding of the character of the term unless they are supplemented by a brief introductory explanation.

## ORIGIN or THE TERM "CAPITULATION" AND ITS USE

The first time that the term was officially used to denote an agreement dates back to 1275 when the Greek Emperor issued a declaration concerning the Genoese referring to the articles therein as "capitula," and it is possible that shortly thereafter the

<sup>5</sup> "This technical term," remarks Temperley, "covers a body of relationships between Turkey and certain foreign powers which, by long tradition, have come to be regarded as a coherent whole, though it would be almost impossible to codify them in a precise and logical form. The capitulations consist partly of written treaties, partly of customary rights; they concern not only the diplomatic relations of states, but the personal status of individuals; and they extend from the political into the judicial, financial and economic spheres of social intercourse." (*History of the Peace Conference of Paris*, VI, 96.)

The term "capitulations" will be used here in a general sense as descriptive of the privileges of autonomous jurisdiction as well as the other trading facilities, exemptions, and special rights of control granted to foreigners in the Orient. In this sense, the term will thus cover more than the extraterritorial rights which give the foreigner immunity from the jurisdiction of the Turkish courts. It will thus be used as to make it extend over all relationships by which the status of foreigners in Turkey is determined. However, the term will be used in some cases, especially in treating the origin of the capitulations, to denote extraterritorial rights only, for the early capitulations had been largely concerned with extraterritorial rights given in confirmation of the system of personality of laws. The other rights, such as the financial control and the political rights, developed in the later period when Turkey began to decay.

term "capitulation" came to be used in this sense.<sup>6</sup> The term is thus derived from the Medieval Latin, and signifies a treaty the terms of which are specified under articles (capitula) or minor heads of several stipulations.<sup>7</sup> The term "capitulation," therefore, may be explained as designating a treaty by the terms of which foreigners resident in Turkey are entitled to special immunities and rights and are more or less subject to the laws of their respective countries.<sup>8</sup>

<sup>6</sup>G. B. Ravndal, "The Origin of the Capitulations and of the Consular Institution," *S. Doc.* No 34, 67th Cong., 1st sess., p 35

Sir Travers Twiss, however, is of the opinion that it is doubtful whether the term "capitulations" came into use before the treaty of 1535 between France and Turkey. He cites evidence of its use in a French dispatch dated Sept. 20, 1539. (*The Law of Nations Considered as Independent Political Communities*, 2d ed., I, 463.)

<sup>7</sup>After the end of the eighteenth century, the term "capitulations" has been less frequently applied to the international agreements concluded between the Western Powers and Turkey. Yet, it is to be noted that although the latest treaties were not spoken of as "capitulations" they still bore the unilateral character in the grant of extraterritorial privileges.

<sup>8</sup>The term "capitulation" has been sometimes referred to by some writers as implying the submission of unbelievers suing for peace to the Moslem Caliph. This, however, has been contested by many authors. (P. M. Brown, *Foreigners in Turkey*, p. 29 n.) It seems that this idea of submission may also be explained so as to imply the submission of the Sultan to the will of the foreign powers through the act of waiving some of his sovereign rights in their favor. Both suggestions, however, can hardly be accepted. In reply to the first idea, it is to be noted that the capitulations were not originally granted by the Sultans. The Sultans merely adopted the commonly accepted principles of immiscibility and extraterritoriality which had been commonly practiced before the development of Ottoman national existence. As to the second idea, it is substantiated by historical facts that the Sultans were at the zenith of their power

## EARLIEST PRACTICE OF EXTERRITORIALITY

The practice of the principle of extraterritoriality,<sup>9</sup> the principle by which a person in a foreign country is more or less subject to the laws of his own country, dates back to many centuries before Christ.<sup>10</sup>

---

when they confirmed the extraterritorial privileges which had been formerly granted. The deduction as to the submission of the Sultans to the will of the foreign powers may perhaps be suggestive to a certain extent in the later centuries when the capitulations came to operate in practice against the will of the Sultans who were becoming weaker and weaker; but this, again, can be refuted due to the fact that the term "capitulation" had come into use long before the decay of the Ottoman Empire. De Testa seems to assert that the correct equivalent for the term "capitulations" is "Letters of Privileges." "Nous croyons que la qualification *lettres patentes* répond assez exactement, quant à l'essence et à la forme tout ensemble, au mot turc *ahdname* qui sert plus spécialement à les désigner." (Testa, *Recueil des traités de la porte ottomane*, I, G.)

<sup>9</sup> Some writers treat the words "extraterritoriality" and "extrajurisdiction" as identical; others as indicating, by the first, the privileges enjoyed by diplomats and their suites; by the second, the privileges of foreigners who by virtue of treaty stipulations are judged by their own laws in consular courts. (See Piggott, *Extraterritoriality*, p. 2.) The two words will be treated as identical in this text.

<sup>10</sup> It is to be noted in this connection, that although the term "extraterritoriality" has been definitely placed in the phraseology of international law, it is inadequate and improperly used; for it is hardly practicable today that a foreigner is entirely subject to the laws of his own country when he enjoys extraterritorial rights in a foreign country. Foreigners in Turkey, for instance, were subject to Ottoman jurisdiction in matters dealing with land holding despite the capitulatory rights to which foreigners were entitled in Turkey. (See *infra*, pp. 81 ff.) Furthermore, in most criminal cases foreigners were denied in Turkey the benefit of their own consular courts. We must also consider the great influence of customs and local usages which impedes the absolute execution of the foreigner's native laws

As early as 1294 B. C., the Phoenicians from Tyre who settled at Memphis (Egypt) which was then under the reign of Protee (1294-1244 B. C.) were allowed to have temples of their own in the new settlement. Furthermore, merchants of Tyre were permitted in the twelfth century before Christ to reside and establish factories in three cities on the Tanitic branch of the Nile where they were given

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in a foreign country. In a memorial issued by Lord Aberdeen's Government in 1844, along with the Foreign Jurisdiction Act, it was stated that the "right of British consular officers to exercise any jurisdiction in Turkey, in matters which in other countries come exclusively under the control of the local magistracy, depends originally on the extent to which that right has been conceded by the Sultans of Turkey to the British Crown, and therefore the right is strictly limited to the terms in which the concession is made." (J. Lorimer, *The Institutes of the Law of Nations*, I, 313)

Sir Francis Piggott cites the case of *Carr v. Francis, Times & Co.* (1902 A. C. 176) in which the seizure of a British vessel in the territorial waters of Muscat by the local authorities was justified. (Piggott, *Exterritoriality*, p. 8. See also *Damase v. Hale* [91 U. S. Reports, 1875, p. 13] and *infra*, p. 121, "the theory of delegation.")

Thus, it is no surprise that many writers on international law agree as to the inadequacy of the term and its misleading character. It has been suggested that the term "immunity of jurisdiction" would be more accurate and satisfactory, (See P. M. Brown, *Foreigners in Turkey*, pp. 3, 60, 61.) "A foreigner who enters upon Turkish soil," says L. E. Thayer, "does not carry his own laws with him in reality." Mr. Thayer forms the opinion that the term "immunity from all but a special jurisdiction" would be more exact. (*A. J. I. L.*, 1923, XVII, 227.) Commenting on this point, C. C. Hyde remarks that "exemption from local jurisdiction does not imply exemption also from local control. . . . Although a particular individual may not be amenable to local process, he may, nevertheless, be prevented from committing acts regarded as detrimental to the public welfare, and rendered illegal by local enactment." (Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, Boston, 1922. I, 429.)

the privilege of living under their own laws and were allowed freedom of worship.<sup>11</sup>

There is record of another case dating back to the year 526 B. C. whereby Greeks, migrating to Egypt to establish themselves in Naucratis, were allowed by Amasis (569-526 B. C.) freedom of worship and independent jurisdiction administered according to their own laws.<sup>12</sup> There is, after all, a wealthy source of material to support the evidence of a wide use of the principle of extraterritoriality in earlier centuries. Hence, if it is agreed that this principle forms the testing element of the capitulations, then the origin of the capitulations dates back to many centuries before Christ.

<sup>11</sup> See Brown, *Foreigners in Turkey*, p. 9, and T. Twiss, *The Law of Nations considered as Independent Political Communities*, 2d ed., I, 444

<sup>12</sup> *Revue d'histoire diplomatique*, 1890, IV, 535.

"Amasis, being partial to the Greeks," says Herodotus, "both bestowed other favours on various of the Greeks, and moreover gave the city of Naucratis for such as arrived in Egypt to dwell in; and to such as did not wish to settle there, but only to trade by sea, he granted places where they might erect altars and temples to the gods." (*Herodotus*, Book II, ch. 178; see translation by H. Gary, London, 1908, p. 167.) On the question as to whether or not the Greeks had settled at Naucratis before the time of Amasis, cf. W. W. Howe and J. Wells, *A Commentary on Herodotus*, Oxford, 1912, pp. 253-254.

"The Egyptians," comments Phillipson, "often allowed foreign merchants to avail themselves of local judges of their choice and even of their own nationality in order to regulate questions and settle differences arising out of mercantile transactions, in accordance with their own foreign laws and customs: The Greeks especially enjoyed these privileges on Egyptian territory." (C. Phillipson, *The International Law and Custom of Ancient Greece and Rome*, London, 1911, I, 193.)

## AMONG THE HEBREWS

Exterritorial arrangements are known to have existed among the Jews in earlier days. During their reign, the Hebrews allowed foreign tribes to live among them, permitting them to retain their own laws and traditions; while, on the other hand, foreign rulers allowed the Hebrews to live under Jewish laws and customs when the latter happened to come under foreign rule.<sup>13</sup>

## THE GREEKS

In Greece, history tells us, the foreigner was looked upon as an enemy and treated with cruelty. Piracy was a sanctioned practice. "The fleets of Athens, the best disciplined and most respectable naval force in all antiquity, were exceedingly addicted to piratical excursions."<sup>14</sup> Yet, there is record of the existence of an institution, known as the "proxenial institution,"<sup>15</sup> corresponding to the consular agency established in Egypt.<sup>10</sup> This institution which may be said to commence at about the end of the seventh century before the Christian era was largely the outcome of commercial intercourse and it recognized the principle of extraterritoriality whenever the question of foreigners arose.<sup>17</sup>

<sup>13</sup> Ravndal, "The Origin of the Capitulations and of the Consular Institution," *S. Doc. No. 34*, 67th Cong., 1st sess., p. 8.

<sup>14</sup> J. Kent, *Commentaries on American Law*, Boston, 1873, 12th ed., I, 5.

<sup>15</sup> Cf. P. Monceaux, *Les proxenies grecques*, Paris, 1886.

<sup>16</sup> See C. Philpson, *op. cit.*, I, chs. v, vi.

<sup>17</sup> Cf. *Revue d'histoire diplomatique*, 1890, IV, 535; also, R. Redslob, *Histoire des grands principes des gens*, Paris, 1923, p. 70.

"In order to belong to a political group in Greece it was indispensable

## THE ROMANS

The treatment of the foreigner by the Romans did not differ from that of the Greeks. The Romans called both strangers and enemies *hostes*, obeying the axiom of ceaseless war against such *advert hostem aeterna auctoritas*; but the cosmopolitan nature of Rome made it impossible for the Romans to drive the strangers from their midst, and while the latter were allowed to remain, they were refused the advantage of the sacred Roman law, *jus civile*, which was the exclusive law applying to the Roman citizen only. As a result, foreigners were allowed to settle their disputes according to their own laws and traditions. A new *praetor* was accordingly appointed (246 B. C.), called *praetor peregrinus*, who was given authority to adjust the controversy which arose from the various legal notions.<sup>18</sup>

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sable to belong to a family group. As the extension of the family was the tribe, so the expansion of the tribe was the State. Hence transitory aliens and even, for the most part, such as were permanently resident within the territory, were not regarded (apart from special concessions) as being amenable to the ordinary established national juridical organizations, so that a special jurisdiction had per force to be introduced in the interests of justice and state policy." (C. Phillipson, *op. cit.*, I, 192.)

<sup>18</sup> "It was a general principle which marked the early Roman policy in Italy to allow a subject community to retain its own municipal laws, and to administer justice between its own citizens, so far as this was consistent with a state of subjection to Rome." (W. C. Morey, *Outline of Roman Law*, N. Y., 1908, p. 64.) On the status and the functions of the *praetor peregrinus*, see *ibid.*, ch. li; also, E. Cuq, *Manuel des institutions juridiques des romains*, Paris 1917, pp. 54-58, 92-94.

## " THE BARBARIANS "

The principles of extritoriality were also thoroughly established and widely applied by " the Barbarians." In founding their new states, " the Barbarians " (Goths, Burgandians, Franks, Lombards, etc.) allowed the conquered peoples to keep their customs and laws. They did not try to incorporate the conquered population into their own nationality by imposing upon them the customs and the laws of the north.<sup>19</sup> Each case was decided in pursuance of the personal law of the defendant.<sup>20</sup> " The German," says Prof. Emerton, " thought of his legal rights as belonging to him, not because he was a member of the state, but because he was *himself*, the son of his fathers, and the heir of all that had seemed right to them. His law was a part of himself. He could no more change it or part with it than he could change or part with his own existence."<sup>21</sup>

Barbarians who had settled in Macedonia and Asia Minor for farming purposes obtained possession of the villages and the districts where they resided and

<sup>19</sup> " Franks, Burgandians, Goths, Romans inhabited the same territory subject to their personal law respectively. One might see five persons converting together, no two of whom were accountable to the same authority." (Ravndal, op. cit., p. 10.)

<sup>20</sup> T. E. Holland, *Elements of Jurisprudence*, edition 10, Oxford, 1906, p. 401. Marriage was contracted in accordance with the law of the husband.

<sup>21</sup> Emerton, *Introduction to the Study of the Middle Ages*, Boston, 1888, p. 75.

were granted the right to have their own domestic government and to propagate their native manners and customs. They acknowledged the sovereignty of the Emperor but without being required to submit to the magistrates of Rome.<sup>22</sup>

This same principle was observed by the conquering nations in Great Britain until the eleventh century when Canute the Great made an attempt to blend the Danes and the Saxons into one united people, subject to the same laws and governed by the same religious institutions.

### THE ARABS

No less was the principle of extritoriality observed by the Arabs. It is maintained by some historians that capitulations dating back to the days of Mohammed, the prophet of Islam, were granted. Mohammed, himself, is recorded as having granted certain extritorial privileges to the Christians in his dominions;<sup>23</sup> these were embodied in a document known as "the testament of Mohammed."<sup>24</sup> The

<sup>22</sup>Ravndal, *op. cit.*, p. 10.

<sup>23</sup>The exact date of the grant is calculated to have been October 6, 625 A. D.

<sup>24</sup>The original document is said to have been found in a convent, belonging to the Carmelite order of monks, in the neighborhood of Mecca. It provides for the protection of Christians, guarantees free exercise of worship, and makes fearful laws against the followers of Islam who would violate these terms of toleration. Christians were, on the other hand, to hold friendly relations with the Moslems and to refrain from extending any aid to the enemy of the Moslems. (The text is found in Van Dyck, E. A., "The Capitulations," *Senate Ex. Doc.* 3, 47th Cong., special sess., pp. 85-87; also in Alex, de

prophet is reported to have personally executed the provisions of this document.<sup>25</sup>

Furthermore, Arab rulers have frequently been noted to have granted similar privileges to non-Moslem communities residing within their dominions. Shortly after the death of Mohammed (636-637 A. D.) when the Arabs captured Jerusalem, a chart was conceded by the third Caliph, Omar Ibn el Khattab, assuring to the Christian inhabitants freedom of worship and protection of property and churches. Certain exemptions were also granted under the terms of the chart.<sup>26</sup> This chart, accord-

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Miltiz, *Manuel des consuls*, part 1, II, 495-490 and Charnere, *Negotiations de la France dans le Levant*, I, LXVI-LXIX.)

Some authors dispute the authenticity of the document; this can be refuted, however, by reason of the fact that mention was later made by Caliph Omar of a document of such character (See *infra*, note 26; also, Lawrence, *Commentaire sur les elements du droit international et sur l'histoire des progrès du droit des gens de Henry Wheaton*, IV, 106)

<sup>25</sup> "I promise," said the prophet of Islam, "to protect the Christian magistrates in my provinces, with my infantry and my cavalry, with my auxiliary troops and with the faithful who follow me." (*Vide R. D. I. L. C.*, 1896, I, 120.)

<sup>26</sup> "That surety shall be equally granted to their churches, bells, and holy places, inside as well as outside. . . . They deserve all respect; for they have been formerly honored by the Prophet in a document of his own seal by which he exhorts us to treat them with respect and to give them protection. For this reason, we, true believers, are bound to be kind to them in honour of him who was kind to them. They must be exempted of the capitation tax and of dues in all the countries and on all the seas of the Muslimin. . . . The true believers of both sexes must obey this law—Sultans or chiefs are not excepted—and comply with it, be they rich or poor." (For text, see Miltiz, *Alex, de Manuel des consuls*, part 1, II, 500; also, Famin, *Histoire de la rivalité et du protectorat des églises Chrétiennes en orient*, pp. 465-467.)

ing to Du Eausas, was faithfully and loyally observed as long as the Arabs remained the masters of Palestine.<sup>27</sup>

It is also to be noted that an embassy is said to have been sent by Harun-el-Rashid to Charlemagne which produced the effect of increasing the toleration of Christian worship throughout Moslem countries.<sup>28</sup>

### CONCLUSION

The wide spread of the exterritorial system has perhaps been promoted more by trade than by any other factor, although we must admit that conquests in the early centuries played a significant role and that the religious element had some influence on the development of the system. Its universality is evidenced by the various codes formulated in early times to regulate maritime intercourse. The principles of the Hanseatic League provided that its members were to be judged by their own laws wherever they might be engaged in commercial pursuits.<sup>29</sup>

"We conclude, therefore, that this exterritorial or capitulatory system goes back to a remote age, and that the principle of personality of law which provides for autonomous jurisdiction to the stranger in a foreign land dates back to early centuries when the principle was widely practiced, commonly recognized, and faithfully observed.

<sup>27</sup> Du Rausas, op. cit., I, 9.

<sup>28</sup> See infra, pp. 44 ff.

<sup>29</sup> Brown, *Foreigners in Turkey*, p. 14; Miltiz, *Manual des consuls*, I, 141.

PART I  
THE CAPITULATIONS PRIOR TO THE OUT-  
BREAK OF THE WORLD WAR



## CHAPTER I

### THE HISTORICAL INTERPRETATION OF THE ORIGIN OF THE CAPITULATIONS

#### INTRODUCTORY

The view that the origin of the capitulations under which foreigners enjoyed extraterritorial rights in the Ottoman Empire is to be attributed to the wide religious and social gap separating the Moslem from his non-Moslem neighbor has been often upheld by many writers. It is maintained that since the Turkish judicial system did not provide for the protection of the legal rights of the foreigner, it was but natural and indispensable for the Turks to allow non-Moslems to maintain their own jurisdictions on Turkish soil if these were to reside in the Ottoman Empire at all; this the Turks did, which consequently gave rise to the capitulatory institution. Historical facts, however, prove the contrary, and whatever may have been the reasons for the spontaneous desire of the Turks to grant these extraterritorial concessions to non-Moslems, foreigners and natives alike, the fact remains that the capitulatory system had existed practically in the same form and had been operating for centuries before the fall of Constantinople at the hands of the Turks.<sup>1</sup> All that the Ottomans

<sup>1</sup>" The system of capitulations under which foreigners to-day reside in Turkey," wrote Sir Edwin Pears, " is the one under which

did was to sanction the continuation of the system after their conquest" in acknowledgment of the general practice of the times—a conformity to the accepted rules of international intercourse."<sup>2</sup> The exterritorial system was not uncommon in the early centuries<sup>3</sup> and became commoner after the breaking up of the Roman Empire.<sup>4</sup> The origin of its wide application may be traced to the fifth century after Christ and may be attributed to the Visigoths in Spain after their conquest of that country.<sup>5</sup> The

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they have always resided there." (*The Fall of Constantinople*, N. Y., 1886, pp. 148-149.)

"When the Turkish rule was substituted for that of the Byzantine Emperors, the system already in existence was continued; the various non-Moslem peoples were allowed their semi-autonomy in matters affecting their personal status, and the Genoese of Galata were confirmed in their privileges" (*Encyclopaedia Britannica*, 11th ed., V, 284).

<sup>2</sup> Brown, *Foreigners in Turkey*, p. 28.

This is clearly shown in article XVI of the Capitulation of 1454, granted by the Turks to the Venetians shortly after the fall of Constantinople, which recognized the previous customary arrangements. The article provided "that his lordship of Venice may, if he desires, send to Constantinople a governor (consul), with his suite, *according to custom*, which governor (consul), shall have the privilege of ruling over, governing, and administering justice to the Venetians of every class and condition." (For text, see Ravndal, G. B., "The Origin of the Capitulations and of the Consular Institution," pp. 92-93.)

An exception to the general rule is manifested in this grant in that it was unilateral in character.

<sup>3</sup> See *supra*, p. 4 et seq.

<sup>4</sup> Sir Edwin Pears seems to describe the capitulations as "a survival in our own times of legal conceptions of the later Roman Empire." (See *Law Quarterly Review*, October, 1905, XXI, 408; also, C. Calvo, *Le droit international*, 5eme ed., Paris, 1896, II, 9.)

<sup>5</sup> See Twiss, "Consular Jurisdiction in the Levant, etc." p. 4; Du Moiron, *Les juridictions Françaises en Orient*, etc., p. 14; *Memoires de l'institut royal de France*, Academic des inscriptions et belles-

code of the Visigoths conceded to foreign merchants the privilege of being tried by judges selected from among their own countrymen.<sup>6</sup>

#### EXTERRITORIAL SYSTEM IN THE BYZANTINE EMPIRE

The exterritorial system was later recognized and widely practiced in the Byzantine Empire: Venetians, Genoese, and nationals of other states had formed colonies of their own within the Empire; these were originally traders, and being allowed to reside in the Empire, they obtained privileges chief among which was the right to maintain a national independent jurisdiction.<sup>7</sup> The consul of the colony was not only a diplomatic representative, but also a governor and judge; he was the legal protector of the nationals of his state.<sup>8</sup>

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lettres, 1833, X, 26-27; Brown, *op. cit.*, p. 10. On the practice of exterritoriality among the Barbarians, *cf. supra*, pp. 9ff.

<sup>6</sup> Miltiz, *Manuel des consuls*, I, livre 1, ch. iv, p. 161, sec. 2; part 1, livre 2, II, ch. i, p. 4, sec. 1, n. 2.

<sup>7</sup> "Foreigners resident in (Byzantine) Constantinople," says Mr. Grosvenor, "were under their own laws and amenable to their own magistrates. Such, for example, was the case with the Venetians, the Amalfians, the Genoese, and the Pisans. This arrangement was an advantage to the Byzantine authorities and a convenience to the foreigner." (Grosvenor, *Constantinople*, Boston, 1900, II, 699.)

<sup>8</sup> "The consuls held the offices of prefect, mayor, judge, and civil and police official. They filled the offices of registrar, notary, and bailiff." (Kandelafte, *L'avenir reserve au regime des capitulations en Turquie*, p. 101. See also, Bonfils (Fauchille), *Manuel de droit international public*, 7th ed., 1914, p. 497 and Feraud-Giraud, *fitats devant les tribunaux etrangers*, Paris, 1895, II, 5.)

The consuls were in the early period of the exterritorial system appointed by the members of the community residing abroad and not by the home government as it came to be later and is at the present time.

Miltiz describes the foreign consulate as then existing in the Byzantine Empire as an "enclos" where the consul, the merchants and all their compatriots resided. This residence section was called *fonde*. It included a church, a bakehouse, a public bathing house, a tavern, a slaughter house, and a fish market; it also included the market where merchandise and food stuffs were sold.<sup>9</sup> The consul was also to protect and inspect the church and to have supervision over all matters concerning the welfare of his community.<sup>10</sup> In other words, the foreign community was under the protection and the jurisdiction of the homeland and its members held allegiance to the sovereign of their country as if they were residing in the original state.

#### THE "WARINGS"

Sir Edwin Pears calls attention to the fact that even before the Italian cities had begun to acquire extraterritorial rights from the Greek emperors, the so-called "Warings" who were then known as "Russians" had enjoyed capitulatory privileges in the Christian Empire. According to Sir Edwin, the first treaty made with the "Warings" was that of 905 which constituted the first capitulatory treaty between foreigners and the Greek Emperor.<sup>11</sup> These

<sup>9</sup> Miltiz, part 1, II, 433.

<sup>10</sup> Ibid., p. 428.

<sup>11</sup> See Pears, *The Fall of Constantinople*, p. 149; Brown, *Foreigners in Turkey*, pp. 11-12; Pears, *Turkey and its People*, p. 337.

" Warings " were of the same Scandinavian stock as the English and were the oldest foreigners in Constantinople. They used to trade with the Empire, importing slaves to Constantinople and exporting back into Waringia eastern produce and Byzantine gold. They made several attempts to capture Constantinople during the eleventh and the twelfth centuries, but they failed in their attempts and a treaty was finally concluded between the invaders and the Emperor providing for peaceful relations. The settlements of the " Warings," however, ceased to be of importance when other foreigners found their way to New Rome.<sup>12</sup>

#### THE ARMENIANS

We must also consider the privileges granted by Justinian to the Armenians domiciled in Constantinople. According to these privileges, the Armenians were allowed to reside in a quarter of their own and were granted certain rights of autonomous jurisdiction to the effect of settling among themselves questions relating to marriage, heritage, etc., in accordance with their own laws.<sup>13</sup>

<sup>12</sup> A treaty made with the Warings in 912 provided for trial of the " Warings " according to Russian Law, for extradition, for cases of shipwreck, and for administration of the property of Russians dying intestate. The text of a treaty made in 945 is found in Louis Paris, *Le chronique de Nestor*. The text of another treaty of friendship concluded between the " Warings " (sometimes called Warangians) and the Greeks in 911 is found in Ravndal, "The Origin of the Capitulations and of the Consular Institution," pp. 90-91.

<sup>13</sup> Cf. Pears, *The Fall of Constantinople*, p. 148; also, *Missionary Herald*, November, 1914, CX, 496.

## THE ITALIAN CITY STATES

Among the pioneer cities of Southern Europe, the Italian cities were the first to acquire exterritorial privileges from the emperors of New Rome. As early as 991, the Venetians, domiciled in Constantinople, were allowed by the Greek Emperor to maintain their own jurisdiction,<sup>14</sup> and in 1056 a treaty of commerce was concluded defining the exterritorial privileges that the Venetians were to enjoy in Constantinople.<sup>15</sup>

In return for the help the Venetian fleet had extended to the Greek Emperor, Alexis Commene, capitulations were granted to the Venetians (1060) which exempted Venetian commerce in Rumania from taxation; the Venetians were, furthermore, exempted from the jurisdiction of Greek magistrates in all civil and criminal matters.<sup>16</sup>

A Bulla Aurea of the Emperor Alexis III (1199) conferred upon the Venetians the right of having their disputes settled by their own magistrates even when these disputes occurred between Venetians and subjects of the Empire.<sup>17</sup>

Similar privileges of exterritorial character were given to the nationals of other cities residing in Con-

<sup>14</sup> Brown, *Foreigners in Turkey*, p. 13.

<sup>10</sup> Pears, *op. cit.*, p. 166.

<sup>16</sup> Miltiz, *Manuel des consuls*, part 1, II, 19-20.

<sup>17</sup> Evans, *Leading Cases on International Law*, 2d edition, 1922, p. 278, n.

stantinople. In 1056 the Amalfians obtained concessions; in 1098 the Genoese followed, and in 1110 the Pisans obtained theirs.<sup>18</sup>

#### THE EXTERRITORIAL, SYSTEM AND THE CRUSADES

It was during the Crusades (1095-1291) that the practice of conceding exterritorial privileges became general.<sup>19</sup> In consideration for the material support of the commercial cities to the Christian princes in their conquests in the East, exterritorial concessions in sweeping forms were given. Some of the cities had even stipulated before extending their assistance that certain exemptions and exterritorial privileges were to be conferred upon their merchants in the conquered region.<sup>20</sup>

By the treaty of 1111, Venice was allowed to maintain a factory<sup>21</sup> at Acre. Twelve years later, in consideration for the help they extended in the siege of

<sup>18</sup> Pears, *The Fall of Constantinople*, p. 149.

<sup>19</sup> For a brief historical account of the Crusades, see: Williams, *The Historians' History of the World*, 1904, VIII, 314 ff.; Du Rausas, op. cit., I, 15 ff.; Charriere, *Negotiations de la France*, etc., I, Ixxii ff.

<sup>20</sup> "It is from that period that dates if not the origin, at least the development of the foreign consular institution which may be considered among the most remarkable effects that these immense armed pilgrimages produced upon the commercial and the maritime situation of Europe." (Miltiz, *Manual des consuls*, part 1, II, 13.)

"De Steck and other writers," said Warden, "have conjectured that the Crusades gave birth to consular institutions." (Warden, *On the Origin, Nature, Progress, and Influence of Consular Establishments*, p. 60. See also, H. Bonfils (Fauchille), *Manuel de droit international public*, ed. 7, 1914, p. 495.)

<sup>21</sup> The word factory is used here in the sense of an establishment or trading station where foreigners resided and carried on their trade.

Tyre, Venetian merchants acquired, after the occupation, the privilege of having a quarter and the right in that city for independent jurisdiction governed by their own laws.<sup>22</sup>

In 1139 Baudouin II, who was given assistance by Venice on his escape from captivity, granted the Venetians commercial privileges and the right to maintain their national jurisdiction within the whole region of Jerusalem; Venice acquired also in 1221 similar concessions in Beirut including the right of anchorage from Jean d'Ibelin, the Seigneur of the city.<sup>23</sup>

In 1187, Pisa acquired capitulatory rights in Tripoli.<sup>24</sup>

In the charter of 1152, Marseilles was given extraterritorial privileges in Jerusalem; this was sanctioned by Pope Clement III in 1190, and later by Innocent IV in 1272.<sup>25</sup> Marseilles obtained also several other capitulations in Syria and Palestine. In return for their help in the conquests, the merchants of Marseilles acquired concessions in Beirut (1223) which were later confirmed by Pope Gregory IX (1230). They enjoyed furthermore, similar privileges in Tyre and Acre.<sup>26</sup>

In February, 1243, Montpellier was granted various commercial privileges including extraterritorial

<sup>22</sup> Miltiz, *op. cit.*, part 1, II, 27.

<sup>23</sup> *Ibid.*, p. 30.

<sup>24</sup> *Ibid.*, p. 439.

<sup>25</sup> *Ibid.*, part 1, II, 178.

<sup>26</sup> *Ibid.*, pp. 178-181.

rights in Antioch, Tripoli, and Constantinople; special quarters were assigned to its nationals in these cities.<sup>27</sup>

#### EXTERRITORIALITY IN CYPRUS

Venetian settlements are recorded as having existed in Cyprus in the early part of the fourteenth century. In 1306, the kingdom of Cyprus exempted the Venetians from taxation and granted them the privilege of being judged by their own magistrates; these privileges were confirmed by the succeeding kings in 1238 and in 1860.<sup>28</sup>

#### EXTERRITORIALITY IN NORTHERN ASIA MINOR

Commerce was not confined to the Mediterranean basin, but extended also to the shores of the Black Sea. By the treaty of 1303 with the Emperor, the Venetians acquired commercial privileges in Trebizond; the treaty was renewed in 1319 and again in 1364.<sup>29</sup>

There is record, remarks Miltiz, of a treaty concluded in 1201 between Venice and the kingdom of Armenia, then known as "Small Armenia," granting the Venetians in Armenia exemptions and extritorial privileges; this was renewed in 1245 and again in 1333.

<sup>27</sup> *Ibid.*, p. 200.

<sup>28</sup> *Ibid.*, p. 32.

<sup>29</sup> *Ibid.*, p. 40.

## PRACTICE OF EXTERRITORIALITY IN EUROPE

It is interesting to note that the principle of exterritoriality was applied even among<sup>1</sup> Italian neighboring cities whose laws and traditions were identical. At the dose of the thirteenth century, Frederic II, king of Sicily, confirmed the exemptions and the privilege of independent national jurisdiction in criminal and civil matters formerly granted to the Genoese by the Norman princes;<sup>30</sup> and in 1285, James the First, another ruler of Sicily, granted several exemptions including the right of national jurisdiction to the Catalan merchants residing within his territory.<sup>31</sup>

The exterritorial system was also well recognized by other European countries: The Italian merchants of Genoa, Venice, Milan, Bologna, Rome, Pisa, Florence and other cities, engaged in trade with the principal French cities and residing there, were subject only to the jurisdiction of the special judges of their respective states; these judges were called " Captains of the University of Lombard and Tuscan merchants. " In the chart of 1276, Philip the Hardi, king of France, granted several privileges and exemptions to the members of this mercantile university.<sup>31</sup>

In 1174, Raymond V, count of Toulouse, granted the Genoese consuls a *fonde* at Saint-Gilles and a

<sup>30</sup> Ibid., p. 118.

<sup>31</sup> Warden, *On the Origin, Nature, Progress, and Influence of Consular Establishments*, p. 58.

<sup>32</sup> Miltiz, *op. cit.*, pp. 77-78.

quarter in the city for the habitation and trade of their nationals. The Genoese were exempted from all tolls and dues on their commerce, and, except in capital crimes, they were exempted from local jurisdiction.<sup>33</sup>

The French cities also enjoyed similar privileges in Italian cities between 1252 and 1268; extraterritorial privileges were formally granted in a charter addressed to the consuls of Montpellier.<sup>34</sup>

In 1402, Italian consulates were established in London and the Netherlands where they were granted authority to exercise jurisdiction over Italian nationals in civil and criminal matters. Similarly, Richard III, king of England, appointed in 1485 a certain Larent Strozzi upon whom he conferred judicial authority including jurisdiction over all Britishers settled in Italy.<sup>35</sup>

By the treaty of peace of January 20, 1490, between Henry, king of England, and Jean, king of Denmark (art. 8), British merchants residing in Denmark, especially at Berghen, were given the right to elect their own judges who were to try all civil and criminal cases between British nationals.<sup>36</sup>

<sup>33</sup> Germain, *Histoire du commerce de Montpellier anterieurement a l'ouverture du port de Cette*, Montpellier, 1861, pp. 98-100. (Cited in Bahi ed Dine Barakat, *Des privileges et immunités dont jouissent les étrangers en Égypte*, p. 3.)

<sup>34</sup> Miltiz, op. cit., p. 203.

<sup>35</sup> Warden, op. cit., p. 72. See also Tarring, *British Consular Jurisdiction in the East*, p. 3 and *Revue d'histoire diplomatique*, 1890, IV, 546.

<sup>36</sup> Feraud-Giraud, *Etats devant les tribunaux étrangers*, Paris, 1895, II, 7.

In 1555, Iwan Wassiliwitch, emperor of Russia and grandduke of Novogorod and of Moscovy, granted a charter to the English by virtue of which British merchants were allowed to trade throughout the Russian dominions and to enjoy there complete independent national jurisdiction.<sup>37</sup>

There is also a record of similar privileges being reciprocally granted by other European cities such as the German cities and the British trading posts.<sup>38</sup>

#### EXTERRITORIALITY IN EUROPE IN THE SEVENTEENTH CENTURY AND AFTER

The most striking of all is that as late as the nineteenth century the exterritorial system continued to operate in some Western nations. By the treaty of Rio-Janeiro of February 19, 1810, British nationals were given special privileges in Portugal very similar to the immunities enjoyed under the capitulatory regime. In the different ports and cities of the kingdom of Portugal there were special British courts consisting of judges elected by the Brit-

<sup>37</sup> Warden, *On the Origin, Nature, Progress, and Influence of Consular Establishments*, p. 67.

<sup>38</sup> See *supra*, p. 12, "the Hanseatic League."

It is to be noted that in the reign of Richard I of England, a special court called the "Exchequer of the Jews" was established to decide all civil and criminal cases in which Jews were implicated, and purely civil cases in which both parties were Jews were generally referred to a purely Jewish tribunal to be decided by Jewish law. (See Henriques, *The Jews and the English Law*, Oxford, 1908, p. 54; also, Hyamson, *A History of the Jews in England*, London, 1908, p. 52.)

ish residents competent to try all cases submitted by British subjects.<sup>39</sup> The treaty continued in effect until 1842 when it was succeeded by the treaty of July 3, 1842.<sup>40</sup>

The Hanseatic cities enjoyed similar privileges in Portugal; their privileges were extended to Andalusia in September, 1607, and to Castile in November of the same year.<sup>41</sup>

The treaty of November 14, 1788, concluded between France and the United States and abrogated by act of Congress on July 7, 1798, gave the privilege of special jurisdiction to each of the parties in the territory of the other.<sup>42</sup> Article XII of this convention stipulated that all differences and suits between French citizens in the United States or between Americans in France, particularly cases relative to wages or terms of engagements of the crews of the vessels, and all quarrels of whatever nature which may arise between the privates, between any of the privates and their captain, and between the captains of different vessels of their nation should be determined by the respective consuls and vice consuls; "no officer of the country, civil or military, shall interfere therein, or take any part whatever in the matter; and the appeals from the said consular

<sup>39</sup> The election of the judges by the British residents was subject to the approval of the British Government.

<sup>40</sup> Lawrence, *Commentaire sur les elements du droit international*, Leipzig, 1880, IV, 2.

<sup>41</sup> *Ibid.*, p. 2.

<sup>42</sup> For the text of the treaty, see *Malloy*, I, 490-496.

sentences shall be carried before the tribunals of France or of the United States to whom it may appertain to take cognizance thereof."<sup>43</sup> Article XIII provided for the establishment of special tribunals in the territory of each of the parties to try cases of commercial nature.<sup>44</sup>

And, finally, we should note that the system of extritoriality operated in Christian Bulgaria even after Bulgaria had been recognized as a sovereign country, and, theoretically, the system continued to exist there even after the close of the World War.<sup>45</sup>

<sup>43</sup> See also, Moore, *Digest of International Law*, II, 83-85.

<sup>44</sup> "The general utility of commerce having caused to be established within the dominions of the most Christian King particular tribunals and forms for expediting the decision of commercial affairs, the merchants of the United States shall enjoy the benefit of these establishments; and the congress of the United States will provide in the manner the most conformable to its laws for the establishment of equivalent advantages in favor of the French merchants, for the prompt despatch and decision of affairs of the same nature."

<sup>45</sup> Bulgaria won its autonomy by the treaty of Berlin of July 13, 1878 (*St. P.*, LXIX, 749-768). It was stipulated in that treaty (article VIII) that the capitulations in Bulgaria were to remain in force and no modification of the *status quo* was to be allowed without the consent of the powers concerned. (Cf. *infra*, p. 170.) Since then, the Government of Sofia has been endeavoring for many years to put an end to the capitulatory system which was looked upon as a foe to the patriotic spirit of the Bulgarian people. By the Franco-Bulgarian commercial treaty of January 13, 1906 (De Clercq, *Recueil des traites de la France*, 1905-1906, XXIII, 292-293, articles XXI, XXII, XXIII), France relinquished her capitulatory rights in Bulgaria, but in a declaration of the same date (*ibid.*, XXIII, 314) this relinquishment was made conditional and was to become effective only when Germany, Austria-Hungary, Great Britain, Italy, and Russia would have relinquished their capitulatory rights there. By an agreement, dated Dec. 8, 1905 (Martens, *Nouveau recueil general de traites*,

## CONCLUSION

We conclude, therefore, that the origin of the capitulations goes back to the Christian era and that the Mohammedan religion or the Ottoman legal codes are not to be deemed the original causes of the establishment of the extraterritorial system in Tur-

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2eme srie, XXXIV, 747), Great Britain similarly consented to give up her capitulatory rights in Bulgaria as soon as Germany, Austria-Hungary, France, Italy, and Russia should have renounced theirs. Bulgaria, however, failed in her efforts to win the consent of all the powers concerned, and the capitulations consequently remained in vigor. Soon after Bulgaria's independence was proclaimed in 1908, the Bulgarian Minister of Justice issued a confidential circular by which the heads of the judicial authority in the country were instructed to give no account thereafter of the system of the capitulations in conducting their judicial functions. This unilateral act on the part of Bulgaria was immediately protested by the foreign diplomatic agents, and, in response, the Bulgarian Government decided to negotiate with the powers; but, up to the outbreak of the World War, no fruitful results were achieved of these negotiations, and the entrance of Bulgaria into the War on the side of the Central powers in 1915 made the continuation of negotiations impossible.

The treaty of Neuilly signed by Bulgaria on November 27, 1919, (*Treaty Series*, 1920, No. 5, *Cmd* 522; also, *A. J. I. L.*, Supplement, XIV, p 245), explicitly asserted the consideration that the capitulatory system had always existed in Bulgaria and provided that its modification or suppression could be effected only through agreements to be reached by Bulgaria with each of the Allied Associated Powers to this end. Art. CLXXV of the Treaty (*Treaty Series*, 1920, No. 5, *Cmd.*, 522, p. 43, sec. 2) declared that "the immunities and privileges of foreigners as well as the rights of jurisdiction and of consular protection enjoyed by the Allied and Associated Powers in Bulgaria by virtue of the capitulations, usages and treaties, may form the subject of special conventions between each of the Allied and Associated Powers concerned and Bulgaria." (See: Calary de Lamaziere, *Les capitulations en Bulgarie*; Caleb, *Du regime des capitulations en Turquie par rapport a, la Bulgarie*, 1907; Despagnet, F., *Cours de droit international public*, 4th ed., Paris, 1910, pp. 498 ff.;

key, as it is frequently believed,<sup>46</sup> although we must admit that religion and the difference in judicial systems have been a major factor, later, when the Western Powers insisted on the continuation of the capitulatory institution in the Ottoman Empire.<sup>47</sup> In

Dillon, "Abolition of Capitulations in Bulgaria," *Contemporary Review*, November, 1908, XCIV, 525-526; Dislcre, P. et R. de Mouy, *Droits et devoirs des Francais dans les jmys d'orient et d'xtreme orient*, 1893, p. 112; Fauchille, *Traite dc droit international public*, 3eme partie, Paris, 1926, I, 180; Merignhac, "Lcs capitulations et l'incident Franco-Bulgare de 1891," *R.D.I L C.*, 1892, XXIV, 147-169; Willoughby and Fenwick, *Types of Restricted Sovereignty and of Colonial Autonomy*, Wash. Govt. Printing Office, 1919, pp. 22-25.)

Although the Powers did not claim any capitulatory privileges in Bulgaria after the War, it was not until 1925 that Great Britain expressly recognized (he condition of reciprocity in its commercial relations with Bulgaria. See "Notes Exchanged between the United Kingdom and Bulgaria providing for the Provisional Regulation of Commercial Relations between the two Countries" (*Treaty Series*, No. 53 [1925], *Cmd.* 2556.)

<sup>40</sup> Du Rausas seems to agree that the dissimilarity of laws, religious rites or traditions cannot be deemed to be the explanation for the origin of the capitulations. He maintains that if it were exact to say that the exceptional treatment of foreigners in Turkey was caused by the dissimilarity between Christian and Moslem institutions, the situation would have consequently necessitated the making of reciprocal grants of exterritorial concessions, namely, Turkish subjects should have been given exterritorial rights in Christian countries, but this was not done, and the capitulations are, in this respect, unilateral in grant and practice. Du Rausas further explains the opinion that no motives of economic character can be accredited to the origin of the capitulations. (See Du Rausas, *Le regime dcs capitulations dans l'empire ottoman*, I, 13-15.)

<sup>47</sup>" Il faut voir Forigine des capitulations comme une suite naturelle des idees au moyen-age, et la difference de religion ou de civilisation n'a pu etre prise en consideration que plus tard lorsqu'il s'est agi de forcer la Turquie au maintien des anciens privileges." (Aliotti, *Les Francais en Turquie*, etc., p. 27.)

other words, the institution, as it originated, had little in common with race, religion or region;<sup>48</sup> it

<sup>48</sup> In his article, "Islam, Personal Law and the Capitulations," Pierre Crabites, American Judge on the Egyptian mixed tribunal, seems to stress the idea that the system of personality of laws is "one of the pillars of Islam, erected by Islam itself, and symbolizing one of the most venerable of its traditions." He maintains that the system of territoriality of law is entirely unknown to the Mohammedans who, unlike the western people, cannot think in terms of territorial laws. So he concludes that the abolition of the capitulations would inevitably destroy one of the most basic principles of Islam. (Cf. *The Moslem World*, April, 1928, XVIII, 173-176.) Crabites seems to ignore the fact that the system of personality of laws had been a commonly recognized principle among all the nations, western as well as eastern, Christian as well as Mohammedan. Islam did sanction the principle of personality of law, but did not erect it. "The Turk," says Abbott, "had found this system already established in the Greek Empire, and adopted it as he adopted so many other Byzantine customs, good and bad." (*Turkey, Greece and the Great Powers*, N. Y., 1917, p. 4.) The change in the social, political, and economic order of society is chiefly responsible for the development of the new idea of territoriality of law, and Mohammedan countries were certainly influenced by the same factors which led westerners to think in terms of territoriality of law.

Gontaut Biron similarly seems to ignore the fact that the capitulations had existed long before the coming into power of the Turks. He gives as a reason for the existence of the capitulatory system "the deep-seated inaptitude of the Turks to govern," as a result of which the western powers sought practical means to safeguard the interests of the Christian states and their subjects by establishing the exterritorial system. "From that day," he concludes, "the idea of a capitulatory regime was created" (Gontaut Biron et L. de Reverend, *D'Angora a Lausanne*, pp. 107-108.)

Dr. C. Hamlin, on the other hand, seems to conclude that the capitulations are contrary to the spirit of Islam. "They were designed," he says, "to encourage commerce and intercourse with foreigners, and are contrary to the exclusive and insolvent spirit of Islam." (*Our Day*, May, 1887, No. 17, III, 478.) This view again, if not groundless, certainly goes to the extreme; for Islam laid no barriers against the practice of the exterritorial system. In a word,

was independently established without regard to any of these three factors.<sup>49</sup>

The religious gap separating the Christian from the Moslem world does not constitute the cause for the origin of the capitulatory system,<sup>50</sup> although it somewhat explains the reasons for the continuation of the system in Moslem countries when it disappeared in the Christian world. The profound difference in religion, laws and customs does not give

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the capitulatory system is not *contrary* to Islamic rites; neither was the institution *erected* or *created* by Islam. What Islam did was to *sanction* the existing system of intercourse between foreigners and natives and can by no means be deemed as responsible for the origin or the existence of the system.

<sup>49</sup> It has been indicated that extraterritorial privileges were reciprocally granted and practiced by Christian nations and that the capitulatory system was not confined to Moslem-Christian relations. It is also to be noted that the system operated even between Moslems themselves. As late as 1875, Moslem Turkey granted extraterritorial rights in sweeping form to Moslem Persians residing in Turkey. See art. 7 of the Turco-Persian convention of December 20, 1875. (Noradounghian, *Recueil d'actes internationaux de l'empire ottoman*, III, 391-394.)

<sup>60</sup> "The principle of the capitulations was the old one—taken over from antique Mediterranean and Byzantine jurisprudence—that the sovereignty of a state applied only to its subjects." (Shotwell, *International Conciliation*, pamphlet No. 180, November, 1922, p. 482.)

"It began as part of the early policy of law, of practice, of policy, and of immemorial tradition under the Roman Empire and far earlier, that every stranger in a strange land remained under the jurisdiction of his own nation and his own people and lived apart in a special area assigned to him and to his people." (Talcott Williams, *Turkey: A World Problem of to-day*, pp. 272-273.)

"Historically, it must be admitted that the present position of foreigners in Turkey is an outgrowth, not of any special arrangements made when Constantinople passed out of Christian hands, but of institutions sanctioned by the Byzantine Emperors." (Eliot, *Turkey in Europe*, p. 123.)

an answer to the question as to why the extraterritorial system existed in the middle ages among peoples of the same creed and culture, and *a fortiori* it by no means furnishes the explanation for the origin of the capitulatory institution.

The capitulatory regime has its origin in a once universally observed principle, namely, the principle of "personality of law" by which the foreigner carried his own laws wherever he went.<sup>51</sup> In origin, it was the development of a normal procedure; it is exceptional now, because, with the decline of the city state of the middle ages, jurisdiction, throughout all progressive nations, has become territorial. The firmly established theory of "territorial right" (*jus territoriale*) by which a state has exclusive sovereignty over its territory gave an anomalous character to the capitulatory system. It is thus clear that there had been no derogation from sovereignty as then conceived nor any disparagement to an independent existence when Turkey had followed the steps of the Christian emperors in the grant of capitulations after the capture of Constantinople.

<sup>61</sup> "Les capitulations nous apparaissent ainsi comme l'expression positive dans le domaine des faits internationaux du système de la personnalité des lois." (Du Rausas, *Le régime des capitulations dans l'empire ottoman*, I, 21.)

CHAPTER II  
THE FOREIGNER IN MOSLEM LAW  
INTRODUCTORY

What is the status of the foreigner in Moslem law? Is he deemed an outlaw in Moslem society or is he entitled to justice and protection on Moslem territory? It is to be noted, in this connection, that indeed few writers have impartially discussed this question; consciously or unconsciously, religious sentiment has played a great part in the explanation of the situation. It has been claimed by many western authors that Moslem law does not concern itself with the foreigner, that it does not provide for his protection, and that it is only in the capitulations that the foreigner can find his guarantees.<sup>1</sup> " The Moslem law," says Du Rausas, " does not concern itself with the foreigner, for it looks upon him as infidel; that is to

<sup>1</sup>" There is, outside of the Capitulations or of compulsion by external power," says A. D. F. Hamlin, " no right of legation, no immunity of ambassadors, no right to the protection of life and property, to trial by one's peers, to immunity from arrest without due process of law, to testify in court, to be represented by an advocate, to travel, to carry on business, even to live, for any one not a Moslem." (*The Forum*, July, 1897, XXIII, 526) Continuing, Mr. Hamlin asserts that " the Capitulations are a necessity of the situation. Only by their protection is the resident foreigner enabled to live, travel, worship, and do business without fear of constant interference and oppression. . . . The Capitulations are the charter of life, liberty, and the pursuit of happiness for the foreign resident in Turkey." (Ibid , pp. 528-530 )

say, it places him out of right, and guarantees neither his life nor his liberty or his property."<sup>2</sup> In other words, according to this school of writers, the explanation of the existence of the capitulations in Turkey is to be found in the inimical view of Islam towards the foreigner. They maintain that Islam divides the world in two parts, namely: " Dar-ul-Islam " or the house of Islam to which all Moslems belong; and " Dar-ul-harb " or the house of war to which all non-Moslems belong. According to them, Islam preaches a continual warfare with the non-Moslems and there can only be a temporary peace in the form of a truce and in the making of certain guaranties. This has been and continues to be the view of the vast majority of western writers and of missionaries to the east in particular. It is largely based on certain passages of the Koran, the Moslem holy book:

" When ye encounter the unbelievers,, strike off their heads until ye have made a great slaughter among them; and hind them in bonds."<sup>3</sup>

" O true believers, enter not into friendship with a people against whom God is incensed,"<sup>4</sup>

Is this view correct or justified? The following discussion is intended to give an answer based largely on the primary sources of Islamic rites and legal codes.

<sup>2</sup> Du Rausas, *Le regime des capitulations dans l'empire ottoman*, I, 126.

<sup>3</sup> *Koran*, Sura XLVII, verse 4.

<sup>4</sup> *Ibid.*, Sura LX.

## ISLAM

Islam, like all primitive societies, is governed by sacred law. Its regulations are chiefly concerned with the members of the Moslem community. No need was foreseen for any special provisions to define the judicial standing of the foreigner as long as the principle of "personality of law" had been long in practice and universally adopted. All that was necessary was the pledge for the protection of the foreigner and the respect of his individual rights as a member of *his* community, and to this, as we shall see, the Moslem code did not fail to give attention. A better idea may be had if we briefly analyze the attitude of Islam towards human society in general. Islam classifies the people of the world under four categories, namely: (a) The Moslems; (b) the Kitaby; (c) the Mustamins; (d) the Harby.

## THE MOSLEMS

The Moslems are those who believe in Islam and its prophet and who are to be treated equally and are to enjoy equal rights with no distinction or discrimination whatsoever.

## THE "KITABY"

The "Kitaby," or the people of the book, are those who have received revelations, namely, the Jews and the Christians; these are recognized by Islam and are to be offered protection; they are to

be distinguished from the " Harby " against whom fighting is to be continued.<sup>5</sup>

Some authors still cherish the opinion that Islam recognizes no other religion but Islam. The facts, however, give us evidence to the contrary; for Islam not only offers protection to the " Kitaby," but also sanctions the diversity of religions. " The Prophet's chief political innovation was the recognition of tolerated religions."<sup>6</sup>

" Unto every one of you," says the Koran, " have we given a law, and an open path; and if God had pleased, he had surely made you one people; but he hath thought fit to give you different laws, that he might try you in that which he hath given you respectively."<sup>7</sup>

There are several passages in the Koran which assure the protection of " the people of the book " and make tolerance to their creed an obligation. No words can be more explicit in expressing the respect of the prophet of Islam to the *Kitaby's* religions than the following passage:

" Surely those who believe, and those who Judaize, and Christians, and Sabians, whoever believeth in God, and the last day, and doth that which is right, they shall have their reward with their Lord; there shall come no fear on them, neither shall they be grieved. . . . Say, we believe in God, and that which hath been sent down unto us, . . . and that which was delivered unto Moses, and Jesus, and that which

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<sup>5</sup> See *infra*, p. 40.

<sup>6</sup> *British Foreign Office, Historical Section, Peace Handbooks*, No. 57, X, 12.

<sup>7</sup> *Koran*, Sura V.

was delivered unto the prophets from their Lord; We make no distinction between any of them, and to God are we resigned."<sup>8</sup>

Another passage reads:

" We also caused Jesus the son of Mary to follow the footsteps of the prophets, confirming the law which was sent down before him; and we gave him the Gospel, containing direction and light; confirming also the law which was given before it, and a direction and admonition unto those who fear God."<sup>9</sup>

The " Zimmis," or the " Kitaby " residing in Moslem territory, were consequently given a special social status and were entitled to protection. Generally speaking, their assimilation in the social order of Islam was not insisted upon; they were allowed to live freely in their quarters under their own laws subject to the payment of certain taxes, the " Jizyah," which were imposed in proportion to wealth.

#### THE " MUSTAMIN "

The people coming under the third category are the " Mustamins," the class of people which concerns us most, for these are the temporarily residing foreigners in Moslem territory. Contrary to the common belief, Moslem law clearly defines the status of the foreigner in addition to its recognition of the principle of personal laws in the treatment of the

<sup>8</sup> *Koran*, Sura II, verses 59, 130.

<sup>9</sup> *Ibid.*, Sura V, verse 50. " Les Musulmans, ne Toubhons pas, ont une haute idee des vertus et du pouvoir miraculeux de Jesus-Christ." (Nys, *Etudes de droit international et de droit pohitique*, Paris, 1896, p. 49.)

foreigner. Chapter III of the Islamic political code<sup>10</sup> reads as follows:

When he enters with the express permission of the sovereign or his representatives, the foreigner ought to enjoy in Moslem territory the protection of the laws. Commentary. By this permission, protection and safe conduct (email) is accorded to the foreigner who, in consequence, is called *Mustamin*, that is to say, placed under the protection of the State. If necessary, any Moslem, provided he be a freeman, may also grant to a foreigner at the frontier entrance into the country, and his guarantee should be respected.<sup>11</sup>

Moslem law, furthermore, provides that a foreigner may reside in Moslem territory during which period he is exempted from taxation, but if he resides more than one year, he becomes *ipso facto* a non-Moslem resident subject to the special tax imposed on the " *Zimmi*."<sup>12</sup>

That the word " *Mustamin* " bears nothing suggestive of a stigma of inferiority is clearly shown in

<sup>10</sup> This political code is one of the five parts in which the general code is divided. The general code, known as " *Mltaka-ul-ebhar*" (confluence of the seas) and comprising the religious, civil, commercial, political, and military codes, was drawn up under the reign of Soleiman II (1520-1566) and it has been the main authority in Moslem jurisdiction in Turkey ever since. It was translated into French by Mouradja d'Ohsson, the Swede Charge d'Affaires to Turkey under the title of *Tableau general de l'empire ottoman*. The first volume appeared in 1787.

<sup>11</sup> Mouradja d'Ohsson, op. cit., IV, 37.

<sup>12</sup> " The foreigner may not dwell in our territory a whole year, and it shall be said to him, if thou dwellest a year we will impose upon thee the personal tax (*djiziah*); and if he dwell a year he becomes *ipso facto* a tributary (*Dhimmi*)." (Van Dyck, " Report on the Capitulations of the Ottoman Empire," *S. Ex. Doc.* No. 87 [vol. IV], 47th Cong., 1st sess., p. 5.)

the next chapter of the code which provides that Moslems residing in a foreign country should be called by the same term:

"A Moslem should not go to a foreign land except under the pledge of a public safeconduct. Commentary. Likewise he should then bear the title of Mustamin as the foreigner in Moslem lands."<sup>13</sup>

Hence, we must admit that Moslem law takes care of the foreigner residing in Moslem territory and gives him the necessary protection in the enjoyment of freedom of travel and safe residence. Can we make now any other conclusion than that there is an evident fallacy in the theory of perpetual hostility between Islam and international law<sup>14</sup> concerning the treatment of the foreigner? "It would be difficult," remarks Professor Brown, "to express in simpler terms the rights of foreigners under the laws of nations than in the words of this Moslem code."<sup>35</sup>

#### THE " HAKBY "

And finally come the " Harby " with whom war may be continued. These are called " Mushrekin " or idolaters.<sup>18</sup> It is to be noted that even with these

<sup>13</sup> Mouradja d'Ohsson, *Tableau general de Vempire ottoman*, IV, 44.

<sup>14</sup> Dr. Hamlin, an ardent exponent of this theory, emphatically states that "the law of nations is absolutely incompatible with Mohammedan principles." (*The Forum*, July, 1897, XXIII, 526.)

<sup>15</sup> Brown, *Foreigners in Turkey*, p. 7.

<sup>16</sup> We should note, in this connection, that the passages upon which western writers base their conclusions (cf. supra, pp. 34-35) apply to these idolaters and not to the people of the book or the Christian foreigners.

a truce may be made; and in case such an agreement is concluded, the Koran makes it a duty to observe the terms thereof:

"Wherefore perform the covenant which ye shall have made with them," says the Koran, "until their time shall be elapsed . . . , and when the months wherein ye are not allowed to attack them shall be past, kill the idolaters where-soever ye shall find them, and take them prisoners, and besiege them, and lay wait for them in every convenient place. But if they shall repent, and observe the appointed times of prayer, and pay the legal alms, dismiss them freely."<sup>17</sup>

The Koran also provides that the idolaters be protected when they have surrendered:

"And if any of the idolaters shall demand protection of thee, grant him protection, that he may hear the word of God; and afterwards let him reach the place of his security. This shall thou do, because they are people which know not the excellency of the religion thou preachest."<sup>18</sup>

<sup>17</sup> *Koran*, Sura IX.

<sup>18</sup> *Koran*, Sura IX, verses 8, 9.

The Moslems did not neglect to observe the laws of war and humanity in their wars against the infidels. In the conquest of Syria by the Arabs, the Kaliph Abou-Bekr, addressing his troops, made the following recommendations: "Combattez franchement et loyalement; n'usez pas de perfidie envers vos ennemis; ne mutilez pas les vancus; ne tuez m les vieillards, ni les enfants, ni les femmes; ne detruisez pas les palmiers; ne brulez pas les maisons; ne coupez pas les arbres fruitiers; n'egorgez pas le bctail, a l'exception de ce qu'il faudra pour votre nourriture. Vous trouverez sur votre route des hommes vivant dans la solitude et la meditation, voues a l'adoration du seigneur; nc leur faites point de mal." (Nys, *Etudes de droit international et de droit politique*, Paris, 1896, p. 48.)

Count Ostrorog summarizes the Moslem code of war as follows: "When war is declared, even if it is occasioned by the enemy's treacherous aggression, all the enemy's subjects in the land must be

## CONCLUSION

In the light of these considerations, can we conclude other than there is no basis for the theory of an irreconcilable hostility between Islam and the foreigner? "The designation of non-Moslems as members of the *house of war*," says Mr. Brown, "would seem to have no practical value in determining the juridical status of foreigners in Turkey. It may properly be as an approximate equivalent of 'hostis' as applied by the Romans to foreigners, or of 'barbarian' as used by the Greeks."<sup>18)</sup>

Now that it has been explained that Islam is not to be accredited with the origin of the capitulations and that Moslem law is not to be deemed as hostile to the foreigner residing on Mohammedan soil, we shall proceed next to give a general account of the capitulatory regime to which a historical introduction will be given in the next chapter.

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free to depart. Further in order to make sure that they shall not be molested, women and children must be escorted to the frontier. During military operations, it is forbidden to touch women, children, the aged, priests, and also such men of trade, handicraft or mental service as have no fighting capacity." (Leon Ostrorog, *The Turkish Problem*, London, 1919, p. 19.)

<sup>19</sup> P. M. Brown, *Foreigners in Turkey*, pp. 5-6.

## CHAPTER III

### HISTORICAL CONSIDERATIONS

#### INTRODUCTORY

Until the victory of the Turkish Sultan which marked the end of the rule of the Byzantine Emperor, we can hardly speak of Turkey as an internationally recognized state, despite the fact that there had been several agreements entered into between the Sultan and the neighboring Christian city states. The Turks were more or less a group of warriors organized under the leadership of the Sultan who was both ruler and commander in chief of the armed forces. But the situation took an entirely different outlook when in 1453 the City of Constantinople fell into the hands of the Turks. The triumph of the Crescent over the Cross brought a large non-Moslem population under Turkish rule. In a comparatively short period, the Ottoman Sultan succeeded in extending his rule in Europe, Asia and Africa to such an extent that he obtained control over trade routes then constituting the chief highway of commerce between East and West.<sup>1</sup> More-

<sup>1</sup> It is commonly believed that the search for new routes to India that eventually led Columbus to the discovery of the New World was caused by the expansion of the Turks who, by blocking the main Asian land routes of European trade with the Orient, stimulated the western nations to turn their eyes towards the Atlantic for

over, the Turks gave up commerce to foreigners, consequently increasing the foreign element in the Empire.

#### ARABIAN INSTITUTIONS AND TURKISH CONTACT

It is to be remembered that long before the Turks appeared on the stage as a conquering power there had been Arab dynasties of higher civilization who professed Mohammedanism, and as it has often been that people coming in contact with a higher civilized community copy the fundamental principles of that civilization, so it was with the Turks. They had little to give but much to adopt. They embraced Islam, the religion of the Arabs, and copied many of the Arabian institutions and practices.<sup>2</sup> Thus the Moslem Arabs set an enlightened example to their Ottoman successors in the grant of freedom of worship and liberty to trade, including extraterritorial rights, to non-Moslems, and in the extension of protection to Christian judges; for the Koran says, " they who

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a sea route. (See Chiról, V., *The Occident and the Orient*, Chicago, 1924, pp. 27-30.) This is refuted, however, by Professor Lybyer, who maintains that " the discovery of the route around Africa to Asia was not caused by the advance of the Turks. They did not acquire Syria and Egypt until after the turning of the Cape, and so did not block the trade-routes." (See *The Question of the Near East*. Institute of International Education, International Relations Clubs, Syllabus No. VII, p. 17; also, "The Influence of the Rise of the Ottoman Turks upon the Routes of Oriental Trade," Annual Report of the *American Historical Association* for the year 1914, I, 125-133.)

<sup>2</sup> The early contact of the Turks with the Arabs was through their enlistment as mercenary guards at the courts of the Caliphs of Bagdad.

have received the gospel, might judge according to what God hath revealed therein; and whoso judgeth not according- to what God hath revealed, they are transgressors."<sup>3</sup>

As conquerors the Arabs, in most cases, allowed the vanquished to keep their own laws and traditions, and as residents in a foreign country they insisted on being granted a similar privilege.<sup>4</sup>

As early as the time of the reign of Caliph Harun el-Rashid there is record of agreements entered into between the Caliph and Charlemagne under which the kings of France later claimed the guardianship of the holy places in Jerusalem.<sup>5</sup>

The Arabs had also obtained in China in the ninth century the privilege of having a Mohammedan

<sup>4</sup> *Koran*, Sura V, verse 51.

<sup>1</sup> The Arabs in Spain, for instance, allowed the Christian population to maintain their own jurisdiction. Similarly, when the Arabs invaded Smd, as m Spam, they allowed the people of that region to exercise their own creed and to be judged by their own laws. On the other hand, Arab communities residing in foreign countries enjoyed similar exterritorial privileges. There had been, according to Masudi who visited India in 916, a community of some 10,000 Arabs in the region of Saimur (near Bombay) which was governed by a Mohammedan magistrate to whose courts the members of the community were amenable. Similar conditions existed in the maritime towns of the Balhara, between Cambay and Saimur, and in Calcutta where Mohammedans settled for purposes of trade. In these places, the Mohammedans were also allowed to have their own mosques and to summon their congregations by the usual mode of proclaiming the times of prayer. (See Ravndal, "The Origin of the Capitulations, etc.," *S. Doc.*, No. 34, 67th Cong., 1st sess., pp. 14-15.)

<sup>5</sup> Charriere, *Ncgociatwns de la France dans le Levant*, I, Ixix-lxx. Cf. also, *supra*, p. 12.

judge at Kan fou (Canton)<sup>6</sup> who was to try according to Moslem law all cases between Mohammedan merchants trading at that port.<sup>7</sup>

It is to be noted that the Arabs who were residing in Corsica and Sicily were similarly allowed to have their own magistrates and to be tried according to their own laws. In the treaty of 1230 between Frederick II, the king of Sicily, and Abbuissac, a Sarazin prince,<sup>8</sup> it was stipulated that a Mohammedan judge should be appointed to render justice to the Moslems residing in the island of Corsica.<sup>9</sup>

At the hands of the Arabs, Egypt became a prosperous trading center.<sup>10</sup> The geographical position

<sup>6</sup> Chinese authors make mention of Arab settlements existing in Canton as early as 758 A. D. (Cf. Reinaud, *Relation des voyages faits par les arabes et les persans dans l'Inde et la Chine dans le IXe siècle de l'ère Chrétienne*, Paris, 1845, pp. cix ff)

<sup>7</sup> Travers Twiss, "Consular Jurisdiction in the Levant and the Status of Foreigners in the Ottoman Law Courts," p. 6; also, Du Moiron, G., *Les juridictions Françaises en orient et les tribunaux intermationaux en Egypte*, p. 15.

It is questioned by some writers whether the system of jurisdiction under which the Arabs lived in Kaufu was properly characterized as extraterritoriality. It is maintained that the Arab magistrate was appointed by the Chinese authorities, and considerable Chinese law was applied, certainly where Chinese subjects were in any way involved. (See E. T. Williams, *China Yesterday and To-day*, N. Y., 1923, pp. 342-343.)

<sup>8</sup> The text (in Latin) is found in J. Du Mont, *Corps universel diplomatique du droit des gens*, part 1, I, 168.

<sup>9</sup> Warden, *On the Origin, Nature, Progress and Influence of Consular Establishments*, p. 56; also, De Martens, *Le guide diplomatique*, Paris, 1837, I, 229, n. 1.

<sup>10</sup> "The Arabs in the days of their greatness," says Dicey, "were born traders as well as conquerors." (*The Nineteenth Century and After*, July, 1906, LX, 18.)

of the region rendered it a highway, so to speak, through which the riches of the East reached the European countries. The sea-power of the Arabs, however, was insignificant as compared with that of the Christian traders of the Mediterranean basin. It became necessary, therefore, for the former to enter into international relations with Europe in order to avail themselves of maritime commerce, thus facilitating the development of their trade.

The most influential among the European states in commercial intercourse at that time were the Italian republics. As early as the ninth century, relates Sir Travers Twiss, the Caliphs of Egypt granted the merchants of Amalphi the privilege of trading at Alexandria and to reside there under an Amalphitan consul.<sup>11</sup>

In 1153 the Caliph of Egypt entered into a convention with Pisa by which certain trading privileges were granted to the Pisan merchants engaged in trade in his dominions.<sup>13</sup>

The Genoese followed, acquiring capitulatory privileges from Helam-el-Maleh (1205), and the Venetians were given similar privileges by Malek-el-Adel (1238). In 1488 Florence, under Laurent the Magnificent, obtained from Abu-Nasr, another ruler of Egypt, extended capitulations.<sup>13</sup>

<sup>11</sup>Twiss, *The Law of Nations*, 2d ed., I, 446.

<sup>12</sup>*The Nineteenth Century and After*, July, 1906, LX, 18.

<sup>13</sup>Pictri, *Étude critique sur la fiction d'exterritorialité*, p. 292.

In 1507 the French and the Catalans conjointly obtained capitulatory privileges from Kan-Sou, one of the Mamelooks of Egypt.<sup>14</sup>

Tunis was another Mohammedan country which as early as the thirteenth century granted exterritorial privileges to foreigners. By the treaty of 1230 with the king of Tunis, the Pisans acquired the right of establishing a factory in Tunis and other privileges in that town.<sup>15</sup> The same rights were later granted to the Genoese.<sup>16</sup> Thus, we can hardly overestimate the influence of this tolerated practice on the successors of the Arabian dynasties.<sup>17</sup>

#### NON-MOSLEM COMMUNITIES IN THE OTTOMAN EMPIRE

On his victorious entry to Constantinople on May 29, 1453, Mohammed II, following the example

<sup>14</sup> Ibid., p. 293.

<sup>16</sup> This was followed by another treaty dated August 11, 1265, by which Elmir-Mommini-Buabi, the ruler of Tunis, granted several exterritorial privileges to the Pisans trading in his dominions (The text of this treaty [in Latin] is given in J. Du Mont, *Corps universel diplomatique du droit des gens*, Supplement, part 1, II, 115-117.)

<sup>16</sup> Warden, *On the Origin, Nature, Progress, and Influence of Consular Establishments*, p. 56.

Pradier-Fodere seems to remark that the first treaty of international character and of historical import concluded between a Mohammedan government and a Christian power is that of November 21, 1270, between Philip III, king of France, and the king of Tunis. (*R. D. I L. C.*, 1869, I, 120.) For the text of the treaty, see Famin, C., *Histoire de la rivalite et du protectorat des eglises Chretiennes en orient*, pp. 469-474; also, Rouard de Card, *Traites de la France avec les pays de l'Afrique du Nord*, Paris, 1906, pp. 109-113. The treaty was also signed by the king of Sicily and the king of Navarre.

<sup>17</sup> In his article, "La juridiction consulaire dans les pays de Torient et specialement au Japon," Sir Travers Twiss emphasizes the influence of the Arabs on the development of the exterritorial system as follows: "Les faits historiques nous font croire que c'est aux arabes

of the Arabs, ordered the Greeks to return to Constantinople and promised them freedom of worship and the preservation of their property. The Greek Patriarchate was vacant for two years when the city fell; but Mohammed the Conqueror sent for the Greek notables and addressed them as follows:

It is none of my business whom you choose for your Patriarch. Elect any one who suits you and consecrate him according to your ancient usages. But this vacancy is intolerable and I do not countenance it. Get down to work at once. Your man will have my backing but delay and I shall have your heads.<sup>18</sup>

Consequently, the synod chose the monk George Scholarius (Gennadius) to be crowned with the "tiara." In his assistance at the investiture, the Sultan addressed the Patriarch, saying: "Be the Patriarch and may Heaven protect you. Enjoy all the rights and privileges that your predecessors have enjoyed before you."<sup>19</sup> The Patriarch was given the title of "Millet Bashi," or head of the nation.<sup>20</sup>

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qu'on doit attribuer l'initiative de cette methode de renouer le commerce entre l'occident et l'extreme orient, apres la dissolution de l'empire romain, et que les villes maritmes de l'Italie ont suivi l'initiative des Arabes en etablissant, par voie d'accords avec les princes musulmans, des tribunaux de consuls-juges dans tous les grands entrepots du Levant" (*R. D. I. L. C.*, 1893, XXV, 217.)

Expressing the same opinion, Mr. G. F. Abbott said: "It was not a Turkish, but a Mohammedan policy—a policy dictated by the precepts of the Prophet and hallowed by his example." (*Turkey in Transition*, London, 1909, p. 71.)

<sup>18</sup> *American Bar Association Journal*, XI, 485.

<sup>19</sup> Williams, *The Historians' History of the World*, New York, 1904, XXIV, 329.

<sup>20</sup> The word "millet" which means *nation* was later replaced by "djemaat" meaning *community*. (Brown, *Foreigners in Turkey*,

Two days later, the Armenian Bishop of Brousa, Joachim, was ordered to take up his official residence at Constantinople and to bring with him 200 Armenian families. At the same time, the head of the Jewish community was recognized.

The prerogatives of the (Ecumenical Patriarch were defined in the Hatti-Sherif<sup>21</sup> promulgated at the time of his investiture. Judicial power was granted which made the Patriarch's tribunal competent to decide criminal cases as well as " all civil and correctional causes such as actions at law between two or more Greeks, and cases affecting marriage, divorces, legacies and testaments."<sup>22</sup> Among other immunities was the exemption from the land tax (kharadj) which was extended to the members of the synod as well as the Patriarch.<sup>23</sup>

Prerogatives of similar nature, though not as extensive as those conferred upon the Greek (Ecumenical Patriarch, were conferred upon the Armenian

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p. 18) The Patriarch had also been given the Turkish title " Rutbetlu " which is translated in official correspondence as " His Holiness." (Young, *Corps de droit ottoman*, part 1, II, 2.) He was ranked as a vizier and possessed a janissary guard. (Williams, op. cit., XXIV, 329; *Fortnightly Review*, October 15, 1866, VI, 609.)

<sup>21</sup> The word " Hatti-Sherif " is equivalent to " imperial edict."

<sup>2a</sup> The Patriarch's tribunal, composed of the principal dignitaries of the clergy, could even pronounce the sentence of death, and the military authorities were responsible for the execution of its decrees. (For an account of the immunities of the Greek community and the juridical powers of the CEcumenical Church, see *The Juridical Review*, Edinburgh, III, 251 et seq.; also: Bertram, "The Orthodox Privileges in Turkey," *Journal of the Society of Comparative Legislation*, 1909, X, 126-140; Eliot, *Turkey in Europe*, ch. vi.)

<sup>23</sup> Williams, *The Historians' History of the World*, XXIV, 329.

Bishop and the Jewish Rabbi. Later, when the Turks found that there were many other non-Moslem communities in the Empire, all these religious sects were constituted autonomous bodies.<sup>24</sup>

#### THE ITALIAN CAPITULATIONS

A few days after his victory over the city of Constantine, the Sultan, in an imperial rescript in the form of a letter of privileges, guaranteed to the Genoese in Constantinople freedom of worship and travel, preservation of the churches and property, and application of national jurisdiction on Turkish

<sup>24</sup> See *infra*, p. 89, n. 2.

It is to be noted that some authors maintain that by granting these concessions, the Turks were motivated by an economic interest expecting to receive a financial return from the non-Moslem communities in the Empire. Sir Valentine Chirol, for instance, remarks that "it was the interests of the ruling race to conserve the Christian communities as hewers of wood and drawers of water. There was a limit under the Sacred Law to the taxation, which could be imposed upon the Sultan's Mohammedan subjects; there was none to the taxation of his Christian subjects." (*The Occident and the Orient*, Chicago, 1924, p. 34.) Speaking of the Turkish grants of privileges, A. D. F. Hamhn asserts that "they were concessions made from a purely selfish motive—that of supplying the new empire with the commercial advantages and industries which the warlike conquerors were themselves incapable of maintaining." (*The Forum*, July, 1897, XXIII, 524; see also, *Law Magazine and Review*, New series, October, 1873, II, 864.) The question whether the capitulatory privileges were granted from a selfish motive, from a disposition towards toleration, or by influence of precedents can be safely answered by stating that all these worked together in guiding the Turk towards the policy of adopting the capitulatory system, although the influence of precedents can hardly be denied the highest credit.

soil, thus confirming the former privileges given them by the Greek emperors.<sup>25</sup> The rescript confirmed also the privileges previously granted by the Turks to the Genoese in Adrianople, but it prohibited the use of bells and forbade the building of new churches. Exemptions from certain services, then imposed on Ottomans, were also conceded.<sup>26</sup> These privileges were later confirmed in the treaties of 1612<sup>27</sup> and of 1665.<sup>28</sup>

On April 15, 1454, capitulatory privileges were conferred upon the Venetians in confirmation of the capitulations granted under the former treaty concluded in Adrianople.<sup>29</sup> These were later confirmed by the same Sultan on January 26, 1479, on July 14, 1480, and in 1481;<sup>30</sup> and they were again renewed by the succeeding Sultans in 1482, in 1502, in 1517, in 1539, in 1540, in 1567, and in 1595.<sup>31</sup>

<sup>25</sup> " Et en signe d'amitie, ils m'ont presente les clefs de leur ville, et se sont fait ainsi nos sujets; nous les avons done acceptes en cette condition, et ils pourront vivre, se regir et se gouverner comme ils l'ont fait par le passe, sans que je puisse aller, avec mon armee, occuper ou miner leur ville." (Belin, *Histoire de la latinite de Constantinople*, 2d. ed., Paris, 1894, pp. 160-161.)

<sup>26</sup> Miltiz, *Manuel des consuls*, livre 2, part 1, II, ch. i, pp. 114-117, sec. 3.

<sup>27</sup> For text, see Noradounghian, *Recueil d'actes internationaux de l'Empire Ottoman*, I, 111-112.

<sup>28</sup> For text, cf. *ibid.*, I, 125-132.

<sup>29</sup> For text, see Ravndal, "The Origin of the Capitulations and of the Consular Institution," p. 92. See *supra*, p. 16, n. 2.

<sup>30</sup> Van Dyck, "Report on the Capitulations of the Ottoman Empire," *S. Ex. Doc.* 3, 47th Cong., special sess., p. 15.

<sup>31</sup> Miltiz, *Manuel des consuls*, part 1, II, 73-77. The texts of the treaties of October 2, 1540, and of June 24, 1567, are found in J. Du Mont, *Corps universel diplomatique*, part 2, IV, 197-200, and part 1, V, 140 respectively.

In 1460, the Florentines were granted the privilege of trading in the Ottoman Empire. According to the terms of the capitulation Florence was to be allowed to maintain consulates in Turkey, and nationals of Florence were to enjoy in Turkey freedom of trade and security of life and property. Judicial cases between Florentines were to be decided by Florentine consuls.<sup>32</sup>

#### THE FRENCH CAPITULATIONS

After the Italian city states, France was next to ask for the confirmation of the privileges formerly granted to the French by the rulers of Egypt.<sup>33</sup> Shortly after the conquest of Egypt by the Turks,<sup>34</sup> Sultan Selim I confirmed these adding thereto new notable concessions, and, at the request of the French merchants, then residing at Alexandria, Sultan Suleiman I<sup>35</sup> the successor to the throne, renewed in 1528<sup>36</sup> the capitulations granted by his father.<sup>87</sup>

<sup>32</sup> Miltiz, op. cit., livre 2, part 1, II, ch. ii, pp. 144 et seq., sec. 3.

<sup>33</sup> See p. 48, supra. The French are recorded to have obtained a decree from Bayazet II (1484-1512) giving them freedom to trade in the Ottoman Empire. (Lawrence, *Commentaire sur les elements du droit international*, etc., IV, 120.)

<sup>34</sup> Egypt was conquered by the Turks in 1516.

<sup>35</sup> Suleiman I is said to have been the son of a French woman. (Young, *Constantinople*, p. 188.)

<sup>30</sup> Miltiz, op. cit., part 1, II, 207-209. For the text of the capitulation of 1528, see Ancien Diplomate, *Le regime des capitulations*, pp. 49-54; also: Testa, *Recueil des traites de la Porte Ottomane*, I, pp. 23-26; De Saint-Priest, *Memoires sur l'ambassade de France en Turquie*, pp. 345-353; Charriere, *Negociations de la France dans le Levant*, I, 122-129.

In connection with the confirmation of the French privileges, the

These were followed by another elaborate document, the treaty of February, 1535,<sup>38</sup> which constitutes the basis on which the capitulatory regime has

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French Monarch, in a letter to Suleiman I, asked for the redemption to the Christians of Jerusalem an old church which had been transformed into a mosque. Suleiman's reply throws light on the early friendly relations between the Turkish Sultan and the French King. Expressing his regret for the impossibility of satisfying the request, Sultan Suleiman said. "L'amitie et l'affection qui existent entre ma glorieuse majeste et vous rendent vos desirs admissibles aupres de ma personne, source de bonhcur; mais cette affaire ne ressemble pas a toute autre affaire de domainc et de propnete, elle concerne notre religion. . . . Il est contraire a notre religion qu'un lieu qui porte le nom de mosquee et dans lequel se fait la pnere soit maintenant altere par un changernent de destination." The Sultan, however, expressly guaranteed the protection of all other places occupied by the Christians and assured the safety of the occupants (The text of the Sultan's letter in French and Turkish is found in Charriere, *Negociations de la France dans le Levant*, I, 129-132 )

<sup>37</sup> This capitulation is of great importance in that it served as a basis for the privileges later conferred on the French in the Levant. It is to be noted, however, that the document did not make mention of the king of France; it was directly concluded with the consul, Jehan Benoist de Pierre Benoist, who was consul of both the French and the Catalans residing in Egypt. The privileges under the capitulation were therefore *ipso facto* enjoyed by the members of both communities.

<sup>38</sup> Hammer maintains that the treaty could never have been concluded in February, 1535 in Constantinople, because of the historical record that the Sultan and the Grand Vizier were then on their Persian campaign stationed in their winter quarter at Bagdad. According to him, they both arrived at Constantinople, Saturday, January 8, 1536. He, therefore, presumes that the treaty must have been made in February, 1536 (see *Journal asiatique*, 1827, X, 20, 39). Charriere, however, calls attention to the old style calendar under which the year begins in March and the date of the year for the first three months is that of the preceding year. Commenting on Hammer's view, Charriere adds: " Mais le savant historien commet ici une erreur qui etonne de sa part sur un point aussi elementaire en histoire, et la connaissance de cette meprise rend superfine toute

developed;<sup>89</sup> it is the first capitulation in the form of a treaty of amity and commerce.<sup>40</sup>

The second French capitulation of October 18, 1569, granted for the first time in the history of the

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sa demonstration, quelque instructive qu'elle reste encore. Il a oublié que tous les actes de l'histoire de France avant la Réforme du calendrier étendent ainsi la date de l'année précédente sur les trois premiers mois de la suivante par l'ancienne manière de commencer l'année à Pâques" (*Négociations de la France dans le Levant*, I, p. 284, n.)

<sup>39</sup> See *infra*, p. 69. Also, Appendix I

Unlike the capitulation of 1528, the treaty of 1535 is this time concluded between the French King and the Turkish Sultan.

<sup>40</sup> The rivalry between Charles V of Austria and Francis I of France furnishes the explanation of the motives which led to the conclusion of this treaty. As a result of the wars between the two sovereigns, Francis was defeated and led captive into Spain. To gain his liberty, Francis signed a disastrous treaty at Madrid in 1526, which he later declared null and void. He recommenced war with Italy, but finally consented to a definite arrangement whereby he renounced his claim to Italy. The war between Austria and Turkey, on the other hand, naturally developed a community of interest between Turkey and France strong enough to cause the Most Christian King to unite with the Mohammedan Sovereign. A mission is said to have been sent by Francis as early as 1525 to open negotiations with the Porte, but it failed to reach its destination. The envoy with twelve men accompanying him were assassinated on their way to Constantinople. (See Charnere, *op. cit.*, I, 112 ff.) A second mission was sent during the captivity of Francis (1526) headed by a certain Jean Frangipam, a Hungarian (according to R. Davey, Frangipam was an Italian by birth and was sent to Turkey in 1521. On this point, see *ibid.*, p. 117, n). This mission was secret and the reason for choosing a foreigner to represent France before the Porte was to facilitate the denial that such a mission had existed in case it became known to the public (see text of the letter of Francis to the Sultan, *ibid.*, pp. 119-121). The mission met with success and in reply to the French appeal, for aid, the Moslem Sovereign wrote: "Toi qui es François, roy du pays de France, vous avez envoyé une lettre à ma Porte, asile des souverains, par votre

Ottoman Empire the permission to fly the French flag on foreign ships navigating in the Levant belonging to nations which did not have treaty relations with Turkey, that is, all foreign ships belonging to nations who did not have capitulatory privileges

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fidele agent Frankipan, vous lui avoz aussi recommande quelques communications verbales; vous avez fait savoir que Fennemi s'est empare de votre pays, et que vous etes actuellement en prison, et vous avez demande ici aide et secours pour votre delivrance. Tout ce que vous avez dit ayant ete expose au pied de mon trone, refuge du monde, ma science imperiale Fa embrasse en detail, et j'en ai pns une connaissance complete. Il n'est pas etonnant que des empereurs soient defaits et deviennent prisonniers. Prenez donc courage, et ne vous laissez pas abattre. . . . Du reste, en interrogeant votre susdit agent sur les affaires et les' nouvelles, vous en serez informc." (Ibid, pp. 116-119.) Encouraged by the success of this mission, Francis sent this time an official mission to Constantinople in 1534. Jean de Laforest was chosen as ambassador and was given letters of credence with official instructions. The negotiations resulted in the conclusion of the treaty of 1535 signed by Forest in the name of the king of France and by the Grand Vizier in the name of the Sultan. It is of interest to note that the instructions as given to the French ambassador bore no guidance for the negotiation of privileges to French subjects in Turkey; Forest was instructed to negotiate a loan and to ask for the dispatch of an Ottoman fleet to the Neapolitan waters. The privileges granted to the French in the Treaty seem to have been granted by the Sultan without being asked for. (For the text of the instructions given to Forest, see *ibid*, pp. 255-263.)

For an account of the early diplomatic relations between France and Turkey, see: Ancien Diplomate, *Le regime des capitulations*, pp. 55-69; Bourilly, V.-L., "L'ambassade de la Forest et de Marillac a Constantinople (1535-1538)," *Revue historique*, May-Aug., 1901, LXXVI, 297-328; Maron, *Francois Ier et Sohman le Grand*, 1853; Rey, F., *La protection diplomatique et consulaire dans les echelles du Levant et de Barbarie*, pp. 116-121; Pelissie du Rausas, *Le regime des capitulations dans l'Empire Ottoman*, I, pp. 4 et seq.; Shotwell, "A Short History of the Question of Constantinople and the Straits," *International Conciliation*, Pamphlet No. 180, November, 1922, p. 480.

No Turkish representative had been sent to France until 1569.

were allowed to navigate under French protection. This treaty also abolished the provision of article XV of the previous treaty of 1535 limiting the exemption from taxation to a period of ten years.<sup>41</sup>

The third French capitulatory treaty was concluded in July, 1581, between Sultan Murad III and Henry III. It confirmed the former privileges and by its terms France was made the only country privileged to use her flag on foreign vessels.<sup>42</sup> Thus France became the legitimate protector, in this early period, of most of the foreign traders in the Ottoman Empire with little regard to nationality. This explains how the merchants of the various nationalities of Europe came to be indiscriminately classed under the appellation of Franks by the Turks.<sup>43</sup>

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(A list with dates of the ambassadors sent by each of the two countries to the other up to the end of the nineteenth century is given in Hammer, *Histoire de l'Empire Ottoman*, XVII, 140, 160.) According to Charriere, as early as 1530, Sultan Suleiman was inclined towards sending an envoy to France, but for several reasons his desire was not put into effect. (Charriere, *Negotiations de la France dans le Levant*, I, 242, n. 1.)

<sup>41</sup> For text, see: Ancien Diplomate, *Le regime des capitulations*, pp. 73-80; Testa, *Recueil des traite de la Porte Ottomane*, I, 91-96; Noradounghian, *Recueil d'actes internationaux de l'Empire Ottoman*, I, 88-93.

<sup>42</sup> For text, cf. Ancien Diplomate, *op. cit.*, pp. 85-92.

<sup>43</sup> "After the treaty of 1535," says Judge Davis, "the French took under their protection persons of other nationalities not represented by consuls and hence the generic name of "Franks" was given to all participants in the privileges, and has been preserved in the laws, treaties, and public documents of the United States." (Dainese v. The United States, 1880, 15 Ct. Cl., 64.) Sir Traversi Twiss is of the opinion, however, that the appellation of "Franks" dates back to 1023 A. D. when the term was used in an ordinance of Sultan Mou-

These capitulations were renewed occasionally on the accession of new sultans. The fourth and fifth French capitulations were those obtained by Henry IV from Sultan Mohammed III in February, 1597, and from Ahmed I on May 20, 1604.<sup>44</sup> Again in these treaties, Henry IV obtained the former privilege of protecting the trade of other European nations.<sup>45</sup> The sixth capitulation was that of June 5, 1673, between Louis XV and Mohammed IV.<sup>46</sup>

The seventh, that of May 28, 1740, between

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zaffer ("Consular Jurisdiction in the Levant and the Status of Foreigners in the Ottoman Law Courts," p. 8). See also, Du Moiron, G., *Les juridictions Françaises en orient et les tribunaux internationaux en Égypte*, p. 13.

Martens remarks that the term "Franks," *Farang*, did not apply to the Russians. (F. de Martens, *Traité de droit international*, Paris, 1886, II, 173)

<sup>44</sup> For the texts of the two treaties with comments, see Ancien Diplomate, op. cit., pp. 95-121; the text of the treaty of May 20, 1604, is also found in Noradounghian, op. cit., I, 93-102; Testa, op. cit., I, 141-151; J. Du Mont, *Corps diplomatique*, part 2, V, 39-42; De Saint-Priest, *Mémoires sur l'ambassade de France en Turquie*, pp. 415-430.

<sup>45</sup> By a special decree, dated April 20, 1607, this privilege was emphatically confirmed: "We command this: that from this day all foreign nations having no ambassador at our Sublime Porte and coming to trade in our Empire shall come under the protection of the French flag in accordance with ancient usage, and shall render obedience to the French consuls and ambassador; and that the capitulations and orders obtained by the English in this matter, which will be found to be contradictory to our sublime capitulation, shall in no way be observed in the places of our Empire." (For text, see Noradounghian, op. cit., I, 108-110; also, De Testa, op. cit., I, 152-154.)

<sup>46</sup> For text, see Ancien Diplomate, op. cit., pp. 129-140; Noradounghian, op. cit., I, 136-145.

Louis XV and Sultan Mahmoud I,<sup>47</sup> exceeds the preceding capitulations in importance, in that it binds the successors of the Sultan to observe it. It is furthermore the most specific and the first one in which the Sultan calls the king of France his friend.<sup>48</sup>

#### FRENCH LEGISLATIVE ACTS

The principal legislative acts for the control of the French consular jurisdiction in the Levant are those of August, 1681,<sup>49</sup> of July 6, 1749,<sup>50</sup> of June, 1778,<sup>51</sup> of March 3, 1781,<sup>52</sup> and of May 28, 1836.<sup>53</sup> Of these, the royal edict of June, 1778, is the fundamental law in respect to civil jurisdiction, while the law of May 28, 1836, is the fundamental law in respect to criminal jurisdiction, both, however, resting upon the provisions of the ordinance of August, 1681.

<sup>47</sup> For text, vide: Ancien Diplomate, op. cit., pp 151-182; Testa, op. cit., I, 186-210; Noradounghian, op. cit., I, 277-306; De Saint-Priest, op. cit, pp. 475-522; Gavillot, J. C. A., *Essai sur Ics droits des Europccm en Turquie cl en figypte*, pp. 27-99; St. Pap , vol. C, 1906-1907, pp. 730-754.

<sup>48</sup> This was confirmed by the treaty of peace of June 25, 1802, (De Saint Priest, op. cit., pp 523-527), and later by the treaties of commerce of November 25, 1838, and of April 29, 1861. The texts of the latter two treaties are found in Gavillot, J. C. A , op. cit., pp. 100-113.

<sup>49</sup> De Clercq and de Vallat, *Formulaire dcs chancelleries diplomatiques ct consulaires*, ed. 6, 1890, Tome II, p. 1.

<sup>TM</sup> Ibid, II, 3.

<sup>51</sup> Ibid, II, 4-10.

<sup>52</sup> Ibid, II, 10-24. This ordinance was supplemented by instructions dated May 6, 1781. See *ibid*, pp. 24-31.

<sup>63</sup> Ibid , II, 141. This law was followed by a circular, dated July 5, 1836, providing for the execution of the law. See *ibid*, II, 153-159.

## THE BRITISH CAPITULATIONS

After the French, the English were next to secure capitulatory privileges in the Ottoman Empire.<sup>54</sup> The first so-called " Charter of Privileges " was secured by the British in 1579; this was later confirmed in 1583, renewed in 1606, and modified in September, 1675.<sup>55</sup> The treaty of peace of January 5, 1809,<sup>56</sup> confirming the capitulation of 1675,<sup>B7</sup> is of particular importance in that it is the first treaty by which England undertook to conform herself to the rule of the Ottoman Porte that vessels of war should not enter the canal of Constantinople.<sup>58</sup> It is also the

<sup>54</sup> The first British ambassador to Turkey was Edward Burton sent to Constantinople in 1593 (Hammer, J. de, *Histoire de VEmpire Ottoman*, XVII, 134). Sir Edwin Pears, however, makes mention of William Harborne as the first English ambassador to the Sultan arriving at Constantinople in 1583 (Pears, *Turkey and its People*, p. 338). The first Turkish delegate to England was Housse-Tschaousch who was sent to London in 1619 to notify the king of England of the accession of Sultan Osman II (Hammer, op. cit., XVII, 158).

<sup>55</sup> The last capitulation of September, 1675, covers all the provisions of the previous charters. For text, see Noradounghian, op. cit., I, 146-169. For English version, see Farley, J. L., *Turkey*, London, 1866, pp. 291-316; also, Hertslet, *Commercial Treaties*, II, 346-369.

<sup>56</sup> For text, see: Noradounghian, op. cit., II, 81-84; Farley, *Turkey*, pp. 317-320; De Martens, *Nouveau recueil de traites*, I, 160-163; Hertslet, op. cit., II, 371-377. This treaty was followed by the commercial treaties of August 16, 1838 (Hertslet, op. cit., V, 506-535), and of April 29, 1861 (Noradounghian, op. cit., III, 136-144 or Hertslet, op. cit., XI, 561-568).

<sup>57</sup> See article IV, Hertslet, op. cit., II, p. 375.

<sup>58</sup> The question of the Straits has been one of the most grievous factors throughout the history of the Near Eastern problem. In 1475 the Turks obtained control of the shores of the Black Sea thus acquiring a monopoly in the Black Sea excluding all foreign shipping.

With few exceptions, the Straits were closed to all ships that did not fly the Turkish flag, and despite the fact that Turkey granted in the European capitulations freedom of trade in the Ottoman Empire, the presumption was that the Black Sea was not included. This monopoly was maintained so long as the Black Sea remained an "Ottoman Lake," but the situation changed when Russia first turned her attention to the Black Sea for an outlet and succeeded in acquiring in 1700 the fort of Azof with its neighboring territory (see art. IV of the treaty of peace of June 13, 1700, Noradounghian, op. cit., I, 197-203). Fearing the effects of a rival in the Mediterranean, France was the first of the European powers to resent Russian designs in the Black Sea; consequently, Russia surrendered in 1711 her former conquest (see Treaty of Pruth of July 21, 1711, arts. I, II, in Dumont, *Corps universel diplomatique du droit des gens*, part 1, VIII, 275), and furthermore recognized in 1739 the Turkish monopoly, pledging to refrain from building a fleet in the Black Sea (art. IX of the Treaty of Belgrade of September 18, 1739, Noradounghian, op. cit., I, 258-267). Russian attempts for free passage through the Straits were, however, renewed and finally triumphant Russia obtained in 1774 the so-coveted freedom of passage to Russian merchant ships through the Straits between the Black Sea and the Mediterranean (cf. art. XI of the Treaty of Kutchuk Kainarji of July 21, 1774, Holland, T. E., *The Treaty Relations of Russia and Turkey*, London, 1877, pp. 36-55).

This concession, reluctantly granted by defeated Turkey, marked the beginning of a new era in the history of the Straits. The old principle excluding all foreign ships from the Black Sea now broken, the Western Powers demanded and obtained the privileges conferred upon Russia. Austria secured them in 1784 (Martens, *Nouveau recueil general de traites, conventions, etc.*, XV, 462-463 or Noradounghian, op. cit., I, 379-382), England in 1799 (Hertslet, *Commercial Treaties*, V, 499-501; *ibid.*, VII, 1021), France in 1802 (art. II of the Treaty of Peace of June 25, 1802, Martens, *Recueil des principaux traites d'alliance, de paix, etc.*, 2d. ed., VII, 416-418), and Prussia in 1806 (*ibid.*, VIII, p. 467). But the event of the loss of Turkish commercial monopoly in the Black Sea and the Straits did not impair the Ottoman right to prohibit warships from passing through the Straits. By the peace of the Dardanelles of January 5, 1809, England recognized this "ancient rule of the Empire" and promised to conform thereto (see art. XI of the treaty of peace of January 5, 1809, *supra*, p. 60, n. 56. In the meantime, Russia was taking advan-

tage of the weakness of Turkey, enlarging her concessions but simultaneously arousing European protests (see Convention of Oct. 7, 1826, art. VII, Hertslet, *The Map of Europe by Treaty*, I, 747-753; the Treaty of Adrianople of September 14, 1829, art. VII, *ibid.*, II, 813-823; and especially the Treaty of Unkiar-Skelessi of July 8, 1833, secret clause, *ibid.*, II, 925-928). As a result of the pressure of the European protests, a collective agreement was concluded in 1840 between Russia, Austria, Prussia, Great Britain, and Turkey by which Turkish sovereignty over the Straits was guaranteed and "the ancient rule of the Ottoman Empire, in virtue of which it has in all times been prohibited for ships of war of foreign Powers to enter the Straits of the Dardanelles and of the Bosphorus," was recognized (see Treaty of July 15, 1840, arts. III, IV, *ibid.*, II, 1008-1012). From that date, the closing of the Straits to foreign warships in time of peace became a part of European public law. The Convention of 1841 between Great Britain, Austria, France, Prussia, Russia, and Turkey confirmed the principle, (see Convention of July 13, 1841, arts. I, II, *ibid.*, II, 1024-1026), which was later accepted by the other powers and confirmed in the treaty of Paris of March 30, 1856, (see convention annexed to the general treaty, art I, *ibid.*, II, 1266-1269), and in the Conference of London of 1871 (art II of the Treaty of London of March 13, 1871, *ibid.*, III, 1919-1923). The principle confirmed in these conventions remained a fundamental rule of the international law of the Straits down to the World War.

An excellent short historical account of the question of the Straits is found in Shotwell, J. T., "A Short History of the Question of Constantinople and the Straits," *International Conciliation*, pamphlet No 180, November, 1922. For other references, see Adair, R., *The Negotiations for the Peace of the Dardanelles in 1808-9*, London, 1845; Buxton, N. E., and Phillipson, C., *The Question of the Bosphorus and the Dardanelles*, London, 1917; Callwell, C. E., *The Dardanelles*, Boston, 1919; Cambon, H., "La question des detroits an XIXe siecle," *Annales des sciences politiques*, 1909, XXIV, 172; Dascovici, N., *La question du Bosphore et des Dardanelles*, Geneve, 1915; Dnault, E., *La question d'Orient*, Paris, 1905; Gonainow, S. M., *Le Bosphore et les Dardanelles*, Paris, 1910; Hyde, C. C., *International Law chiefly as interpreted and Applied by the United States*, Boston, 1922, I, 280-281; Jabotinsky, V., *Turkey and the War*, London, 1917, ch. xi; Loze, M., *La question des detroits*, Pans, 1908; Macey, P., *Statut international des "Detroits"*, Paris, 1912; Mishev, P. H., *La Mer Noire et les Detroits de Constantinople*, Paris, 1899; Robinson, *The Straits of Dardanelles*, London, 1878;

first treaty by which the king of England is described by the title of " His Majesty " or *Padishah*.<sup>69</sup>

#### BRITISH LEGISLATIVE ACTS

The first English Foreign Jurisdiction Act to set forth the fundamental propositions of law concerning British consular jurisdiction in the Ottoman Empire was that of August 24, 1843.<sup>60</sup> The application of this general parliamentary act was effected through several enactments, significant among which

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Snow, F, *International Law*, 2d ed., Wash Printing Office, 1898, p. 18; *United States and Turkey*, McGill and Witherow, Wash., D. C., 1868, pp. 3-17. On the period after the outbreak of the World War and the settlement of Lausanne, see *infra*, p. 242, n. 29.

<sup>B9</sup> This title was given to Francis I in his correspondence with Sultan Suleiman I, and the succeeding French kings were likewise styled as such; all other western potentates were mere " beys " or " lords " in Turkish documents (See W. S. Davis, *A Short History of the Near East*, N. Y., 1924, p 227; also, G. F. Abbott, *Turkey, Greece and the Great Powers*, N Y., 1917, p. 18)

This shows to what extent French influence was predominant in the early period of the Ottoman Empire. That the French ambassador and consuls were to be given precedence over all other foreign representatives accredited to Turkey was emphatically expressed in the Franco-Turkish Treaty of May 28, 1740. (Articles XVII, XLIV, XVIII.)

It is also to be noted that it was not until 1825 that the British Crown began to appoint consuls in Turkey. Before that time, the so-called " Levant Company " appointed its consular agents, and it was only due to the extinction of the Company in 1825 that the jurisdiction of its consuls was transferred to the consuls appointed by the Crown. (The text of the British Parliamentary Act authorizing the transfer of the power and property of the Company to the Crown is found in *St. Pap.*, XII, 531-535; also, Hertslet, *Commercial Treaties*, IV, 484-489.)

<sup>60</sup> Hertslet, *op. cit.*, VI, 500-506, 840-841.

were those of 1873,<sup>61</sup> 1874,<sup>62</sup> 1876,<sup>63</sup> 1882,<sup>64</sup> 1890,<sup>65</sup> 1891,<sup>66</sup> 1895,<sup>67</sup> 1898,<sup>68</sup> and of 1899.<sup>69</sup>

#### THE CAPITULATIONS OF OTHER WESTERN POWERS

The English capitulations were followed by those of the other western powers: Austria obtained capitulatory privileges by the treaty of May 1, 1615;<sup>70</sup> Holland by the treaty of September 15, 1680;<sup>71</sup> Sweden by the treaty of January 10, 1737;<sup>72</sup> Sicily by

<sup>61</sup> "St. Pap., LXIII, 59-161.

<sup>62</sup> Ibid., LXV, 496-497.

<sup>63</sup> Ibid., LXVII, 600-601.

<sup>64</sup> Ibid., LXXIII, 547-553.

<sup>65</sup> Ibid., LXXXII, 1036-1037.

<sup>66</sup> Ibid., LXXXIII, 102-112.

<sup>67</sup> Ibid., LXXXVII, 642, 647

<sup>68</sup> Ibid., LXXXVIII, 178.

<sup>69</sup> Ibid., XCI, 1045-1105. This order in council, dated August 8, 1899, was the one by which the previous orders in council and other provisions regulating the British consular jurisdiction in Turkey were repealed and consolidated. (The text is also found in Hertslet, op. cit., XXI, 855-1062.)

<sup>70</sup> Noradounghian, *Recueil d'actes internationaux de l'Empire Ottoman*, I, 113-118. This was confirmed by the treaties of July 27, 1718, (ibid., I, 220-227), and of February, 1784 (ibid., I, 379-382).

<sup>71</sup> Ibid., I, 169-181; confirmed by the treaties of March 14, 1840, (*St. Pap.*, XXVIII, 391-395), and of February 25, 1862 (*Archives diplomatiques*, année 1870, tome II, pp. 644-653).

The Netherlanders trading in Turkey remained, however, under either French or English protection until 1741, when by their own law, they were forbidden to seek the protection of any country other than Holland. (Hinckley, F., *American Consular Jurisdiction in the Orient*, p. 12, n. 1.)

<sup>72</sup> Noradounghian, op. cit., I, 239-242; confirmed by the treaty of January 31, 1840 (*St. Pap.*, XXVIII, 404-408 or Martens, *Nouveau recueil general de traites*, I, 1-6).

the treaty of April 7, 1740;<sup>73</sup> Denmark by the treaty of October 14, 1746;<sup>74</sup> Prussia by the treaty of March 23, 1761;<sup>75</sup> Spain by the treaty of September 14, 1782;<sup>76</sup> Russia by the treaty of June 10, 1783;<sup>77</sup> Sardinia by the treaty of October 25, 1823;<sup>78</sup> the United States by the treaty of May 7, 1830;<sup>79</sup> Belgium by the treaty of August 3, 1838;<sup>80</sup> the Hanse cities by the treaty of August 27, 1839;<sup>81</sup> Por-

<sup>73</sup> Noradounghian, op. cit., I, 270-277; confirmed by the treaty of March 5, 1851 (ibid., II, 394-403).

By the treaty of July 10, 1861, the Kingdom of Italy succeeded to the capitulatory privileges previously conferred by the Porte on the states which later formed the Kingdom of Italy (ibid., III, 151-159).

<sup>74</sup> Ibid., I, 308-314; confirmed by the treaties of May 1, 1841, (ibid., II, 330, 383), and of March 13, 1862 (*Archives diplomatiques*, 1870, II, 653-660).

<sup>76</sup> Noradounghian, op. cit., I, 315-319; confirmed by the treaty of March 20, 1862, (*Archives diplomatiques* annee 1870, tome II, 660-666 or Noradounghian, III, 185-191), passing to the German Empire in 1870.

<sup>76</sup> Noradounghian, op. cit., I, 344-349; confirmed by the treaty of March 2, 1840 (Martens, *Nouveau recueil general de traites*, I, 22-26).

<sup>77</sup> Noradounghian, op. cit., I, 351-373; confirmed by the treaty of April 18, 1846 (ibid., II, 371-379).

<sup>78</sup> Ibid., II, 99-102; confirmed by the treaties of September 2, 1839, (ibid., II, 283-287 or *St. Pap.*, XXVIII, 395-399), and of July 31, 1854, (Noradounghian, op. cit., II, 425-431), passing to Italy in 1861.

<sup>79</sup> Malloy, II, 1318-20; confirmed by the treaty of Feb. 25, 1862 (ibid., II, 1321-41). See *infra*, p. 130.

<sup>80</sup> Noradounghian, op. cit., II, 243-248 or *St. Pap.*, XXVI, 1222-27; confirmed by the treaties of Aug. 3, 1839, (Noradounghian, II, 276-282), of April 30, 1840, (ibid., II, 302-303 or *St. Pap.*, XXVIII, 385-389), and of October 10, 1861 (*Archives diplomatiques*, 1864, tome IV, pp. 169-176).

<sup>81</sup> *St. Pap.*, XXVIII, 448-454; confirmed by the treaties of Sept. 1, 1841, (Martens, op. cit., II, 183-189), and of Sept. 27, 1862 (Noradounghian, III, 206).

tugal by the treaty of March 20, 1843;<sup>82</sup> Greece by the treaty of May 23, 1855;<sup>83</sup> Brazil by the treaty of February 5, 1858;<sup>84</sup> and Bavaria by the treaty of August 25, 1870.<sup>85</sup>

#### THE MOST-FAVORED-NATION CLAUSE

The capitulations granted to these countries and later to others were more or less identical. The most-favored-nation clause was inserted in all, thus forming of the capitulatory system a code of privileges (written and unwritten) more or less uniform in its application to foreigners in Turkey and in the maintenance of which, the nations enjoying capitulatory rights became, to a certain extent, jointly concerned.<sup>86</sup>

<sup>82</sup> Noradounghian, II, 354-360.

<sup>83</sup> Ibid., II, 437-444.

<sup>84</sup> *St. Pap.*, XLVIII, 1045-1048.

<sup>85</sup> Noradounghian, op. cit, III, 296-298

<sup>86</sup> This is expressed in art. V of the treaty of Aug. 25, 1870, between Turkey and Bavaria (see above, n. 85), providing that "in the event that the Sublime Porte should undertake to come to an understanding with the other Powers with regard to the modification, in one sense or another, of the jurisdiction exercised by consuls in Turkey in virtue of the treaties and capitulations, the Government of Bavaria will not claim anything beyond the privileges and immunities which would be maintained in behalf of the consuls of the other Powers, to whom, moreover, the Bavarian consuls will continue to be assimilated in all respects."

There is much difference in attitudes on the question as to whether the most-favored-nation clause in commercial treaties applies likewise and automatically to jurisdictional rights, such as extraterritoriality. It is to be admitted, however, that in Turkey the clause applied in most cases to jurisdictional rights. (See S. K. Hornbeck, *The Most-favored-nation Clause in Commercial Treaties*, Madison, Wisconsin, 1910, extended bibliography, pp. 113-121.)

The capitulations in the early period were frequently renewed on the accession of new sultans, and fresh clauses were added; the principle upon which the system operated, however, remained unchanged.<sup>87</sup>

<sup>87</sup>" Los capitulations sont aujourd'hui ce qu'elles etaient il y'a quatre siecles; elles n'ont ete modifies ni dans leur esprit ni dans leur texte " (Du Kansas, *Le regime des capitulations dans l'Empire Ottoman*, I, 22)

## CHAPTER IV

### THE SYSTEM OF THE CAPITULATIONS

#### INTRODUCTORY

The question as to what the capitulations are is too complicated to be answered definitely and satisfactorily. " So great has been the accumulation of these capitulatory rights through the centuries," remarks Clair Price, " that it is to be doubted whether any one knows to-day precisely what the capitulations are."<sup>1</sup> Writers uniformly agree, however, that the French treaty of 1535 is the basis for all the succeeding capitulations and the most specific and elaborate of the preceding capitulatory arrangements.<sup>2</sup> The privileges granted therein are more or less similar to those conferred upon the Italian cities in the earlier capitulations.

<sup>1</sup> *Cur. Hist.*, June, 1922, XVI, 464.

" These (rights) are so numerous and of such uncertain origin," affirms Mr. Thayer, " that an inclusive enumeration is impossible. Perhaps they may be best summarized by saying that any act of an arbitrary nature on the part of a native official, which controverts a privilege of long standing, is considered *ultra vires*." (*A. J. I. L.*, 1923, XVII, 215)

<sup>2</sup> " This general treaty of peace, amity, and commerce," says P. M. Brown, " may be considered as the real commencement of the regime of the capitulations whereby foreigners in Turkey have come to enjoy such extraordinary privileges. Certainly all subsequent treaties were closely modelled on this treaty; and other nations have claimed as favourable treatment as therein accorded to France." (*Foreigners in Turkey*, p. 33.) Confirming this opinion, Sir Edwin Pears asserts that the " system which was thus formulated in the French capitulations has not materially changed from that day to this." (*The Fall of Constantinople*, N. Y., 1886, p. 150.)

## THE FRENCH TREATY OF 1535

Consisting of sixteen articles, this French capitulation<sup>3</sup> deals mostly with such problems as freedom of trade, passage of vessels, slavery, piracy, protection of property, security of life, etc. Perhaps the most important articles are those concerned with judicial administration; these provide that all French citizens shall be tried by the French consul, and in no case, civil or criminal, between merchants or other subjects of the French King shall the Turkish authorities interfere; it is only when the consul finds it necessary, in case his orders are not obeyed, to appeal to Turkish authorities for the execution of these orders that the Turkish officials shall lend the necessary aid and the compulsory power. Civil cases between Turks and French nationals shall not be tried in Turkish courts without the presence of a dragoman.<sup>4</sup> In criminal cases, the French subjects shall not be called or tried by the local courts, but the cases shall be referred to the Sublime Porte where the testimony of the French and the Turk shall be heard. The treaty provides also for freedom of worship and asserts that the subjects of the King (the French) shall not be considered "Mohammedans" unless they voluntarily and openly profess the change of their faith. The subjects of either country are to be granted in the territory of the

<sup>3</sup> See supra, p. 54. For the text of the treaty, see Appendix I.

<sup>4</sup> The dragoman is the official interpreter or the delegate of the foreign consulate or embassy.

other exemption from taxation or performance of any services, and French nationals residing in Turkey shall enjoy this exemption unless the period of residence shall have exceeded ten years. Finally, a proposition is inserted in the Treaty that the Pope, the King of England, and the King of Scotland shall be entitled to adhere to the Treaty, on condition that ratifications are exchanged not later than eight months from the date of the Treaty.<sup>5</sup>

Despite the fact that this treaty forms the background of the capitulatory system, the question as to what the capitulations are is by no means answered in a summary of its contents. Much has been added to this (written and unwritten). The system, therefore, can only be explained in a general way, and by doing so, we may discuss the capitulations under two main headings, namely, the economic and the juridical, although we may add the personal privileges such as freedom of worship, freedom of residence and trade, and inviolability of domicile.

#### PERSONAL PRIVILEGES

Freedom of worship has been uniformly granted in all the capitulations. Article VI of the French ca-

<sup>5</sup> According to Sir Travers Twiss, clauses were found in the Turkish text providing for the use of the French flag by citizens of nations having no treaty of friendship with the Porte and for the guardianship of the holy places of Palestine. He remarks, however, that it is probable that these clauses did not belong to the treaty of 1535 but were later added on the renewal of the Treaty by the succeeding Sultan. (Twiss, T., *The Law of Nations*, I, 454.)

pitulation of 1535<sup>6</sup> provides that all French subjects, their agents and servants shall have the right to practice their own religion. It is interesting to note, in this connection, that despite the Islamic prohibition of the use of liquor, the French residing in Turkey were allowed to import wine from outside or make it in their houses.<sup>7</sup>

The individual freedom of the foreigner is, furthermore, expressly promised in most of the capitulations. This was granted in the French capitulations of 1569, of 1581, of 1604, of 1673, and of 1740. The French were not to be molested under pretext that they injured the Turks or talked against the Islamic faith.

This individual freedom was extended to commerce and the exercise of professions. Article I of the French capitulation of 1535<sup>8</sup> provides for freedom of trade and residence. The French were given freedom and safety and were allowed to navigate on their vessels with their belongings and men, to travel on land, and to reside in the Empire.<sup>9</sup>

The inviolability of the domicile of the foreigner

<sup>6</sup> See Appendix I.

<sup>7</sup> "Les consuls de France et ceux qui en dependent comme religieux, marchands, et interpretes, pourront faire faire du vin dans leurs maisons et en faire venir du dehors pour leur provision ordinaire, sans qu'on puisse les inquieter a ce sujet." (Article XL of the French treaty of 1740.)

<sup>8</sup> See Appendix I.

<sup>9</sup> The Hedjaz province containing the holy cities of Medina and Mecca was excepted.

was also recognized in most of the capitulations:<sup>10</sup> Article LXX of the French treaty of 1740 stipulates that the Ottoman officials shall not enter by force a house occupied by a Frenchman; when an entry to such a house is required, the consul or the ambassador shall be notified and the persons appointed in their behalf shall go with the local officials to the place in question.<sup>11</sup> This unlimited inviolability was later restricted only to localities distant by nine hours or less from the residence of the consular agent.<sup>12</sup>

#### ECONOMIC PRIVILEGES

The economic capitulations consisted of exemptions from direct taxation, of regulation of customs duties, and of foreign supervision of the Ottoman financial system. Under the early capitulatory regime, foreigners were exempted from the "kharadj" or tax on land and from the "jizyah" or poll tax imposed on non-Moslems (Zimmis) residing in Moslem territory; foreigners were also exempted later from new taxes such as the "kassa-

<sup>10</sup> See Dislere et de Mouy, *Droits et devoirs des Francais dans les pays d'Orient et d'extreme orient*, p. 56.

<sup>11</sup> The origin of the inviolability of the domicile of the foreigner goes back to the early extraterritorial regime in Turkey when foreigners used to reside in their own quarters subject to their own jurisdiction and officials. When foreigners began to reside outside their quarters later, they were permitted to enjoy the same privileges that they had enjoyed in their quarters. The new residence, outside the quarters, was treated as if it were a part of the quarter assigned to the community. (See Du Rausas, *Le regime des capitulations*, I, 87.)

<sup>12</sup> See *infra*, p. 83, n. 39.

bieh " or slaughter fees, the " takelify urfieh " or arbitrary taxes, etc.<sup>13</sup>

Furthermore, the customs were regulated by the Western Powers, viz., Turkey could not raise the tariff rate on any commodity without the consent of the nations concerned.<sup>14</sup> In 1907, however, the tariff on imports was raised from 8 per cent to 11 per cent ad valorem by the consent of the foreign powers,<sup>15</sup>

<sup>13</sup> The origin of these exemptions goes back to the time when the main source of revenue was secured from religious obligations by means of taxes such as the tithes, the sheep tax, etc. Since these were Moslem taxes provided for in the Koran, the conclusion was drawn that non-Moslems should be exempted from them. The origin may also be traced back to the days when the non-Moslem communities were allowed to have their own quarters and to maintain therein their own administration, jurisdiction and police. These communities contributed to the maintenance of their public services and their relations with the local authorities were thus limited. They enjoyed none of the services of the state, and it was understandable, therefore, that this seclusion should exempt them from local taxes.

It is to be noted that this exemption of foreigners from direct taxation was not only discriminatory against Turkish nationals (Moslems and non-Moslems), but it gave the foreigners privileges that they could not enjoy in their own countries. Speaking of the exemption, G. F. Abbott remarked: " It was an arrangement which, scrupulously observed, guaranteed to foreign residents privileges and immunities not only incomparably greater than any known to the Sultan's Christian subjects, but even greater than those which Frenchmen, Englishmen, and other Europeans enjoyed in their own countries." (*Turkey, Greece and the Great Powers*, N. Y., 1917, p 4.)

<sup>14</sup> The provision found in article IX of the treaty of Venice of 1454 limiting the tariff rate to 2 per cent on imported goods was to a certain extent the basis on which the foreign powers insisted that the customs duties could not be altered without the consent of the nations concerned.

<sup>15</sup> See *Parliamentary Paper*, Turkey No. 2 (1907), "Correspondence Respecting the Increase of the Turkish Customs Duties." [Cd. 3455.]

A protocol, dated April 25, 1907, was signed by Turkey. Oermanv.

on condition that the Ottoman Government would comply with certain demands made by these powers.<sup>16</sup> The Young Turks tried immediately after the success of their revolution to raise this rate to 15 per cent, but they failed.

Commodities destined for the use of religious and philanthropic institutions were exempted from import duties. No additional tax was imposed on goods in transit to or from the interior. The treaty of August 16, 1838, between Turkey and Great Britain, abolished all taxes imposed by local governors under the form of granting permits for the transfer of goods through their provinces.<sup>17</sup> The American treaty of 1862 limited the transit tax on goods passing through Turkey to 1 per cent in order to give allowance for expenses of administration and control. Export duties were also regulated by the capitulatory treaties; the same American treaty of 1862 limited the export duties to 1 per cent.<sup>18</sup> The

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Austria-Hungary, France, Great Britain, Italy, and Russia to give effect to the increase of the import rates (for the text of the protocol, see Martens, *Nouvcau rccueil general de trailer*, 3eme serie, I, 790-792 or st. *Pap.*, vol C, 575). A separate agreement was also signed on the same date between Turkey and Germany to this effect (See Martens, op. cit., 3eme serie, XXXV, 686-689.)

<sup>16</sup> Germany demanded that a portion of the revenue be detained to help pay the kilomctric guarantee of the Bagdad railway; France insisted that the dispute concerning the Syrian railway and the quays at Constantinople be settled in her favor; England asked to be compensated with certain mining concessions in Macedonia.

<sup>17</sup> The text of the treaty is found m Noradounghian, G., *Recueil d'actes internationaux de UEmpire Ottoman*, II, 249-253. See article II.

<sup>18</sup> See *infra*, pp 134-136

An unusual provision is found in the Anglo-Turkish treaty of 1675,

Franco-Turkish treaty of commerce of April 29, 1861, provided for the same rates on exports and on goods in transit.<sup>19</sup>

Perhaps the best illustration of the absence of legal control on the part of the Turkish Government under the economic privileges is that connected with business houses. According to an American report:

There is no law in Turkey obliging any foreign bank, banking house, or mercantile firm wishing to establish a branch house in Turkey to submit itself to any official or legal formalities. Consequently, any bank or private firm is at liberty to establish a branch in Turkey and freely transact and conduct business. . . . Foreign firms conserve their nationality and are governed with regard to their internal organization, and to the rights and duties of its members, according to the law of their country.<sup>20</sup>

Another important restriction on the free action of the Ottoman Government was the foreign control of the Turkish financial system. The Imperial Irade, termed the decree of Mouharrem of December 20,

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article LXXIV of which stipulates that the King of England shall have the right to purchase for his own use at a minimum duty of 3 per cent two cargoes of figs and raisins in years of fertility. (Noradounghian, op. cit, I, 168 or Hertslet, *Commercial Treaties*, II, 369)

<sup>19</sup> See articles IV and VIII.

<sup>20</sup> Means, E. G., *Modern Turkey*, N. Y., 1924, p. 431.

The act of November 27, 1887, on the part of the Sublime Porte requiring permits to be obtained from the Ottoman Government by foreign joint stock companies doing business in the Turkish Empire, was held by some foreign powers to be a violation of the capitulatory clauses guaranteeing freedom of commerce. (See For. *ReL*, 1888, part 2, pp. 1592-1594.)

1881, virtually forced on the Sultan by the foreign powers, instituted the so-called " Dette Publique Ottomane " which gave hand to foreign powers in the financial administration of the Empire through a council of administration which had power to collect the " Five Principal Revenues."<sup>21</sup> This institution was designed to protect the interests of the foreign creditors in Turkey and was controlled by Great Britain, France, Germany, Italy, and Austria-Hungary.<sup>22</sup> It became, according to Professor Brown, " the most flourishing and powerful institution in the Empire. It collected at their source many of the taxes assigned to its service and acquired a large authority in fiscal matters all over the Empire."<sup>23</sup>

<sup>21</sup> For text of decree, see Young, G., *Corps de droit ottoman*, V, 69, the text and other documents relating thereto are found in *Archives diplomatiques*, 1912, CXXIII, 244-278.

<sup>22</sup> The council of administration consisted of one representative each for France, Great Britain, Holland, Germany, Austria-Hungary, Italy, and Turkey, and one representative of the Imperial Ottoman Bank. The president of the council was a Frenchman or a Britisher in alternate years. (Bowman, I., *The New World*, ed. 1926, p. 437.)

<sup>23</sup> *Foreign Affairs*, June 15, 1923, I, 77. For further references, see Adib Roumani, *Essai historique et technique sur la dette publique ottomane*, Paris, 1927; Charles Morawitz, "The Public Debt of Turkey," *North American Review*, August, 1902, CLXXV, 275-288; G. Young, *Corps de droit ottoman*, V, ch. Ixxxv; Albert Murat, *Le control international sur les finances de l'Égypte de la Grèce et de la Turquie*, Paris, 1899, livre III; R. L. Buell, *International Relations*, N. Y., 1925, p. 405; W. H. Hall (editor), *Reconstruction in Turkey* (a series of reports compiled for the Armenian and Syrian relief), N. Y., 1918, pp. 220ff.; *Recueil des cours*, The Hague Academy of International Law, VII, 307; Dupuis (Laurent), *Le controle financier de la Dette Publique Ottomane*, Paris, 1908; Du

It is not an unwarranted assumption, therefore, that the economic privileges were among the most objectionable features of the capitulatory system. There is no doubt that these restrictions were in the mind of the Turkish Government when they termed the capitulatory regime as " an intolerable obstacle to all progress in the Empire."<sup>24</sup> " The exemption

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Velay (A.), *Essai sur l'histoire financiere de la Turquie*, Pans, 1903; Delaygue (Louis), *Essai sur Les finances ottomanes*, Paris, 1911; Iplijian, *Histoire de developpement de la Dette Publique Ottomane*, Strasbourg, 1911; Charles Morawitz, *Les finances de la Turquie*, Pans, 1902; A. Andreades, "Les obligations financieres envers la dette pubhque ottomane, des provinces detachees de l'Empire Turc depuis le traite de Berlin," *R. G. D. I. P.*, 1908, XV, 585-601. See also *infra*, p. 209, n. 10, and pp. 239-240

The public debt was originally over \$715,000,000, and the main shares were French, 60 per cent, German, 20 per cent, and British, 15 per cent. (Donaldson, J., *International Economic Relations*, N. Y., 1928, p 349.)

<sup>~4</sup>In answering the question of the abrogation of the capitulations, a member of the Committee of Union and Progress made the following statement: " For the moment we do not aspire to liberate ourselves except in the *economic* and *financial* matters. . . . We have no interest to emancipate ourselves of the capitulations early. If we obtain this before the right time, it will certainly not fail to create a great difficulty to Turkey." (Kandelafte, J. S., *Uavemr reserve au regime des capitulations*, p. 82.)

It is to be noted that even after the Porte had announced the absolute abolition of the capitulations in 1914 (cf. *infra*, p. 189) the Turkish Government was willing to defer discussion of the abolition of judicial capitulations if the abrogation of fiscal and commercial privileges could be agreed to by the Allied Powers (see *The Times*, London, *Documentary History of the War*, IX, Diplomatic, part III, pp. 128, 277, 281, 286; also, *St. Pap.*, 1915, CIX, 699).

Speaking to the American High Commission in 1919, the Ottoman Minister of Finance stated that " no reason, or pretext of any kind can be found to justify the discrimination of the foreign subjects against the natives of a country in respect to taxes and duties. There-

of foreigners from taxation and the veto of foreign governments over increases in the Ottoman custom duties," remark Toynbee and Kirkwood, "contributed to the pauperisation of the Turkish treasury, placed the Sublime Porte at the mercy of European diplomatists and European financiers and struck a severe blow at native industry and commercial prosperity,"<sup>25</sup>

#### JURIDICAL PRIVILEGES

The juridical privileges may be discussed under two divisions, namely: (a) Jurisdiction over cases involving only foreigners, whether of the same nationality or of different nationalities; (b) jurisdiction over mixed cases; namely, cases between foreigners and Ottoman subjects.

Under the first division come the consular courts.<sup>26</sup> Practically all the consulates in the Ottoman Empire had their own consular courts in which all civil and criminal cases arising among their nationals were tried; this, as a rule, had been the general practice

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fore resumption of economical capitulations cannot be allowed in any way even if judicial capitulations be reestablished in some way or other." (Mears, E. G., *Modern Turkey*, p. 444.)

<sup>25</sup> Toynbee and Kirkwood, *Turkey*, pp. 136-148.

"It should be stated," said Mr. Ravndal, "that the Powers have abused their economic privileges in many instances to the extent of preventing Turkey from developing her own industries while inferior European goods have been unloaded upon the country in great quantities." (Mears, *Modern Turkey*, 433.)

<sup>26</sup> An explanation of the administration of the consular courts is given in G. Young, *Corps de droit ottoman*, I, 279-84.

for centuries and had never been contested. The consular courts had also jurisdiction over property in all questions affecting their nationals with certain exceptions in regard to real property. The intestate descent of foreign real property was governed by the Ottoman tribunals under application of Ottoman law.<sup>27</sup> On the other hand, consular jurisdiction in the testamentary disposition of real property and in the succession of personal property of foreigners whether by testament or " *ab intestate* " was recognized by the Porte.<sup>28</sup>

The consular jurisdiction was also extended over civil cases between foreigners of different nationalities allowing, however, the choice of the parties concerned whereby they might have recourse to Ottoman jurisdiction. If the consular court assumed jurisdiction, as was usually the case, the court of the defendant possessed the authority.<sup>29</sup>

<sup>27</sup> A. Mandelstam, *La justice ottomane dans ses rapports avec les puissances étrangères*, p. 265. See also Appendix II, Art. IV of Law conceding to foreigners the right of holding real estate in Turkey.

<sup>28</sup> *Ibid.*, p. 266.

<sup>29</sup> C. J. Tarring, *British Consular Jurisdiction in the East*, London, 1887, p. 93.

This was effected through mixed judiciary commissions. The right to call such a commission was reserved to the legation of the country to which the defendant belonged. The mixed commission usually consisted of three judges, two of whom were chosen by the legation of the defendant and the third by the legation of the plaintiff; plurality of opinion constituted the decision which was to be confirmed by the legation of the defendant and executed by it. This system was adopted as early as 1820. (See Calvo, C., *Le droit international theorique et pratique*, 5th ed., Paris, 1896, III, 269, sec. 1432.)

There was full agreement as to the exclusive jurisdiction of the consular courts in criminal matters between foreigners of the same nationality, and up to 1881 the consular courts had jurisdiction over criminal cases involving foreigners of different nationalities as well;<sup>30</sup> but, after that date, the Porte claimed jurisdiction for the Ottoman tribunals in cases involving foreigners of different nationalities.<sup>31</sup> This controversy was never settled.

The consular courts had no jurisdiction over civil or criminal cases between foreigners and Ottoman subjects. By virtue of treaty stipulations, however, certain powers claimed special privileges in criminal matters. They admitted that when the accused was an Ottoman, the Turkish courts had jurisdiction, but, by virtue of their special treaties, they claimed jurisdiction for their consular courts whenever the accused was a foreigner.<sup>32</sup> The Porte denied this claim, although it was, on several occasions, obliged to abandon this position.<sup>33</sup>

Under the second division come the following channels of justice:

First, the mixed commercial courts. These courts were organized by the consent of the Powers and of

<sup>30</sup> The practice of consular jurisdiction over criminal cases involving foreigners of different nationalities was established by usage and was not based on any text. (P. Dislere et De Mouy, *Droits et devoirs des Français dans les pays d'orient et d'extreme orient*, p. 93.)

<sup>31</sup> Mandelstam, A., op. cit., p. 267.

<sup>32</sup> See infra, p. 85, n. 44, and pp. 131-132.

<sup>33</sup> A. Mandelstam, op. cit., p. 262.

the Sublime Porte and consisted of three Ottoman judges and two foreign assessors who were to have jurisdiction over all commercial and civil matters between Turks and foreigners which involved a sum larger than 1000 piasters. It was also agreed that all steps taken in the procedure including the rendering of the verdict were to be declared void if a dragoman was not present. In an area where no such tribunal existed, the case was tried in the local courts subject to the right of appeal to Constantinople. The status of these courts was the subject of a prolonged disagreement concerning the position of the two foreign assessors and the dragoman. The execution of Ottoman judgments in favor of Ottoman subjects against foreigners was another source of friction.<sup>34</sup>

Second, the Ottoman civil and religious courts.<sup>35</sup> These courts had jurisdiction over cases dealing with real estate belonging to foreigners. By an imperial decree, dated January 18, 1867,<sup>36</sup> foreigners were given the privilege of owning real estate in the Ottoman Empire, with the exception of the province of

<sup>34</sup> Mandelstam, op. cit., pp. 257-258. For an account of the organization of the mixed tribunals, see G. Young, *Corps de droit ottoman*, I, 239-250; also, *Juridical Review*, 1891, III, 248 and *R. D. L. L. C.*, 2eme serie, 1910, XII, 84-90.

<sup>35</sup> For an explanation of the administration of the local courts, see *Juridical Review*, 1891, III, 245. Also, A. Bertram, "The Legal System of Turkey," *Law Quarterly Review*, Jan. 1909, XXV, 24-43.

<sup>36</sup> See Appendix II.

the Hedjaz, subject to Turkish law.<sup>37</sup> According to this decree, foreigners were to be placed upon terms of equality in all matters concerned with real property. The legal effect of this equality made the foreigner subject to all local taxes levied upon landed property. It also brought the foreigner under all laws and regulations governing the ownership, " the transmission, the alienation and the hypothecation of landed property," and rendered him directly amenable to the Ottoman courts in all cases relating to real estate, whether the parties were foreigners or mixed, foreigners and Turkish subjects. " In short," reads the rescript, " they (the foreigners) are in all things to hold real estate by the same title, on the same condition and under the same forms as Ottoman owners, and without being able to avail them-

<sup>37</sup> Up to 1867 foreigners could not hold real estate in Turkey except under borrowed names, i.e., foreign real property had been held in trust for the alien owner by a subject of the Porte in whose name the property was registered. In some instances, however, this disability had been evaded by female relatives of foreign residents who had enrolled themselves as members of a Turkish non-Moslem community possessing the right of holding real estate. This had given rise to a common abuse whereby a foreigner owning real estate under borrowed names escaped the seizure of his property on his becoming bankrupt. It is of interest to note that an exception to this disability had grown up in Smyrna where foreigners had, for nearly a century before 1867, acquired permission to hold real estate in their own name. (See McCoan, *Our New Protectorate*, II, 195.)

The right of foreigners to hold real estate in Turkey in their own names as granted in the decree of 1867 did not extend to foreign corporations. By an Imperial Irade, however, exception was made in the case of educational institutions whereby the institution itself was given the right to hold the property in its own name. (See J. L. Barton, *Daybreak in Turkey*, Boston, 1908, p. 244.)

selves of their personal nationality, except under the reserve of the immunities attached to their persons and their movable goods, according to the treaties."<sup>38</sup>

The Ottoman civil tribunals, composed exclusively of Ottoman judges, also tried, in the presence of the dragoman, mixed cases involving disputes over less than 100 piasters. However, in localities more distant than nine hours' travel from the residence of the consular agent, foreigners could be tried by a Turkish tribunal, without the presence of the dragoman, for actions involving the sum of less than one thousand piasters and for offences entailing a fine of not more than five hundred piasters. Against judgments issued by such a tribunal, appeals were to be allowed which were to be followed and judged with the assistance of the dragoman. The execution of a sentence was to be suspended during the process of the appeal.<sup>39</sup> The conflict raised over the

<sup>38</sup> In the event of a foreigner's bankruptcy, the real property of the bankrupt could be sold for the benefit of the creditors after application to the local courts had been made and could also be sold in satisfaction of judgments obtained in foreign courts without the formality of a fresh action in the Ottoman courts. The local courts were also to have jurisdiction over the intestate descent of foreign real property. As to actions brought by third parties of foreign nationality against foreign succession, it was agreed that they were to be tried by the mixed commercial courts.

<sup>39</sup> The protocol confirming the decree of 1867 and to which most of the capitulatory powers adhered is found in Appendix III. This provided for the acceptance by the signatory powers of the decree relative to foreign ownership of real estate and of the arrangements therein; it also gave the local authorities the right to enter the residence of a foreigner more distant than nine hours' travel from the

function of the Ottoman courts in regard to foreigners was one of the chief sources of controversy and never reached a definite solution.

Third, the Ottoman criminal courts.<sup>40</sup> These courts which were composed of Ottoman judges tried criminal acts committed by foreigners against Turks, as well as acts committed by Ottomans against foreigners;<sup>41</sup> in either case the trial was to be made in the presence of the consular delegate whose signature was necessary to make the sentence effective.<sup>42</sup>

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residence of the consular agent without the presence of the consular delegate, but this was to be permitted only in case of emergency. Furthermore, the right of defence and publicity of hearings were to be assured in proceedings against foreigners in Turkish tribunals. France adhered to the Protocol in 1868 (*St. P.*, LIX, 389-391), Great Britain in 1868 (*Parl. P.*, LXIV, 4145), Russia in 1873 (*St. P.*, LXVIII, 1262-64), Greece in Feb. 1873 (Noradounghian, *op. cit.*, III, 343), Italy on March 23, 1873 (*ibid.*, p. 345), The Netherlands on August 6, 1873 (*ibid.*, p. 351), and the United States in 1874 (*St. P.*, LXV, 370-373).

<sup>40</sup> The testimony of the non-Moslem in the local courts was not held of equal value with that of the Moslem until 1854 when an imperial decree, dated March 16 of that year, was issued providing for the admissibility of the testimony of Christians in criminal matters against or in favor of Mohammedans<sup>1</sup> (See Van Dyck, "Report on the Capitulations of the Ottoman Empire," p. 76; also, O Focief, *La justice turque et les reformes en Macedoine*, p. 152 )

<sup>41</sup> " Dans le cas de crime ou de deht, si la victime etait un sujet ottoman, l'article 65 de la capitulation de 1740, attribuait competence a l'autorite locale qui jugeait en presence du consul ou du drogman. Mais, dans la pratique, il a ete admis que le coupable pouvait etre defere a la justice consulaire. Quand le sujet ottoman etait non la victime, mais l'auteur de l'infraction, les tribunaux locaux etaient competents " (A. Bonde, *Traite elementaire de droit international public*, Paris, 1926, p. 285 )

<sup>42</sup> In case the dragoman refused to sign the sentence, it could only be carried into effect after negotiations with the higher authorities (Tarring, *British Consular Jurisdiction in the East*, 1887, p. 91.)

The procedure was subject to the agreements reached concerning the search and the inspection of the foreigner's residence.<sup>43</sup> Disputes arose between some of the foreign powers and the Sublime Porte as a result of claims for special privileges in criminal matters, but with no definite solution.<sup>44</sup>

<sup>43</sup> Since 1868 the inviolability of the domicile of a foreigner was deemed limited to residences within nine hours journey from a consular post (cf. *supra*, p. 83, n. 39). McCoan refers to the nine hours distance as consisting of 27 miles, although the protocol providing therefor seems to be silent on this point (see McCoan, *Our New Protectorate*, II, 197).

<sup>44</sup> The capitulatory treaties of Belgium of August 3, 1838 (Nora-doughian, *op. cit.*, II, 245, art. VIII), of Portugal of March 20, 1843 (*ibid.*, II, 356, art. VIII), of Sardinia of October 25, 1823 (*ibid.*, II, 101, art. IX), of the United States of May 7, 1830 (*ibid.*, II, 193, art. IV), and of the Hanse cities of August 20, 1839 (*St. P.*, XXVIII, 450, art. VIII), contained a special provision, not found in the capitulations of the other powers, allowing the nationals of the mentioned signatory powers accused of crime to be tried and punished by their respective consular courts. The extent to which this concession was practiced is illustrated by the American and Belgian test cases of 1905:

In the American case, two naturalized American citizens of Ottoman origin were arrested and tried by the Turkish authorities on the charge of killing an Armenian merchant in Constantinople. The demand of the United States that the accused be tried and punished by the American Consulate General in accordance with the provisions of the Turkish-American Treaty of 1830 (see *infra*, p. 130) was refused by the Ottoman Government. The men in question were tried and sentenced by the local courts without the presence of the dragoman, one of them being condemned to death and the other to fifteen years imprisonment. Finally, as a result of the representation of the American embassy in Constantinople the Turkish Government ordered that the execution of the death sentence be suspended, and the matter rested in this form. (See *For. Rel.*, 1905, pp. 885-898.)

The famous Belgian case, known as the "Jons case," arose in connection with Jons, a Belgian subject, who was condemned to death

It is safe to state, therefore, that only a small amount of friction arose concerning jurisdiction over cases involving foreigners of the same nationality or of different nationalities and that the chief source of conflict lay in the field of jurisdiction over cases between foreigners and Turks. In the language of Andre Mandelstam:

In matters involving control by the powers, i. e., questions dealing with the legal relations between foreigners and Ottoman subjects, the situation could not be better characterized than by calling it the domain of conflicts. The composition of the civil courts hearing mixed cases; the rights of foreign assessors in the mixed commercial courts; the law to be applied by these commercial courts; the jurisdiction of the religious tribunals over foreigners; the right of supervision by the dragoman and its extent in civil and criminal matters; the execution of judgments rendered by Ottoman tribunals against foreigners in both civil and criminal cases; the detection of foreigners before trial, and many other questions of the same nature cause daily conflicts between the Sublime Porte and the diplomatic missions.<sup>45</sup>

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by the Turkish authorities on the charge of an attempt on the life of the Sultan. The Belgian dragoman who was present at the trial refused to sign the sentence; thereupon, the Belgian representative, as in the American case, demanded that the accused be handed over to the Belgian Government for trial and punishment as provided in the Turco-Belgian treaty of 1838, but the Porte refused to comply with the demand. The case, however, was finally settled by the action of the Turkish Government in releasing Joris on the condition of his leaving the country. For references on the case, see: *A. J. I. L.*, 1907, part I, p. 485; P. M. Brown, *Foreigners in Turkey*, p. 80, n. 8a; A. Mandelstam, *La justice ottomane dans ses rapports avec les puissances etrangeres*, p. 165; *R. D. I. L. C.*, 2eme serie, 1906, VIII, 52-56, 119-135, 363-382; *ibid.*, 1910, XII, 426-433; *R. D. L. prive*, 1906, II, 379-392, 659-683; *R. G. D. L. P.*, 1907, XIV, 554

<sup>45</sup> A. Mandelstam, *op. cit.*, p. 268.

## ADDITION OF PRIVILEGES THROUGH USAGE

It is finally to be remembered that besides the specific rights granted in the treaties many usages grew up as the Ottoman Empire began to decay, thus adding a mass of traditional usages to the treaty guarantees. Most consulates, for instance, had refused to submit their mail to the Ottoman postal service, and they were consequently allowed to maintain their own post offices on Ottoman territory.<sup>46</sup> This privilege was in most cases abused by some of the powers, and it was, therefore, one of the capitulatory rights to the existence of which the Ottoman Government was strongly opposed.<sup>47</sup> That these privileges which were added through usage as the Empire declined, as well as the capitulatory rights

<sup>46</sup> Before the abrogation of the capitulations in 1914 (see *infra*, p. 189) six European powers maintained their own post offices in Turkey, namely: Austria, France, Italy, Russia, Great Britain, and Germany. Austria was the first to establish its post office in Turkey in 1748. It was followed by Russia in 1799; by France in 1812; by Great Britain in 1832; by Germany in 1870. (See "Turkey," *A Commercial and Industrial Handbook*, Trade Promotion Series, No. 28, Wash., 1926, p. 67.) For further references on the question of foreign post offices in Turkey, see: Bonfils-Fauchille, *Manuel de droit international public*, 7th ed., p. 164, n. 2, sec. 260; P. M. Brown, *Foreigners in Turkey*, p. 95; *Clunet*, 1901, XXVIII, 617-632; Fauchille, P., *Traite de droit international public*, 1922, part 1, I, 441; *R. G. D. I. P.*, 1895, II, 365-372; *ibid*, VIII, 777-797 and 1914, XXI, 493; *St. P.*, 1912, CV, 681-682.

<sup>47</sup> "The foreign post offices," said Professor P. M. Brown, "crept in insiduously and deprived the Ottoman postal service of a large revenue, as well as enabling foreigners to evade provisions of Turkish law relating to customs duties and to censorship." (*A. J. I. L.*, XVII, 292.)

in general, had given an advantage to the foreigner in Turkey, and that they often left the foreigner free from the restraints of law<sup>48</sup> can hardly be denied.<sup>49</sup> A passage from Edward Dicey's article on the capitulations well describes the situation and is worth quoting:

"Every community possessing capitulations," he said, "formed throughout the Ottoman Empire a sort of imperium in imperio. Every European colony on Ottoman territory possesses, under the capitulations, rights not accorded to Mahometan subjects of the Sultan, and these rights and privileges are employed by these colonies to increase their wealth, to enlarge their privileges, and to establish their independence."<sup>50</sup>

48 "Foreigners in Turkey before 1914," remarked Prof Brown, "enjoyed so privileged a status that they were not only free from the restraints of Turkish laws, but also from the restraints of their own laws." (*A. J. I. L.*, 1923, XVII, 292.)

<sup>49</sup> In addition to these restrictions, Turkey's sanitary administration was controlled by a Council of Health composed of eight Ottoman subjects and thirteen representatives of the Powers. The Powers were Germany, Austria, Belgium, Spain, the United States, France, Great Britain, Greece, Italy, the Netherlands, Persia, Russia, and Norway and Sweden. (For a complete documentary account of the Sanitary administration, see G. Young, *Corps de droit ottoman*, III, 125-194. On the settlement after the War, see *infra*, p. 246, n 33 )

<sup>50</sup>*The Nineteenth Century and After*, 1906, LX, 21.

## CHAPTER V

### THE SYSTEM OF THE CAPITULATIONS (*Continued*)

#### NON-MOSLEMS IN TURKEY AND THE MILLET SYSTEM

To be distinguished from the foreign capitulations, there were the privileges of the so-called " millets " or religious communities granted to the Turkish non-Moslem subjects in Turkey.<sup>1</sup> There were in 1914 some thirteen millets recognized by the Sublime Porte.<sup>2</sup> Each of these was allowed to have a patriarch

<sup>1</sup> Cf. *supra*, pp 48 ff.

<sup>2</sup> These millets were: (a) The Greek community which included all members of the Orthodox church recognizing the Oecumenical Patriarch whose seat was in Constantinople; (b) Latins, or Catholics, who use the Roman liturgy, consisting of the descendants of the Genoese and Venetian settlers and other native Catholics of the Latin ritual; (c) Armenian Gregorians, under their patriarch in Constantinople, but giving allegiance to the Catholics at Echmiadzin, in Russian Armenia; (d) Armenian Catholics, under a patriarch at Constantinople; (e) Syrian Catholics under a patriarch at Mardin; (f) Chaldean Catholics, under a patriarch at Mosul; (g) Syrian Jacobites, under a patriarch at Mardin; (h) Protestants consisting chiefly of converts among the Armenians; (i) Melchites, under a patriarch at Damascus; (j) Jews of two rites; (k) Bulgarian Catholics, under the Bulgarian Exarch; (l) Marontes, chiefly in the Lebanon, under the Patriarch of Antioch; (m) Nestorians, whose patriarch had his residence in the mountains of Kurdistan. (See E. Powell, *The Struggle for Power in Moslem Asia*, 1923, pp 60-61.) On the non-Moslem population of the Ottoman Empire, see: E. Pears, *Turkey and its People*, London, 1912; C. N. E. Eliot, *Turkey in Europe*, London, 1900; G. F. Abbott, *Turkey in Transition*, London, 1909, pp 70-74, 87-98; W. Denton, *The Christians of Turkey: Their Condition under Mussulman Rule*, London, 1877; W. S. Monroe, *Turkey and the Turks*, London, 1908, chs. v, vi, vii; E. Poujade, *Chretiens et Turcs*, Paris, 1862; J. L. Barton, *Daybreak in Turkey*,

or a religious head who was the chief protector of his community and who was responsible, in behalf of the community, to the Sultan. Taxes were in most cases collected through the heads of these millets.<sup>3</sup> Important among the privileges granted to these communities was the right to maintain independent courts in which all cases relating to religious rites as well as a certain class of civil cases were tried.<sup>4</sup> The freedom of the use of the community's own language was extended and several other privileges such as the maintenance of schools, the establishment of religious institutions, etc., were granted.<sup>5</sup>

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Boston, 1908, chs. v, vi, vn; R. Davey, *The Sultan and his Subjects*, London, 1897, II; V. Jabotmsky, *Turkey and the War*, London, 1917, chs. vn, vni; M. Maccoll, "The Christian Subjects of the Porte," *The Contemporary Review*, Nov., 1876, XXVIII, 970-989; W. H. Hall, (editor), *Reconstruction in Turkey*, A series of Reports compiled for the American Committee of Armenian and Syrian Relief, N. Y., 1918, pp. 9-28; A. Riley, "Christians and Kurds in Turkey," *The Contemporary Review*, Sep., 1889, LVI, 452-468.

<sup>3</sup> Non-Moslems living under Moslem rule were in the early period of Islam subject to a tax known as "Kharadj." This was later abolished by the Turks and replaced by the military exemption tax, "Bedel-i-Askariyeh."

<sup>4</sup> The Imperial charter of February 18, 1856 (see *infra*, p. 91, note 7), provided that "all commercial, correctional, and criminal suits between Mussulmans and Christian or other non-Mussulman subjects, or between Christians or other non-Mussulmans of different sects shall be referred to mixed Tribunals." (A documented account of the judicial privileges of the non-Moslem communities in the Ottoman Empire is found in G. Young, *Corps de droit ottoman*, II, 165 ff.)

<sup>5</sup> See Historical statement on the problem of minorities in Turkey read by the Turkish Delegate at the Lausanne Conference at the meeting of Dec. 12, 1922, of the Territorial and Military Commission. (Turkey No. 1 [1923], Cmd. 1814, pp. 190-204.)

These privileges are to be distinguished from the foreign capitulatory privileges in that they were not included in a treaty. Enforcement, therefore, rested wholly on the will of the Sultan. Furthermore, they were not as extensive as the foreign privileges were, especially in tax exemptions. They were merely guaranties which had been repeatedly given in the Ottoman constitutions and in the many proclamations made by the Sultans on several occasions; but these charters of liberty and of the rights of man such as those granted in the decrees of November 3, 1839,<sup>6</sup> and of February 18, 1856,<sup>7</sup> as well as those con-

<sup>6</sup> This decree of 1839, sometimes called "Tanzimat" or organizations, guaranteed security for life, honor, and fortune to all the subjects of the Ottoman Empire, made illegal the confiscation of the property of the innocent heirs of a criminal, and provided for a regular system of taxation and for a defined system of military service. (For the text of the decree, see: Aristarchy Bey, *Legislation Ottomane*, II, 7; Noradounghian, *op. cit.*, II, 290-294; Testa, *Recueil des traites de la Porte Ottomane*, V, 140; E. P. Engelhardt, *Turqme et le Tanzimat*, pp. 257-261. For English version, see *Great Britain Foreign Office, Historical Section, Peace handbooks*, III, No. 2, pp. 139-142 and E. A. Van Dyck, "Report on the Capitulations," p. 106.)

<sup>7</sup> Known as the Hatti Humayun of February 18, 1856, this decree confirmed the previously granted charter and provided, among other things, for: (a) the admissibility of all the subjects of the Empire without distinction of nationality to public employments according to their capacity and merit; (b) the admissibility of all subjects without distinction of religion into the civil and the military schools of the Government; (c) publicity in trials and assurance to all, without discrimination on account of religion, the right to produce witnesses before the courts; the testimony was to be received upon an oath taken according to the religious law of the witness. The decree also made it lawful for foreigners to possess landed property in Turkey subject to the local laws and police regulations. This was to be effected by special agreements to be made with each of the powers.

ferred in the Ottoman constitution of December 23, 1876, of Midhat Pasha<sup>8</sup> and in that of the Young Turks of 1909<sup>9</sup> had not been put into practice, con-

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(For the text of the decree, see Anstarchy Bey, *op. cit.*, II, 14; Noradounghian, *op. cit.*, III, 83-88; Testa, *op. cit.*, V, 132; Engelhardt, *op. cit.*, pp. 263-270. The English version is found in *Great Britain Foreign Office, Historical Section, Peace Handbooks*, III, No. 2, pp. 142-147.)

<sup>8</sup>This constitution provided for a parliamentary form of government, a bicameral legislature to be composed of a senate and of a chamber of deputies. The senators were to be named directly by the Sultan and their number was not to exceed one third the number of the deputies. The deputies were to be elected by the people, one for every 50,000 male inhabitants of Ottoman nationality. The Grand Vizier (prime minister) was to be appointed directly by the Sultan, and the ministers who were to be nominated by the Sultan were to be responsible for their acts. While Islam was to be the State religion, freedom of worship was assured to all subjects of the Empire.

The Constitution also provided, among other things, for security of personal liberty and property; equality before the law to all without distinction; abolition of torture; eligibility to public office for all without distinction; freedom of the press.

The Constitution finally provided that no provision thereof could "under any pretext whatever be suspended or ignored" (For text, see *St. Pap.*, LXVII, 683-698; *A. J. I. L.*, Supplement, 1908, II, 367-387; A. Ubcimci, *La constitution ottomane du 7 Zilhidge, 1293 [Dec. 23, 1876]*, Paris, 1877.)

<sup>9</sup>Shortly after its proclamation, the Constitution of 1876 was suspended by Sultan Abdul Hamid who introduced a rule of terror and absolutism. His rule was, however, put to an end when the Young Turks' revolution broke out and succeeded in deposing the despot ruler. The reins of the Government now in the hands of the Young Turks Committee of Union and Progress, the constitution of 1876 was reproclaimed with certain modifications; but due to the Balkan wars and other factors the constitution was again put aside. The text of the constitution as revised by the Young Turks (Aug. 5, 18, 1909) is found in *For. Rel.*, 1909, pp. 585-594; for a detailed account of the constitutions of 1876 and of 1909, refer to Lord Eversley and V. Chirol, *The Turkish Empire*, London, 1923, pp. 316-351.

sequently giving birth to the question of non-Moslem communities in Turkey where in many cases various communities revolted, leading to foreign intervention.<sup>10</sup>

#### THE PROTÉGÉ SYSTEM

Foreign political interests later rendered the question more) complicated, especially after the development of what is called the protégé system—the system by which Ottoman subjects could acquire foreign nationality or foreign protection without being required to reside in the country granting the protection and thereby be entitled to the capitulatory privileges enjoyed by the nationals of that country in Turkey;<sup>11</sup> this, as we shall see, had been one of

<sup>10</sup> By the treaty of peace of Paris of March 30, 1856 (Martens, *Nouveau recueil general des Traités*, XV, 770), the right of any European power to interfere with the affairs of the Sultan and his subjects was denied. Turkey was placed under the guarantee of Europe and her integrity was recognized by the Powers (arts. 7, 9); this, however, did not prevent foreign intervention for the cause of the non-Moslem communities in Turkey. In violation of the Treaty, France, without consultation, landed 6000 troops in 1861 to protect the Christians of the Lebanon. Again, Russia's insistence on the introduction of domestic reforms in Turkey was one of the major causes which led later to the Russo-Turkish War of 1878. In the treaty of Berlin of July 13, 1878 (*St. P.*, LXIX, pp. 749-768), special provisions were inserted in favor of the Armenians with clauses regarding religious liberty, and the Porte was to keep the Powers periodically informed of the steps taken to this effect (arts. 61, 62). By proclaiming equality of Ottoman subjects, the Young Turks' Government (1909) attempted to do away with the privileges enjoyed by the non-Moslem communities in the Empire, but the latter declined to yield.

<sup>11</sup> An excellent account of the protégé system is given in Francis Rey, *La protection diplomatique et consulaire dans les échelles du*

the most abused privileges under the capitulatory regime. Generally speaking, there were four classes of proteges in Turkey.

First, we may cite the foreign proteges. It has been indicated that foreign nations were allowed by Turkey to assume protection of nationals of other foreign nations trading in Turkey. France, as we have seen, played an active part in the early development of the capitulatory system extending her protection, for a certain period, over all foreigners who belonged to countries which had not acquired capitulatory rights in Turkey.<sup>12</sup> This privilege, however, lost its significance later by reason of the fact

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*Levant et de Barbanc*, pp. 244-450. For further references, see: P. Arminjon, "La protection en Turquie et en Egypte," *Revue du droit public et de la science politique*, 1901, XVI, 5-44; E. M. Borchard, *The Diplomatic Protection of Citizens Abroad*, p. 468; P. M. Brown, *Foreigners in Turkey*, p. 93; Dislere et De Mouy, *Droits et devoirs des Français dans les pays d'orient et dextreme orient*, p. 45; (*For. Rel.*, 1898, p. 1109; *ibid.*, 1900, p. 920; F. E. Hmckley, *American Consular Jurisdiction in the Orient*, p. 83; "Extraterritoriality as affecting Questions of Nationality and Citizenship," *House Doc.* No. 326, 59th Cong., 2d sess., p. 206; J. Jacquemmm, *La jundiction penale des consuls Français dans les pays hors Chretiente*, pp. 34ff.; A. Mandelstam, *La justice ottomane dans scs rapports avec les puissances etrangeres*, p. 174; Moore, *Digest of International Law*, II, 736-747; E. Nys, *Le droit international*, nouvelle edition, Bruxelles, 1912, II, 473 et seq.; Oppenheim, *International Law*, 3d edition, 1920, I, 466; Pelissie du Kansas, *Le regime des capitulations dans l'Empire Ottoman*, II, 23-40; *R. D. L. L. C.*, 1869, I, 131; Y. Rioche, *Les juridictions consulaires Anglaiscs dans les pays d'orient*, pp. 239ff.; Testa, *op. cit.*, I, 224ff.; J. Westlake, *International Law*, Cambridge, 1910, part 1, pp. 206 ff.; "X," "Des proteges en Turquie," *Clunet*, 1900, XXVII, 314-321.

<sup>12</sup> See supra, pp. 55-57.

that most of the powers acquired capitulations in the eighteenth and the nineteenth centuries.<sup>13</sup> The few foreigners left without diplomatic or consular representation in Turkey, such as the Swiss,<sup>14</sup> were entitled to elect one of the foreign powers represented in Turkey to assume their protection.

Under the second category come the consular protégés such as the native consuls, vice-consuls, agents, dragomans, clerks, and guards; these were entitled to the same privileges enjoyed in Turkey by the nationals of the country employing them. These privileges, again, could hardly be abused if faithfully carried out, since the number of these protégés was limited. Although no western country would have granted these privileges to native consular officials

<sup>13</sup> A detailed account of the foreign protégés is found in F. Rey, *op. cit.*, pp. 199-243; see also, J. Jacquemin, *op. cit.*, p. 27 et seq., and Y. Rioche, *op. cit.*, pp. 261 ff.

<sup>14</sup> In a note, dated March 22, 1890, (Noradounghian, G., *Recueil d'actes internationaux de l'Empire Ottoman*, IV, 500), addressed to the French ambassador in Constantinople, the Turkish Foreign Minister signified his consent to the application of the Franco-Turkish arrangements in the determination of the status of the trade and nationals of Switzerland.

By the protocol of August 26, 1890, (Noradounghian, *op. cit.*, IV, 498), signed by Germany and Turkey, Swiss nationals residing in the Ottoman Empire and willing to place themselves under German consular jurisdiction were given the privilege of enjoying all the immunities granted to German nationals in Turkey by treaty arrangements or otherwise.

Swiss law, on the other hand, authorized Swiss nationals residing or trading in Turkey to choose the consulates under whom they wanted to place themselves. (Y. Rioche, *Les juridictions consulaires Anglaises dans les pays d'outre-mer*, p. 264 )

delegated by a foreign nation, we may assume that they were granted in conformity with the principle of international law that consular officials are to enjoy certain extraterritorial immunities.

Thirdly, there were certain monasteries and religious communities in Turkey, some of which had been under the protection of the Papal States, which were entitled to foreign protection. These were regarded as of the nationality of the power which acquired the right to extend the protection. The superior officials together with the heads and the dragomans of these religious establishments were entitled to immunities, more or less similar to those granted to consular establishments. Certain exemptions from customs duties were also granted to these organizations.<sup>15</sup>

The proteges under the fourth category were the most numerous; these were the native proteges whose privilege of foreign protection was permanent and hereditary.<sup>16</sup> Any Ottoman subject, whether Moslem or non-Moslem, could acquire the right of

<sup>15</sup> France was the champion of the Roman Catholic Church in Turkey and was given the right to assume the protection of some of the holy places in Palestine. The Catholics in northern Albania were under the protection of Austria. Russia, on the other hand, claimed and enjoyed the privilege of protecting the Greek Orthodox Church in Turkey as successor of the Byzantine Empire. (See F. Rey, *op. cit.*, pp. 305-384.)

<sup>16</sup> These were also called "*de facto* subjects" of the protecting state; their anomalous position was based on custom and treaties and there was no special rule concerning them in so far as the law of nations is concerned.

protection from a foreign country without being required to reside in that country.<sup>17</sup> This right—the right to extend protection to Ottoman subjects—that the foreign powers enjoyed in Turkey was the most abused of all the privileges under the capitulatory regime.<sup>18</sup> It was later used by some of the powers as a means of furthering their political interests.<sup>19</sup>

#### ABUSES OF THE PROTÉGÉ SYSTEM

That a foreign power may assume the protection of nationals of another foreign power within a third state has often been conceded by nations; but the question becomes, indeed, intolerable when this for-

<sup>17</sup> This protection thus granted did by no means constitute full adoption by a state or naturalization, for those who received it retained their true nationality outside Turkey. (See J. Westlake, *International Law*, 1910, part 1, p. 206)

<sup>18</sup> The abuse by consuls in respect to giving protection to persons of other than their own nationality does not seem to have been uncommon in the early period of Turkish reign. We find in the Florentine Capitulation of 1460 (cf. *supra*, p. 53) a provision prohibiting the Florentine consuls in Turkey from extending protection to other than nationals of Florence. A fine of 1000 florins was to be imposed upon the Florentine consul in case this provision was violated. (See Miltiz, *Manuel des consuls*, Book 2, part 1, II, ch. i, p. 146, sec. 3.)

<sup>19</sup> Commenting on the extension of protection by foreign powers to native subjects in eastern countries, J. Westlake remarks: "It is an objectionable practice for several reasons. It enables a Western state, by gathering under its flag recruits who have little connection with it, to acquire an influence in the country out of proportion to its trade and to the number of residents really belonging to it; and it impedes the progress of the Eastern state by making it easy for its proper subjects to withdraw themselves from its control." (J. Westlake, *International Law*, 1910, part I, p. 207.)

eign protection is extended to millions of *native citizens* who hold allegiance to the sovereign within whose dominions the foreign power claims the protection. On the payment of a certain sum of money, patents for life, known as " *barat*," were issued by foreign ambassadors in Turkey to Ottoman subjects by which the latter became entitled to foreign protection. A French ambassador was reported to have received a sum exceeding 400,000 francs from this source and a British ambassador 2000 to 3000 pounds from the same source.<sup>20</sup>

Austria had at the end of the eighteenth century more than 200,000 subjects under her protection in Moldavia alone. In Valachia, Emperor Joseph II had distributed 60,000 patents of protection; when Russian influence superseded in the region, however, the Austrian patents were transformed to Russian patents.<sup>21</sup>

In 1774, according to the treaty of Kutschuk-Kainardji, Russia had in the Ottoman Empire more than seven million Greeks and Armenians of Ottoman nationality under her protection.<sup>22</sup>

Of the 300,000 Greeks in Turkey entitled to Greek protection as recorded in the Greek consulate, 150,000 were found to be born of Turkish parents on Turkish soil, and in Constantinople alone there were

<sup>20</sup> F. Key, *op. cit.*, p. 262; also, Testa, *op. cit.*, I, 226

<sup>21</sup> F. Key, *op. cit.*, p. 265.

<sup>22</sup> Du Rausas, *Le regime des capitulations dans l'empire ottoman*, II, 34.

21,000 of Ottoman nationality who had fraudulently acquired the Hellenic nationality.<sup>23</sup>

An interesting case is cited by Engelhardt whereby an Ottoman subject who had appeared as an Ottoman national in a suit before the Turkish court shortly thereafter reappeared as a Russian subject in the same suit, this time accompanied by a dragoman of the Russian embassy.<sup>24</sup> " It is easy to see," says Arminjon, " the disorder, the conflicts, the injustices and the various difficulties which were caused by these incredible abuses." <sup>25</sup>

#### ORIGINAL DEVELOPMENT OF THE PROTÉGÉ SYSTEM

A word or two may be said as to how this state of affairs originated. In the middle of the sixteenth century the ambassadors in Turkey communicated with the Turkish Government through interpreters or " dragomans "<sup>20</sup> who were recruited from the Turkish non-Moslem communities. Notwithstanding the responsibility that their position involved, these interpreters remained subject to Ottoman jurisdiction and enjoyed no other rights than the rights granted by the Sultans to the members of the communities to which they belonged. The Turkish authorities were rather suspicious of these interpret-

<sup>23</sup> Ibid., II, 35; also F. Rey. op. cit, p. 285 and P. Armmjon, *Revue du droit public et de la science pohtique*, 1901, XVI, 11.

<sup>24</sup> Ibid., p. 11.

<sup>25</sup> Ibid., p. 12.

<sup>26</sup> The term " dragoman " is derived from the Arabic word " tirci-man " meaning interpreter.

ers. At the beginning of the seventeenth century a dragoman was imprisoned by the local authorities and publicly hanged; the answer to the protest of the employing ambassador was that the person in question was an Ottoman subject and that he had no right to interfere with the domestic questions of the Empire. Handicapped under these circumstances, the foreign representatives decided to train their own nationals for the office; but the increasing demand for interpreters, on the one hand, and the difficulty experienced by foreigners in mastering the Turkish language, on the other, rendered the success of the scheme impossible. An arrangement was made later, however, by which the dragoman became subject to the jurisdiction of the employing embassy and thereby entitled to all immunities granted to the nationals of the employing country.<sup>27</sup>

This privilege was later extended to the servants of the foreign representatives, the native consuls and vice-consuls, to the Janissaries (guard), and to all those who were employed by the embassy. Then followed the sale of patents of protection to wealthy Ottoman subjects who found in the capitulatory privileges security and economic advantages. In virtue of the patent the foreign protection was not confined to the purchaser only, but it was extended to all the family. It was hereditary and could be

<sup>27</sup>" We grant to interpreters serving the ambassador the same privileges given to French nationals." (Article XIV of the French Capitulation of 1673.)

transferred for a consideration. These patents of protection were rather limited, at the beginning, to those who could afford to buy them; but the situation took a different aspect when the limitation was removed and the patents were issued on a large scale for political purposes. It seems obvious, therefore, that the capitulations ceased to be a matter of only judicial privileges for foreigners in Turkey, as they also became a political instrument in the hands of some of the powers. Foreign protection was even extended to Ottoman Moslems, who, in virtue of the protection, became entitled to the capitulatory privileges of the protecting nation.

#### ATTEMPTS TO CHECK ABUSES

Napoleon tried in 1806 to put an end to the issuance of these "barats" by denying such a right for France. The other powers, however, did not follow<sup>r</sup> his example. Several attempts were later made by the Sublime Porte to prevent the issuance of the patents of protection to Ottoman subjects. In a note, dated January 27, 1852, and addressed to the foreign representatives in Constantinople, the Turkish Government declared that it would no longer recognize the foreign protection of Ottoman subjects except that concerned with natives attached to the service of the foreign legations or consulates.<sup>28</sup> Again, on September 14, 1860, Ali Pasha sent a mem-

<sup>28</sup> P. Dislere et R. de Mouy, *Droits et devoirs des Français dans les pays d'orient et d'extreme orient*, p. 45.

orandum to the foreign legations, notifying them of the measures that the Sublime Porte had decided to adopt in regard to these native proteges; it was declared in the note that the new protégés were to be subjected to Ottoman jurisdiction and that no inheritance of rights for protection would be allowed; these new proteges were to leave Turkey within three months following the declaration of their change of nationality.<sup>29</sup> The only result of this memorandum was the appointment of a mixed commission to revise the titles of protection.<sup>30</sup>

#### REGULATION OF 1863

On April 24, 1862, another circular was addressed to the diplomatic corps requesting the powers to settle in common accord with the Sublime Porte the question of the protege system. The powers re-

<sup>29</sup> Du Rausas, *op cit*, II, 36.

<sup>30</sup> It is to be noted in this connection that in most of the capitulations of the nineteenth century a clause was inserted by which the beneficiary state undertook not to issue these "barats" except to persons engaged in the service of the ambassador or the consuls (See. The Anglo-Turkish treaty of Jan. 6, 1809, Noradounghian, *op. cit.*, II, 83, arts. 9, 10; the treaty of October 25, 1823, with Sardinia, *ibid*, II, 101-102, art. 13; the treaty of May 28, 1827, with Sweden, *ibid*, II, 127, art. 2; the treaty of May 7, 1830, with the United States, *ibid.*, II, 193, art. 5; the treaty of Feb 12, 1833, with Tuscany, *ibid*, II, 225, art. 11; the treaty of August 3, 1838, with Belgium, *ibid*, II, 245-246, art. 9; the treaty of March 20, 1843, with Portugal, *ibid*, II, 356-357, art. 9.) It is not an unwarranted assumption, however, that these powers did not keep to the letter of their pledges as Turkey grew weaker and weaker and as the political interests of the powers grew in importance.

sponded and with their consent the regulation of August 9, 1863,<sup>31</sup> was proclaimed by the Ottoman Government. This regulation defined the number of persons who were to be employed by the embassies, by the consulates, by the ecclesiastical missions, and by the foreign monasteries. It also provided that no Ottoman subjects were to be employed as consuls or vice-consuls without special arrangements with the Porte; furthermore, the protection was not to be extended to the family or to descend to the heir of the employee, but it was to cease on his dismissal.

The regulation, however, was not retroactive, that is, patents of protection issued before August 9, 1863, were to remain hereditary and were by no means to be affected. The rescript hence created a new class of native proteges who were entitled to temporary protection and the result thereof was nothing more than a check for further abuses; what had been done in the past was to remain.

#### TURKISH COMPLAINTS

It was not long after the promulgation of the decree of 1863 when the Sublime Porte began to

<sup>31</sup> For text, see Van Dyck, *op cit*, pp. 96-97; also: F. Rey *op. cit.*, pp. 520-523; Testa, *op. cit.*, I, 228; P. Armmjon, *Etrangers et proteges dam Vempire ottoman*, pp. 325-330; *St. P.*, LXVIII, 1046-1049; *Clunet*, 1893, XX, 458-462. In connection with this regulation, a circular was sent by the Ottoman Government to the governors-general, asserting that the regulation of August 9, 1863, had "for its sole object to put an end to a crowd of abuses that had crept in a long time ago, and to dispel every cause of difficulty with foreign agents." (See Van Dyck, *op. cit.*, pp. 97-99; also, *St. P.*, LXVIII, 1049-1052.)

realize that practically nothing had been done by the Eegulation. In its note of September 14, 1866, the Ottoman Government enumerated the many unchecked abuses,<sup>32</sup> and again in April, 1869, it complained to the powers, declaring that the number of Ottoman subjects adopting foreign nationality had increased since 1863.<sup>33</sup>

Generally speaking, the whole system of the capitulations began to be looked upon by the Ottoman Government as an obstacle to the progress and the preservation of the nation. In a memorandum, dated July 7, 1869, addressed to the representatives of the foreign powers, the Porte enumerated the abuses of the capitulations and declared that the Imperial Government could no longer tolerate the existing state of affairs.<sup>31</sup> In the meantime, the Ottoman Empire was in the process of disintegration, losing her prestige, decaying in power and efficiency. Under these

<sup>32</sup> *Archives Diplomatiques*, 1867, p. 157.

<sup>33</sup> For text, see P. Armmjon, *op. cit.*, pp. 338-344; also, Testa, *op. cit.*, VII, 542.

<sup>34</sup> "Ces abus, il suffira de les signaler, pour que tout le monde comprenne qu'il serait impossible au Gouvernement Imperial de les tolerer plus longtemps.

"C'est pourquoi la Sublime Porte, en ordonnant aux autorites Imperiales d'observer strictement et en toute loyauté les dispositions contenus dans les capitulations, ne saurait trop leur recommander en meme temps de repousser toute pretention qui depasserait les limites des privileges consacres par ces actes et qui porterait atteinte aux droits souverains et imprescriptibles de sa Majeste Imperiale le Sultan." (For text, see Anstarchy Bey, *Legislation Ottomane*, II, 421-427. An extended discussion of this memorandum is found in B. Brunswik, *Etudes pratiques uur la question d'onent*, pp. 197-237.)

circumstances, Turkey could do little for herself, and the Powers showed no evidence of any desire on their part to do anything for her; their own interests, rather than Ottoman interests, dictated their policies towards the fate of the Turkish state.

LAW OF 1869 AND PROBLEM OF EXPATRIATION OF OTTOMAN SUBJECTS

Restrictive regulations issued by the Turkish Government added to the complexity of the situation. By an *Irade*, dated January 19, 1869,<sup>35</sup> the Porte forbade the naturalization of Turkish subjects under foreign governments. Article V of the proclamation strictly forbade the expatriation of Ottoman subjects without special authorization by the Imperial Government.<sup>36</sup> This gave rise to diplomatic controversies regarding the rights of Turkish subjects naturalized in foreign countries.<sup>37</sup> The consent of the

<sup>35</sup> For text, see *St. P.*, LXVII, 1251; the English version is found in *For. Rcl.*, 1893, p. 714. See also, *infra*, pp. 113-115.

<sup>36</sup> "The Ottoman subject who has acquired a foreign nationality with the authorization of the Imperial Government is considered and treated as a foreign subject. If, on the contrary, he has naturalized himself as a foreigner without the preliminary authorization of the Imperial Government, his naturalization will be considered as null and void, and he will continue to be considered and treated in all respects as an Ottoman subject.

"No Ottoman subject can in any case acquire foreign naturalization until after obtaining an act of authorization delivered by virtue of an Imperial *Irade*."

<sup>37</sup> The status of a great number of Ottoman subjects who had acquired foreign nationality in Turkey under the *protege* system (see *supra*, pp. 96 ff) was another source of diplomatic controversy between Turkey and some of the foreign powers as the decree applied

Turkish Government to the expatriation of an Ottoman subject was given only on condition that the applicant should stipulate not to return or in case

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to Ottoman subjects expatriated in the Ottoman Empire as well as to Turkish subjects naturalized in a foreign country. Thus the decree was opposed mostly by the powers who were particularly affected because of their having many Ottoman subjects in Turkey under their protection. Of these, Russia and Greece may be cited as examples. Their protest was based on the ground of the retroactive effects of the decree on capitulatory privileges. The Turkish Government, however, claimed that the law bore no retroactive effect since the Sublime Porte had never recognized the acquisition of a new nationality by Ottoman subjects "There are persons," it declared, "who seem to believe that the law would have a retroactive effect because the Sublime Porte does not recognize the validity of changes of nationality abusively effected outside the presumptions of the laws of the countries which these new subjects had adopted. But the disposition of the law concerns only the Ottoman subjects whose change of nationality has been legally effected. The others have at no time been recognized." Accordingly, a decree was passed by which a special permanent commission attached to the Ministry of Foreign Affairs was instituted to concern itself with the determination of nationality and the execution of the law bearing thereon. (See G Young, *op. cit.*, II, 238; also, Aristarchy Bey, *op. cit.*, I, 12.) Most of the powers accepted the regulations except Russia and Greece who continued their opposition to the law. (See E R Salem, "De l'autorité compétente pour statuer en Turquie sur les questions relatives à la nationalité et des conflits de lois en matière de nationalité," *R. D. I Privé*, 1907, III, 25-42, 654-660.)

An agreement between Russia and Turkey was finally concluded May 4, 1870, (*St. P.*, 1884-1885, LXXVI, 594-595), modifying some of the previous arrangements of 1863 between the two countries (see *ibid.*, pp. 590-594). According to this new agreement of 1870, Turkey agreed to recognize the Russian nationality of Ottoman subjects who had obtained their Russian nationality before 1858 and whose names were found in the registers of the commissions instituted in the Ottoman Empire. The children of such persons, who in 1858 had not attained their majority, were also to be recognized as Russian nationals. However, persons who acquired a Russian passport after May 5, 1858, were to be admitted to avail themselves of the Rus-

he returned he should regard himself as an Ottoman subject.<sup>38</sup>

To avoid this trouble, the British Government passed the naturalization act of 1870 which declared that " an alien to whom a certificate of naturalization is granted . . . shall not, within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty to that effect." Thus, a Turkish subject naturalized in Great Britain did not expect to receive British protection in case he returned to Turkey.<sup>39</sup> There were also other countries, of which France was an example, which did not admit a Turkish subject to citizenship unless he procured the Imperial sanction of his change of nationality.<sup>40</sup> No laws in the United States, however, could give a free hand to the Ameri-

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sian nationality after making a declaration and after residing three years in Russia.

Greece continued to maintain its own pretension, but the Turkish Government insisted on the view that Turkey had the exclusive right to set its own regulations regarding the acquisition and the loss of nationality of its own subjects. The question remained unsolved until the elaboration of the consular convention drawn by the arbitration of the ambassadors, although the provisions of this convention did not touch on the question of nationality. (On this convention and the Greek capitulations in general, see: *R. G. D. I. P.*, 1902, IX, 202-262, 406-468; *ibid.*, 1903, X 69-105; *St. P.*, 1901-1902, XCV, 939-948; *R. D. I. L. C.*, 1897, XXIX, 377-384.)

*"For. Rel.*, 1901, p 516.

<sup>TM</sup>*For. Rcl.*, 1894, p. 762.

<sup>40</sup> Hall, *International Law*, London, 1895, p. 247

can Government to resort to such measures, and, consequently, the solution of the problem of expatriation became largely dependent on an understanding to be reached between the Governments of the United States and of Turkey.<sup>41</sup> Unfortunately, no such an understanding was ever reached between the two countries and the problem was left unsolved.<sup>42</sup> There is record of several cases of expulsion from Turkey of naturalized American citizens of Armenian parentage whereby the Ottoman government refused to recognize the right to American protection.<sup>43</sup>

#### IMMIGRATION OF JEWS INTO PALESTINE

Among other Turkish regulations relative to nationality was that preventing the immigration into Palestine of Jews *en masse* who wished to establish permanent colonies there; the sojourn of Jewish

<sup>41</sup> A detailed account of the controversy arising from the problem of expatriation of Ottoman subjects is found in Moore's *Digest of International Law*, III, 679-708.

<sup>42</sup> In his annual message (December 5, 1899), President McKinley said: "In the Turkish Empire the situation of our citizens remains unsatisfactory. Our efforts during nearly forty years to bring about a convention of naturalization seem to be on the brink of final failure through the announced policy of the Ottoman Porte to refuse recognition of the alien status of native Turkish subjects naturalized abroad since 1869. Our statutes do not allow this Government to admit any distinction between the treatment of native and naturalized Americans abroad, so that ceaseless controversy arises in cases where persons owing in the eyes of international law a dual allegiance are prevented from entering Turkey or are expelled after entrance." (*For. Rel.*, 1899, p. xxxi.)

<sup>43</sup> See *North American Review*, 1906, CLXXXII, 696-699.

travelers in Palestine was limited to three months. Furthermore, Jews who purchased real estate in Palestine were required to subscribe to special agreements. The British Government protested against these restrictions;<sup>44</sup> and so did the American,<sup>45</sup> on the ground that no distinctions could be introduced regarding the protection of their nationals and the issuance of passports.<sup>46</sup>

#### OTTOMAN SUBJECTS NATURALIZED IN FOREIGN COUNTRIES AND THE RIGHT TO HOLD REAL ESTATE IN TURKEY

In connection with the problem of expatriation, arose the question of the rights of Ottoman subjects naturalized in foreign countries to hold and inherit real estate in Turkey. According to the Imperial rescript of January 18, 1867, granting to foreigners the right to possess real estate in Turkey,<sup>47</sup> Ottoman subjects naturalized in foreign countries were not entitled to the rights conferred upon the nationals of the country in which they were naturalized.<sup>48</sup> " This arrangement (relative to the rights

<sup>44</sup> *For. ReL*, part 2, 1888, p. 1590.

<sup>45</sup> See *For. ReL*, part 2, 1888, pp 1617, 1627; *ibid*, 1894, pp. 752-764; *ibid.*, 1898, pp. 1092, 1107.

<sup>46</sup> See Hinckley, *American Consular Jurisdiction in the Orient*, p. 80.

<sup>47</sup> Cf. p. 81 et seq, *supra*. Also Appendix II.

<sup>48</sup> " A Turk who has, since 1869, been naturalized abroad without having obtained an Imperial Irade consenting to his expatriation," says Mr. Moore, " is debarred from inheriting from Ottoman subjects, notwithstanding that the property may have been acquired through his thrift and industry; and, in case he purchases property in Turkey, he can bequeath it only to such subjects." (*Digest of International Law*, III, 692.)

of foreigners to hold real estate in Turkey)," reads the rescript, " does not concern subjects of Ottoman birth who have changed their nationality, who shall be governed in this matter by a special law." The Ottoman Government assumed that the special law referred to is that of April 21, 1858, relative to real estate, article CXI of which provides that " land once owned by a Turkish subject who has abandoned his nationality does not descend to his children."<sup>49</sup> It is to be noted, in this connection, that there was no treaty stipulation between Turkey and the United States to prevent the application of this rule to Ottoman subjects who had since 1869 become citizens of the United States without the consent of the Turkish Government.<sup>50</sup>

#### UNRATIFIED TURKISH-AMERICAN TREATY OF NATURALIZATION OF 1874

In 1874 a treaty of naturalization was negotiated between the United States and Turkey and was signed in Constantinople on August 11 of the same year.<sup>51</sup> In regard to the renunciation of acquired citizenship, this convention, as signed, provides that the intention not to return to the country of adoption *shall* be considered as established by a two

<sup>49</sup> For. *Rel*, 1897, p. 588; also, *ibid.*, 1883, pp. 809, 815, 821, and 1906, pp. 1410-1412.

<sup>50</sup> The Turkish Government did not seem to have insisted upon the enforcement of the provision in the code of 1858. (See Hinckley, *op. cit.*, p. 97.)

<sup>51</sup> For text, see G. Noradounghian, *Recueil d'actes Internationaux de Vempire ottoman*, III, 368-370.

years' residence in the country of origin. The Senate of the United States amended the treaty by substituting the word "may " for " shall " which is the usual form found in the treaties of the United States.<sup>52</sup> The Ottoman Government accepted the amendment with certain qualifications which in effect restored the original meaning. Ratifications were exchanged at Constantinople (April 22, 1875), but on account of the qualification made by the Turkish Government the President of the United States considered the exchange as ineffective and refused to proclaim the treaty. Fourteen years later, Mr. Straus, minister of the United States at Constantinople, obtained the consent of the Sultan to accept the treaty as amended by the Senate without qualification. Thus the treaty was to take effect on its proclamation by the President; but the President resubmitted it to the Senate, and by its resolution of February 28, 1889, the Senate consented to the exchange of ratifications upon an understanding between the two governments " that as amended the treaty shall not be construed to apply to persons already naturalized in either country." The ratifications, however, remained unexchanged.

### CONCLUSION

Such was the capitulatory system in Turkey—a system which may be characterized as a domain of conflict. There is no doubt that the abuses of the

<sup>52</sup> Noradounghian, *op. cit.*, III, 381-382.

capitulatory rights on the part of some of the foreign powers helped to aggravate the situation. Thus, it may seem unfair to attribute the difficulty involved in the solution of the question to the nature of the Turkish system of justice, for there is no evidence that the Western Powers were ever sincerely desirous of cooperating in the introduction of any measures to better the situation. But, on the contrary, most of the powers used the advantage of this anomalous condition to increase their privileges and to satisfy their political and economic interests.<sup>53</sup>

The capitulations, after all that can be said, were, however, a paramount impetus in urging the Ottoman Government to secularize its laws, and it is not an unwarranted conclusion that as the Romans were influenced by their contact with the foreign elements in their midst to incorporate the *ius gentium* into their legal system, so was the Ottoman administration influenced by the contact with European jurisprudence. This is manifested in the present attempt, on the part of Modern Turkey, to sift the religious elements from the departments of state and justice and to establish a modern system which may prove of great advantage to Turkey and to the foreign powers as well.

<sup>53</sup>" The Turkish Government, I know, have been accused of being corrupt. I venture to submit that it has not been for want of encouragement from Europeans that the Turks have been corrupt." (Sir Mark Sykes, in the House of Commons, March 18, 1914.)

## CHAPTER VI

### NATIONALITY AND DOMICILE

#### NATIONALITY IN TURKEY AND THE LAW OF 1869

Under the capitulatory system in Turkey, no foreigners, whether temporary residents, permanently located, or born in Turkey, were allowed to become Ottoman citizens without becoming Moslems until 1869 when a law with respect to naturalization was passed by the Sublime Porte.<sup>1</sup> Nationality was so blended with religion that little difference was deemed to exist between the two.<sup>2</sup> So it was not unusual for foreign subjects born in the Ottoman

<sup>1</sup> This is the same law which forbade the naturalization of Turkish subjects under foreign governments without special authorization by the Imperial Government (See supra, p. 105, the text and a documented explanation thereof are given in G. Young, *Corps de droit ottoman*, II, 225-229.)

<sup>2</sup> It was provided by the French capitulation of 1740 (Nora-dounghian, op. cit., I, 294, art. 68) that if a Frenchman should willingly embrace Mohammedanism, he would be required to give notice to his consul and by doing this he would relinquish his nationality. Also in the British capitulation of 1675 (art. 61) it was provided "that if any Englishman should turn Turk (the word Turk is used here as a synonym of Moslem), and it should be represented and proved that besides his own goods, he has in his hands any property belonging to another person in England, such property shall be taken from him, and delivered up to the Ambassador or Consul, that they may convey the same to the owner thereof." (Hertslet, *Commercial Treaties*, II, 366; see also art. 71, *ibid.*, p. 368.) The word "Turk" was also used as a synonym of "Mohammedan" in the French capitulation of 1535. (See art. 6, appendix I.)

Empire beyond several generations to be regarded as subjects of the state to which their ancestors had belonged. " I assent after careful examination," says Sir Edwin Pears, " that uninterrupted usage has kept all the descendants of British-born or other foreign subjects in the ligeance of the sovereign of the country from which the ancestor came as completely as if they had been born on the proper territory of such sovereign." <sup>3</sup>

According to the Turkish law of nationality of January 19, 1869,<sup>4</sup> a foreigner could become an Ottoman citizen if he had been residing in Turkey for five years after attaining majority.<sup>5</sup> The children of a foreigner who had been naturalized in Turkey, however, did not follow the condition of the naturalized father but remained foreigners before the law; these could claim Turkish citizenship three years after attaining majority. Similarly, the children of an Ottoman subject naturalized in a foreign

<sup>3</sup> *Law Quarterly Review*, October, 1905, XXI, 418.

<sup>4</sup> The text of the law is also found in P. Arminjon, *Strangers et proteges dans l'empire ottoman*, p. 330; Aristarchy Bey, *Legislation ottomane*, I, 7; Testa, *Recueil des traites de la Porte ottomane*, VII, 526; and Hertslet, *Commercial treaties*, XV, 1067-1068.

In connection with the law, a circular dated March 26, 1869, was also issued bearing comment on the law serving as a guide to the governors-general of the villayets in the Empire. (For text, see: Aristarchy Bey, *op. cit.*, I, 9-11; *For. Rel.*, 1893, pp. 714-715; *St. P.*, LXX, 720-722.)

<sup>5</sup> " Every foreigner who attained majority and who has resided for five years consecutively in the Ottoman Empire may obtain the Ottoman nationality by applying directly or through an intermediary to the Minister of Foreign Affairs."

country did not, according to the law, follow the condition of the father but remained Ottoman subjects.<sup>6</sup> Hence birth on Turkish soil did not give the right of Ottoman citizenship.<sup>7</sup>

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IN TURKEY

In no capitulation had the legal status of the children of foreigners born on Turkish territory been defined. The original idea had been to continue to have a colony preserving its nationality similar to the colonies organized by the early Genoese, Vene-

<sup>6</sup> "The minor child of an Ottoman subject who has been naturalized in a foreign country or who has lost his nationality does not follow the condition of his father and remains Ottoman subject. The minor child of a foreigner who has been naturalized in Turkey does not follow the condition of his father and remains foreigner."

<sup>7</sup> The new Turkish law of nationality of 1928, promulgated by the New Turkish Republic, provides that children born in Turkey are Turkish subjects. Such children, however, may within six months after reaching majority (in Turkey the nineteenth birthday) opt for the nationality of the parents in which case they will not be allowed to remain in Turkey. (See *London Times*, June 14, 1928, p. 15.) The provision as first interpreted to hold that any child born on Turkish soil after January 1, 1929, of foreign parents, either of whom had been born in Turkey, will be considered a Turkish subject was later reinterpreted by the Turkish Government such as to postpone the application of the law for a generation. "Only children born in Turkey of foreign parents, either of whom shall have been born in Turkey on or after January 1, 1929, will become Turkish subjects." (See *Cur. Hist.*, June, 1929, XXX, 535.) On the new Turkish law of nationality, see E. R. Salem, "La loi nouvelle sur la nationalité turque, avec quelques notes comparatives de droit étranger," *R. D. I. prive*, 1929, XXIV, 25-59; see also, *Revue de VInstitut Beige de droit compare*, 1928, p. 219 and *Rwista di Dintto internazionale*, 1928, IV, 556.

tians, and other foreign nationals in the Byzantine Empire. Thus, for centuries, the descendants of foreigners in Turkey remained under the control and the protection of their own sovereign.<sup>8</sup> This may seem to have caused a contradictory view with enactments of some countries. According to the English statutes of George II and George III, for instance, British subjects born abroad beyond the third generation were to be regarded as aliens. This, however, could not be applied to British subjects residing in Turkey; for foreigners, as we have seen, could not become Ottoman subjects until the enactment of the law of nationality of 1869. It was later construed in several British cases that a Britisher could not acquire a domicile of choice in a country where the capitulatory system operated.<sup>9</sup>

The law of the United States limited the right of citizenship of American nationals born abroad to one generation,<sup>10</sup> although it provided for the acqui-

<sup>8</sup> "Neither Sultan nor king," remarks Sir Edwin Pears, "contemplated the application of the new territorial idea of allegiance, which made allegiance depend on the place of a person's birth, but were content, as were all other European sovereigns of the time, to remain with the old notion that allegiance was due to the person of the sovereign under whose control and within whose protection he was born." (See *Law Quarterly Review*, October, 1905, XXI, 410.)

<sup>9</sup> See *infra*, p. 119 et seq.

<sup>10</sup> "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States." (*Rev. St.*, sec. 1993 [U. S. Comp. St. sec. 3967; U. S. C. tit. 8, sec. 61.]

Bition of citizenship by descendants affected by this limitation through the American consulate after having complied with certain modes of procedure.<sup>11</sup> This law, however, was not strictly applied to American nationals residing in Turkey; exceptions were made in favor of those who continued to associate with their fellow Americans. In the case of David and John Offley, children of the second generation born on Turkish soil, the Department of State maintained that they retained their citizenship. In a note dated August 9, 1887, the Department of State declared that "section 1993 of the Revised Statutes, providing that 'the rights of citizenship shall not descend to children whose fathers never resided in the United States,' does not apply to the descendants of citizens of the United States members of such communities. Such descendants are to be regarded, through their inherited extra-territorial rights recognized by Turkey herself, as born and continuing in the jurisdiction of the United States."<sup>12</sup> Thus American missionaries applying for passports to countries where the exterritorial system operated were not asked whether they intended to reside there or return to the United States.<sup>13</sup>

<sup>11</sup>34 Stat. 1229, sec. 6 (U. S. Comp. St. sec. 3963; U. S. C. tit. 8, sec. 6).

<sup>12</sup>*For. ReL*, 1887, p. 1125.

<sup>13</sup>In a note, dated July 18, 1892, the Department of State maintained that "these requirements, while generally applicable to the cases of native-born citizens indefinitely sojourned abroad under circumstances creating a presumption of abandonment of their Ameri-

There was no such limitation in French law. Children of French parentage born anywhere abroad have always been regarded as French citizens.<sup>14</sup> This, most probably, has its origin in the attempt made on the part of the French kings during the seventeenth and the eighteenth centuries to control French communities established in the Orient; these communities which were called "nations" were entirely controlled by royal edicts, and children born therein were regarded as if they were born on French soil.<sup>16</sup>

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can domicile and status, are particularly necessary in respect to naturalized citizens quitting this country after acquiring citizenship, and especially to such as take up residence in the land of their original allegiance. The case of an American missionary in a country where the United States possesses extra-territorial jurisdiction presents certain exceptional features which may well invite relaxation of requirements not obviously necessary in their regard" (For. *ReL*, 1892, p 124.)

<sup>14</sup> The Code Napoleon and the law of 1889 regarded such children as French nationals unless they lost it, either by serving in the army of the foreign country in which they were born or by some other act which might be construed as denoting renunciation of the citizenship of the parents. The new French code of nationality of August 10, 1927, however, provides that a child born of French parents in a country whose laws rest on the doctrine of *jus soli*, imposing its own nationality on the child, shall be regarded as having acquired the nationality of such country. (For the text of this new law, see *Clunet*, 1927, LIV, 1213-1259; see also, *A. J. I. L.*, April, 1928, XXII, 379-382.)

<sup>15</sup> The "nation" was highly centralized and its members could not even marry without a royal sanction. Those who would marry without the permission of the king were to be ordered out and to be denied residence in the Levant as members of these French communities (see art. 24 of the ordinance of March 3, 1781, De Clercq et De Vallat, *Formulaire des Chancelleries diplomatiques et consulaires*, 6th edition, 1890, II, 18). The chief royal ordinances regulat-

## ACQUISITION OF TURKISH DOMICILE BY FOREIGNERS

The question as to whether or not a foreigner could acquire a domicile of choice in Turkey and a discussion thereof can best be approached through a brief survey of the opinions of the higher courts.<sup>16</sup> The early English cases uniformly held that no such domicile could be acquired in a country where extra-territorial privileges were granted to foreigners;<sup>17</sup> the foreigner was to keep his domicile of origin no matter how long he resided within the territory of the servient state.<sup>18</sup> This opinion was uniformly shared by most writers of the old school. In his report on the capitulations, Van Dyck asserted that " a European resident in Turkey continues to belong to his own country and has his domicile there, for his domicile is considered to be that of the consul in authority over him; and it is the judge of this domicile who exercises full jurisdiction over him, and through whom his estate or his heritage is ad-

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mg the political and social organization of the " nation " were those of August, 1681, and of Maich 3, 1781 (see supra, p 59). For an account of the organization and the constitutional administration of these "nations," see: Pelissie du Kansas, *Le regime des capitulations dans l'empire ottoman*, I, 390-404; Ancien Diplome, *Le regime des capntulations*, p. 216; Clerck, J. de, *Guide pratique des consulats*, I, 328 et seq.

<sup>16</sup> An elaborate treatment of the subject is found in Francis Pig-gott, *Exterritoriality*, pp. 216-235.

<sup>17</sup> See Hall, W. E, *A Treatise on the Foreign Powers and Jurisdiction of the British Crown*, pp. 180-186.

<sup>18</sup> Cf. H. W. Halleck, *International Law*, San Francisco, 1861, pp. 713-714.

ministered. . . . For, although dwelling there, they (foreigners) are nevertheless not subject or amenable to the laws of the land, and are governed by the laws of their home country, so that, viewed juridically, they can be deemed as being quite outside of Ottoman territory."<sup>19</sup>

#### EARLY DECISIONS

In *Maltass v. Maltass* (1844),<sup>20</sup> the question arose as to whether the law of Turkey or the law of England should be applied in the disposal of the property of a British subject who was born in Smyrna and who resided there all the time with the exception of a few years spent in England. The Treaty of Dardanelles (1809) recognizing the power to make a will with no regard to domicile rendered the question of domicile immaterial; thus Dr. Lushington, sitting for Sir H. Jenner P<sup>^</sup>ust, maintained that " it was immaterial whether he had acquired a domicile in Smyrna or retained his English domicile, as in either case the English law would apply, . . . . but this I must say—I think that every presumption is against the intention of British Christian subjects voluntarily becoming domiciled in the dominions of the Porte."

In *Re Tootal's Trust* (1883),<sup>21</sup> this opinion was affirmed. The question in this case was brought up as

<sup>19</sup> *Sen. Ex. Doc.* No. 87 (vol. IV), 47th Cong., 1st sess., pp. 17, 18.

<sup>20</sup> 1 Rob. Eccl. (1844), 67. For the facts of the case, cf. *S. C.* (1842) 3 Curt. 231.

<sup>21</sup> 23 Ch. Divs., 1883, pp. 532-542; see also, *Clunet*, 1884, II, 85.

to whether or not a British subject residing in Shanghai could acquire a domicile in China. It arose in connection with the payment of legacy duty; if a British subject residing in Shanghai and dying there could acquire a domicile in China the duty would not be payable, whereas the duty would be payable if the domicile were English. It was decided that a Britisher could not acquire a domicile in China. In delivering the opinion of the court, Judge J. Chitty explained the status of the Anglo-Indian domicile and asserted that British subjects residing in China could not acquire there a domicile similar to the Anglo-Indian domicile.<sup>22</sup>

While recognizing this same principle, the case of *Abd-ul-Messih v. Farra* (1887)<sup>23</sup> established, on the other hand, the principle that a person under British protection, residing in Egypt, does not become a British subject and that mere protection does not render English law applicable to his succession.

#### THEORY OF DELEGATION

As the principle of "personality of law" was gradually superseded by the modern concept of territorial sovereignty, the theories expounded in these early decisions were found to be lacking in harmony with the latest thought. Thus grew the theory of delegation by which the officials of the foreign sov-

<sup>22</sup> See *Law Quarterly Review*, 1908, XXIV, 443.

<sup>23</sup> 13 App. Gas., 1888 (P. C.), 431; see also, *Clunet*, 1892, XIX, 758-761.

foreign exercising judicial authority within the territory of a servient state were held to be acting as agents of the sovereign on whose territory the foreign judicial authority is exercised.<sup>21</sup> In *Re Ross* (1890),<sup>25</sup> the Supreme Court of the United States maintained that the consular courts in Japan operated as agents of the Japanese Government. In delivering the opinion of the Court, Justice Field asserted that "the constitution can have no operation in another country. When, therefore, the representatives or officers of our Government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree, the laws of neither one being obligatory upon the other."

In *Secretary of State for Foreign Affairs v. Charlesworth Pilling and Co.* (1901),<sup>20</sup> it was held that "the Queen and her officers are acting as Zanzibar authorities by virtue of the power which she has

<sup>24</sup> "This theory," says Mr. Hinckley, "is, in a word, that of agency: A consul in Turkey or China exercises jurisdiction as an agent of Turkey or China; the source of his authority as a judge is not the United States, but the Oriental Power, which has, through treaty stipulation or long standing usage, made the grant of jurisdiction; the laws and regulations provided by the American Government for controlling the exercise of consular jurisdiction are virtually provided in behalf of the Oriental Government." (F. E. Hinckley, *American Consular Jurisdiction in the Orient*, pp. 66-67.)

<sup>25</sup> United States Supreme Court, 1890, 140 U. S. 453, 11 Sup. Ct. 897, 35 L. Ed. 581. Also, J. B. Scott, *Cases on International Law*, St. Paul, 1922, pp. 379-386.

-L. R. (1901), A. C., p. 373; see also, F. Piggott, *Exterritoriality*, p. 5 and *The British Year Book of International Law*, 1926, p. 132.

acquired and which is within its limits a sovereign power. It results that a judge acting within these limits is a Zanzibar judge.<sup>1,27</sup>

It seems that the chief contribution of this theory of delegation was to make the system of the capitulations look as if effecting no derogation of Turkish sovereignty. It would seem as if the right to grant capitulatory privileges to foreign nations flowed from Turkish sovereignty and treaty making power, since the concessions were granted under international treaties by which Turkey voluntarily agreed to allow foreign courts to sit on Turkish soil; but, in fact, it is to be noted that the capitulations as they existed during the few decades preceding the World War were practically imposed upon Turkey by European pressure. They were forced upon the Ottoman Government which used every method and procedure

<sup>27</sup> Dr. Thornely contends that there is a particular difficulty in accepting the delegation theory. He declares that while a sovereign is made an agent of another sovereign the power of pardon which is one great power inherent in the real sovereign cannot be exercised by the delegating sovereign. He maintains that a Britisher convicted in a British consular court or transferred to a home jail cannot be released by the native sovereign; the power of pardon, he asserts, belongs to the agent only which is the British sovereign. (Cf. *The British Year Book of International Law*, 1926, pp. 133-134.)

It may be questioned, however, whether this power of pardon could not be considered as an integral part of the judicial authority granted by the native sovereign, "It may be argued," says Mr. Thayer, "that when a state gives to a foreign power the exercise of sovereign rights within its territorial confines, it is an absolute and unconditional grant of such rights which the grantor may not thereafter exercise himself unless the grantee consents or cuts off his rights by a reconveyance." (See *A. J. I. L.*, 1923, XVII, 226.)

it could think of to rid itself of the system, but with no avail. Furthermore, the grant was unilateral. Although international in character, the treaties under which the grants were made were unequal. In this respect, it can hardly be denied that the capitulations, in practice, imposed grave limitations on the sovereign rights of Turkey. The doctrine of delegation saved Turkey, at least in theory, from the implication of a limited sovereignty, but there is ample evidence that the capitulations deprived the Ottoman Government of full freedom of action within the sphere of its domain.

#### LATER DECISIONS ON DOMICILE

Then followed cases in which the early decisions declaring the impossibility of a foreigner's acquiring a Turkish domicile were criticized, especially the decision of the Tootal's Trusts case. It was maintained in *Re Allen's case* (1907) that Dr. Allen, an American citizen who moved to China where he lived for forty years until his death, had *ipso facto* acquired an extra-territorial domicile in China. "We can see no good reason," said Judge Wilfley, "for holding that a citizen of the United States cannot be domiciled in China. Mr. Justice Chitty's decision (Tootal's Trusts case) destroys in their application to China all the definitions of domicile contained in the books. It ignores both of the essential elements of residence and intention."<sup>28</sup>

<sup>28</sup> See *A. J. I. L.*, part 1, 1907, I, 1029-1039; also, *Law Quarterly Review*, XXIV, 445-447.

In another American case, *Mather v. Cunningham* (1909), it was asserted that the "whole trend of modern authority is in opposition to the dictum advanced in *Re Tootal's Trusts*." The court concluded that "domicil depends upon locality, and that the law of the locality attaches to the person who has acquired a domicil there, whether that law be decreed by the supreme power of the foreign country or is the result of treaty."<sup>29</sup>

This opinion was later adopted by the House of Lords in 1918. The case of *Casdagli v. Casdagli*<sup>30</sup> marks the turning point in the history of British jurisdiction. In delivering the opinion of the court, Lord L. C. Finlay declared that the appellant's position "is in no respect analogous to that of an ambassador and his staff in a foreign country. . . . The jurisdiction exercised by His Majesty in Egypt is indeed extraterritorial, but it is exercised with the consent of the Egyptian Government, and its jurisdiction is therefore, for the purpose, really part of the law of Egypt affecting foreigners there resident."<sup>31</sup>

#### TERRITORIAL SOVEREIGNTY VERSUS PERSONALITY OF LAW

The medieval idea that law is personal gave way to the modern theory of territorial sovereignty. Law used to be personal irrespective of territory, whereas

<sup>29</sup> *A. J. I. L.*, 1910, IV, 446-467; also, 74 *Atlantic Reporter*, p. 809

<sup>30</sup> *Law Reports* (1919) A. C. 145.

<sup>81</sup> See *A. J. L. L.*, 1926, XX, 290.

the modern idea of the state and its judicial authority is intimately associated with territory. The so often quoted passage of Judge Marshall with regard to the territorial sovereignty of the state is in harmony with modern thought and modern political theories.<sup>1<</sup> The jurisdiction of the nation within its territory," Judge Marshall remarked, "is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself."<sup>32</sup> The modern state, therefore, must have well-defined territory over which she has the right of exclusive jurisdiction.<sup>33</sup> A part of this right may be waived under certain exceptions only by the consent of the state itself which may be implied or expressed.

This new doctrine makes domicile attached to locality rather than to society. It recognizes the application of a foreign legal system in countries granting extritorial privileges, but it acknowledges, at the same time, the idea that foreign laws

<sup>82</sup> *Schooner Exchange v. McFaddon*, 7 Cranch, 1812, p. 116, 3 L. Ed. 287. Also, Scott, *Cases on International Law*, p. 300.

<sup>33</sup> It is to be noted, in this connection, that most continental writers maintain that the territorial sovereign can by no means have absolute power and jurisdiction over foreigners within his domain. They hold that foreigners are to be allowed to enjoy the advantages of their own laws in so far as these laws are not opposed to the public order and the laws of the state. "Each sovereign," says Fillet, "should tolerate on its territory the application of foreign laws to the extent that said application serves the common advantage of nations. . . . It is therefore certain that the state has not the same freedom of action towards the foreigner that it possesses towards a national." (Fillet, *Pnnicipes de drozt international prive*, edition 1903, pp. 53, 196.)

are operative because they are legally recognized by these countries as forming a part of the law of their land. And, finally, it is to be noted that in accordance with this new doctrine, the American Government, contrary to the instructions of the Department of State of August 9, 1887,<sup>34</sup> providing that children born abroad beyond one generation of American parents residing in Turkey shall not lose the right of citizenship if they continue to associate with their fellow Americans, declared that persons born in Turkey whose fathers had never resided in the United States " are not citizens of the United States, even though their fathers may have resided in American communities and submitted to the extraterritorial jurisdiction of the United States. "<sup>35</sup>

<sup>34</sup> See *supra*, p. 117.

<sup>35</sup> *For. ReL.*, 1914, pp. 15-16.

## CHAPTER VII

### AMERICANS IN TURKEY

#### EARLY AMERICAN INTERESTS IN TURKEY

The United States as an independent state is the creation of the eighteenth century, and as such, it was the last among the western powers to develop interests in the Ottoman Empire. It was not until 1800 that the American flag was for the first time displayed before the walls of Constantinople on the American frigate *George Washington*,<sup>1</sup> and not until 1826 that the first American merchant steamer was on the waters of the Bosphorus.~

American interests in Turkey, however, may be traced back to the colonial days when the port of Smyrna was the center of attraction to American ships. Mr. Ravndal calls attention to the fact that in the latter part of the colonial period Bostonians carried out trade with the Near East and a little colony of American merchants was established in

<sup>1</sup> This vessel had not been intentionally destined for Constantinople; it was seized by the Dey of Algiers and forced to carry an Algerian ambassador to Constantinople. (See Eugene Schuyler, *American Diplomacy*, N. Y., 1901, p. 221.)

<sup>2</sup> Ravndal, "The Origin of the Capitulations, etc.," pp. 97-99. According to an official report, however, the brig *Calumet* of Boston went as far as the Black Sea in 1810. (See "Turkey," *U. S. Department of Commerce, Trade Promotion Series*, No. 28, p. 229.)

Smyrna, remnants of which still exist.<sup>3</sup> These commercial relations grew up gradually during the early years of the American national existence, and a few decades thereafter the need for official American representation in the Ottoman Empire became more pronounced.<sup>4</sup>

Early American commerce in the Ottoman Empire had been protected by the English Levant Company (1581-1825) which had, more or less, an exclusive monopoly over Turkish markets. For this protection, "a consulate duty, averaging one and one-fourth per cent on the values of cargoes inward and outward, is paid."<sup>5</sup>

#### EARLY NEGOTIATIONS OF A TREATY WITH THE PORTE

The growth of the need for American protection of American citizens in Turkey pressed upon the administration to negotiate with the Ottoman Government for a commercial convention which would define Turkish-American relations. As early as 1799, a mission was appointed by President Adams upon which full authority was conferred to negotiate a

<sup>3</sup> Ravndal, G. B., "American Trade Relations with the Near East," p. 7.

<sup>4</sup> From August, 1811, to November, 1820, exclusive of the period of the War of 1812, thirteen American vessels, on the average, arrived annually at the port of Smyrna. The value of their cargoes for each year was estimated to be upward of a million dollars. During the year 1831, there were 27 vessels and 300 men employed by the commerce of Smyrna with the United States. (See "Turkey," 17. S. Department of Commerce, Trade Promotion Series No. 28, p. 229.)

<sup>5</sup> Van Dyck, "Report on the Capitulations," p. 19.

treaty of amity and commerce with the Sublime Porte;<sup>c</sup> nothing, however, came of it, and no further steps were taken until 1820, when the Bradish-Bainbridge mission was appointed to continue the negotiations started in 1799. This again with two other missions sent in 1823 and in 1828 proved a failure. The attempt to conclude a treaty with Turkey was renewed in 1829 when President Jackson commissioned Charles Rhind, David Offley and Commodore James Biddle to resume negotiations with the Ottoman Government.<sup>7</sup> Consequently, a treaty was signed on May 7, 1830,<sup>8</sup> and David Porter of Maryland was commissioned on April 15, 1831, charge d'affaires of the American legation<sup>9</sup> which opened in that year in Constantinople.<sup>10</sup>

#### THE TREATY OF MAY, 1830

Generally speaking, the treaty of 1830—a rather laconic document—left it for the most favored nation clause inserted therein to determine most of the

<sup>6</sup> William Smith, then minister plenipotentiary to Portugal, was commissioned on February 11, 1799, envoy extraordinary and minister plenipotentiary to Turkey but did not go. (*The Americana*, 1927, XXVII, 195.)

<sup>7</sup> See House Ex. Doc. No. 250 (vol. VI), 22d Cong., 1st sess.; also, Sen. Ex. Doc. No. 200 (vol. III), 25th Cong., 3d sess.

<sup>8</sup> Ratifications were exchanged October 5, 1831, and the treaty was proclaimed February 4, 1832.

<sup>9</sup> Commissioned later as minister resident on March 3, 1839.

<sup>10</sup> It was not until 1867 that the first Turkish diplomatic representative, Blacque Bey, was accredited as envoy extraordinary and minister plenipotentiary to the United States. (*The Americana*, 1927, XXVII, 195.)

American rights in Turkey. The capitulatory regime which involved written and unwritten privileges had been already established for centuries when the increasing number of American nationals together with the development of American interests in Turkey necessitated treaty relations. Thus, according to this first treaty, American nationals could claim any privilege granted by Turkey to other foreign nationals. It is interesting to note, in this connection, that the most important privilege, the exemption from Turkish jurisdiction in both civil and criminal cases involving foreigners only, whether of the same nationality or of different nationalities, was not explicitly granted under the terms of this treaty.

The treaty, consisting of nine articles, dealt mostly with trading rights and bound each of the two countries to offer most-favored nation treatment to the other. The fourth article, which has been the source of diplomatic controversy for more than a half century, restricted the Turkish courts from giving a judgment on a dispute between a Turk and an American without the presence of a dragoman and bound the Turkish authorities to disallow the arrest of an American citizen by local officials, even if the latter had committed a crime justifying his arrest. The last provision reads as follows :

Citizens of the United States of America quietly pursuing their commerce, and not being charged or convicted of any crime or offence, shall not be molested; and even when they may have committed some offence *they shall not be arrested* and put in prison by the local authorities, but *they shall be*

tried by their minister or consul, and punished according to their offence, following, in this respect,, the usage observed towards other Franks.

A bitter dispute arose as to the real translation of this provision and remained the subject of diplomatic correspondence for more than fifty years without any satisfactory settlement. Turkey contended that the words " they shall not be arrested " and " they shall be tried by their minister or consul, and punished according to their offence " were not found in the Turkish version.<sup>11</sup> The treaty also dealt with the mutual recognition of consular representation and with the most-favored nation treatment to

<sup>11</sup> For references on the conflicting versions of the treaty, see Curtis, W. E., *The United States and Foreign Powers*, N. Y., 1899, pp. 239-242; *For Rel*, 1900, pp. 559, 914; *ibid*, 1885, p. 892; Hmckley, F., *American Consular Jurisdiction in the Orient*, pp. 23-27; House Ex. Doc. 303 (vol VI), 22d Cong., 1st sess.; Hyde C. C., *International Law chiefly as interpreted and applied by the United States*, Boston, 1922, I, 458; Lawrence, W. B., *Commeutaire sur lex element' du droit niternational*, IV, 158 et seq.; Mandelstam, *La Justice ottomane dans 'es rapports avec les puissances etrangeres*, pp. 154-174, Mooie, *International Law Digest*, II, 668-714; E. Schuyler, *American Diplomacy*, N. Y., 1901, p. 62; Turlington, W. E., " The American Treaty of Lausanne," *World Peace Foundation Pamphlets*, 1924, VII, No. 10, p. 567;—, " Treaty Relations with Turkey," *Yale Law Journal*, 1925-1926, XXV, 329; F. Wharton, *A Digest of the International Law of the United States*, 2d edition, II, sec. 165, pp. 292-304.

In general, however, foreigners committing crime in Turkey were<sup>1</sup> tried by the Ottoman courts in the presence of the dragoman even when their plaintiffs were Ottoman subjects; but in capital cases or even when the criminal was condemned to a long imprisonment the criminal was handed over to his own legation for the execution of the judgment (See *House Ex. Doc.* 68, 35th Cong., 2d sess., pp. 64-67; also, *supra*, pp. 80, 84-85 )

American merchant vessels, mainly concerning the passage through the canal of the Imperial residence. An interesting provision was added to the effect that the American representatives were not to lend protection to Turkish subjects of the Christian faith.<sup>12</sup>

To sum up, it may be said that the treaty of 1830 was of great significance in that it was the first formal treaty of commerce and navigation between the United States and Turkey which laid a basis for future Turkish-American relationships. It seems clear when we read the preamble of the instrument that there was no definite period within which the treaty might come to an end. This point is important; for when Turkey abrogated the capitulations in 1914 by unilateral act, it is partly on this point, as we shall see later, that the American Government based its refusal to recognize the right of terminating the obligations under the terms of the treaty. It was claimed that the treaty was contractual and indefinite, and neither party, therefore, could terminate it without the consent of the other.<sup>13</sup> Similarly after the World War, the American Government refused to give its formal recognition to the abolition of the capitulations despite the formal

<sup>12</sup> For the text of the treaty, see *Malloy*, II, 1318-1320; also, Noradounghian, G., *Recueil d'actes internettionaux de l'empire ottoman*, II, 192-194.

In the original text a secret clause was added providing for the purchase of timber and the building of ships in the United States. This was rejected by the American senate on account of its secret character.

<sup>13</sup> See *infra*, p 191.

renunciation of the capitulatory rights by the European powers in 1923. It was contended that the United States had not declared war on Turkey and that the treaty of 1830 granting capitulatory rights could not be terminated without the consent of the American Government.<sup>14</sup>

#### THE TREATY OF FEBRUARY 25, 1862

With the view to regulating the details of Turco-American commercial relations, a treaty of commerce and navigation was concluded on February 25, 1862.<sup>15</sup> Up to the date of this new treaty, the United States had depended largely on commercial agreements reached between Turkey and the European Powers in determining her trade relations with the Ottoman Empire; the commerce of the United States had been carried on the same footing as that on which the commerce of Great Britain was placed according to the commercial convention of August 17, 1838, concluded between the latter and the Sublime Porte.<sup>16</sup> The American treaty of 1862 was, therefore, a substitute for the Anglo-Turkish convention of 1838.<sup>17</sup>

The treaty provided: First, that all commodities imported into the Ottoman Empire by American mer-

<sup>14</sup> See *infra*, pp. 272-273.

<sup>15</sup> The treaty was ratified by the President of the United States on April 18, 1862; ratifications were exchanged on June 5, 1862, and proclamation was made on July 2, 1862.

<sup>16</sup> For the text of the Anglo-Turkish treaty of August 17, 1838, see Noradounghian, *op. cit.*, II, 249-253.

<sup>17</sup> For text, see *Malloy*, II, 1321-1341.

chants, as well as all merchandise exported by them from the United States to Turkey, were to pay a tariff duty of eight per cent *ad valorem* or a specific duty equivalent thereto; the valuation was to be based on the wholesale price of the goods at the wharf.<sup>18</sup> Second, that no export duty was to be charged by the Ottoman Government exceeding eight per cent on goods purchased by American citizens or their agents; this duty, however, was to be reduced by one per cent every year until it would finally be reduced to one per cent. Hence at the beginning of the eighth year after the going into effect of the treaty and in the following years there was to be no export duty exceeding the one per cent.<sup>19</sup> Third, that the duty of three per cent imposed on goods passing through the Empire to other countries was to be reduced to two per cent and at the end of eight years from the date of the exchange of ratifications of the treaty to a definite tax of one per cent, as in the case of exports of Ottoman produce to cover expenses of administration and control.<sup>20</sup> Fourth, that American citizens, vessels, commerce and navigation were to be equally granted all rights and privileges that the subjects, ships, commerce or navigation of any other foreign power enjoyed and exercised by grant made or which might be made thereafter by the Sublime Porte.<sup>21</sup> Fifth, that permits to trade were not to be

<sup>18</sup> See art. 5.

<sup>19</sup> See art. 4.

<sup>20</sup> See art. 12.

<sup>21</sup> See art. 1.

required from American nationals.<sup>22</sup> The United States, on the other hand, was bound by the instrument to offer most-favored nation treatment to Ottoman subjects, vessels, commerce and navigation.<sup>23</sup>

It is to be kept in mind that this treaty did not terminate the obligations under the terms of the first treaty of 1830; it confirmed the principal provisions of the previous treaty and it is important in that it went into detail as to the regulation of the values upon which the *ad valorem* duties were to be based and in that it defined the tariff rates. It was drawn up for a definite period and at the expiration of that period each of the contracting parties might give a notice for its revision or termination. Thus after having given notice to the American Government in 1884, the Turkish Government considered the treaty as abrogated since that year.

#### THE EXTRADITION TREATY OF 1874

This was followed by an extradition treaty concluded in 1874, consisting of eight articles. The treaty bound both parties to deliver up fugitive criminals charged with any of the crimes enumerated therein, excluding the obligation of delivering up persons charged with offences of a political nature. The treaty also dealt with the procedure by which a requisition was to be presented and with the regu-

<sup>22</sup> See art. 2.

<sup>28</sup> See art. 19.

lation of the payment of the expenses involved in the arrest and transportation. It was finally stipulated that neither party was to be bound to deliver up its own citizens. The treaty was to continue in force for five years from the time of its coming into effect, and if a notice of the intention to terminate the treaty should not have been given by either party within six months before the end of the period, the treaty was to continue in force for another live years and so on.<sup>24</sup>

#### THE PROTOCOL OF 1874

The last agreement between Turkey and the United States was the protocol of 1874 by which American rights in regard to real estate were defined. This was the same protocol to which most of the foreign powers adhered, stating the conditions under which foreigners could hold landed property in Turkey.<sup>11</sup> It provided that the preceding immunities and privileges, as specified by the capitulations, were to remain in force until the revision of the ancient treaties, which revision the Sublime Porte reserved to itself the right to bring about by reaching an understanding with the powers.

<sup>24</sup> For text, see *Malloy*, II, 1341-1344. The treaty was concluded on August 11, 1874, and ratified by the President on January 22, 1875. Ratifications were exchanged on April 22, 1875, and proclamation was made on May 26, 1875.

<sup>25</sup> Cf. *supra*, pp. 81-83

## ACTS OF CONGRESS CARRYING TREATIES INTO EFFECT

In connection with the execution of these chief documents upon which Turkish-American relations were based, several acts were passed by congress. The first act was that of August 11, 1848,<sup>26</sup> giving certain judicial powers to ministers and consuls of the United States in China and Turkey; it provided " that all such officers shall be responsible for their conduct to the United States and to the laws thereof, not only as diplomatic functionaries and commercial functionaries, but as judicial officers when they perform judicial duties, and shall be held liable for all negligences and misconduct as public officers."

This act failed, however, to confer upon the consuls of the United States in Turkey authority to exercise judicial functions in civil cases, whatever may have been the interpretation of the treaty of 1830. Thus on June 22, 1860, another act was passed<sup>27</sup> the original aim of which was to carry into effect a new treaty made with China in 1858 and other treaties made with Japan, Siam, Persia, and other countries. This act conferred upon American ministers and consuls in Turkey judicial power " for the exercise of jurisdiction in civil cases wherein the same is permitted by the laws of Turkey or its usages in its intercourse with the Franks or other foreign Christian nations." Another act was passed

<sup>26</sup> 9 U. S. Statutes at Large, pp. 276-280.

<sup>27</sup> 12 U. S. Statutes at Large, pp. 72-79.

in 1866 to carry into effect the treaty of 1862 with Turkey extending to Egypt and the consul-general there the provisions of the act of 1860.<sup>28</sup>

#### MISSIONARY PROBLEMS

Although the earliest American relations with Turkey were intimately connected with commercial interests, nevertheless the chief diplomatic correspondence was centered on missionary problems. "Upon no other subject," wrote Hinckley, "is the printed diplomatic correspondence of the United States so voluminous as upon that of the protection of missionaries in oriental countries."<sup>29</sup> The main reasons, according to him, were: That the missionaries find their way into the interior where few or no foreigners are found; that their relations with the natives are bound to be much closer than the contacts of the mercantile classes with the inhabitants; that privileges not inserted in the treaties nor granted to foreigners in other occupations have been allowed to missionaries; that some missionaries have assumed powers which in some instances interfered with prerogatives of the local authorities. To these, we must add the lack of communications, the difficulty involved in securing uninterrupted contact with

<sup>28</sup> See *Dainese v. Hale* (91 U. S. Reports, 1875, p. 13).

Another act was passed on July 1, 1870 (16 *Stat. L.*, p. 183), providing for the question of appeal. Amendments were introduced by the acts of March 3, 1873 (Ch. 249, 17 *Stat. L.*, 582), and of June 14, 1878 (Ch. 193, 20 *Stat. L.*, 131).

<sup>29</sup> Hinckley, *op. cit.*, p. 108.

the consuls, and the ignorance of the local officials which impeded the execution of laws passed by the central authority in favor of foreign missionaries.

#### AMERICAN MISSIONARIES IN TURKEY AND THEIR ACTIVITIES

As early as the beginning of the nineteenth century American missionaries began to penetrate into parts of the Ottoman Empire. The oldest American organizations involved in missionary and philanthropic work in Turkey are the American Bible Society (1816) and the American Board of Commissioners for Foreign Missions (1819). The first American missionaries sent to Turkey were Pleny Fisk and Levi Parsons; they landed in Smyrna on January 5, 1820, where they established the first American missionary station. Their attempt to work among the Jewish population of Palestine proved to be unsuccessful and they soon came to the conclusion that Beirut was the most suitable center for Syria and the Holy Land where the natives—Jew, Christian, and Moslem—could be reached through one common language, the Arabic. Thereupon, a missionary station was established there three years later by William Bird, William Goodell, and their wives.

Another station was established in Constantinople in 1831 and stations were later opened at Urumia (1835), Trebizond (1835), Erzerum (1839), Aintab (1847), Tripoli (1848), Sidon (1851), Sivas (1851), Adana (1852), Marsovan (1852), Diarbekir (1853),

Cesarea (Talas) (1854), and Harpoot (1855). Other stations were later established at Van and in Syria.<sup>30</sup> Thus in the latter part of the nineteenth century Turkey was dotted with American missionary establishments engaged in educational, evangelistic, philanthropic, social, medical and cultural work.

The failure to win converts among Jews and Moslems led the missionaries to direct their attentions towards Christian churches. Most of their activities were carried out among the Armenians. Thus among the early missionary problems to be solved was that of securing protection to the Armenian converts who on account of their conversion to Protestantism were excommunicated by the Armenian Clergy.<sup>31</sup> It is to be remembered that under the Turk-

<sup>30</sup> See A. H. Lybyer, "America's Missionary Record in Turkey," *Cur. Hist.*, February, 1924, XIX, 802-810

<sup>31</sup> It is to be noted that Russian attitude was against the propagation of Protestantism in Turkey. In his *History of Turkey*, Rosen records an act on the part of the head of the Gregorian sect, whose seat was in Russian territory, instructing the Armenian Patriarch of Constantinople to suppress Protestantism by all means in his power. The Russian ambassador at Constantinople is quoted to have declared (1839) that "the Tsar would never allow Protestantism to set its foot in Turkey" (See C Hamlm, "Our Relations with Turkey," *Our Day*, May, 1889, III, 480-481.) In the words of Oscar S. Straus, former American ambassador to Turkey: "The greatest opposition that the American missionaries and educators had to encounter in Turkey did not come from the Mohammedans, who regarded their efforts, if not with opposition, at least with a certain degree of complacency, but the opposition came from the French and Russian influences. . . . From my own experience during the three different times I represented the United States in Turkey as Minister and as Ambassador, I found most of the difficulties the American missionary and educational institutions in Tur-

ish millet system<sup>32</sup> the head of the community was the sole protector of the members of that community and the only agent through whom these members could obtain justice and status. Thus, by being excommunicated, the member was *ipso facto* left outlawed without personal rights. The question was brought before the Sublime Porte in 1847, and consequently, these converts who were then called "Evangelical Christians" were recognized as a separate community with the right to elect a head who was to reside in Constantinople representing the interests of the new Protestant millet.<sup>33</sup>

#### FRICTIONS AND CAUSES

Interference with missionary privileges by the local authorities, on the one hand, and restrictive laws passed by the Porte, on the other, became later the cause of continuous diplomatic controversy between the Porte and the American Government. A

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key encountered were instigated by French and Russian agents, who succeeding in imbuing the minds of the Ottoman officials in the various provinces with the thought that the American institutions had a political object and were propagating sedition." (See *American Review of Reviews*, December, 1914, L, 711.)

<sup>32</sup> Cf. *supra*, pp. 48 ff., 89 ff.

<sup>33</sup> The text of the firman (November 14, 1850) giving effect to the institution of the Protestant community into an autonomous body is found in G. Noradounghian, *op. cit.*, II, 392-394. See also, "Regulations of the Turkish Government, Respecting the Conditions of Protestants in Turkey, and Respecting Chapels and Burial Grounds for, and the Exercise of Religion by Them, 1845-1854." Hertslet, *Commercial Treaties*, IX, 739-747 and XI, 549-551.

There were 54,000 Protestants registered in 1909.

special school law was passed in 1869 by the terms of which schools, other than those established by the Government, could be opened only upon the grant of a permit by the ministry of public instruction certifying government approval of the course of study, text books, and teachers.<sup>34</sup> There was much variation in the administration of the school laws, and in some cases schools were refused a permit even when they complied with the regulations.<sup>35</sup>

Eegulations were passed in 1863 concerning the licensing of graduates in medicine which were to apply to graduates of foreign institutions as well as to graduates of the American Medical College of Beirut. The regulations required doctors of medicine or of surgery: First, to register their diplomas

<sup>34</sup> Aristarchi Bey, *Legislation Ottoman?*, III, 299

<sup>35</sup> See Hinckley, *American Consular Jurisdiction in the Orient*, p. 113.

Especially after the Armenian massacres (cf *infra*, pp 145 ff.) diplomatic controversy concerning school regulations became intense. Mr Leishman, then American minister to Turkey, writing to Secretary Hay (December 31, 1903), said: "The most bitter and determined opposition has been encountered against the granting of equal privileges to American schools on the ground that they are hot-beds of sedition, and this idea has been fostered and stimulated by foreign intrigue and encouraged somewhat by the very impolitic actions of some of the missionaries. . . . No stone has been left unturned in my efforts to secure a peaceable adjustment of the schools question, but I fear that it will be next to impossible to obtain a proper settlement without resorting to more forcible measures." (A. L. P. Dennis, *Adventures in American Diplomacy*, p. 463.)

The handicap under which the early American teachers had to labor is illustrated by the story of the geography textbook from which a physical map of Turkey had to be torn off because a part of it had the same color as a map of China. (Cf. P. K. Hitti, *The Syrians in America*, N. Y., 1924, p. 29.)

at the Imperial School of Medicine; the registration was to be made only upon the presentation of a passport duly vised by the Constantinople authorities of the countries to which they belonged. Second, to undergo a colloquium.<sup>36</sup>

Other restrictions were imposed by the Turkish Government on the importation, the printing and the circulation of books in Turkey. Regulations to this effect were passed on January 21, 1858, these being later superseded by a more restrictive law decreed on January 10, 1888. The most objectionable part of the latter was that providing that a foreigner could not set up a printing office without furnishing a declaration legalized by the embassy or legation of his country to the effect of relinquishing his capitulatory rights and accepting the proceedings prescribed for Ottoman subjects. Against this, the representatives of the foreign powers together with the American minister<sup>37</sup> in Constantinople protested to

<sup>36</sup> *For. Rel.*, 1898, pp. 1102-1103.

<sup>37</sup> It was not until 1906 that the American legation at Constantinople was raised to the rank of an embassy. Much earlier, however, the attempt was made by the American Government to raise the legation to an embassy in order to give the American representative personal access to the Sultan who was then the real director of public policy and in whose hands power was concentrated. In 1904, the Turkish Government maintained that the financial conditions could not permit the raising of the Ottoman legation at Washington to the rank of an embassy, but it added that it would take up the question as soon as the fiscal situation would permit. Two years later, the question was brought up again, and after reaching an agreement, John G. A. Leishman of Pennsylvania, who was then minister of the United States at Constantinople, was commissioned ambassador extraordinary and plenipotentiary, June 18, 1906. (See

the Imperial Government. The American Government held ' ' that it was not competent for a citizen to divest himself of any part of his inherent right to protection, though he might conclude his rights in that regard by ceasing to be a citizen."<sup>38</sup>

In addition to these restrictions, capitulatory rights were infringed upon on several occasions. In 1895, armed men entered the premises of an American missionary at Tarsus and attacked the servants in charge. Due to the neglect of the local authorities to prosecute the offenders, a naval vessel was sent to Mersine, and finally the Turkish Government ordered the arrest of the accused, eight of whom were convicted.<sup>39</sup> In the same year, police officials, in violation of the domiciliary rights granted in the protocol of 1874,<sup>40</sup> entered the residence of an American missionary at Marsh without notifying the consul.<sup>41</sup>

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Dennis, A L P , *Adventures in American Diplomacy*, p. 464; Foster, J. W., *The Practice of Diplomacy*, N. Y., 1906, pp. 28-31; *North American Review*, 1906, CLXXXII, 689-691; Van Dyne, F., *Our Foreign Service*, Rochester, N. Y., 1909, pp. 53-54.)

While the elevation of the American legation to the grade of an embassy was scarcely noticed in the United States, it seems to have provoked, especially in a certain section of the continental press, unfriendly comment. It was somewhat interpreted as a step marking the entrance of the United States into the Near Eastern Question as a claimant in the then anticipated division of the spoils. (See *American Foreign Policy*, By a Diplomatist, Boston and N. Y., 1909, p. 139.)

<sup>38</sup>Hmckley, op. cit., p. 114; see also, "Troubles of Americans in Turkey," *The Nation*, N. Y., June 16, 1892, LIV, 443-444.

<sup>39</sup>*For. ReL*, 1895, part 2, p. 1258.

<sup>40</sup>See supra, pp. 81-83, 137.

<sup>41</sup>*For. ReL*, 1895, part 2, p. 1252; *ibid*, 1892, p. 601.

The question of the use of missionary dwelling houses as churches and schools was another source of diplomatic entanglement. In many instances Turkish authorities refused to issue a building permit for the erection of a dwelling house on the ground that the missionary would not bind himself not to use the house for school purposes.<sup>42</sup>

#### ARMENIAN DISTURBANCES AND AMERICAN MISSIONARIES

The missionary problems continued to be a source of controversy until the climax was reached in the latter part of the nineteenth century when the Armenian disturbances broke out. Missionary buildings were burned and American property was destroyed.<sup>43</sup> To protect the American missionaries, three naval vessels were ordered to Turkish waters and their officers were placed in direct communication with the localities where trouble had occurred. "At no time," says Hinckley, "during the seventy years and more that American missionaries had been residing in Turkey had they been in greater danger, and never was the purely charitable nature of their work, nor their rectitude and prudence, more clearly shown."<sup>44</sup>

The Turks contended that the American missionaries had a hand in the Armenian plot—a contention refutable in the light of facts. That American edu-

<sup>42</sup> See *ibid.*, 1891, p. 755; *ibid.*, 1892, p. 527; *ibid.*, 1893, p. 625; *ibid.*, 1894, p. 693.

<sup>43</sup> *For. ReL.*, 1896, p. 895; 1895, part 2, pp. 1369, 1416.

<sup>44</sup> F. E. Hinckley, *op. cit.*, p. 117.

cation had a great influence in awakening the mind of the subjugated Armenian and that American public opinion sympathized with the persecuted Armenian can hardly be denied; but can this humanitarian spirit be a good ground for the attitude of the Ottoman Government? The most biased mind would certainly answer in the negative. The Turks opposed educational movements not only among the Armenians, but also among their other subjects such as the Arabs, the Kurds, etc. They realized that the success of their reign over their non-Turkish subjects was partly, if not largely, dependent on the ignorance of those subjects. Generally speaking, the American missionaries have always opposed bloody revolutions. Unlike most of the European powers, the United States did not have any political interests in the Near East;<sup>45</sup> the American Government avoided political entanglement of every sort in Turkey. Some of the European powers, for instance, claimed the protection of certain churches in Turkey with which political interests were associated.<sup>46</sup> The American Government, on the other hand, could by no means advocate any principle but that of religious freedom; it is bound by the spirit of its institutions to make no distinction on account of creed or class.

<sup>45</sup> The United States was, however, interested in the question of the Straits, if this is to be considered a political question. Her aim was to secure equal opportunities to all vessels without distinction of nationality.

<sup>46</sup> See *supra*, p. 96

## AMERICAN CLAIMS

As a result of the Armenian disturbances there was a heavy loss of American property and many teachers lost their lives, despite the earnest attempt of the Turkish authorities to protect American lives and property. A bill for damages was presented by the American consulate to the Turkish Government, but the latter refused to compensate. In September, 1896, Joseph Chamberlain asked Secretary Olney whether the United States would consent to join Great Britain in any action against Turkey, and the answer was that the United States would positively insist on the claim for damages and it would support the demand by using all the physical force available. Lord Salisbury, however, refused the plan.<sup>47</sup> Satisfactory arrangements were finally made concerning the payment of the bill for damages, but this was effected only through the pressure exerted by the friendly visit of an American war vessel headed by Admiral Chester.

## DISCRIMINATION AGAINST AMERICAN MISSIONARIES

In connection with the Armenian trouble several new questions arose. The Turkish Government forbade admission to Turkey of Armenians who had been away from Turkey for the preceding twenty years. This obviously affected Armenians naturalized in the United States who contemplated a tem-

<sup>47</sup> Dennis, *Adventures in American Diplomacy*, p. 450.

porary visit to Turkey, and the fact that the American Government could not legally refuse to issue passports to such persons gave rise to a serious question.<sup>48</sup>

In violation of treaty rights, Turkey also impeded the free passage of Americans into the interior of Asia Minor, although the right to refuse the granting of permits was not claimed.<sup>49</sup>

And finally, controversies arose over the problem of erecting new school buildings, missions and orphanages which were needed most at the end of the disturbances. Disorders in Turkey made the situation worse, and on several occasions American cruisers were called to visit Turkish ports without taking action.<sup>50</sup> Early in the twentieth century, however, Turkey finally agreed not to discriminate against American institutions but to treat them as the institutions of European powers were treated. Dr. Barton stated,

After seven years of negotiations, in 190? the Sultan finally conceded in a formal manner the same rights and privileges to American institutions in his dominion which had already been granted to similar institutions of France, Kussia, Germany and other countries; but as yet in most cases this concession exists largely in form, while the actual enjoyment of the privileges is withheld.<sup>51</sup>

<sup>48</sup> See *supra*, pp. 105-108.

<sup>49</sup> *For. ReL*, 1898, p. 1095.

<sup>50</sup> See Americus, "Some Phases of the Issues between the United States and Turkey," *North American Review*, May, 1906, CLXXXII, 689-700.

<sup>51</sup> J. L. Barton, *Daybreak in Turkey*, Boston, 1908, p. 246

## AMERICAN SENTIMENTAL INTEREST IN TURKEY

That the interests of the United States in Turkey have been largely humanitarian can hardly be questioned. The United States had a deep sentimental interest in Turkey, and it is safer to say *had* because that interest was mostly connected with the Armenians of Turkey who are no more in the New Turkish Republic. In his message to Congress (May 24, 1920),<sup>52</sup> concerning the mandate for Armenia,<sup>53</sup> President Wilson said:

The sympathy for Armenia among our people has sprung from unstained consciences, pure Christian faith and an earnest desire to see Christian people everywhere succored in their time of suffering and lifted from their abject subjection and distress and enabled to stand upon their feet and take their place among the free nations of the world . . . . At their hearts, this great arid generous people have made the cause of Armenia their own.

In the report of the American military mission sent to investigate and report on the conditions of Armenia, known as the Harbord report,<sup>54</sup> we find a

<sup>62</sup> See *Congressional Record*, May 24, 1920; also, *International Conciliation*, Pamphlet No. 151 (June, 1920), pp. 13-16.

<sup>53</sup> The treaty of Sevres (see *infra*, p 207), the peace treaty of 1920 with Turkey which has never been signed by the Nationalist Government of Turkey, provided for an independent Armenia referring the question of the boundary to the arbitration of the President of the United States. The conference of statesmen sitting at San Remo to work out the details of this peace treaty addressed a definite appeal to the American Government to accept a mandate for Armenia. In the address of May 24, 1920, President Wilson brought the appeal before Congress; but the latter declined to accept the mandate (June 1, 1920) by a vote of 52 to 23.

<sup>54</sup> 66th Cong., 2d sess., Sen. Doc. XV, Nos. 266, 281. See *infra*, p. 208, n 7.

tabulation in parallel columns of " Reasons for " and " Reasons against " the acceptance of a mandate for Armenia, with fourteen in the former and thirteen in the latter. The eleventh " Reason for " reads: "America has strong sentimental interests in the region—our missions and colleges."

This is substantiated in the light of the statistical record of the financial support invested by the American people in humanitarian and philanthropic enterprises in Turkey: In one of its financial reports, the American Board of Commissioners for Foreign Missions stated that since 1819, over sixteen and one-half million dollars had been expended in the Near East, the majority of which was spent in Turkey proper. According to an official of the Near East colleges, an amount of ten million dollars had been invested in the educational work of the three institutions in Turkey within the last sixty years; namely, Constantinople Woman's College (1908), Robert College (1863), and the International College of Smyrna (1903). Before it withdrew from Asia Minor in 1923, the Near East Relief had spent forty million dollars in Turkey. It is roughly estimated that the total American investment in missionary and philanthropic work in Turkey was 123 million dollars, this including sums spent on work outside the present confines of Turkey.<sup>55</sup>

<sup>55</sup> See *Foreign Policy Association, Information Service*, January 5, 1927, No. 22, II, 255.

A contrast with the American investments in missionary enterprises in China shows that American humanitarian interest was

That the United States had no political or economic interest in the Ottoman Empire is well illustrated in the incident of 1907 when the tariff rates on imports into Turkey were raised from eight per cent to eleven per cent *ad valorem*. In return for their consent, the European powers demanded certain economic privileges with which Turkey had to comply before the agreement concerning the customs duties could go into effect.<sup>56</sup> What did the American Government demand in return for her assent to the increase of the duties? Ambassador Leishman was authorized by the Department of State to demand non-discriminatory treatment for American missionaries, institutions, and nationals, as stipulated in the treaties, as prerequisites for the American consent to the increase of the tariff rates.<sup>57</sup>

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much more significant in the Near East than it was in the Far East Of \$150,000,000, the total American investments in China, \$80,000,000 were invested in missionary work. (Hornbeck, "China to-day: Political," *World Peace Foundation Pamphlets*, 1927, No. 5, X, 482.) Not only was the investment in missionary enterprises larger in the Near East, but also the economic investment in Turkey was much less as compared with the \$70,000,000 invested in China

In 1913, exclusive of Syria, there were in Turkey nine colleges with about 2400 students, about 50 boarding and high schools with 4500 students, and 400 common schools with 20,000 students. In 1914, there were ten American missionary hospitals in Turkey with two or three others under American managements. (See: *Cur. Hist.*, XIX, 807; *ibid.*, January, 1923, XVII, 596-600; Matteosian, "Official List of American Religious, Educational, and Charitable Institutions in the Ottoman Empire" [1907].)

<sup>58</sup> See *supra*, p. 74, n. 16.

<sup>c</sup>7Cf. *For. Rel.*, 1906, part 2, p. 1413; *ibid.*, 1907, part 2, p. 1051

## CHAPTER VIII

### THE HISTORICAL EVOLUTION OF THE INTERNATIONAL RECOGNITION OF THE CAPITULATIONS

#### INTRODUCTORY

Historically speaking, the capitulations may be roughly regarded as having undergone a change—if not in content or in principle, at least in their international recognition—passing through three distinct periods in the process of evolution. In discussing these three periods, it seems that we should make a distinction between the terms "binding" and "reciprocal." In speaking of agreements we can hardly substitute the one for the other; for, under certain circumstances, a reciprocal grant or agreement may not necessarily be strictly binding, whereas under other conditions a binding agreement may involve a unilateral grant of privileges such as the capitulations in Turkey in the later period. Let us therefore keep this distinction in mind while surveying the three periods through which the capitulations had evolved.

#### FIRST PERIOD—EARLY EXTERRITORIAL SYSTEM

Although not strictly binding in character, the earliest grant of independent national jurisdiction within foreign territory was more or less voluntary and reciprocal, conceded in accordance with common usage and mutual convenience. It was the prin-

ciple of the Roman law that the Roman carried his law wherever he went, and Italian cities as well as other cities preserved and maintained the fundamental principles of the Roman law. These reciprocal arrangements were, therefore, based on this accepted principle and were the growth of a normal procedure.

There was nothing written concerning extraterritoriality in the earliest period of the development of the system. Custom and usage were the binding elements and the extraterritorial arrangements were faithfully executed by the parties concerned as long as no exceptional events occurred to break the even tenor of the times. When members of a community moved to establish themselves on foreign territory, it was understood, without becoming a ground for negotiations, that they were to be governed according to their own laws in that territory. "When the Greek Emperors, or the Saracens granted permission to reside in their territory, it was on the well-understood condition that the foreigners on whom the privilege was bestowed should remain subject to the sovereign to whom they had owed allegiance before coming. They were to remain under his jurisdiction while residing on foreign territory, and he was to support the burden of governing them."<sup>1</sup> Thus it seems doubtful whether these early arrangements can be referred to as privileges.<sup>2</sup>

<sup>1</sup> E Pears, *Turkey and its People*, p. 337

<sup>2</sup> "What is now regarded as at least an equally valuable concession," says Sir Edwin Pears, "namely that foreigners should be

In explanation of the situation it may be said that there had been no perfect notion of sovereignty in earlier days; neither was the idea of public right developed to its present stage of recognition. The conception of public right grows much slower than the claim of private rights. It is believed, even up to this day, that the notion of public right is still far behind private interests in growth. Thus, before becoming territorial, the concept of sovereignty was purely personal. In the early period of the growth of the concept of sovereignty there was no fixed home life nor permanency of habitation. Groups settling themselves one day here, the next day there, had placed themselves under the command of a chief in whose person sovereignty was expressed. It is, therefore, obvious that under these circumstances the notion of territorial sovereignty could not have been entertained by such a social organization. It was only when people began to become sedentary that the juridical relation between the territory and the occupants became noticeable. This relation, however, was largely confined in its inception to private rights, collective or individual, with little regard to territorial sovereignty. Thus, when as a result of wars and invasions, groups of various races with

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governed by their own magistrates, who should administer their own laws, was not considered by the emperors or sultans as a privilege. It was an obligation imposed on them as a condition upon which they enjoyed the privilege of residing in the foreign country." (See *ibid.*, p. 336; also, Pears, *The Fall of Constantinople*, p. 149, n. 1.)

different social and legal concepts were forced to live together on the same soil and under the same authority, the notion that sovereignty remains purely personal kept each race under its own laws and governed by its own magistrates in so far as the recognized political sovereignty was not interfered with. This state of things, therefore, could not disappear without the process of a perfect assimilation of the various elements and without the formation of a homogeneous society flourishing within a defined territory as a social entity under the same authority and the same jurisdiction.

Roughly speaking, the fifteenth century may be taken as marking the beginning of friction between the established principles of the first period of the exterritorial system and the new concepts introducing the new social and political atmosphere of the second period. In conclusion, we may summarily characterize the exterritorial system of the first period as having been more or less reciprocal or mutual in character, as having depended for its execution on custom and usage, and as having owed its existence to the early political concepts and structure of society.<sup>3</sup>

<sup>3</sup> That the early practice of exterritoriality was mutual and reciprocal is substantiated by historical facts: The Mohammedans who had been residing in Sicily, for instance, had enjoyed there the privileges of the exterritorial system just as foreigners had enjoyed their exterritorial immunities in Mohammedan countries. (See *supra*, p. 46.) Similarly, the Venetians recognized the exterritorial system in their relationship with the Turks. A Turkish community stationed at Salonica was given therein the right of exterritorial

SECOND PERIOD—EARLIEST CAPITULATIONS CONCEDED  
BY THE TURKISH SULTANS

The above comment makes it clear that the growth of the idea of territorial sovereignty became largely dependent on the degree with which society had been subjected to the evolutionary process in political, social, and economic matters. Thus it is not hard to

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jurisdiction in civil cases arising among the members of that community. (See A. Ahotti, *Les Francais en Turquie*, p. 24, also, Desjardins, *Seances et travaux de l'Academie des Sciences morales et politiques*, 1891, I, 50) There is also a record of a situation whereby a Moslem community, settled in Constantinople before the fall of that city into the hands of the Turks, was allowed by the Christian emperors to be governed by a *cadi* who rendered justice in that community according to Mohammedan law. (See: Brown, *Foreigners in Turkey*, p. 16; Twiss, *The Law of Nations*, I, 449-450; Ancien Diplome, *Le regime des capitulations*, p. 47; Turkey No. 1, 1923, *Cmd.* 1814, p. 471.) "Before the close of the fourteenth century," says E. A. Grosvenor, "several Ottomans had become domiciled in Constantinople for the purpose of trade Sultan Bayezid I requested the Emperor Manuel Palaiologos that they should be allowed to build a mosque, and to be judged, not by Byzantine magistrates, but by their own *kadi*. There was nothing insolent or unusual in this request . . . Sultan Bayezid simply made the demand that no distinction should be made against his subjects, but that they should be upon the same footing as the subjects of other foreign states. There was no reason why Manuel should say nay." (*Constantinople*, Boston, 1900, II, 699-700.)

This grant of privileges in the early period of the extraterritorial system was, as it has been indicated in Chap I, reciprocal, not only between Christians and Mohammedans, but also between non-Moslems of various countries. When the merchants of Wisby, for instance, were allowed to establish a factory at Nowogorod in Russia and to live there under their own laws, it was stipulated in the agreement signed by the Duke of Nowogorod (13th cent.) that the nationals of Nowogorod should enjoy the same privileges in Gothland. (Cf. Twiss, T., *The Law of Nations*, I, 449.)

see how the western countries gradually developed the new concept of sovereignty as being attached to territory, whereas the Orient was still cherishing the theory of legal personality.<sup>4</sup> While European countries, influenced by the change of their form of society, developed the concepts of public right and territorial sovereignty giving effect to the unification of legislation and jurisdiction, oriental countries were still tolerating the old practice. The Turks voluntarily continued to grant extraterritorial privileges, whereas western nations began to feel jealous of their territorial integrity and sovereign attributes, gradually eliminating the operation of the extraterritorial system within their territory.

At a time when Christians were persecuting the Jews and at a time when Christians persecuted Christians, Moslem Turkey was a safe refuge for some 200,000 Jews and the home of religious toleration. All non-Moslem communities enjoyed freedom

<sup>4</sup> The idea of territoriality of law, in challenge of the system of personality of laws, developed in Europe in the later middle ages as a result of cardinal changes in the social and economic life of the peoples of the region. The major factors involved in the process of this evolution were chiefly: First, the development of agriculture among the Germanic nations as a result of which permanency of habitation became common. Second, the attachment to a city or a community and the intermarriage between members of the different Germanic nations which made the application of personal laws difficult after a generation or two. Third, the influence of the church in family relations, establishing a more or less uniform system of regulations. And finally, feudalism which was a vital factor in developing a new form of society based on fixed home life and land ownership.

of worship and autonomous jurisdiction in accordance with their respective laws within the Empire. Never was assimilation contemplated, and both Moslem and non-Moslem seem to have been satisfied with the situation. This obviously widened the gap separating the Moslem from his non-Moslem neighbor, and the attempt made later to apply the system of territoriality of laws became difficult, if not impossible.

This explains how the personal jurisdiction, formerly tolerantly and mutually granted, began in this second period to acquire its *unilateral* character in Moslem territory. There were two major historical events which largely accounted for the development of this evolution and the clothing of the Turkish capitulatory system with the one-sided character. Firstly, the Turkish conquests increased the foreign element in the Ottoman Empire, and it is to be noted that while the number of foreigners therein increased steadily, the Turks were rarely found outside their dominions.<sup>5</sup> Thus, while foreigners in the Ottoman Empire demanded and obtained the privileges formerly granted in their favor by the Byzantine emperors, the Turks had nothing to demand for their nationals abroad since they had very few Turkish traders outside the confines of their empire. Secondly, we note that, with the extension of trade, there came to be added to the personal legal rights several

<sup>5</sup> This may be attributed to the lack of interest in trade on the part of the Turks.

commercial exemptions and privileges, thus giving to the old system a character of material interest and economic advantages.

It is unanimously agreed that the early capitulations granted by the Sultans were unilateral in character. They were given at a time when the Sultans were at the zenith of their power inspiring the European nations with terror. There was no power to enforce them but the free will of the grantor/ The early Turkish capitulations, remarks Pradier-Fodere, were Imperial patents granted by the Sultans, comprising a promise and involving several other interests such as the admission of ambassadors and consuls, protection of monks, and commercial matters. " These capitulations," he continues, " were then, in principle, *concessions gracieuses* granted by the Sultans without previous discussions, conferring voluntarily certain rights or privileges upon the subjects of the foreign nations with whom Turkey kept relations of trade and friendship."<sup>7</sup>

<sup>6</sup>" The capitulations," says Sir Travers Twiss, " were rather favours or concessions on their part (the Turks) to the nations of the West." (See Twiss, " Consular Jurisdiction in the Levant, etc.," p. 4.)

" Primitivement, les capitulations furent des concessions gracieuses de privileges et de prerogatives particulieres, conferes aux membres de certaines nations etrangeres." (H. Bonfils, *Manuel de droit international public*, Paris, 1914, 7th ed., p. 601.)

<sup>7</sup> Pradier-Fodere, *Traite de droit international public*, Paris, 1885, II, 690.

" It is worthy of notice," says Edward Dicey, " that the capitulations granted previously to the repulse of the Turkish invasion before Vienna were granted as favours bestowed by a superior upon

In the process of time these early capitulations or "charters of privileges" <sup>8</sup> became a part of Turco-European treaties. The first capitulation in the form of a treaty was that of 1535 <sup>9</sup> granted to the French by Sultan Suleiman I; <sup>10</sup> but this, in so far as the capitulations are concerned, did not change the one-sided character of the grant. Van Dyck, however, seems to assert that the treaty "contained reciprocal engagements and had the full value of a bilateral treaty," <sup>11</sup> but this remark can hardly be accepted

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an inferior. Thus, in the decree of 1468 according to the capitulations to the Republic of Florence, it is stated that 'the envoy of Florentine Republic had presented himself at the court of the Sultan in 1468 and had requested of his Beneficence the renewal and confirmation of the said capitulations.' Even in the glorious days of good Queen Bess, her majesty had to ask permission from Mahmud the third 'for her subjects to trade freely in the Ottoman Empire like the Venetians, the French, the Poles, and the subjects of the Emperor of Germany'" (*Nineteenth Century and After*, July, 1906, LX, 19.)

<sup>8</sup> These early capitulations differed from other treaties of peace and commerce in that they were not the result of conferences; they were voluntary acts essentially revocable at the will of the grantor; they were granted in conformity with usage and to a certain extent by necessity. In the words of Pradier-Fodere, "Differant des traites de paix et de commerce, qui sont le resultat de conferences et de discussions, constatent des arrangements pris apres debats contradictoires, lient au meme degre les parties contractantes et sont reciproquement obligatoires pour toute leur duree, les capitulations n'etaient done dans Torigine que des actes emanant d'une volonte unique, et essentiellement revocables au gre du gouvernement qui les avaient octroyes." (*Traite de droit international public*, Paris, 1885, II, 690.)

<sup>9</sup> See supra, pp. 54, 69.

<sup>10</sup> It is to be noted that while the capitulations were granted in treaty form to France in 1535, they remained in the form of a charter of privileges to the English.

<sup>11</sup> Van Dyck, "Report on the Capitulations," p. 124.

without reservation; for in the first place, the capitulations remained unaltered. Additional privileges were granted, but this did not change the principle upon which they were based; they were still unilaterally and voluntarily granted by the Sultan.' Willing to prove his affection for Francis," says Pradier-Fodere, "Suleiman I gave the king of France, without being solicited, new capitulations more extensive than the preceding capitulations."<sup>12</sup> In the second place, the grant of the capitulatory privileges was in most cases limited in this early period to the life of the Sultan;<sup>13</sup> had the Sultan found it necessary to deny the privileges granted by him or by his predecessors, there was nothing to compel him to abide by his grant or accept the arrangements of his predecessor. Furthermore, Turkey was then excluded from the Christian family of nations; it had no recognized international status.<sup>14</sup> It was even

<sup>12</sup> See *R. D. I. L. C.*, 1869, I, 121; also, *supra*, p. 55, n. 40.

<sup>13</sup> See *infra*, p. 279, n. 3.

<sup>14</sup> In the case of the *Madonna del Burso*, (1802, 4C. Rob., p. 169), Lord Stowell said: "The inhabitants of the Ottoman Empire are not professors of exactly the same law of nations with ourselves. In consideration of the peculiarities of their situation and character, the Court has repeatedly expressed its disposition not to hold them bound to the utmost rigour of that system of public law, on which European states have so long acted in their intercourse with one another."

With respect to the relation of Mohammedan countries to international law, the same view was expressed by Scott, in the *Hurtige Hane* (1801, 3 C. Rob., p. 324) as follows: "On many accounts undoubtedly (persons residing in the kingdom of Morocco) are not to be strictly considered on the same footing as European merchants; they may on some points of the law of nations, be entitled to a

interpreted at that time that the conclusion of an alliance with Turkey by a Christian Power would be construed as a treason to the Christian nations.<sup>15</sup> It seems obvious, therefore, that the one-sided character in the grant of the capitulations did not terminate.<sup>16</sup> One thing, however, makes this first

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very relaxed application of the principles, established by long usage between the states of Europe, holding an intimate and constant intercourse with each other. It is a law made up of a good deal of complex reasoning, though derived from very simple rules, and altogether composing a pretty artificial system, which is not familiar either to their knowledge or their observance. Upon such considerations, the Court has, on some occasions, laid it down that the European law of nations is not to be applied in its full rigour to the transactions of persons . . . . residing in that part of the world." (See also: *The Kinders Kinder*, 1799, 2 C. Rob., p. 96; *The Helena*, 1801, 4 C. Rob, p. 3; E. Dickinson, *Equality of States in International Law*, London, 1920, pp. 163, 223.)

It is also to be noted that even as late as the early part of the nineteenth century, Turkey was not allowed an international status. Turkey was not represented at the Congress of Vienna of 1815, nor was it included in the provisions of positive public law contained in the treaty which was the achievement of the Congress. (Cf. R. Phillimore, *Commentaries upon International Law*, 2d ed., London, 1871, I, 87.)

<sup>15</sup> It was the fear of the possible effect of his negotiations with the Porte upon his relations with the Christian powers that led Francis I to choose a Hungarian instead of a Frenchman to head his secret mission to the Turkish sovereign, hoping<sup>1</sup> thereby that he could disown his unofficial envoy in case of failure. (See *supra*, p. 55, n. 40.)

<sup>16</sup> It is also to be noted that the lack of reciprocity is apparent in the situation whereby the Ottoman consuls accredited to Christian countries were not given the right to assume jurisdiction over their own nationals. Most writers seem to agree that the capitulatory treaties were unilateral in character. Famin goes even so far as to say that the French treaty of 1740 (see *supra*, pp. 58-59) is improperly designated under the name of treaty. (See C. Famin,

treaty significant and that is the insertion of the capitulatory privileges for the first time in a definite treaty, thus giving a political character to the capitulatory system. But the mere assumption that treaties can be nothing but bilateral and binding on the signatory parties does not furnish any proof of alteration in the character of the capitulations.

### THIRD PERIOD—LATEST CAPITULATIONS IN TURKEY

The third period which may be roughly said to begin in the eighteenth century is essentially significant in that it grafted a binding character upon the capitulatory system. *Privileges* granted in the early

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*Histoire de la rivahte et du protectorat des eghses Chretiennes en orient*, pp. 23-25, 33.) Confirming the same view, Vandal asserts that "never did the King (of France) and the *Grand Seigneur* sign a treaty binding the one to the other or imposing reciprocal engagements." (Cf. A. Vandal, *Une ambassade Francaise en Orient sous Louis XV*, Pans, 1887, p. 4.) Again, speaking of the French treaty of 1740, De Flassan states that "De Villeneuve used the credit acquired by the success of his mediation to renew the capitulations which are nothing but patents containing privileges granted by the *Grand Seigneur*; for these are not treaties in the strict sense." (See De Flassan, *Histoire generate et raisonnee de la diplomatic Fran-Quaise*, Paris, 1800, V, 64-65. Also, A. Rivier, *Pnnicipes du droit des gens*, Paris, 1896, I, 544 and F. Despagnet, *Cours de droit international public*, 4eme edition, 1910, p. 490.)

Fauchille, however, contends that these opinions cannot be accepted due to the reason that most of the capitulations bore a reciprocal character. Mentioning the treaty of April 15, 1454, between Venice and Mohammed II (see supra, p. 52) and the French treaties of 1535, 1569 and 1740, (cf. supra, pp. 54, 55, 58-59, 69), he maintains that these imposed reciprocal obligations and were the results of conferences and discussions. (See P. Fauchille, *Traite de droit international public*, Seme partie, I, 448.) Arminjon upholds the same view. (See *Clunet*, 1905, XXXII, 133, 558.)

period of Turkish reign became *rights* in this new period. While they remained unilateral and one-sided,<sup>17</sup> the capitulations gradually became international treaties and of such a binding character that some writers went far enough to maintain that they were to operate even in time of war in the country granting them.<sup>18</sup>

The insertion of the capitulatory clauses in a political or commercial treaty was of no importance in the early period of the Ottoman reign, for Turkey was then at the height of her power and she was furthermore excluded from the family of nations. Two factors made this of great significance later, namely: (a) The beginning of the decay of the Ottoman Empire; (b) the admission of Turkey into the family of nations.

It was in the sixteenth century that the idea of territorial sovereignty began to influence political thought in most European countries. The degree to which it was entertained by these countries and the extent to which it was developed in the various

<sup>17</sup> Contrasting the capitulatory system of the first period with that of the third period, Professor Brown affirms: "We thus have five hundred years before the capture of Constantinople by the Turks treaty agreements granting to foreigners very similar extraterritorial privileges to those granted in turn by the Sultans of Turkey, with this important difference, however, that while the earlier privileges were reciprocal in character, the immunities of jurisdiction which still exist in the Ottoman Empire are entirely one-sided concessions on the part of the Turks." (P. M. Brown, *Foreigners in Turkey*, p. 12.)

<sup>18</sup> See *infra*, pp. 285-286.

states depended largely, as it has been explained above, on the degree and the extent to which each society was influenced by evolutionary processes. Turkey was one of the slowest to adopt the new doctrine. When western nations began in the sixteenth and the seventeenth centuries to restrict the operation of foreign jurisdiction within their territory, the grant of extraterritorial privileges in the Ottoman Empire became commoner than it had ever been before. It was in the latter part of the eighteenth century when Turkey began to grasp slowly the significance of the new doctrine of territorial sovereignty that the question arose as to whether Turkey, a non-Christian nation, should be given the right to enjoy the principles of the doctrine. It is to be remembered that Turkey was growing weaker and weaker, corruption and maladministration becoming the chief phenomenon in the Empire. In the meantime the birth of the Near Eastern Question together with the doctrine of the Balance of Power gave rise to several abuses of the capitulations. Political clauses began to form a part of the capitulations. Under these circumstances the Powers decided to insist on the continuation of the capitulatory system in Turkey, notwithstanding the many protests made by the latter. They maintained that the capitulations formed a part of international treaties and could not be abolished without mutual consent and without the introduction of reforms in the judicial system of Turkey. It is, however, to be noted

that the doctrine "might is right" played a cardinal role in the settlement of the question.

By the treaty of Paris of March 30, 1856,<sup>19</sup> Turkey was "admitted to participate in the advantages of the public law and system of Europe," and the independence and integrity of the Ottoman Empire was guaranteed by the Powers.<sup>20</sup> This admission would seem to have made the revision of the system of the capitulations indispensable, for the logical implications would give the Ottoman Government the privilege of participating in all rights enjoyed by the Christian nations, including the exclusive right of territorial sovereignty.<sup>21</sup> What happened, however,

<sup>19</sup> For the text of the treaty, see- Martens, *Nouveau recueil general de traites*, XV, 770; Holland, T. E., *The European Concert in the Eastern Question*, pp. 241-260; C. Phillpson, *Termination of War and Treaties of Peace*, pp. 350-357. The protocols of the congress of Paris with the text of the treaty are found in Norudounghian, *op. cit.*, III, 1-83.

<sup>20</sup> See art. 8 of the treaty; also *supra*, p. 93, n. 10, and *infra*, p. 178.

The guarantee of the integrity of the Ottoman Empire was also pledged by the powers in a separate tripartite treaty signed by Great Britain, Austria, and France on April 15, 1856. (For text, see Martens, *op. cit.*, XV, 790-791.)

<sup>21</sup> "On general principles," remarks W. E. Hall, "the capitulations should have been abrogated. In Protocol XIV of March 25, 1856 (cf. *infra*, p. 178), 'M. le Baron de Bourquency and the other plenipotentiaries admitted that the treaty of peace tends necessarily to bring about a situation in which the capitulations come to an end/' (*A Treatise on International Law*, Oxford, 1924, p. 60, note. Cf. statement made by the Turkish delegate at the Lausanne Conference, Appendix V, pp. 334-335.

A. D. F. Hamlin seems to assert that the admission of Turkey into the Concert of Europe was in the nature of a favor extended by the European Powers and that the favor was given on condition that the capitulations were to continue to operate. ". . . this ad-

was just the contrary. Article XXXII of the treaty provided that the treaties or conventions which had existed before the war were to continue to operate until they would be either renewed or replaced by new acts. In other words, no change was to be effected in any of the capitulatory privileges without the consent of the Powers concerned. One-sided as they were, the capitulations thus acquired an international status and the binding character of an international treaty. So the system which constituted a paramount restriction upon the sovereign rights of Turkey did not disappear with the formal admission of Turkey into the family of nations.<sup>22</sup> On the contrary, we find in most of the treaties con-

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mission to a *quasi-equ'ahty* with the nations about her," tays he, "has been accorded to Turkey, not as a matter of right, but of favor. . . . When in 1856, by the Treaty of Paris, the Ottoman Empire was admitted to a qualified membership in the political family of European nations, the maintenance of the Capitulations was a part of the price of the favor." (The Forum, July, 1897, XXIII, 523, 530.) This remark seems to suggest a peculiar inconsistency of thought on the part of Mr Hamhn; for how could the Powers demand that the continuation of the system of the capitulations should be the price of the admission of Turkey to the advantages of public law when the Powers themselves recognized the fact that the system was incompatible with the principles of international law?

<sup>22</sup> "To admit a country in the international concert," says Abi-Chahla, "recognizing that it is in a position to exercise the absolute rights of the sovereign states and at the same time seek to impede this exercise by meddling in the internal affairs of that country is an apparent contradiction. 'Donner et retenir ne vaut.'" (*L'Extinction des Capitulations en Turquie et dans les regions arabes*, p. 115) Such an argument, however, received scant attention from the powers.

eluded with the Porte thereafter a formal declaration in their first articles providing that " all rights, privileges, and immunities, which have been conferred . . . . are confirmed, now and forever." <sup>23</sup>

In the Protocol of January 17, 1871, signed by Great Britain, Austria-Hungary, France, Italy, Germany, and Turkey, the principle of " non-alterations of treaties without consent of contracting parties " was recognized.<sup>24</sup> Turkey, a signatory to this protocol, was thus bound to observe the principle therein, and the capitulations could not, therefore, be abrogated without the consent of the Powers concerned since they were granted under treaties.<sup>25</sup>

<sup>23</sup> Cf. art. 1 of the Turkish-American Treaty of 1862. (*Malloy*, II, 1321 ) The same provision is found in the treaties of the other powers concluded with Turkey in 1861 and thereafter.

<sup>24</sup> The Powers declared " that it is an essential principle of the law of nations that no power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, unless with the consent of the Contracting Powers by means of an amicable arrangement" (Hertslet, *The Map of Europe by Treaties*, London, 1875, p. 1904 )

This protocol was signed in the conference called to meet in London as a result of Russia's declaration that she would no more be bound by the clause of the treaty of Paris of 1856 relative to the naval warfare in the Black Sea. Russia's declaration was largely based on the grounds of alteration of essential conditions. (See *infra*, pp. 300-301.)

<sup>25</sup> It is argued by some authors that this protocol did not apply to the capitulations. According to Professor Paternostro, the declaration of 1871 did not bind the Ottoman Government with regard to the capitulations; it applied to a general treaty elaborated by a general congress destined to regulate the political and the territorial equilibrium of Europe. (Cf. H. Abi-Chahla, *L'Extinction des Capitulations en Turquie*, etc., p. 120.)

Similarly, in the treaty of Berlin of 1878,<sup>6</sup> article VIII referring particularly to Bulgaria, stipulated that " the immunities and privileges of foreigners, as well as the right of consular jurisdiction and protection as established by the capitulations and usages, shall remain in full force so long as they shall not have been modified with the consent of the parties concerned."<sup>27</sup> " The foreign powers," concludes Pradier-Fodere, " thus transformed into contracts the concessions that Turkey had temporarily granted. The substitution of a treaty for the voluntary concession deprived the latter of its revocable character."<sup>28</sup> And, finally, it is safe to say that the capitulations acquired in the last period of their history the validity of treaties despite their anomalous character in international law and the unilateral feature in the grant of privileges.

#### THE CAPITULATIONS AND INTERNATIONAL LAW

That the capitulatory institution is anomalous and incompatible with modern political concepts has been

<sup>20</sup> This treaty revised the treaty of San Stefano of March 3, 1878, concluded after the defeat of Turkey in the Russo-Turkish war (1877-1878). The San Stefano peace agreement was revised in the interests of Austria-Hungary and Great Britain. (An account of the Congress of Berlin is given in *Great Britain Foreign Office Historical Section*, XXIV, *Peace Handbook* No. 154; also, Noradounghian, op. cit., IV, 1-175. For the text of the treaty of Berlin of July 13, 1878, see: *St. P.*, LXIX, 749-768; Holland, op. cit., pp. 277-307; Noradounghian, op. cit., IV, 175-192.)

<sup>27</sup> See also, articles 20, 37, 49.

<sup>28</sup> See J. S. Kandclafte, *L'Avenir reserve au regime des capitulations en Turquie*, p. 47. Also, J. W. Foster, *The Practice of Diplomacy*, N. Y., 1906, p. 245.

recognized by the western powers on many occasions and is admitted by the vast majority of writers on international law. Westlake, however, seems to uphold the contrary view. He maintains that the system " is sufficiently uniform to be capable of treatment as a branch of practical international law. "<sup>29</sup> It is also to be noted in this connection that in supporting the idea that American citizens in China should not be subjected to the local courts, Mr. Gushing, who negotiated the first Sino-American treaty, contended that the United States should demand extraterritorial privileges in China for her citizens not as a matter of concession upon the part of China, but as a principle of " established international law." Dr. Koo, with whom Professor Willoughby agrees, criticizes Mr. Gushing's argument and maintains that the extraterritorial system in China owes its legal existence to concessions made by China in her treaties with western powers.

While joining Dr. Koo in this criticism, Dr. Willoughby seems, on the other hand, to conclude that the claim to extraterritorial rights in China cannot be founded on the same basis as that supporting the capitulations in Mohammedan countries or as that of personality of laws which prevailed in Europe prior to the fifteenth and the sixteenth centuries.<sup>30</sup>

<sup>29</sup> J. Westlake, *International Law*, 2d ed., Cambridge, 1910, part 1, Peace, p. 289.

so w. W. Willoughby, *Foreign Rights and Interests in China*, Baltimore, 1920, pp. 16-18.

This conclusion seems to suggest that Professor Willoughby considers the capitulations in the Near East and the system of personality of laws which prevailed in Europe prior to the fifteenth and the sixteenth centuries as being identical in character, but differing in status from the extraterritorial system in China. He seems to emphasize the idea that the capitulations in Turkey were willingly granted and hence they have a different status from the extraterritorial system in China. It is to be admitted that the Turkish capitulations have a different origin from that of the Chinese extraterritorial system, but, so far as the anomalous situation with regard to international law is concerned, we can find no marked distinction existing between the status of the later extraterritorial system in China and the status of the capitulations in the Near East; both systems are exceptional and anomalous; they can hardly be considered as operating under an established principle of international law. Hence, it appears that, if there is any distinction at all, that distinction, in so far as the principles of international law are concerned, lies between the latest regime of the capitulations of Turkey or the extraterritorial system of China, on the one hand, and the system of personality of laws which prevailed in most countries prior to the fifteenth and the sixteenth centuries, on the other. The latter was uniformly and mutually practised by the general powers, the former exceptionally and unilaterally applied. In this

respect, we may be safe in saying that the system of personality of laws as practised prior to the fifteenth and the sixteenth centuries might be considered as having acquired a status in international law at that period, had international law been developed then; but the same can hardly be true of the latest capitulations in Turkey or of the extraterritorial jurisdiction in China which were practised only in the orient and admitted nowhere by western nations. " This jurisdiction," says Wilson, " is exceptional, furnishes no precedents for international law, tends to become more restricted, and will doubtless gradually disappear." Professor Wilson does not seem to presume the existence of any difference in status between the extraterritorial jurisdiction in China and the capitulatory regime in the Near East.<sup>31</sup>

<sup>31</sup> G. G. Wilson and G. F. Tucker, *International Law*, 2d ed., N. Y., 1902, p 194.



PART II  
THE CAPITULATIONS AFTEE THE OUT-  
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## CHAPTER IX

### INTRODUCTION

The first part of this study has given us, on the one hand, an explanation of the origin, the nature and the development of the capitulatory system, and on the other, an account of the abuses of the capitulatory privileges and of the attempts on the part of the Turkish Government to make a restrictive interpretation of these established prerogatives. It is the attempt in this second part to give a general account of the unilateral abrogation of the capitulations in 1914, of the relations of the World War to this abolition, and finally, of the ultimate categorical recognition of the annulment of the capitulatory regime by the Treaty of Lausanne of 1923.

The question of the abolition of the capitulations became in the nineteenth century a matter of vital concern on which the Turkish Government focussed its efforts, attempting to bring about a successful solution. The steps taken to this end were numerous but all met with failure. As early as the latter part of the nineteenth century the Sublime Porte made several attempts to abolish the capitulatory regime by agreement with the foreign powers, but it failed. The Ottoman Government tried to rid itself of the

capitulations in the Paris Congress of 1856 and again in 1862, in 1867, in 1869, in 1871, and in 1881,<sup>1</sup> but without fruitful result.

#### THE CONFERENCE OF PARIS OF 1856

At the sitting of March 25 of the Conference of Paris of 1856, the plenipotentiaries recognized the necessity for a revision of the capitulations.<sup>2</sup> "No power," declared Count Cavour, "possesses a commercial legislation of a more liberal character than that of Turkey, and the anarchy which prevails in the transactions, or rather in the personal relations of foreigners residing in the Ottoman Empire, has its origin in stipulations due to an exceptional situation." As a result of this recognition we find in the protocol of the meeting the expression of the desire on the part of the European powers to carry out, after the conclusion of peace, negotiations with the Porte for the purpose of adopting a satisfactory measure with regard to the revision of the capitulations.<sup>3</sup> Nothing, however, was done.

<sup>1</sup> See Paul Fauchille, *Traite de droit international public*, tome I, 3eme partie, Paris, 1926, pp. 161-162.

<sup>2</sup> This conference was held in Paris at the end of the Crimean war (1854-1856). The war was fought between Russia on one side and Turkey, France, Great Britain, and Sardinia on the other. Russia was forced to sue for peace and at this conference the treaty of peace, known as the treaty of Paris of 1856, was signed.

<sup>3</sup> See Noradounghian, *Recueil d'actes internationaux de l'Empire ottoman*, III, 36-38; also, *R. D. I. L. C.*, 1869, I, 128-131. The English version of the protocols of the Conference is found in *Parliamentary Paper* [2073.] in vol. LXI of 1856.

GERMANY'S CONDITIONAL CONSENT TO ABROGATE THE  
CAPITULATIONS

Anxious to win the favor of the Sultan, Germany was the first western power to consent to the abrogation of the capitulations.<sup>4</sup> The treaty of August 26,

<sup>4</sup> In the latter part of the nineteenth century, especially after the accession of Emperor William II to the throne of Germany in 1888, a new policy of German imperialism was launched with regard to the near orient. The old idea of Bismarck that the whole sick Ottoman Empire was not worth the sound bones of a single Pomeranian grenadier died out with the dismissal of the old chancellor in 1890. It became ever since a defined policy of the German Imperial Government to develop friendly relations with Turkey and to acquire political prestige in that region at the expense of the French and the British. In 1889, the young emperor paid a visit to Sultan Abd-ul Hamid and friendly sentiments were exchanged between the two sovereigns. In 1898, William II paid a second visit to Turkey, this time visiting the Holy Land and the grave of Saladin at Damascus where he made a speech by which he assured his eternal friendship to the Mohammedans of the world. Similar friendly sentiment was also expressed by the German Emperor on his visit to Morocco a few years later. In concluding his famous speech he delivered there, he declared: "I am going home delighted with my visit, but I will not say good-bye. I will hope that soon I may be able to come back, no longer as a visitor, but as the ally of the great Turkish Sultan and as the best friend and protector of Islam." (On the Kaiser's policy in the Ottoman Empire, see: Abbott, G. F., *Turkey, Greece and the Great Powers*, N. Y., 1917, pp. 182-193; Chirol, V., "Turkey in the Grip of Germany," *Quarterly Review*, January, 1915, CCXXIII, 231-251;———, *The Occident and the Orient*, Chicago, 1924, p. 46 et seq.; Gaulis, G., *La ruine d'un empire*, Paris, 1913, part 2, pp. 91-242;———, "Les Allemands a Constantinople," *Revue de Paris*, 5eme annee, March 15, 1898, II, 327-352, April 1, 1898, pp. 659-680; Jabotinsky, V., *Turkey and the War*, London, 1917, pp. 55ff.; Marriott, J. A. R., "Factors in the Problem of the Near East: Germany," *Fortnightly Review*, new series, June 1, 1916, XCIX, 943-953; Moukhtar Pasha, M., *La Turquie l'Allemagne et l'Europe depuis le traite de Berlin jusqu'a la guerre mondiale*, Paris,

1924, chs. i, ii; Pears, E., "Turkey, Germany, and the War," *Contemporary Review*, March, 1915, CVII, 284-293; Prelaut, S. J., "Les perils du protectorat Francais en orient," *Etudes publiees pur des peres de la compagnie de Jesus*, 35eme annee, December 5, 1898, LXXVII, 651-679; Seyud Hossain, "Turkey and German Capitalists," *Contemporary Review*, April, 1915, CVII, 487-494; X, "La politique allemande et le protectorat des missions Catholiques," *Revue des deux mondes*, September, 1898, CXLIX, 5-41; X, "German Methods in Turkey," *Quarterly Review*, October, 1917, CCXXVIII, 296-314.)

In return for the Kaiser's friendly support, the Sultan opened the gate of his empire to German commercial interests, thus introducing into his dominions a powerful German element formerly unknown to the Empire. Political concessions went hand in hand with commercial privileges and thus we find Germany at the end of the nineteenth century displacing the ages old French prestige in the Ottoman Empire. In 1898, the Kaiser obtained the right to protect his Catholic subjects in Turkey, thus striking a heavy blow on the French claim to the guardianship of all Catholics in the Ottoman Empire. Furthermore, the famous concession made by the Sublime Porte in 1902 exempted German charitable institutions from all taxation, and a declaration made by the Valy of Beyrouth in 1903 exempted German subjects (alone among foreigners) from payment of taxes for the acquisition of land. (Giordani, P., *The German Colonial Empire*, p. 83.) And finally, the scheme of building a net of railroad lines throughout the Ottoman Empire linking Berlin with Bagdad and the Persian Gulf was the most important enterprise in which the German Government became interested. As early as October 6, 1888, the first railway concession to a German syndicate was given for the construction of a railroad line to Angora as a result of which the first of the German railway enterprises in Turkey was formed under the name of the Anatolian Railway Company. (Cf. *Report of the Anatolian Railway Company*, 1889, pp. 1-2; also, *Corps de droit ottoman*, IV, pp. 120-142.) Extensions of this first concession were made on several occasions, and in November 1899 the Sultan announced his decision to award to the Anatolian Railway Company the concession for the construction of a railroad line from Konia to Bagdad and the Persian Gulf. (For text of concession, see *Corps de droit ottoman*, III, 342-351; cf. also, *Report of the Anatolian Railway Company*, 1899, pp. 9-10; 1902, p. 8.) The award

was definitely effected on March 18, 1902, and by a convention dated March 5, 1903, plans were perfected for the financing of the first section of the line. (*Parliamentary Paper*, No. Cd. 5635, vol. GUI, 1911, No. 1. See also, *St. P.*, CII, 856 ff. for texts of concessions.) This German penetration into the Ottoman Empire was bitterly opposed, especially by the British who considered the German scheme a threat to the security of India. In June, 1914, however, a convention was signed between Great Britain and Germany (text in *Political Science Quarterly*, 1923, XXXVIII, 24-44) and it seemed as if the various protests and diplomatic controversies had come to an end when the World War broke out. (For references on the question of the Bagdad Railway, see: Cheradame, A., *Le chemin de fer de Bagdad*, Paris, 1915; Earle, E. M., *Turkey, the Great Powers and the Bagdad Railway*, N. Y., 1924;———, "The Secret Anglo-German Convention of 1914 Regarding Asiatic Turkey," *Political Science Quarterly*, vol. XXXVIII, March, 1923, pp. 24-44; Fraser, D., *The Short Cut to India*, London, 1909; Giordani, P., *The German Colonial Empire. Its Beginning and Ending*, London, 1916, ch. v, "The Bagdad Railway"; Gwinner, Arthur Von, "The Baghdad Railway and the Question of British Co-operation," *Nineteenth Century and After*, June, 1909, LXV, 1083-1094; Henry, Rene, "L'Asie Turque et le chemin de fer de Bagdad," *Questions Diplomatiques*, vol. XXIII, 1907, pp. 1-20; Ihtsch, *Le chemin de fer de Bagdad*, Bruxelles, 1913; Jastrow, Morris, Jr., *The War and the Bagdad Railway*, Philadelphia, 1917; Lewin, P. Evans, *The German Road to the East*, New York, 1917; Lynch, H. F. B., "The Baghdad Railway," *Fortnightly Review*, vol. LXXXIX, new series, March 1, 1911, pp. 375-387, May 1, 1911, pp. 771-780; Muratet (Abel), *Chemin de fer de Bagdad*, Toulouse, 1914; O'Connor, T. A., "The Bagdad Railway," *ibid.*, XCV, New Series, February 2, 1914, pp. 201-16; Pears, E., "The Bagdad Railway," *Contemporary Review*, XCIV, November, 1908, pp. 570-591; Russell, A. D. C., "The Bagdad Railway," *Quarterly Review*, CCXXXV, April, 1921, pp. 306-329; Sarolea, Charles, *The Bagdad Railway and German Expansion as a Factor in European Politics*, Edinburgh, 1907; Siebert, B. de, *Entente Diplomacy and the World*, New York and London, 1921, Book III, part 3, "The Entente and the Bagdad Railroad Question," Part 9, "Settlement of the Bagdad Railroad Question"; X, "The Bagdad Railway Negotiations," *Quarterly Review*, vol. CCXXVIII, October, 1917, pp. 487-528; X, "The Baghdad Railway," *Edinburgh Review*, CCVI, October, 1907, pp. 371-398.)

1890, concluded between Germany and Turkey, provided that the stipulations of the treaty of friendship and commerce of March 22, 1761, between Prussia and Turkey,<sup>5</sup> so far as they were not contradictory to the new treaty were to continue to operate, pending future accord to be reached with regard to the necessary modifications.<sup>6</sup> It was also stipulated (art. 25) that the new convention was to be substituted for the Turco-Prussian treaty of March 20, 1862,<sup>7</sup> and for the treaty of September 27, 1862, between Turkey and the Hanse cities.<sup>8</sup> This new German treaty was based on the principle of reciprocity and entirely omitted the customary preamble confirming the capitulatory privileges which was found in all other treaties between Turkey and the western powers.<sup>9</sup>

In expressing his gratitude for this renunciation of the capitulations on the part of Germany, the Sul-

<sup>5</sup> See *supra*, p. 65.

<sup>6</sup> See article 24 of the treaty. For text, see: Noradounghian, G., *Recueil d'actes internationaux de l'empire ottoman*, IV, 485-499; Martens, *Nouveau recueil general de traites*, 2eme serie, XVII, 409-586; *Archives diplomatiques*, 2eme serie, XXXVIII, 137-192; *St. P.*, 1889-1890, LXXXII, 128-200.

<sup>7</sup> See *supra*, p. 65, n. 75.

<sup>8</sup> See *supra*, p. 65, n. 81.

<sup>9</sup> The Porte, encouraged by the act of Germany, tried likewise to omit the mention of the confirmation of the capitulatory privileges and to conclude a treaty on the basis of reciprocity like that of Germany when the question of the renewal of the French treaty of 1861 (see *supra*, p. 59, n. 48) came up; but France, considering the German act as directed against French prestige and interests in the Near East, refused to yield.

tan crowned Kadowitz, then German ambassador to Turkey, with homage and extended to him valuable presents. It is to be noted, however, that the most-favored-nation clause inserted in the treaty automatically made the relinquishment of the German capitulatory rights applicable only when the chief capitulatory powers would have relinquished their privileges. It was, furthermore, provided in the *procès-verbal de signature* attached to the treaty that neither the stipulations of the convention nor the tariff annexed were to be applied to German subjects or merchandise without the consent of the German Government, unless these provisions and tariff rates were at the same time equally applied to subjects and merchandise of other countries.<sup>10</sup> Thus, while in theory, Germany was deemed to have renounced the capitulations, the most-favored-nation clause inserted in the treaty and the *procès-verbal de signature* attached thereto made the relinquishment purely nominal; for Germany knew well that the western powers concerned would not be willing to relinquish their capitulatory rights.<sup>11</sup>

<sup>10</sup> " 1. Jusqu'a la date à laquelle le dit Traite entrera en vigueur conformément a son Article XXV, le regime actuel sera maintenu. Il est pourtant bien entendu que meme apres cette date ni le Tarif ni une stipulation queleconque du Traite ne pourront etre, sans le consentement du Gouvernement Allemand, mis en vigueur vis-a-vis de l'Allemagne s'ils ne sont pas en meme temps mis en vigueur vis-a-vis de toute autre nation." (*St. P.*, 1889-1890, LXXXII, 200-201.)

<sup>11</sup> Commenting on the Turco-German treaty, George Gaulis remarks: " Ce traite, negocié entre 1886 et 1890, peut etre considere comme l'acte politique le plus important de l'Allemagne en Orient.

ATTEMPTS OF YOUNG TURKS TO ANNUL THE  
CAPITULATIONS

The Government established by the Young Turks in 1908 was keener than even the previous administration had been in its aspiration to be rid of the yoke of the capitulations. Its first action was the attempt to obtain the consent of each of the powers concerned to the abrogation of the capitulatory system. The efforts were, however, futile, partly due to the difficulty caused by the claims made by the chief powers for compensation.<sup>12</sup>

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Aujourd'hui encore, il reste suspendu, frappe de nullite par la clause de la nation la plus favorisee, jusqu'au jour ou tous les fitats auront traite a leur tour dans les memes conditions. Mais tel qu'il est, signe et paraphe, il constitue une grave atteinte—la premiere—aux vieux droits des capitulations. Ce fut un bon tour des diplomates allemands d'offrir a la Turquie cette concession enorme. Us savaient bien que les puissances les plus interessees ne cederait jamais sur le principe des capitulations. L'Allemagne avait donc toutes les chances de conserver longtemps le benefice des usages anciens; mais c'etait beaucoup deja que de risquer Taventure et de soulever la question." (*La ruine d'un empire*, Paris, 1913, pp. 114-116.)

<sup>12</sup> Sir Edward Grey, writing to Sir F. Bertie, the English ambassador at Paris, in a note dated October 5, 1908, remarked that "one difficulty was that every Power would demand some compensation for agreeing to modify them (the capitulations), and it was not easy to see what compensation to France, Germany, and England could be given." Continuing, he added that the French view was "that the treaty of Berlin (providing for the maintenance of the capitulatory regime) had been settled by the six Great Powers, but if the Capitulations were to be called into question all the minor Powers would naturally put in a claim to be considered also." (See Gooch, G. P., and H. Temperley, *British Documents on the Origins of the War 1908-1914*, V, 393.)

It is interesting to note in this connection that the mere fact that the Powers were willing to relinquish some of their capitulatory

In the protocol of February 26, 1909, signed in Constantinople by Turkey and Austria-Hungary,<sup>13</sup> the latter recognized the necessity for the modification of the capitulatory regime and promised to render her full support to that end.<sup>14</sup> In the meantime, Turkey was introducing judicial reforms.<sup>15</sup> In 1909, Count Leon Ostrorog, the French orientalist and jurisconsult, was appointed adviser to the ministry

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rights if amply compensated suggests the idea that the insistence of the Powers on the continuation of the capitulations may be safely attributed to selfish and material aims rather than to the difference between Moslem and Christian civilizations.

<sup>18</sup> *St. P.*, 1908-1909, CII, 180-182.

<sup>34</sup> "As the Sublime Porte proposes to open, in a conference or otherwise, with the Great Powers interested, negotiations for the purpose of doing away with the capitular system in Turkey and to replace it by the system of international law, Austria-Hungary recognizing the good grounds of these intentions of the Sublime Porte, declares her willingness henceforth to render to the Porte to that end her full and sincere support." (Article 8.)

<sup>15</sup> The attempts to introduce reforms on the part of the Turkish Government were initiated as early as the beginning of the nineteenth century, but very little was achieved. Most decrees issued to this effect became a dead letter (see *supra*, pp. 91-93), and most of the promulgated legal codes were not put into practice. (For a historical account of these reforms, see: O. Focief, *La justice twque et Ics reformes en Macedoine*, pp. 27-99; J. Gavillot, *Essai sur les droits des Europeens en Turquie et en figypte*, pp. 270-281; L. Ostrorog, *Pour la reforme de la justice ottomane*; E. Engelhardt, *La, Turquie et le Tanzimat*; Abi-Chahla, H., *op. cit.*, pp. 159-229; Van Den Berg, "Les reformes legislatives en Turquie," *R. D. I. L. C.*, 1896, XXVIII, 237-267, 424-444; R. Davey, *The Sultan and his Subjects*, London, 1897, vol. I, chap. III; E. J. Dillon, "The Reforming Turk," *Quarterly Review*, January, 1909, CCX, 231-253; Turkish Patriot, "A Study in Turkish Reform," *Fortnightly Review*, 1897, LXI, new series, 639-659; Berard (Victor), "La reforme ottomane," *Revue de Paris*, 1 Sept. 1908, pp. 188-224; A. Schopoff, *Les reformes et la protection des Chretiens en Turquie*, Paris, 1904.)

of justice.<sup>10</sup> About the same time, an envoy of Turkish students was sent by the Turkish Government to Paris to study the principles of western jurisprudence with the expectation of their participation in the reforms to be introduced in the Turkish judicial system.<sup>17</sup>

In April, 1910, the French Prime Minister, Stephen Pichon, expressed his recognition of the merit of the Turkish proposals for the revision of the capitulatory system and declared his willingness to offer the good offices of his government with his readiness to assist in the opening of a conference whereby Turkey's *desirata* would be considered.<sup>18</sup>

In the treaty of Lausanne of October 18, 1912, Italy recognized the good grounds of the Turkish intentions to abolish the capitulations and promised to support the Turkish claims to this effect.<sup>19</sup>

On October 22, 1913, a commission was appointed consisting of Turks and foreigners to examine the capitulatory system and to report thereon, but nothing came of it. In the same year, Djavid Bey, the Minister of Finance who was on a visit to Paris, opened negotiations with the French Government

<sup>10</sup> The proposal of the Turkish cabinet to appoint a non-Moslem judicial adviser was protested by many deputy members and it was only by a majority vote of 99 against 64 that Count Ostrorog was appointed. (See Ostrorog, op. cit., Preface by Mandelstam, pp. vii-ix.)

" Ibid., pp. 65-69.

<sup>18</sup> Ibid., p. 316.

<sup>19</sup> For text, see C. Philipson, *Termination of War and Treaties of Peace*, 1916, pp. 430-433. (Articles 6, 7, 8.)

concerning the abolition of the capitulations.<sup>20</sup> And finally in 1914, the Turkish Government obtained the consent of France (correspondence of 1914) to the modification of the capitulatory regime.<sup>21</sup> Of all these, however, no result was obtained.<sup>22</sup>

It is not improbable that the desire to throw off the restrictions imposed by the capitulations was an important factor in determining Turkey's choice to enter the World War on the side of the Central Powers.<sup>23</sup> This is illustrated by the following passage

<sup>20</sup> fl. *G. D. I. P.*, 1914, XXI, 488; also, Gontaut-Biron et Le Reverend, *D'Angora a Lausanne*, p. 105.

<sup>21</sup> *A. J. I. I.*, 1923, XVII, 214.

<sup>22</sup> The necessity of revising the capitulations made itself felt even among western writers "According to the admissions even of the most impartial and most eminent legal authorities," said Count Ostrorog, "it is plain that the wide application of the Capitulations has given rise to uncertainty, to useless differences and sometimes to acts absolutely contrary to law and equity. It is desirable for both parties to the Capitulations, in order to establish wise and sincere relations, to put an end to this situation. It is necessary to revise the provisions of the Capitulations: to remove the causes of controversy as well as all which is of a character to wound the national *amour propre* and cause friction in the relations between Ottomans and foreigners." (*Journal of Race Development*, April, 1911, I, 447-455)

<sup>23</sup> One of the chief demands which had been made by the Turkish Government for the price of Turkish neutrality was that "the capitulations should be abolished immediately" and "that the Allied Powers should undertake to oblige the Triple Alliance to accept any agreements which might be reached with respect to the capitulations." (See Sir L. Mallet's telegram, August 20, 1914, to Sir Edward Grey, *The Times*, London, *Documentary History of the War*, IX, "Diplomatic," part 3, pp. 101-102.) The Entente ambassadors in Constantinople, however, did not definitely yield on this point. They promised to issue a joint declaration whereby they would renounce the capitulations as soon as a modern scheme of judicial

of the report presented by the Committee of Union and Progress to the General Congress of the party in September, 1916:

Thinking that the moment had come to deliver ourselves from the international guardianship inflicted upon our great country like a pitiless scourge, we entered the general war in October, 1914,, through an alliance with Germany and Austria-Hungary which is destined to safeguard the national prestige and honour.<sup>24</sup>

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administration was effected throughout the Empire. (See H. A. Gibbons, *The New Map of Asia*, N. Y., 1919, pp. 176-177; also, *infra*, p. 194, n. 9.)

<sup>24</sup> *World Peace Foundation Pamphlets*, 1924, VII, No 10, p 570

## CHAPTER X

### THE CAPITULATIONS AND THE WORLD WAR THE UNILATERAL ABROGATION OF THE CAPITULATIONS

It has been explained in the previous chapter how Turkey made several attempts to abolish the capitulations and how it failed in all of its attempts. The opening of the World War offered the trump card to the Turkish Government. About a month before entering the War, the Porte, taking advantage of the state of war between the European Powers, formally notified all the embassies in Constantinople that it had decided to abrogate the capitulations beginning October 1, 1914. A note, dated September 10, 1914, was submitted by the Turkish ambassador in Washington to the Secretary of State reading as follows:

I have the honor to inform you that by Imperial Irade the Ottoman Government has abrogated as from the first of October next the conventions known as the capitulations restricting the sovereignty of Turkey in her relations Avith certain Powers. All privileges and immunities accessory to these conventions or issuing therefrom are equally repealed. Having thus freed itself from what was an intolerable obstacle to all progress in the Empire, the Imperial Government has adopted as basis of its relations with the other Powers the general principles of international law.<sup>1</sup>

i *For. Rel.*, 1914, p. 1090.

In the formal note of September 9, despatched to the embassies in Constantinople, the Sublime Porte gave several reasons for its decision: It was stated that the privileges under the capitular regime had been decreed by the Ottoman Government entirely of its own accord. " These privileges," the note continues, " which on the one hand were found to be in complete opposition to the juridical rules of the century and to the principle of national sovereignty, constituted on the other hand an impediment to the progress and the development of the Ottoman Empire, just as they gave birth to certain misunderstandings in its relations with the foreign Powers; and thus they form an obstacle to the attainment of the desired degree of cordiality and sincerity in those relations." The message also protested against the restrictions imposed on the sovereign rights of Turkey to determine the taxing rates. It declared that " the fact that foreigners trading in the Ottoman Empire and enjoying here all sorts of immunities and privileges are less heavily taxed than Ottomans constitutes at the same time a manifest injustice and an infringement of the independence and dignity of the State."<sup>2</sup>

-For the text of the note, see Appendix IV.

A note of sympathy towards the action of the Porte is found in *The Law Magazine and Review* of November, 1914, saying in part: " Little regret can be affected at the disappearance of the Capitulations. True, they rested on treaty, and we should be the last to deny the binding obligation of treaty stipulations. But these particular engagements, entered into centuries ago as a matter of mutual

## AMERICAN PROTESTS

In reply to the proclamation of the Porte, the American ambassador in Constantinople notified the Turkish Minister for Foreign Affairs, September 10, 1914, of his dissent as to the recognition of any executive action without the conclusion of an understanding between the two governments. He con-

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venience, have gathered round themselves such an accretion of customary encroachment, that they amount to the constitution of a very serious *impenum in imperio*. . . . Natives were granted 'protection' wholesale, and thus withdrawn from the national jurisdiction into that of the consul. . . . Japan took the earliest opportunity of repudiation; and we cannot wonder that Turkey has at least got rid of a constant source of irritation. The letter of the treaties in no way supports the vast structure which custom has raised upon it . . . . It may probably be quite possible to justify the Turkish action by insisting upon the letter of the treaties, and by ruthlessly clearing away the mass of customary practice which has gone so far beyond what was expressly stipulated." (5th series, XL, 84-85.)

The enthusiasm with which the announcement of the Turkish note was met by the people of Constantinople was expressed in a manifesto proclaimed by the committee of the fleet saying in part: "A new life begins. The nation and the State find now their independence. History opened new pages Let us congratulate ourselves." (ft. *G. D. I. P.*, 1914, XXI, 490.) Speaking of the assembled enthusiasts, C. T. Riggs asserts that "they were addressed by representatives of the Cabinet, who told them that the awful disgrace of the capitulations had been removed forever by the Government, and that they were no longer under the thumb of the foreigners; that henceforth the foreigners would have no special privileges such as they had wrung from former sultans." Continuing, Mr. Riggs adds that "there was a lot of hurraing, and the drums made life interesting till after midnight." Mr. Riggs also describes a great meeting organized by the Union and Progress Committee in which some six or eight thousand celebrated. (See *Missionary Herald*, November, 1914, CX, 493.)

tended in his note that the capitulatory regime was not an autonomous institution of the Empire, but the result of international treaties and of contractual acts, and therefore could not be modified or abrogated without an understanding with the contracting powers.<sup>3</sup>

In a telegram dated September 16, the Secretary of State instructed the American ambassador to express the same view in behalf of the American Government. The exchange of notes between the American ambassador and the Turkish Government in Constantinople, on the one hand, and between the Turkish ambassador and the Secretary of State in Washington, on the other,<sup>4</sup> reveals the grim determination of the American Government in its refusal to acquiesce.<sup>5</sup>

<sup>3</sup> The note continues:

"... a convention by which one country gives the right to exercise certain rights of sovereignty within its territory to another country is absolute in its nature, and the grantor, having parted with the rights unconditionally, cannot resume their exercise except by a reconveyance or a formal consent on the part of the grantee who is entitled to exercise them." (*For. ReL*, 1916, p. 964.)

<sup>4</sup> *For. ReL*, 1915, pp. 1301-1306.

<sup>5</sup> It was even suggested in the English and French papers that the United States should send warships to Turkish ports in order to protect its citizens. To this suggestion, the Turkish ambassador in Washington replied in undiplomatic language as follows: "Great Britain and France have embarked upon a new campaign of provocation against Turkey, secretly hoping that as a result of it something untoward may happen in that country to confirm their sinister predictions, so that the United States will be finally prevailed upon to dispatch warships to the Levant, and thus get mixt in the

## PROTESTS OF EUROPEAN POWERS AND TURKISH REPLY

The decision of the Sublime Porte was not only protested by the United States Government, but it was also protested collectively (September 10, 1914) by the British, the Russian, the French, the German, the Italian and the Austrian ambassadors in Constantinople,<sup>6</sup> despite the state of war existing then between France, Russia and England on one side, and Germany and Austria-Hungary on the other,<sup>7</sup> and despite the secret Turco-German alli-

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European fray on the Allies' side; but I believe the administration is too sagacious to fall into such a vulgar trap." (*The Independent*, September 21, 1914, LXXIX, 403.)

<sup>6</sup> In their protest, the Powers asserted "that the capitulatory regime as it operates in Turkey is not an autonomous institution of the Empire, but a resultant of international treaties, diplomatic agreements and contractual acts of divers kinds. The regime cannot thereafter be modified in any of its parts, much less in its entirety be suppressed, without an entente with the contracting Powers." (For the text of the "Note Identique," see: Martens, *Nouveau recueil general de traites*, Seme serie, X, 743; *R. G. D. I. P.*, 1915, XXII, *Documents*, p. 141; *The Times*, London, *Documentary History of the War*, IX, Diplomatic, part III, p. 272.)

<sup>7</sup> This action, according to Mr L. E. Thayer, seems to be anomalous in view of the doctrine commonly held that belligerent powers have no legal relations. (*A. J. I. L.*, 1923, XVII, 214.) It is to be noted, however, that the German and the Austrian ambassadors deviated from the collective protest a few days after the presentation of the "note identique" to the Sublime Porte. (*R. G. D. I. P.*, 1915, XXII, *Documents*, 141, n. 1.) In a telegram dated September 13, 1914, the Russian ambassador at Constantinople communicated to the Russian Minister of Foreign Affairs the following statement: "I learn from trustworthy sources that the German and Austro-Hungarian Ambassadors, after having united in an identical note of their Governments protesting against the abrogation of (the) Capitulations, now have already withdrawn from making any further

ance of August 12, 1914.<sup>8</sup> The foreign representatives expressed their readiness, however, to revise the capitulatory system by common agreement with Turkey if the latter were to remain neutral,<sup>9</sup> but the Turkish Government adhered to its decision and presented new arguments to support its position. In addition to the legal argument, the Porte maintained that the move towards the abolition of the capitula-

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objection to said abrogation." (See *The Times*, London, *Documentary History of the War*, part 3, IX, 276)

The abolition of the capitulations seems also to have been a matter of concern at the Vatican. The Holy See was disposed to join the protest against the abolition of the capitulatory regime (See *New York Times*, September 14, 1914, p. 4, column 2)

<sup>8</sup> For the text of the secret alliance, see *L'Europe Nouvelle*, sources et documents, August 17, 1929, p. xxv.

<sup>9</sup> In a telegram dated August 22, 1914, the British Government instructed the British Ambassador in Constantinople to address, as soon as the French and Russian ambassadors received similar instructions, a communication to the Porte to the effect that if Turkey will give a written assurance that it shall strictly observe the obligations of neutrality during the War, "the three Allied Powers will in return agree, with regard to the capitulations, to withdraw their extra-territorial jurisdiction as soon as a scheme of judicial administration, which will satisfy modern conditions, is set up." The Allied Powers further agreed to "give a joint guarantee in writing that they will respect the independence and integrity of Turkey, and will engage that no conditions in the terms of peace at the end of the war shall prejudice this independence and integrity." (See Sir Edward Grey's telegram of August 22, 1914, to Sir L. Mallet, *The Times*, London, *Documentary History of the War*, IX, 104-105.) Again, a few weeks later, Sir Edward Grey, communicating to the British Ambassador in Constantinople (September 16, 1914) said: "I am inclined to point out to (the) Turkish Government, so long as they maintain neutrality, what we have said to them already holds good, and that we shall be prepared to consider reasonable concessions about (the) capitulations." (See *ibid.*, p. 129.)

tions was imperative to avoid the involvement of Turkey in the War. In answering the protest of the Eussian ambassador in Constantinople, the Grand Vizier and the Minister of Finance "explained that in order to avoid war they had been forced to satisfy public opinion to some extent, and alleged that through suppression of (the) Capitulations they had secured peace for a month at least."<sup>10</sup>

Shortly after the declaration of September 9, the Ottoman Government issued instructions announcing the annulment of the capitulatory regime and giving detailed information as to the treatment of foreign nationals and foreign institutions.<sup>11</sup> Beginning October 1, customs duties were raised to 14 and 15 per cent and first class clothing material as well as liquor and first class shoes were even subjected to 100 per cent tariff. From the same date, the foreign post offices were closed, except that the services of reception were allowed to be continued by some embassies until October 24.<sup>12</sup>

#### TURKEY ENTERS THE WAR

On October 31 Turkey entered the War on the side of the Central Powers. The latter paid the price of the Ottoman sacrifice by consenting to abrogate

<sup>10</sup> See telegram from Russian Ambassador at Constantinople (September 10, 1914) to Russian Minister of Foreign Affairs, *ibid.*, p. 273.

<sup>11</sup> *For. Rel.*, 1916, pp. 968-974.

<sup>12</sup> *R. G. D. I. P.*, 1914, XXI, 493.

the capitulations; this was recognized and sanctioned by Germany in a series of treaties signed on January 11, 1917,<sup>13</sup> and by Austria by a treaty dated March 12, 1918.<sup>14</sup> It was furthermore provided in an accord signed by Germany and Turkey on November 11, 1917, that "the two contracting parties engage themselves not to sign a peace treaty which would allow the restitution of the capitulations."<sup>15</sup>

Now that Turkey became involved in the War and the capitulations were abolished, foreigners residing in the Ottoman Empire were left to the mercy of

<sup>13</sup> Series of ten treaties signed on January 11, 1917, in lieu of the capitulations: German and Turkish texts (Berlin, *Reichs-Gesetzblatt, Jahrgang*, 1918, Nr. 55); German version, (Martens, *Nouveau recueil general de traites*, Seme serie, IX, 691-742.) The treaties were ratified in Berlin on April 10, 1918.

It is to be noted that about a month before the unilateral abrogation of the capitulations by the Turkish Government, Germany had consented to support the Turkish move towards the abolition of the capitulatory regime if Turkey were to join Germany in the war against the Entente Powers. In an accord signed by Baron de Wagenheim on August 6, 1914, it was pledged that "in case the Turkish Government would remain faithful to its engagements and would enter the War against the Triple Entente, Germany will guarantee to Turkey the following advantages: 1. Its assistance with regard to the abolition of the capitulations. . . ." (See *U'Europe Nouvelle, sources et documents*, August 17, 1929, p. xxv.)

*i'A. J. I. L.*, 1923, XVII, 228.

By the treaties of peace signed at Versailles on June 28, 1919, (art. CCXC, *Treaty Series*, No. 4, 1919, *Cmd.* 153, p. 138) at Saint-Germain on September 10, 1919, (art. CCXLII, *Treaty Series*, No. 11, 1919, *Cmd.* 400, p. 68) and at Trianon on June 4, 1920, (art. CCXXV, *Treaty Series*, No. 10, 1920, *Cmd.* 896, p. 64) Germany, Austria, and Hungary respectively recognized the annulment of all treaties, conventions, or accords concluded with Turkey after August 1, 1914.

<sup>15</sup> *U'Europe nouvelle, sources et documents*, August 17, 1929, p. xxv.

the local courts, and it would certainly be safe to say that they were left to some extent to the mercy of the German military authorities in Turkey, for German officials had tremendous influence in Turkey during the War. A law was passed on March 2, 1915, by the terms of which foreigners residing in Turkey became subject to expulsion and exile.<sup>10</sup>

On October 15, 1915, the dragoman of the American consular agency at Alexandretta was arrested by the local police after being subjected to the search of his house on several occasions between 1914 and 1915; he was deported to an unknown destination.

About the middle of January, 1916, the dragoman of the American consulate at Bagdad was arrested and tried before the Court Martial. On March 4 and 6, 1916, two cavasses<sup>17</sup> of the American Consulate General in Constantinople were also arrested and sent before the Court Martial; another dragoman of the American consulate at Jerusalem was deported. These and other actions of similar nature were not uncommon. On the 10th of April, 1916, however, the American embassy in Constantinople

<sup>16</sup>" Le ministre de l'interieur peut, soit de sa propre initiative, soit par decision du conseil des ministres, eloigner sine die ou pour une duree fixe, de la ville ou des zones ou ils se trouvent, les etrangers voyageant ou residant on Turquie, s'il le juge necessaire pour des considerations politiques ou d'ordre policier, ou bien les expulser du terroire en les faisant accompagner de la force publique." (Martens, *Nouveau recue.il general de traites*, Seme serie, tome X, 1921, pp. 749-751 )

<sup>17</sup> A cavass is a guard or courier of the legation.

was informed by the Minister for Foreign Affairs that at his request the Minister of the Interior " had sent telegraphic instructions to the provincial authorities directing the latter to avoid in all matters friction with Americans." <sup>18</sup>

On August 21, 1916, the Secretary of State was informed by the Charge d'Affaires of Turkey in Washington that the Ottoman Government had decided to put into effect the new Ottoman customs tariff on the basis of specific duties, on and after September 1/14, 1916. In reply to this memorandum, the Secretary of State acknowledged on September 7 the receipt of the note but maintained the same position which the United States Government had announced with regard to the abolition of the capitulations. <sup>19</sup>

On the whole, we may say that until the entry of the United States into the War on the side of the Allied Powers, American nationals and institutions were naturally more favorably treated than those of the Allies. <sup>20</sup>

<sup>18</sup> For. *ReL*, 1916, pp. 963-968.

<sup>19</sup> For. *ReL*, 1916, p. 975.

<sup>20</sup> The French, British, and Belgian nationals in Turkey were placed under American protection after the declaration of war up to the entry of the United States into the War. Those who had decided to leave the country were allowed to do so, although there were many who were compelled to leave; those who remained were subjected to restrictions, searches, and exile. (See Pears, *Forty Years in Constantinople*, N. Y., 1916, p. 361. The step taken by Turkey in her treatment of enemy property is explained in Hertslet, *Commercial Treaties*, XXVIII, 1104-1105.)

It is interesting to note that while all British and French mis-

Mr. Turlington asserts,

The position of the Turkish Government in relation to the exercise of Capitulatory rights by the United States was not altogether dear or consistent between October 1, 1914, the announced date of the abrogation of the Capitulations, and April 20, 1917, the date of the severance of diplomatic relations by action of the Porte. During this period the Turks did not acknowledge the existence of the Capitulations; but on the other hand they did not take the measures which it was in their power to take for the prevention of the functioning of the American consular courts. There is evidence that they deemed it advisable, before the entry of the United States into the War, to avoid raising a sharp issue with this country.<sup>21</sup>

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sionanes were compelled to withdraw after the outbreak of the War, the American missions in the interior, despite the interruption of communications between Constantinople and the interior which rendered the sending of money from Constantinople impossible, were able to continue their work at their posts largely through the cooperation of a Mohammedan religious organization "The Mohammedan religious organization, that has endowments scattered throughout the empire," says Dr. Barton "found it impossible to send the income of those endowments to their headquarters in Constantinople, and when they learned that the mission stations offered a safe means of transfer they also paid in money at the various stations, where it was used for the support of the missionaries, and received in exchange drafts on Treasurer Peet at Constantinople. These drafts were presented at the Bible House by the head of the Mohammedan organization and were cashed at their face value. . . . This experience also gave to missions a new reputation of business integrity and ability." The difficulty involved in the transmission of funds from the United States to Turkish ports was another source of handicap; this, however, was solved when the Standard Oil Company of New York agreed to instruct its agents in Turkey to pay limited amounts of money to the institutions and the missionary societies there. (See J. L. Barton, "The War and Missions in Turkey," *The Missionary Review of the World*, new series, March, 1915, XXVIII, 184-190.)

21 *Yale Law Journal*, 1925-26, XXXV, 334.

The status of the German and Austro-Hungarian nationals in Turkey during the War was defined in the political and commercial arrangements concluded with Turkey to take the place of the capitulations by the terms of which some of the rights granted to German nationals in Turkey were made applicable to Turkish nationals in Germany.<sup>22</sup>

#### THE UNITED STATES ENTERS THE WAR

On April 20, 1917, diplomatic relations with the American Government were severed by Turkey,<sup>23</sup> although the United States did not declare war on the latter.<sup>24</sup> In severing diplomatic relations with the Allied Powers, Turkey had announced that by its action all treaties with these Powers were annulled,

<sup>22</sup> In an ordinance dated June 24, 1915, the German Government granted most-favored nation treatment to Turkish nationals in Germany. The ordinance, passed by the Bundesrat, reads as follows: "The Imperial Chancellor is authorized to concede during the war to the subjects and products of Turkey the advantages which may be granted by the German Empire to the subjects and products of the most favoured nation." (For the text of the ordinance, see *State Papers*, 1915, CIX, 954.)

<sup>23</sup> See *St. P.*, 1917-1918, CXI, 926.

<sup>24</sup> It was mostly due to the German pressure upon the Turks that the Turkish Government reluctantly severed its diplomatic relations with the United States. An interesting article by Frank Jewett on the reasons why the United States did not declare war on Turkey is found in *Cur. Hist.*, September, 1921, XIV, 989-991. Mr. Jewett attributes as one of the chief reasons the plan suggested by the American Government for the conclusion of a separate peace with Turkey. The Zionist movement and British foreign policy, however, played a significant part in effecting the postponement of the plan. (See also, "Why the United States did not declare war on Turkey and Bulgaria," *ibid.*, January, 1918, VII, 74.)

and similarly, treaties between the United States and Turkey were held by the latter to have been automatically suspended by the severance of diplomatic relations. American interests were confided to the protection of the Swedish Government, but in the meantime the American Government communicated to the Sublime Porte its dissent from the Porte's view with regard to the effect of the severance of diplomatic relations upon the American treaty rights. To this, the Porte did not reply, but insisted that all treaties ceased to be in force.

#### THE ARMISTICE OF MUDROS

The close of the Great War found the Allies in undisputed control.<sup>25</sup> The so-called "Mudros Armistice"<sup>26</sup> was signed on October 30, 1918, by which hostilities between the Allies and Turkey ceased Thursday noon, the 31st of October. Its terms were rather lighter than those imposed on the other central powers, this being possibly due to the reason that the framer of the Armistice, a British admiral, stressed the military point of view which to him

<sup>25</sup> A list of the laws passed by Turkey from September, 1914, up to the end of the War is given in *Annuaire de législations étrangères*, 2ième serie, 1919, XVII, 259-260.

<sup>26</sup> For text, see: Mears, *Modern Turkey*, pp. 624-626; *Encyclopedia Americana*, 1927, XXVIII, 460; Hertslet, *Commercial Treaties*, XXVIII, 1106-1108; *St. P.*, 1917-1918, CXI, 611-613; *Cur. Hist.*, (October, 1918-March, 1919), IX, 399-400; *International Law Documents*, Naval War College, 1918, pp. 159-161; Temperley, *History of the Peace Conference of Paris*, I, 495, IV, 513.

seemed to be the most important. It provided for Allied occupation of the Dardanelles and Bosphorus forts and gave the Allies the right to occupy any strategic point in the event of any situation arising which might threaten their security. Accordingly, British forces occupied on November 9 the forts along the Dardanelles, and on November 13, the Allied fleet anchored off Constantinople.

#### THE CAPITULATIONS AFTER THE ARMISTICE

The question whether or not the Allied occupation of Turkish territory carried with it the right to reestablish the capitulations can by no means be definitely answered. According to the principles of international law, the enemy occupying a territory is expected to observe and maintain the existing civil administration; a provisional change of the civil laws is permitted in case these regulations threaten the security of the new governing authority. The Allied Powers, however, reestablished the capitulatory regime in the occupied Ottoman territory, basing their action on the assertion that the unilateral abolition of the capitulations by Turkey in 1914 had never been recognized. In addition, high commissioners to sit at Constantinople were appointed by the chief Allied Powers and the United States,<sup>27</sup> and

<sup>27</sup> In May, 1919, Lewis Heck was sent to Constantinople as representative of the President of the United States with the title of Commissioner. Subsequently, President Wilson appointed in August, 1919, Admiral Bristol, who was at that time in charge of the naval

various organizations and arbitrary courts were established, but the result plunged the City of Constantinople into complete disorder. This situation which lasted for two years became worse when the occupation of Constantinople by a Franco-British force took effect on March 16, 1920. Never was the police force in such a turmoil, and the Ottoman subjects lost practically all their rights against foreign nationals.<sup>28</sup> The situation was improved, however, by the establishment of the provisional mixed commission which was organized in accordance with the provisional law of December 21, 1921.<sup>29</sup>

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forces in Turkish waters, as High Commissioner. Admiral Bristol acted in the capacity of diplomatic representative as well as in that of a naval officer. He was also representative of the United States Shipping Board in the Near East, Chairman of the Constantinople Chapter of the American Red Cross, General Assistant of the Near East Relief Committee, and General Director of all United States consular offices in Turkey. (See R. A. Bachman, "The American Navy and the Turks," *The Outlook*, October 18, 1922, CXXXII, 288-289 ) It is to be noted, however, that despite the fact that Admiral Bristol acted in the capacity of ambassador, the Comptroller General held that the diplomatic post was to be legally deemed vacant (See *V. S. Daily*, July 13, 1927, p. 3, columns 2, 3 )

<sup>-8</sup>"The capitulations, granting to foreigners certain immunities from the jurisdiction of Ottoman law," remarks Professor Earle, "gradually led Westerners in Turkey to consider themselves as being subject to no law. . . . The police were impotent to deal with cafes, gambling houses, saloons, dance-halls and other pleasure resorts which flourished in defiance of the law and of public decency." "These disorders," Professor Earle continues, "reached their highest point of development during the Allied occupation of Constantinople (1920-1923)." (*Political Science Quarterly*, 1925, XL, 81.)

<sup>29</sup>For the text of the law, see Mazard, J, *Le regime de capitulations*, pp. 235-237.

Thus was the situation: Turkey at the point of the Allied bayonets; the capitulations reestablished in the occupied territories; and the Turkish peoples, on the other hand, waiting for the final sentence to be imposed on them by the victorious powers. But the Turkish problem was too complicated to be solved in the Conference of Paris, and it was not until December 18, 1919, that the British Prime Minister announced that France, Italy, and Great Britain could not wait longer for the cooperative participation of the American Government and that they were about to take up the Turkish question.<sup>30</sup>

<sup>30</sup> The delay incurred with regard to the solution of the Turkish question may be traced to the Allied secret agreements made in wartime. The partition of the Ottoman Empire as provided for in these agreements was made impossible due to the fall of the Tsarist regime and the disagreement between the European Allied Powers on the ultimate disposal of the Turkish spoils. (The texts of these secret agreements are found in Seymour Cocks, *The Secret Treaties and Understandings*, London, 1918; for a discussion of these treaties, see Ray Stannard Baker, *Woodrow Wilson and World Settlement*, I, oh. iv.)

## CHAPTER XI

### THE CAPITULATIONS AND THE WORLD WAR (*Continued*)

#### THE NATIONALIST MOVEMENT AND THE NATIONALIST PACT

That the state of things which existed in Turkey after the War would have aroused bitter indignation among the Turkish peoples was but to be expected. The Allied authorization of Smyrna's occupation by Greek troops in 1919 added to the bitterness of feelings, especially among the ardent nationalists in Turkey who began to look at the problem as a matter of life and death. In the interior of Asia Minor the Nationalist movement took a serious outlook: A national congress was held in Erzerum in September, 1919, and a few months later, twelve delegates composed the national council which sat at Angora to communicate with the parliament of Constantinople. This council formulated a program of its own proclaiming integral sovereignty and national independence for the Turkish nation. The program which was later to be known as " the Nationalist Pact " was dispatched to the parliament of Constantinople by which it was adopted on January 28, 1920, despite the discrepant attitude of the representatives of the Allied Powers stationed in Constantinople.

In April, 1920, the parliament of Constantinople was suppressed by the Allies and most of its members were deported. The Nationalists availed them-

selves of the opportunity that the absence of parliament in Constantinople offered, and on April 23, they formed the Grand National Assembly at Angora under the presidency of Mustapha Kemal Pasha, declaring that that body was the only lawful governing body in the country. They reiterated the terms of the Nationalist program which bore no revolutionary character and passed the so-called " Law of Fundamental Organization " on January 20, 1921,<sup>1</sup> now repudiating the existing Government of the Sultan and providing for the main constitutional principles of the new government.

The program, now known as " the Nationalist Pact,"<sup>2</sup> laid special emphasis on the subject of the capitulations; article VI of the Pact reads as follows:

It is a fundamental condition of our life and continued existence that we, like every country,, should enjoy complete independence and liberty in the matter of assuring the means of our development, in order that our national and economic development should be rendered possible and that it should be possible to conduct affairs in the form of a more up-to-date regular administration.

For this reason we are opposed to restrictions inimical to our development in political, judicial, financial, and other matters.<sup>3</sup>

<sup>1</sup> For the text of the law, see *Cur. Hist.*, December, 1922, XVII, 458.

<sup>2</sup> For text, see: *The Nation*, 1922, CXV, 447-448; *Cur. Hist.*, 1922, XVII, 281-282; *The Editor and Publisher*, December 2, 1922, p. 2, Temperley, *History of the Peace Conference of Paris*, VI, 605; Mears, E., *Modern Turkey*, pp. 629-631; *The New International Year Book*, 1922, p. 727; *Toynbee and Kirkwood*, Turkey, 1927, p. 85.

<sup>3</sup> The word " judicial " is not found in the text as published in Temperley's *History of the Peace Conference*. There is no doubt,

## THE PEACE TREATY OF SÈVRES

With their troops and the Greek army on Turkish territory, the Allied Powers lent no ear to the Nationalist aspirations, and in May, 1920, the Greeks started their advance towards inner Asia Minor with the aim of quelling the movement.<sup>4</sup> On the 11th of the same month, a peace treaty formulated by the principal Allied Powers, later to be known as the Treaty of Sevres of August 10, 1920, was communicated to the Grand Vizier, Ferid Pasha, for approval/<sup>1</sup> The latter, who was desirous of satisfying the demand of the British at any cost, summoned eighty prominent men to approve the treaty, which they did.<sup>6</sup>

It is to be remembered that the United States was not officially represented in the Allied conferences on Turkish affairs held in London and San Remo in

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however, as to its being included in the original text; for the word is found in all the other texts as published in the sources referred to

<sup>4</sup> On August 10, 1921, the Supreme Council proclaimed Allied neutrality towards the Greco-Turkish conflict. It was declared, however, that Constantinople was to be excluded from the field of operations and that the Allies would not allow the capture of the city by the Greeks.

<sup>6</sup> A detailed account of the events of the period from the Armistice to the date of the treaty of Sevres is given in Lord Eversely and Sir Valentine Chirol, *The Turkish Empire*, London, 1923, pp. 394-407.

<sup>6</sup> An interesting account of the unconstitutionality of the proceeding in the approval of the treaty is given in E. A. Powell, *The Struggle for Power in Moslem Asia*, 1923, p. 98; see also, L. Stoddard, *The New World of Islam*, New York, 1922, p. 229.

February and April, 1920. The American Government always maintained that there had been no state of war between the United States and Turkey, and, furthermore, it was not willing to carry any responsibility in the territorial and the political adjustment of the peace arrangement.<sup>7</sup>

Although this peace treaty was not ratified by the Nationalist Government and was entirely revoked in 1923, it does not seem out of place to give a summary of the articles which in the mind of the writer are important in so far as they touch upon the subject of the capitulations: According to article CCLXI of the treaty, the capitulatory regime was not only to be reestablished in favor of the Allied Powers which had enjoyed its benefit before 1914, but was also to be extended in favor of the Allied Powers which did not have extraterritorial immunities in Turkey before the War.

<sup>7</sup> The American Government, however, sent two missions to the Near East in the summer of 1919 to obtain first hand information concerning the general situation. In June, a mission composed of Dr. H. C. King and Mr. C. R. Crane was sent to Syria which began its enquiries at Jaffa on June 10, 1919, and ended them at Mersina on July 20. (For the text of the report with the recommendations of the Mission, see *Editor and Publisher*, December 2, 1922.)

The other mission, a military mission headed by Major Gen. J. G. Harbord, was sent to "investigate and report on political, military, geographical, administrative, economic, and other considerations involved in possible American interests and responsibilities in that region." The mission submitted its report on October 16, 1919. (For the text of the report, see *Senate Document* No. 266, 66th Cong., 1st Sess.; also, *International Conciliation* Pamphlet No. 151, June, 1920. See *supra*, p. 150.) Of these two missions no practical result was obtained.

Article CCLXII<sup>8</sup> gave the Allied Powers the right to reestablish their post offices and article CCLXIII<sup>9</sup> deprived the Turkish Government of the right to modify the tariff rates without the consent of the Allied Financial Commission which was to be established in accordance with the terms of the treaty.<sup>10</sup>

Article CXXXVI provided for the establishment of a commission to be represented by France, Italy, Japan, and Great Britain which was to draw up a scheme of judicial reform to take the place of the capitulatory system in judicial matters. The other capitulatory powers, Allied or neutral, were to be invited to appoint technical experts to assist in the preparation of the scheme which was to be approved by the Principal Allied Powers before it could be applied.<sup>11</sup> As to the date on which the new system was to come into force, it was for the Powers to agree among themselves.<sup>12</sup>

<sup>8</sup> "The Allied Powers who had post offices in the former Turkish Empire before August 1, 1914, will be entitled to reestablish post offices in Turkey." (See *supra*, p 87, n 46)

<sup>9</sup> "The Convention of April 25, 1907 (see *supra*, pp. 73-74), so far as it relates to the rate of import duties in Turkey, shall be re-established in favour of all the Allied Powers."

<sup>10</sup> The treaty provided for the administration of the Ottoman Public Debt by the foreign council (see *supra*, pp. 75-76) as before the War until the Debt is liquidated. In addition, a financial commission was to be designated by the Allies at the disposal of which the entire resources of Turkey, except revenues conceded to the Public Debt, were to be placed for an indefinite period. (See articles CCXXXI-CCLX.)

<sup>11</sup> The treaty did not provide for Turkish representation in the commission.

<sup>12</sup> Article XLIX provided that until that judicial reform would be effected all the infringements of the regulations and laws made by

According to article CCCXVI, companies incorporated in accordance with Turkish laws could transfer their property, rights, and interests to other companies incorporated under the laws of any of the Allied nations; and Turkey was to allow the latter companies to enjoy the same rights and privileges that the former enjoyed under Turkish law. Turkey was also to modify her laws so as to allow foreign companies belonging to the Allied nations to hold concessions. Furthermore, Turkey was to refrain from granting any new concession without the consent of the Allied Financial Commission.<sup>13</sup>

Article CCCCXXVI provided that all cases decided in Turkey by a judge or a court of an Allied Power between October 30, 1918, and the coming into force of the new judicial system as provided for in article OXXXVI were to be recognized and enforced by Turkey.

The protection of minorities was assured in a series of articles (CXL-CLI) which restored to the non-Moslem communities the prerogatives and the immunities formerly granted to them by the Sultans; all laws restraining these privileges were to be considered invalid.<sup>14</sup>

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the commission of the Straits (an institution provided for in the treaty to take charge of the neutral zone and the Straits), committed by nationals of Allied Powers in the neutral zone, were to be dealt with by the consular courts of the said powers

<sup>13</sup> See article CCXXXIX.

<sup>14</sup> " All laws, decrees, regulations and circulars issued by the Turkish Government and containing abrogations, restrictions or amend-

And finally, according to article CXXVIII, Turkey was to recognize the rights of expatriation and to consider all those who acquired the nationality of one of the Allied Powers as nationals of such power and as having lost their Turkish nationality; Turkey was also to recognize any new nationality— notwithstanding any provisions of Turkish laws to the contrary—which had been or might be acquired by her nationals under the laws of the Allied Powers or new states and to regard such persons as having, consequently, severed their allegiance to their country of origin. In the words of Mr. Temperley: "If advantage were taken of this clause on any large scale by foreign governments (e. g., by Greece or Italy) on the one hand, and by Turkish nationals (e. g., by those of Greek or Armenian race), on the other, it was evident that the effective exercise of Turkish sovereignty in Turkish territory might become impossible."<sup>15</sup>

#### EFFECTS OF THE PEACE TREATY

That the stipulations of the Treaty of Sevres infringed upon the very national existence of Turkey, attacking her sovereign rights as an independent

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inents of such prerogatives and immunities shall be considered to such extent null and void." (Art. CXLIX.)

<sup>15</sup> Temperley, *History of the Peace Conference of Paris*, VI, 99.

A discussion of the main provisions of the Treaty is to be found in Bowman's *The New World*, 1926, chs. xxiv, xxvi. For the text of the treaty, see: *A. J. I. L., Supplement*, 1921, XV, 179-295; *St. P., CXIII*, 797; *Treaty Series*, No. 11, 1920, *Cmd.* 964.

state cannot be challenged.<sup>10</sup> Commenting on the Treaty, Colonel Thomas E. Lawrence remarked that it is "almost an advertisement of the greeds of the conquerors. No single clause of it will stand the test of three years' practice and it will be happier than the German Treaty only in that it will not be revised—it will be forgotten."<sup>17</sup>

The Treaty was opposed not only by the Nationalists, but also by many of those who were willing to sacrifice for the maintenance of peace by arriving at a compromise at any cost.<sup>18</sup> The mission under Izzet Pasha sent by the Government of Constantinople to communicate with the Nationalists with the aim of effecting a compromise between the two governments arrived at Angora on January 16,

<sup>16</sup> The treaty provided for the attribution of Smyrna and its hinterland to Greece—a divergence from the provisions of the Nationalist Pact which was most bitterly denounced by the Nationalists. Italy was also to have a sphere of influence in Southern Anatolia including the port of Adalia.

<sup>17</sup> E. Mears, *Modern Turkey*, p. 516.

<sup>18</sup> The Nationalist Government denounced the Treaty and sentenced to death the agents of the Sultan who signed it. (D. Y. Thomas, *One Hundred Years of the Monroe Doctrine*, p. 498.)

"The date of signature at Sevres," say Toynbee and Kirkwood, "was made a national day of mourning throughout Turkey; all the newspapers in Constantinople were blackbordered, public entertainments in Stambul were prohibited, shops were closed, and prayers were said all day for the welfare of the country. Not only were these manifestations of resentment shown in the capital; but, far in the interior, the news of the treaty sounded like a tocsin to those who had their country's interests at heart . . . Just as the landing of the Greeks in Smyrna a year earlier had lighted the fires of patriotic nationalism, so this new insult of an inequitable peace, imposed by force, fanned the flames into fresh fury." (Toynbee and Kirkwood, *Turkey*, New York, 1927, pp. 76-77.)

1921, and announced its decision to remain in Angora until the Allies would agree to modify the terms of the treaty of Sevres.<sup>19</sup> The effect of this moral support to the Nationalist movement can hardly be overestimated; for the conversion of the mission to the side of the Nationalists made it clear that the Nationalist party represented the voice of the majority of the people and that the Treaty of Sevres could not be enforced without the use of force.

#### SOVIET RUSSIA RECOGNIZES THE NATIONALIST GOVERNMENT

The first Power to extend its sympathy to the Nationalist program, as expressed in the Pact of January, 1920, was the Soviet Republic of Russia. On September 1, 1920, the Soviet Government of Russia held a "Congress of Eastern Peoples" at Baku, the aim of which, as then declared, was to liberate the Orient.<sup>20</sup> The Nationalists sent a dele-

<sup>19</sup> In connection with the Treaty of Sevres, the so-called "Tripartite Agreement" was signed between the British Empire, France, and Italy, defining the interests of each of the parties and providing that Italy and France were not to withdraw their troops from the areas where their interests were recognized without a collective agreement to be reached by the contracting parties. That is to say, the Powers were to keep their armies until the terms of the Treaty of Sevres shall have been executed. (*A. J. L. L., Supplement, 1921, XV, 153-159. Article VIII.*)

<sup>20</sup> In summoning the peoples of Turkish Anatolia to the Congress, the "Third (Moscow) International" made the following appeal: "Peasants of Anatolia! The English, French, and Italian Governments hold Constantinople under the mouths of their cannon. They have made the Sultan their prisoner, they are obliging him to consent to the dismemberment of what is purely Turkish territory, they

rgation to that congress and a few months later the treaty of alliance of March 16, 1921, was concluded between the Nationalist Government and Soviet Russia by which the latter categorically recognized the abrogation of the capitulations.<sup>21</sup> Article VI of this treaty reads as follows:

Both parties recognize that all the treaties theretofore concluded between them do not correspond to their reciprocal interests. Therefore, they agree to consider the aforesaid treaties void and abrogated. The Government of the R. S. P. S. R. declares, in particular, that it considers Turkey free from any financial or other obligations based on international treaties concluded between Turkey and the Government of the Czar.

Article VII refers particularly to the capitulations:

The Government of the R. S. P. S. R. considers the capitulatory regime to be incompatible with the free national development and with the sovereignty of any country;<sup>22</sup> and it regards all the rights and acts relating in any way to this regime as annulled and abrogated.<sup>23</sup>

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are forcing him to turn the country's finances over to foreign capitalists in order to make it possible for them better to exploit the Turkish people, already reduced to a state of beggary by the six-year war. They have occupied the coal-mines of Heraclea, they are holding your ports, they are sending their troops into your country and are trampling down your fields." (L. Stoddard, *The New World of Islam*, New York, 1922, p. 345 )

<sup>21</sup> For the text of the treaty, see: *Cur. Hist.*, XVII, 277-279; Mears, *Modern Turkey*, pp. 645-648; O. Kiazim, *L'Aventure Kema-hste*, Paris, 1921, *annex*.

<sup>22</sup> The Turkish text refers especially to Turkey.

<sup>23</sup> The same clause is found in the Treaty of Kars of October 13, 1921, (art. III) between the Nationalist Government and the Transcau-

In addition to this recognition of the Nationalist Government, Soviet Russia supported the Nationalists morally and materially in the pursuance of the battle against the Greeks who were advancing towards the interior of Asia Minor.<sup>24</sup>

In connection with the capitulations, it is safe to say that the assent of Eussia or of any of the former allies to relinquish their capitulatory rights would have no material effect, since Soviet Russia was not recognized then by any of the Allied Powers and the former allies of Turkey were in a too deplorable position to give any significance to their arrangements with Turkey. The decisions of the Allied Powers were, therefore, the only decisions to bear weight, and these as embodied in the treaty of Sevres declared the restoration of the capitulatory regime. With Nationalist Turkey determined to oppose the treaty at any cost,<sup>25</sup> it remained to force to decide whether the capitulations were to be continued or

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casian governments of Armenia, Azerbaijan and Georgia. (For text, see *Mears, Modern Turkey*, p. 648) The Nationalist Government was recognized by Afghanistan on March 1, 1921; by Ukraine on January 2, 1922; by Persia on June 26, 1922. (See Appendix VI.)

<sup>24</sup> It was reported that the Tlirks (nationalists<sup>1</sup>) had received \$5,000,000 in gold from the Bolsheviks. This report, though not substantiated, has been frequently credited. (*The New International Year Book*, 1921, p. 705.) Germany was also reported to have concluded a secret treaty with the Nationalist Government. (See *Cur. Hist.*, XVII, 35.) For an account of the Russo-German assistance to the Nationalists, see O. Kiazim, *L'aventure Kemaliste*, pp. 49-60.

<sup>25</sup> Commenting on the Sevres treaty, Mustapha Kemal Pasha, the leader of the Nationalists, said: "I will fight to the end of the world." (L. Stoddard, *The New World of Islam*, 1922, p. 229.)

abrogated. Greece, as we have seen, was delegated to subjugate revolting Anatolia; but lack of cooperation, clash of interests, and imperialistic rivalry upset the whole scheme.

#### REVISION OF THE TREATY OF SÈVRES CONTEMPLATED

Soon after the treaty of Sevres was signed, its impracticability, on the one hand, and the resentment manifested throughout the Moslem world, on the other, convinced the Allied Powers, especially Great Britain who has a large Moslem population in India, that revision of certain clauses of the Treaty in favor of the Turks must be arranged. A conference was consequently held in London (21st February-14th March, 1921) the object of which was to discuss the question of revision. Greek and Turkish (Constantinopolitan and Nationalist) delegates were invited to it. The difficulty involved in reconciling the conflicting interests of the Great Powers, however, made a definite solution of the problem impossible. It was first proposed by the Allies that the general terms of the treaty of Sevres be retained, but as regards the Turco-Greek controversy caused by the territorial distribution of the Treaty, " the Powers would send a commission to visit the regions and recommend dispositions based on the composition and the wishes of the populations." On the rejection of the plan by Greece, another prescription was suggested, namely that of introducing certain modifications, such as the withdrawal of the Allied

troops from Constantinople, the grant of voting privileges to Turkey in the Straits and Financial commissions, the recognition of the sovereignty of the Sultan over Smyrna, and other privileges in favor of Turkey.<sup>26</sup> These proposals, however, were rejected by the Greeks and did not satisfy the Turks.<sup>27</sup>

In June, 1921, another conference was held in Paris between the representatives of Great Britain, France, and Italy the purpose of which was to discuss the Greco-Turkish question. As a result, an agreement was reached and a note was sent to Greece offering Allied mediation; the Greek Government, however, refused (June 25).<sup>28</sup>

<sup>26</sup> See *The New International Year Book*, 1921, p. 744; also: Temperley, *The History of the Peace Conference of Paris*, VI, 32; *L'Europe Nouvelle*, IV, No. 12, p. 229; *Journal of International Relations*, 1921-22, XII, No. 4, p. 471; Paillares. *Le Kemahste devant les Allies*, pp. 207-21.

<sup>27</sup> The only definite result of this conference, so far as the Near Eastern question is concerned, was the separate agreement of March 9th between the French and the Turkish Nationalists putting an end to hostilities between France and Nationalist Anatolia along the Turco-Syrmn frontier. (See *infra*, p. 218, n. 29 )

<sup>28</sup> In a declaration dated March 27, 1922, the three Allied Ministers for foreign affairs<sup>1</sup> (French, British, Italian) reached an agreement regarding the revision of the treaty of Sevres by which the Hellenic troops were to withdraw from Anatolia, the capitulatory regime was to be revised, and in order to safeguard Constantinople, which was to remain Turkish, from foreign attack, a small portion of Eastern Thrace adjacent to the city was to be given to Turkey while the greater part of Thrace was to remain under Greek rule. Other privileges concerning the economic and financial clauses were also to be given in favor of Turkey.

"In respect of the existing capitulatory system," the note reads, "the three Ministers are anxious to secure to Turkey the largest measure of economic independence consistent with the due protec-

THE FRENCH ENTER INTO AN AGREEMENT WITH THE  
NATIONALISTS

While the Greek armies were advancing in Asia Minor, French policy was swinging towards the Nationalist Government,<sup>29</sup> and France surprised the

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tion of the interests of the nationals of their respective countries. For this purpose they are prepared to set up at Constantinople, within three months<sup>1</sup> from the coming into force of the Treaty of Peace, a commission composed of representatives of Great Britain, France, Italy and Japan and of Turkey, to prepare, with the assistance of technical experts representing the other capitulatory Powers, proposals for the revision of the capitulatory regime in fiscal matters. These proposals shall provide for fiscal equality between foreign and Turkish subjects, while safeguarding the former against excessive taxation and abuses in collection, and for any necessary modification of the customs taxes, with the consent of the Powers concerned. As regards the Capitulations in judicial matters, the Allied Powers repeat their former offer to set up within the same period a similar commission to prepare a scheme of judicial reform to replace the capitulatory system, which will continue provisionally pending the introduction of the proposed scheme. This commission on which Turkey will be represented, will be at liberty to recommend either a mixed or a unified judicial system." These propositions, the three Ministers considered "the most equitable solution that it is in their power to offer to the Near Eastern problem."

Had Greece and the Nationalist Government of Turkey accepted this arrangement, the situation would certainly have made the conclusion of a new peace treaty with Turkey necessary; but the latter insisted on the restoration of all Eastern Thrace and the complete abrogation of the capitulatory system. (See "Pronouncement by three Allied Ministers for Foreign Affairs respecting the Near Eastern Situation, Paris, March 27, 1922," *Miscellaneous* No. 3, 1922, Cmd. 1641.)

<sup>29</sup> The French had come to an understanding with the Nationalists since March 9, 1921, providing for peace and for French withdrawal from Cilicia. (The text of this accord is found in *l'Europe nouvelle*, vol. IV, No. 13, March 26, 1921, p. 407; also, in Paillares, *Le Kemorliste devant les Allies*, pp. 349-352. See *supra*, p. 217, n. 27.)

world when she concluded on October 20, 1921, a separate formal agreement, known as the Franklin-Bouillon agreement,<sup>30</sup> with Nationalist Turkey.<sup>31</sup> Under the terms of this agreement, the conflict between France and Nationalist Turkey was to cease and France was to evacuate Cilicia, the region occupied by her as provided by the Treaty of Sevres and by the Tripartite Agreement of August 10, 1920,<sup>32</sup> a certain section of the Bagdad railway line was to remain in Turkish territory, but both the French and the Turks were to have the right to use the road.<sup>33</sup>

#### BRITISH PROTESTS

Against the Franklin-Bouillon agreement, the British Government protested on the ground that it was contrary to previous agreements concluded between France and England. In his note to the

<sup>30</sup> Called after the name of the French signatory delegate, a member of the French Senate Committee on Foreign Affairs

<sup>31</sup> For the text of the agreement, see *Turkey* No. 2, 1921, "Dispatch from His Majesty's ambassador at Paris, enclosing the Franco-Turkish agreement signed at Angora on Oct. 20, 1921," Cmd. 1556; Temperley, *History of the Peace Conference of Paris*, VI, 606-609; A. J. L. L., *Supplement*, January, 1923, XVII, 48-51; *St. P.*, 1921, CXIV, 771-774; Mears, *Modern Turkey*, pp. 651-653; Paillares, *Le Kemalisle dcvant les Allies*, pp. 359-363.

The text together with the Franco-Turkish correspondence relative to certain concessions to be given by the Turks to the French are found in De Martens, *Nouveau recueil general de traites*, 3eme serie, XII, 826-832.

<sup>32</sup> See supra, p 213, n. 19.

<sup>33</sup> The agreement was ratified by the Nationalist Assembly at Angora before the exchange of signatures. France ratified it on October 30, 1921.

French Government, dated November 5, 1921,<sup>84</sup> Lord Curzon declared that it would appear " that the agreement involves formal recognition by France of the Grand National Assembly at Angora as the sovereign authority in Turkey, in which case a peace concluded with Angora would be contrary to the Franco-British Treaty of the 4th September, 1914, and to the London Pact of November, 1915." He, furthermore, declared that articles III and VI of the Franklin-Bouillon agreement regarding the withdrawal of French troops and the rights of minorities ran counter to the terms of the Treaty of Sevres and also ignored the responsibilities assumed by the French Government under the Tripartite agreement.

The arrangement concerning the Bagdad Railway line in favor of Turkey was another point to which the British Government was opposed on account of its involving strategic consequences to Great Britain's position in Iraq (Mesopotamia). " In conclusion," the note continues, " it [the agreement] has the appearance of being a separate agreement concluded by one of the Allies with an enemy government without consultation with the remainder."

In reply to Lord Curzon's protest, the French Government, in a note dated November 17, 1921,

<sup>84</sup> *Turkey* No. 1 (1922), "Correspondence between His Majesty's Government and the French Government respecting the Angora Agreement of October 20, 1921," Cmd. 1570. See also, *L'Europe nouvelle*, November 12, 1921, IV, 1453 ff. and *St. P.*, 1921, CXIV, 293-323.

denied that there was any agreement on her part in virtue of the Tripartite Treaty to remain in Cilicia. Evacuation, it declared, was a necessity. It, furthermore, denied the assumption that the agreement involved a *de facto* or *de jure* recognition of the Turkish Nationalist Government.<sup>35</sup>

#### ITALY FOLLOWS FRENCH EXAMPLE

Italy, who had little sympathy with the irredentistic aims of Greece, followed the example of her ally (France) and concluded an agreement with the Nationalist Government by the terms of which Italian troops were to be withdrawn from Ottoman territory and Italy was to support "all demands of the Turkish delegation relative to the peace treaty, and especially to the restitution to Turkey of Smyrna and Thrace."<sup>36</sup>

#### THE GREEKS COLLAPSE AND EVACUATE SMYRNA

Strictly speaking, this change of policy together with the suspicion of the Allied Powers towards one another left Greece with the moral support of England, on the one side, and Nationalist Turkey with the material and moral backing of Russia, France,

<sup>85</sup> Lord Curzon replied to this note, but still maintained his objections to the Bagdad Railway arrangement.

<sup>38</sup> This agreement was concluded on March 12, 1921, three days after the French came to an understanding with the Nationalist Government (March 9, 1921). (For the text of the agreement, see: E. G. Mears, *Modern Turkey*, p. 644; *The Nation*, N. Y., 1921, CXIII, 214; *L'Europe nouvelle*, May 28, 1921, IV, 698.)

and Italy, on the other.<sup>37</sup> Thus it was but natural that the Greek armies would collapse, and this actually took place on August 26, 1922.<sup>38</sup> This was followed by the evacuation of Smyrna by the Greeks, the fall of the city into the hands of the Nationalists on September 11, 1922,<sup>39</sup> and the withdrawal of the French and Italian troops from Chanack on September 21, 1922.

<sup>37</sup> Speaking of the French aid to the Nationalists, Mr. A. Polyzoides, writing to the *Current History* in 1923, said "Nationalist Turkey became, in a military sense, French territory. Political missions, military missions, propaganda missions, financial missions, found their way from Pans to Angora. The entire credit of the French Republic was placed behind Kemal. The warships of France and the liners of the *Messageries Maritimes* became Turkish transports, and the French arsenals were placed at the disposal of the Turks. Once the ally of Kemal, France supported him to the fullest extent of its ability and its resources." (*Cur. Hist.*, 1923, XVII, 35.)

<sup>38</sup> For an account of the Greek collapse in Asia Minor and the Greek revolution in Greece, see articles by Polyzoides in *Cur. Hist.*, 1923, XVII, 32-36, 312-316, 539-544, 947-950; also, P. Hibben, "Betrayal of Greece by Lloyd George," *ibid.*, XVII, 545-551 and *ibid.*, pp. 161, 342, 519, 698, 773, 870, 1059.

<sup>39</sup> A large part of Smyrna was destroyed by fire on September 14, 1922. The question as to the responsibility for the burning and destruction has never been satisfactorily answered. See: Dourmoussis, E., *La vente sur une drame historique*, Paris, 1928; Oecorimos Lysimachos, *The Martyrdom of Smyrna and Eastern Christendom*, London, 1922; Toynbee, A. J., "The Truth about Near East Atrocities," *Cur. Hist.*, July, 1923, XVII, 544-551; E. A. Powell, *The Struggle for Power in Moslem Asia*, 1923, pp. 155-163; Hamdi, "The Burning of Smyrna," *Cur. Hist.*, XVII, 317; G. Horton, *The Blight of Asia*, N. Y., 1926; Bierstadt, *The Great Betrayal*, N. Y., 1924.

## THE ARMISTICE OF MUDANIA OF OCTOBER 11, 1922

The Turkish victory alarmed the British and on September 16, 1922, Mr. Lloyd George made his famous appeal to the British dominions for military action against Nationalist Turkey, also calling on the Little Entente for aid; but the appeal for another war was nowhere answered. Thereupon, an Allied note was sent to the Angora Government on September 23, proposing an immediate military conference at Mudania. The proposal was accepted on September 29, and a conference was held at Mudania (October 3-4 and 9-11) between the Allied generals and the Turkish delegate which ended in the signature of an armistice known as the Mudania Armistice.<sup>40</sup>

The armistice provided for the restoration of Eastern Thrace to Turkey, but the various operations of the withdrawal of the Greek troops and the transfer of the civil administration were to be carried out under the direction of inter-Allied missions, and the area was to be occupied by Allied contingents during the transitory period in order to secure the maintenance of law, order, and public security. The Government of the Grand National Assembly of Turkey undertook not to transport troops nor raise or maintain an army in Eastern Thrace until the ratification of the peace treaty.

<sup>40</sup> See *New International Year Book*, 1922, p. 770. For text, see *Times*, October 14, 1922; an extract of the text is found in Mears, *Modern Turkey*, pp. 658-659.

## CONCLUSION

Such was the outcome of the Hellenic irredentist movement and of the attempt to force the Turkish nation to accept the peace terms of the treaty of Sevres. The Angora Government, now recognized as the *de jure* Government of Turkey, was to be allowed to enjoy a position of equal advantage in the battle for peace settlement with the former conquerors. The treaty of Sevres was scrapped, and the negotiation for a new treaty of peace not only meant that Turkey was the last of the Central Powers with whom peace was to be effected, but also the only one to engage in a negotiated peace conference.

## CHAPTER XII

### THE LAUSANNE CONFERENCES AND THE TREATY OF LAUSANNE

#### INTRODUCTORY

As a victorious power rather than a defeated country, the Turkish nation under the control of the Nationalist Government was now to be reconciled instead of being forced to accept the terms of peace. On October 26, 1922, invitations were issued by the principal Allied Powers to a conference at Lausanne. The governments invited to the conference were those of the United States, Greece, Rumania, Jugoslavia, Japan, and both the Sultan at Constantinople and the Nationalist Assembly at Angora. The Russian and Bulgarian governments were also asked to send delegates to discuss the question of the Straits. In answer to the invitation, the American Government announced that it would send observers, but not plenipotentiaries, and as to the invitation to the Angora Government to send delegates to Lausanne, Mustapha Kemal declared that the Nationalists would not participate in the conference if the Sultan were to be allowed representation. The Sultan yielded on the point of representation at Lausanne, but refused to acknowledge the decision of the Nationalist Government abolishing his office.<sup>1</sup> In No-

<sup>1</sup> It is to be noted that in addition to the abolition of the Sultanate, the Nationalist Government also abolished the age-old institution

vember, Rafet Pasha, appointed by the Nationalist Government, assumed the governorship of Constantinople, and his office was recognized by the Allied High Commissioners; this was followed by the resignation of the Sultan's ministry and by the dispatch of messages to the representatives of the Sublime Porte in the various capitals to transfer their archives to the representatives of the Angora Government.

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known as the Caliphate. Originally established by the Arabs as the office of the successor of Mohammed, the Caliphate played a great historic role in its early days, but was reduced in importance after the Mongol destruction of Bagdad. For political aims, it was revived by the Turkish Sultans who assumed the title of Caliphs and who were recognized as such by the Orthodox Moslem world. (For a historical account of the institution, see: Abbas Ah Baig, "The Khilafat," *Asiatic Review*, new series, April, 1924, XX, 225-30; Arnold, Sir Thomas, *The Caliphate*, Oxford, Clarendon Press, 1924; Bukhsh, S Khuda, *Politics in Islam*, Calcutta, 1920; Chardin, F. W., "Caliphate Conference, Cairo," *London Quarterly Review*, July, 1926, CXLVI, 102-106; Chirol, V., "Downfall of the Khahfate," *Foreign Affairs*, June, 1924, II, 571-582; Gore, W. O., "Constantinople and the Modern Khahfate," *New Europe*, January 15, 1920, XIV, 5-10; *Journal of British Institute of International Affairs*, May, 1924, p 151; Krajewski, L., "Le Khalifat," *Revue pohtique et parlementaire*, August, 1928; Margoliouth, D. S., "Latest Developments of the Caliphate Question," *Moslem World*, October, 1924, XIV, 334-341;———, "Caliphate," *New Europe*, April 8, 1920, XIV, 294-330; Massignon, L., "La crise de l'autorite rehgieuse et le califat en Islam," *Revue des sciences politiques*, January, 1925, XLVIII, 74-85; Muir, W., *The Caliphate: Its Rise, Decline, and Fall*, Edinburgh, 1915; Paton, W., "Indian Moslems and the Khahfate," *International Review of Missions*, January, 1923, XII, 82-97; Peffer, N., "Passing of the Caliphate," *Forum*, November, 1924, LXXII, 608-615; Rustem, A., "Future of Islamism," *Nineteenth Century*, June, 1925, XCVII, 845-854; Sanhoury, A., *Le califat*, Lyon, 1926; Sykes, Sir Mark, *The Caliph's last Heritage*, London, 1915; A. R. S., "The Indian

## THE FIRST LAUSANNE CONFERENCE

The conference opened at Lausanne on November 20 and after months of negotiations ended in a deadlock on February 4, 1923. One of the chief causes of the failure of the conference was the difficulty in reaching an agreement concerning the capitulatory regime and the guarantees for foreigners proposed as a substitute for the capitulations which the Turks refused to accept.<sup>2</sup>

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Khilafat Delegation," *Foreign Affairs*, Special Supplement, July, 1920; X, "L'Islam apres la guene," *Revue de Paris*, January 15, 1916, pp 425-448; Yale, A, "Future of the Caliphate," *Moslem World*, October, 1924, XIV, 342-352; Zia, M. Z. K, "Why Turkey Deposed the Caliph," *Our World*, June, 1924, V, 84-85.)

The constitutional law (May 24, 1924) declaring the Turkish republic is found in *St. P.*, 1924, CXX, 943-953 See also, E. M. Earle, "The New Constitution of Turkey" (with text) *Political Science Quarterly*, March, 1925, XL, 73-100. For the text of the Turkish law (March 3, 1924) for the abolition of the Khalifat and the expulsion of the members of the Ottoman Dynasty from the territory of the Turkish Republic, see *St. P.*, 1924, CXX, 941-942.

<sup>2</sup> For an account of the Lausanne conferences, see: "Lausanne Conference on Near Eastern Affairs, 1922-1923," *Turkey* No. 1 (1923), Cmd. 1814; Abi-Chahla, II., *L'extinction des capitulations en Turquie et dans les regions arabes*, ch. viii; "The Lausanne Conference," A. J. /. L., April, 1923, XVII, 290; Thomas, D. Y., *One Hundred Years of the Monroe Doctrine*, ch. xxii; *The New International Year Book*, 1922, p. 772; *ibid.*, 1923, p. 789; *Cur. Hist.*, XVII, 520, 531, 744, 929; *ibid.*, XVIII, 351, 176, 680; *The Fortnightly Review*, CXIII, new series, No. 673, pp. 136-152; *ibid.*, CXIII, No. 675, pp. 491-502; *ibid.*, CXIV, No. 679, July, 1923, pp. 122-133; *The American Review of Reviews*, March, 1923, LXVII, 269-274; "The Oriental Labyrinth at Lausanne," *Literary Digest*, April 21, 1923, pp. 19-20; A. J. Toynbee, "The New Status of Turkey," *Contemporary Review*, 1923, CXXIII, 281-289; *UAsie Francaise*, 33d year, No. 208, Paris, 1923, pp. 8-10; Pierre Crouzet, "Pourquoi Ismet

The proposals of the Allied Powers were embodied in a draft treaty which was distributed to all delegations on January 29, 1923. This draft treaty consisted of 160 articles to which eight conventions were attached. The third of these conventions, to which a draft declaration relating to the administration of justice in Turkey was attached, dealt with the status of foreigners in Turkey.<sup>3</sup> The declaration provided that for a period of at least five years Turkey would organize a corps of legal advisers who were to be selected by a commission composed of two Turks and three Justices of the Hague Tribunal. These "conseillers legistes"<sup>M</sup> were actually to participate in the trial of foreigners. One foreigner was to be present in ordinary trial cases involving foreigners, but the foreign judicial representatives were to be in the majority in the judgment of cases in courts of last appeal. These functionaries were, furthermore, to participate in the domiciliary visits and in the arrest of foreigners by the Turkish authorities. And, finally, the Turkish Government was to set up an advisory committee composed of Turkish officers and the foreign legal advisers "to prepare all such schemes of reform as may be considered necessary to bring the law, the administration of justice and the prison system in Turkey into conformity with modern conditions."

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Pasha a quitte Lausanne," *La Revue hebdomadaire*, trente-cleuxieme annee, tome III, March, 1923, pp. 90-99; Roger Labonne, "Lausanne et la question turque," *Revue de Paris*, June 15, 1924, pp. 773-799.

<sup>8</sup> *Turkey* No. 1 (1923), Cmd. 1814, pp. 790-803.

Cases of personal status such as questions relating to marriage, conjugal rights, divorce, dower, adoption, majority, successions to personalty, etc., were to be referred to "the national tribunals or other competent national authorities established in the country of which the parties are nationals," unless the parties would be willing to bring the case before the Turkish courts.<sup>4</sup>

As to the financial and economic proposals, first, the customs tariff in force on September 1, 1916, was to be maintained for five years;<sup>5</sup> second, concessions and monopolies acquired under the old regime were to be upheld;<sup>6</sup> third, the agency of the *Dette publique ottomane* with its powers of control of internal revenues was to be continued.<sup>7</sup>

The foreign religious, educational and other philanthropic institutions were to "comply with the Turkish laws and regulations applicable to similar Turkish establishments, but without their particular character and the freedom of their operations being prejudiced."<sup>8</sup>

Clauses were inserted in the main draft treaty providing for the protection of minorities. These stipu-

<sup>4</sup> Art. XX of the draft convention respecting the regime applicable to foreigners in Turkey. (Ibid., p. 798.)

<sup>5</sup> Arts. II and VII of the draft convention respecting the commercial regime with Turkey. (Ibid., pp. 805, 808.)

<sup>6</sup> Arts. XCIV-C of the main draft treaty. (Ibid., pp. 735-740.)

<sup>7</sup> Arts. XLV-LVI of the main draft treaty. (Ibid., pp. 702-709.) See supra, p. 76.

<sup>8</sup> Article XXIV of the convention respecting the regime applicable to foreigners in Turkey. (Cmd. 1814, p. 800.)

lated that the non-Moslem minorities in Turkey were to be permitted to regulate " questions of family or personal status according to their usages, such measures to be elaborated later by special commissions composed in equal numbers of representatives of the interested minorities with an arbiter chosen from European jurists by the League of Nations and Turkey in agreement."<sup>9</sup>

#### FAILURE OF FIRST CONFERENCE

The Turks presented a list of points from the draft treaty unacceptable to them and emphasized the rejection of the juridical guarantees for foreigners on the ground that they infringed upon Turkey's sovereignty. Turkey consented to have foreign legal advisers to assist in the reorganization of the legal system and to receive complaints, but these were first, to belong to neutral countries during the World War, and second, they were not to take any part in the trial nor to have control over arrests of foreigners or domiciliary searches. Although further concessions were submitted by the Allies, Ismet Pasha, the head of the Turkish delegation, declared that Turkey would never sign a peace such as the one presented and left the Conference (February 5, 1923). Thus ended the first conference of Lausanne,

<sup>9</sup> Arts. XXXVI-XLIV of the mam draft treaty. (Ibid., pp. 698-702.)

it being understood, however, that the terms of the Mudania Armistice were to remain in force pending new discussions.

#### SECOND LAUSANNE CONFERENCE

On March 6, 1923, the Angora National Assembly considered the proposed treaty and voted for its rejection, but authorized the Government to continue negotiations. Two days later, counter proposals to the draft treaty were despatched to the Allies, who, as a result, held an inter-Allied conference in London (March 21-27) to consider the Turkish counter proposals. In replying, the Allies invited Turkey to resume the Lausanne negotiations; the latter responded, and on April 23, the conference was resumed.

In its inception, the second conference was again on the verge of failure by reason of the insistence of the Allies on the provisions of the draft treaty concerning the status of foreigners and the function of the foreign legal advisers. The Turks firmly stood against making any further concession in this regard. Thus the period of negotiations terminated, leaving no other choice for the Allies than that of yielding or opposing. Fortunately, the Allies chose the former and continued with a conciliatory attitude which culminated in the signature of the Treaty of Peace of July 24, 1923, known as the Treaty of Lausanne. The treaty was signed by the British Empire, France, Italy, Japan, Greece, Roumania,

Serb-Croat-Slovene Kingdom, and Turkey. In addition to the main treaty, thirteen other conventions and declarations dealing with various questions regarding Turkey were signed.<sup>10</sup>

#### THE TREATY OF LAUSANNE AND THE CAPITULATIONS

The treaty of Lausanne recognized the complete abolition of the capitulations. According to article XXVIII:

Each of the High Contracting Parties hereby accepts, in so far as it is concerned, the complete abolition of the Capitulations in Turkey in every respect.<sup>11</sup>

It is to be noted, however, that the treaty is silent as to the date from which the capitulations are to be deemed abrogated. According to the proposals of the Allies of January 29, 1923, it was specifically mentioned that the capitulations were to be considered abrogated "from the coming into force" of the treaty;<sup>12</sup> but the Turks insisted that they should

<sup>10</sup>For the text of the treaty, see *Treaty Series*, No. 16 (1923), Cmd. 1929; also, *A. J. I. L. Supplement*, 1924, XVIII, 1-116. The treaty was ratified on August 23, 1923, by the Grand National Assembly by a vote of 215 to 20.

<sup>11</sup>Article CXIII provides for the abolition of foreign post offices in Turkey: "Each of the High Contracting Parties hereby accepts, in so far as it is concerned, the abolition of foreign post offices in Turkey."

The foreign post offices ceased to function in Turkey, especially in Constantinople, beginning September 27, 1923. (P. Fauchille, *Traite de droit international public*, part 3, I, 168.)

<sup>12</sup>Article I of the draft convention respecting the regime applicable to foreigners in Turkey. (Cmd. 1814, p. 790.)

be recognized as abolished since 1914. This controversy is of significance in that it has effect on the determination of the validity of decisions rendered by the consular or Allied courts since 1918 as well as decisions delivered by Turkish courts and imposition of taxes by the Turkish Government since 1914. If the abrogation is to date from 1914, all consular judgments rendered in Turkey since October 30, 1918, would become void; while judgments violating capitulatory rights given by Turkish courts between 1914 and 1918 would be valid. And, furthermore, not only would the taxes collected by the Turkish authorities between 1914 and 1918—taxes from which foreigners were exempt according to the capitulations—be valid, but also foreigners would be held responsible for evasion of payment. If, on the other hand, the abrogation is to take effect from the coming into force of the treaty of Lausanne, all consular decisions rendered in Turkey since October 30, 1918, would be valid and foreigners would be entitled to the restitution of what they had paid between 1914 and the coming into force of the treaty in excess of the provisions of the capitulations. In compromise, the clause was worded as quoted above, " the . . . . Contracting Parties . . . . accept the complete abolition of the Capitulations . . . . , " thus avoiding the necessity for a requisite yielding on either side.

The questions which seemed to have been a source of controversy, due to the silence of the treaty as to the date of the abrogation of the capitulations, were

settled as follows: Article LXIX of the main treaty provides that

no charge, tax, or surtax to which, by virtue of the privileges which they enjoyed on the 1st August, 1914, Allied nationals and their property were not subject, shall be collected from Allied subjects or their property in respect of the financial years earlier than the financial year 1922-23. If any sums have been collected after the 15th May, 1923, in respect of financial years earlier than the financial year 1922-23, the amount shall be refunded to the persons concerned, as soon as the present treaty comes into force. No claim for repayment shall be made as regards sums encashed before the 15th May, 1923.

Thus taxes collected by the Turkish Government prior to May 15, 1923, remain unaffected even though they had been collected in violation of the capitulatory rights, while Turkey renounces the right to collect unpaid dues in respect of financial years earlier than the financial year 1922-23.

As to the decisions rendered by the Allied courts since October 30, 1918, Turkey recognizes in article CXXXVIII of the treaty the validity of such decisions as well as the validity of decisions given by the Provisional Mixed Judicial Commission established on the 8th December, 1921, but " in the event of a claim being presented by a private person in respect of damage suffered by him in consequence of a judicial decision in favor of another private person given in a civil matter by a military or police court, this claim shall be brought before the Mixed Arbitral Tribunal, which may, in a proper case, order the pay-

ment of compensation or even restitution of the property in question."

The treaty is silent as to the fate of judgments violating capitulatory rights given by the Ottoman courts following the unilateral abrogation of the capitulations by Turkey in 1914. The draft treaty proposed by the Allied delegates on January 29, 1923, provided that such judgments were to be subject to revision; such cases were to come before the Mixed Arbitral Tribunal and the parties, if possible, would " be replaced in the situation which they occupied before the judgment was delivered or the measure of execution ordered by the Ottoman authorities." In case this was impossible and in the event that the Allied national had suffered damage from the judgment, compensation such as the Mixed Arbitral Tribunal would consider equitable was to be paid by the Turkish Government.<sup>13</sup> This provision was omitted from the text of the final peace treaty of July 24, 1923; so, at least from the Turkish point of view, judgments violating capitulatory rights, given since October 1, 1914, against foreigners, are legal and valid. The Turks might be well justified in maintaining this view, for article LXXI of the treaty seems virtually to recognize the abolition of the capitulations before October 29, 1914:

The British Empire, France, Italy, Rumania and the Serb-Croat-Slovene State or their nationals, having begun claims

<sup>13</sup> See article XCI of the draft treaty, *Turkey No. 1, 1923, Cmd. 1814, p. 731.*

or suits with regard to their property, rights and interests against the Ottoman Government *before the 29th October, 1914*, the provisions of this Section (dealing mostly with rights as affected after the entry of Turkey into the War) will not prejudice such claims or suits. Claims or suits begun against the British,, French, Italian, Eoumanian or Serb-Croat-Slovene Governments by the Ottoman Government or *Us* nationals will similarly not be prejudiced. These claims or suits will be continued against the Turkish Government and against the other Governments mentioned in this article under the conditions existing before the 29th October, 1914, *due regard being had to the abolition of the Capitulations.*<sup>14</sup>

It is not an unwarranted conclusion, therefore, that although the Allies did not explicitly recognize the Turkish thesis that the capitulations were deemed to have been abolished since 1914, they did recognize it impliedly.<sup>15</sup>

<sup>14</sup> It is to be noted in this connection that it does not seem clear here whether "before the 29th October, 1914" meant the period beginning October 1 when the capitulations were actually abolished or the period beginning September 9 when the declaration to that end had been made. (See *supra*, pp. 189-190.)

<sup>15</sup> " Un examen plus attentif des phases par lesquelles les negociations sont passees, nous fait penser que si les allies n'ont pas consenti a reconnaitre formellement que les capitulations se trouvent abolies depuis 1914, ils l'ont cependant admis implicitement . . . . En rapprochant les textes des projets presentes par les allies' du texte admis definitivement, on ne peut tirer logiquement d'autre consequence que celle que les allies se sont rallies a la these turque. Aussi les Etats allies, impuissants a faire triompher leur point de vue, ont cherche, par certains compromis, a attenuer les consequences que l'application de la these turque pouvait avoir pour les ressortissants allies." (R. Salem, " Fixation de la date a laquelle ont ete abrogees les capitulations en Turquie," *Clunet*, 1925, LII, 515.)

## STATUS OF FOREIGNERS BY THE PEACE SETTLEMENT

As to the status of foreigners in regard to matters of personal concern, the proposals of the Allies were accepted by the Turks. Article XVI of the Convention respecting Conditions of Residence and Business and Jurisdiction<sup>16</sup> provides that in matters of personal status the courts of the Powers of which the party whose personal status is in question, sitting outside Turkey will alone have jurisdiction. Exceptionally, " the Turkish courts will also have jurisdiction in the matters referred to therein, if all the parties to the case submit in writing to the jurisdiction of the said courts. In such case the Turkish courts will apply the national law of the parties."

In the declaration relating to the administration of justice made by the Turkish delegation at Lausanne,<sup>17</sup> Turkey consents to take into its service, for not less than five years, a number of European legal counsellors who will be engaged as Turkish officials. The functions of these *praetores peregrini* are limited to observation and supervision of the administration of laws without any right of intervention. They are authorized to receive complaints and forward such reports as they may consider necessary. These advisers are to be selected " from a list prepared by the Permanent Court of International Justice of the Hague from among jurists nationals of countries which did not take part in the war of 1914-1918."

i« *Treaty Series*, No. 16 (1923), Cmd. 1929, p. 139.

I See Appendix VI.

In a letter of the same date to the Peace Conference,<sup>18</sup> Turkey recognizes the existence of (British, French, Italian) institutions as existing in Turkey before October 30, 1914, and undertakes to "favourably examine the status of other (British, French, Italian) institutions . . . . existing in Turkey on the date of the treaty of peace . . . . with a view to regularizing their position." These establishments and institutions are to be subject to Turkish laws and regulations and are to be treated on a footing of equality with similar Turkish establishments and institutions, but taking into account the conditions under which these institutions carry on their work, and, in the case of schools, considering "the practical organization of their teaching arrangements."

The question of admitting foreigners in Turkey to the various forms of professions was deferred pending the conclusion of separate agreements between Turkey and the Powers concerned.<sup>19</sup> It is to be noted

<sup>18</sup> See Appendix VII.

<sup>19</sup> "The admission in Turkey of nationals of the other Contracting Powers to the different forms of commerce, professions and industry, and reciprocally the admission, in the territory of the said Powers, of Turkish nationals to the different forms of commerce, professions and industry, will form the subject of separate conventions to be concluded between Turkey and the said Powers within twelve months from the coming into force of the present Convention.

"It is understood that, pending the conclusion of the said conventions, the *status quo* as on the 1st January, 1923, will be maintained, and that if any such Convention has not been concluded at the end of the said period of twelve months each of the Contracting Powers concerned will recover its freedom of action, subject to the rights

that a strong public feeling is against the admission of foreigners to any important profession. The National Assembly was recently called upon (May, 1929) to examine a law which would prohibit foreigners from practicing in Turkey most of the professions, including even baking and driving. According to this law, aviators, mechanists and other experts could be employed only by special permit from the Government.<sup>20</sup>

#### THE OTTOMAN PUBLIC DEBT

Under the terms of the treaty, the Ottoman Public Debt was distributed between Turkey and the territories detached from the Ottoman Empire between 1913 and 1923.<sup>21</sup> The new Republic of Turkey is thus held responsible only for the share apportioned to it which amounts to about 40 per cent of the pre-war Ottoman Public Debt.<sup>22</sup> This arrangement also put an end to the control of the council of the

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acquired by individuals before the 1st January, 1923, being respected." (Art. IV of Convention respecting Conditions of Residence and Business and Jurisdiction.)

<sup>20</sup> See *Bulletin de l'institut intermédiaire international*, No. 2, October, 1929, XXI, 277-278.

<sup>21</sup> See articles XLVI-LV of the main treaty.

<sup>22</sup> Toynbee and Kirkwood, *Turkey*, p. 237.

An agreement was signed (June 13, 1928) settling the Turkish share of the Ottoman Public Debt. (See *European Economic and Political Survey*, III, No. 22, July 31, 1928, pp. 747-750.) The agreement was ratified by the Grand National Assembly, December 1, 1928. (Cf. *ibid.*, November 30-December 15, 1928, IV, 225.) See also, P. M. Brown, "Ottoman Public Debt Arbitration," *A. J. I. L.*, 1926, XX, 135-139.

" Dette publique ottomane " over the sources of revenues ceded to the Council in the Decree of Mouharrem of 1881.<sup>23</sup> It is to be noted, however, that in a draft letter to be addressed by the Turkish delegates to the Council of the Ottoman Public Debt, Turkey consented to recognize the validity of the operations of the Council since October 30, 1918, up to the date of the letter.<sup>24</sup>

THE MINORITY QUESTION AND THE EXCHANGE OF  
POPULATIONS

The treaty also provides for the protection of minorities.<sup>25</sup> Article XXXVIII of the main treaty provides that

the Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion. . . . Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

<sup>23</sup> See: " Documents et tableaux relatifs a la repartition des charges annuelles de la Dette publique ottomane conformement au traite de Lausanne de 24 Juillet, 1923," Constantinople, 1924; "Report of Council of Administration created by Imperial decree of the 8/20 December, 1881 for the 42nd Financial Year 1923/24 (1339)," London, 1925. The latter reference includes a report indicating the actual situation of the Decree of Mouharrem up to March, 1925 (1341). See also, Blaisdell, D. C., *European Financial Control in the Ottoman Empire*, New York, 1929 and *supra*, pp. 76, 229.

<sup>24</sup> *Treaty Series*, No. 16 (1923), Cmd. 1929, p. 229.

<sup>25</sup> See articles XXXVII-XLV of the main treaty.

Among other things, the treaty assures to the minorities equality before the law, equality in civil and political rights, and the right to establish their own schools and to use their own language.

The minorities, however, have been stripped of all their former privileges except that in matters concerning family law or personal status Turkey undertakes to take

measures permitting the settlement of these questions in accordance with the customs of those minorities. These measures will be elaborated by special Commissions composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.<sup>28</sup>

And finally, Turkey agrees that the stipulations with regard to the protection of minorities constitute obligations of international concern and are to be placed under the guarantee of the League of Nations. Modifications shall be allowed only after securing the assent of the majority of the Council of the League of Nations.<sup>27</sup>

<sup>26</sup> Art. XLII of the main treaty.

<sup>27</sup> Art. XLIV of the main treaty.

An elastic clause in the treaty would undoubtedly impede the free movement of foreigners in the Turkish Republic if the Turkish Government were to apply it extensively. According to article VII of the Convention respecting Conditions of Residence and Business and Jurisdiction, "Turkey reserves the right to expel, in individual cases, nationals of the other Contracting Powers, either under the order of a Court or in accordance with the laws and regulations relating to public morality, public health or pauperism, *or for reasons*

The minority element has been largely reduced in the New Turkish Republic. The Arab population of the former Turkish Empire has been separated and is no longer within the confines of Turkey. The Armenians have been largely reduced in number through massacre, expulsion, disease and war, and the Greeks in Turkey, except those of Constantinople, have been forced to leave the country in accordance with an agreement reached between Greece and Turkey.<sup>28</sup> The question of minorities in Turkey, therefore, has lost its former significance, and certainly, the New Turkish Republic is much better off than many other Near Eastern states in this respect.<sup>29</sup>

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*affecting the internal or external safety of the State* The other Contracting Powers agree to receive persons thus expelled, and their families, at any time. The expulsion shall be carried out in conditions complying with the requirements of health and humanity."

<sup>28</sup> *Infra*, p. 243.

<sup>29</sup> The question of the Straits was solved as follows: First, the principle of freedom of transit and of navigation through the Straits is recognized. In time of peace, merchant vessels and non-military aircraft under any flag are to enjoy freedom of navigation and passage. With few restrictions regarding the size of fleets, war vessels are also to enjoy the same freedom in time of peace. In time of war, Turkey being neutral, the same conditions are to prevail except that in the case of war vessels the restriction with regard to the size of the fleet will not be applicable to any belligerent Power to the prejudice of its belligerent rights in the Black Sea. In time of war, Turkey being belligerent, neutral merchant vessels will be subject to visit and search and enemy vessels to the measures allowed by international law. Neutral warships will continue to enjoy freedom of passage in the latter case. Second, in order to secure free passage and navigation, a demilitarized zone embracing both shores of the Straits of the Dardanelles and the Bosphorus is set up. Should the provisions of demilitarization be modified in case of war, the

According to the convention signed between Greece and Turkey on January 30, 1923,<sup>30</sup> both countries agreed on the compulsory exchange of their respective minorities excepting the Greeks in Constantinople and the Turks in Western Thrace. The

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*status quo* as applied under the terms of the Straits Convention is to be restored as soon as peace is concluded. Third, an international Straits Commission is to be constituted which will exercise its functions over the waters of the Straits. The Commission is to consist of a representative of Turkey who is to be President and representatives of the Powers adhering to the Convention. The salaries of the representatives are to be paid by the governments represented, each paying the salary of its representative, and in the case of any incidental expenditure incurred by the Commission the governments represented will bear that expenditure in the proportion laid down for the division of the expenses of the League of Nations. The Commission is to carry out its functions under the auspices of the League of Nations and is to "address to the League an annual report giving an account of its activities, and furnishing all information which may be useful in the interests of commerce and navigation." (See "Convention relating to the Regime of the Straits," *Treaty Series*, No. 16, 1923, Cmd. 1929, p. 109. For further references, see: R. J. Kerner, "Russia, the Straits, and Constantinople, 1914-15," *The Journal of Modern History*, 1929, I, 400-415; H. C. Woods, "The Straits—Before and After," *Fortnightly Review*, new series, February, 1923, CXIII, 282-292;———, "The Dardanelles—in History, Retrospect and Fact," *ibid*, June, 1928, CXXIII, 760-772; A. Rougier, "La question des detroits et la convention de Lausanne," *R. G. D. I. P.*, 1924, XXXI, 309-338; Fernand de Visscher, "Le regime nouveau des detroits," *R. D. I. L. C.*, vol IV, 3d series, 1923, pp 537-572 and 1924, V, 13-57; Rene Pinon, "L'evolution de la question des detroits," *L'Esprit international*, April, 1928, II, 184-203; G. A. Schreiner, "The Turkish Straits under International Control," *Cur. Hist.*, October, 1924, XXI, 65-74; Ali Fuad, *La question des detroits; ses origines, son evolution, sa solution a la conference de Lausanne*, Paris, 1928; Kasim Kassimoff, *La Russie et les Detroits*, Paris, 1926. Cf. also, *supra*, p. 60, n. 58.)

<sup>30</sup> See "Convention concerning the Exchange of Greek and Turkish Populations," *Treaty Series*, No. 16, 1923, Cmd. 1929, pp. 175-187.)

convention provides for the institution of a mixed commission to take charge of the execution of the agreement and stipulates that Turks returning to Turkey shall receive Greek property there to the value of their property left in Greece, and that Greeks returning to Greece shall similarly receive Turkish property left in Greece.<sup>31</sup> If the total value

<sup>31</sup> The exchange of populations as provided for in the Convention between Turkey and Greece became later a source of diplomatic controversy between France and Turkey. Turkey proceeded to expel nationals of the French mandate of Syria on the ground that they belonged to the Greek Orthodox Church, but the French Government, on the other hand, maintained that Syrians were to be treated as French nationals. According to article XIX of the Convention respecting Conditions of Residence and Business and Jurisdiction, it was provided that "the Contracting Powers reserve the right of declaring, at the time of the coming into force of the present Convention, that its provisions do not apply to all or any of their Dominions enjoying responsible government, or their colonies, protectorates, possessions or *territories beyond the sea subject to their sovereignty or authority*, and in this case Turkey will be released from her obligations under the present Convention to the said Dominions, colonies, protectorates, possessions and territories." Since France did not signify the exclusion of Syria when the Convention came into force, the French Government thus maintains that it is a tacit consequence that the Syrians in Turkey are to enjoy the advantages of the Convention as French nationals. But the Turkish Government justifies its action of expelling from Turkey Syrians belonging to the Greek Orthodox Church on the provisions of article I of the Convention concerning the exchange of Greek and Turkish populations which stipulate that "from the 1st May, 1923, there shall take place a compulsory exchange of *Turkish nationals of the Greek Orthodox religion* established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory." It is to be noted that although the Convention was signed in January, 1923, the treaty of Lausanne of July, 1923, provided that the Convention was to be considered as if it formed a part of the treaty. (See art. CXLII of the main treaty.) Thus the Turkish

of Greek property left in Turkey does not equal the value of Turkish property left in Greece (and vice versa), the balance shall be paid by the debtor Government.<sup>32</sup>

Government bases its action first, on the terms of the Convention which provides for the exchange of *Turkish nationals of the Greek Orthodox religion*, and second, on the provision of the Treaty of Lausanne recognizing the Convention as a part of the peace settlement. More than 8000 Syrians of the Greek Orthodox faith are recorded as having been expelled from Turkey in 1924 (Gontaut-Biron et Le Reverend, *D'Angora a Lausanne*, pp. 124-129) This situation seems to suggest that the chief source of inconsistency lies in the terms of the Turco-Greek Convention which fail to make a distinction between nationality and religion.

<sup>32</sup> Negotiations for the adoption of this scheme had been carried in 1914 through an exchange of notes between Turkey and Greece, but the outbreak of the World War prevented the execution of the plan. (See A. J. Toynbee, *The Western Question and Greece and Turkey*, 1922, p 141.) The Convention of 1923 was negotiated at the suggestion of Dr. Fridtjof Nansen, the Refugee Commissioner of the League (cf Cmd 1814, 1923, pp 113-117), who was sent by the League to Turkey to report on the Turco-Greek tangled question. See: W. D. Lane, "Why Greeks and Turks Oppose Being Exchanged," *Cur. Hist.*, XVIII, No. 1, April, 1923, pp. 86-90; Zekeria, M., "Solving Greco-Turkish Blood Feuds by Migration," *ibid.*, March, 1923, XVII, 939-942; Kiosseoglou (Th.), *Uechange force des minoritites d'apres le traite de Lausanne*, These, Nancy, 1926; P. Gentizon, "Exchanging Populations," *The Living Age*, February 7, 1925, CCCXXIV, 290-294; A. A. Pallis, "The Exchange of Populations in the Balkans," *The Nineteenth Century*, March, 1925, XCVII, 376-383; Tenekides, *Le statut des minontes et l'echange obligatoire des populations greco-turques*, Paris, 1924; Deimezis, A., *Situation sociale creee en Grece a la suite de Uechange des populations*, Paris, 1927; R. L. Buell, *International Relations*, 1925, p. 190; E. A. Powell, *The Struggle for Power in Moslem Asia*, 1923, pp. 165-166; *Geographical Review*, July, 1925, XV, 449-456; *A.J.L. L.*, 1926, X, 1-4; *R. G. D. I. P.*, VI, 81 ff., 471 ff., 594ff.; *ibid.*, 1925, VII, 54, 101, 102; A. E. Devedji, *UEchange obligataire des minontes grecques et turques*, Paris, 1929; Seferiades, S., "L'echange des populations," *Academic de droit international. Recueil des Cours*, 1928.

THE GREEK PATRIARCHATE <sup>33</sup>

Turkey tried in the Peace Conference of Lausanne to abolish the office of the Greek Patriarch of Constantinople. This, however, was protested by the Powers, and especially by Greece, and consequently Turkey yielded, but on the understanding that the Patriarchate was to be stripped of all political or administrative functions. The question was brought before the League of Nations in 1924 when Gregorios VII who was then on the throne died on November 16 of that year. Since the international status of the Greek Patriarch was not defined, Turkey insisted on the expulsion of the newly elected Patriarch together with seven metropolitans eligible for the office on the ground that they were exchangeable in accordance with the Turco-Greek agreement regarding the compulsory exchange of populations. Greece vehemently protested and appealed to the League of Nations. The question was, however, solved through the withdrawal of the insistence on the part of Turkey, whereupon Greece, in return, withdrew its appeal to the League. Mgr. Basil

<sup>33</sup> The treaty also provides for the abolition of the Council of Health established in the 19th century by Turkey and the foreign powers to assume charge of Turkey's sanitary administration. (See *supra*, p. 88, n. 49.) In a declaration relating to sanitary matters Turkey undertakes to appoint for a period of five years three European medical specialists as counsellors of the administration. (See main treaty, arts. 114-118 and instrument X, "Declaration relating to Sanitary Matters in Turkey.")

Georgiades, Metropolitan of Nicaea, was finally elevated to the Patriarchate on July 13, 1925.<sup>34</sup>

### CONCLUSION

In concluding', it may be said that the question as to whether the Lausanne settlement is or will prove to be a satisfactory arrangement can only be answered when the Peace Agreement will have stood the test of time. Not being concerned here with the general settlement of the Near Eastern Question, we may safely state, in so far as the capitulations are concerned, that never would the Powers have relinquished their capitulatory rights had it not been for the rivalry between the Powers themselves and for the arms of Nationalist Turkey in the background. There is good ground to believe, however, that the complete abrogation of the capitulations marked an end, once and for all, to the many complicated questions arising from the operation of the capitulatory institution. "From every point of view," confirms Mr. Brinton, "the system was a

<sup>34</sup> On the question of the Patriarchate, see: K. Strupp, "Le différend Greco-turque sur l'éloignement du Patriarche de Constantinople" *Revue de droit international de sciences diplomatique, politiques, et sociales*, 1925, III, 11-19; C. Price, "The Greek Ecumenical Patriarchate in Turkey," *Cur. Hist.*, 1923, XVII, 943-946; A. Rustom Bey, "The Future of the (Ecumenical Patriarchate," *Foreign Affairs*, III, 604; *Survey of International Affairs, Royal Institute of International Affairs*, 1925, II, 266-272; *R. G. D. I. P.*, 1925, Series II, VII, 102 et seq.; *Contemporary Review*, March, 1925, CXXVII, 383-386; *The Near East Year Book and Who's Who*, 1927, p. 838; W. Miller, "The Changing Role of the Orthodox Church," *Foreign Affairs*, January, 1930, VIII, 274-281.

rude makeshift whose disappearance was a necessary step to the inauguration of any system of justice worthy of the name."<sup>35</sup> The new system of law, the Constitution of April 20, 1924, and the other reforms introduced by the New Turkish Republic seem to be adequate for the protection of foreign rights and interests,<sup>36</sup> and it remains now for New Turkey to

<sup>35</sup> *Cur. Hist.*, January, 1927, XXV, 500.

<sup>36</sup> The most important of the new reforms introduced by the Turkish Republic into the Turkish system of jurisprudence is the adoption of the new civil code in the place of the former civil code (Medjelle) of 1869 based on the Mohammedan Koranic law. This new code, based on the Swiss civil code, was adopted by the National Assembly on February 17, 1926, and went into effect, October 4, 1926. It will presumably apply to the non-Moslem subjects of Turkey as these communities, according to Mr. C. M. Bishop, "are understood to have renounced their rights to the use of their religious law and have agreed to accept the new code." It is also to be noted that the other codes adopted by the Sublime Porte in the nineteenth century such as the commercial, the penal and the maritime codes are now revised. Moreover, by the act of April 8, 1924, the law of April 22, 1924, and the statute of April 12, 1924, it is respectively provided for the abolition of the religious courts, the modification of the civil and criminal procedure and the regulation concerning the Turkish bar. (On the question of reforms introduced by the New Turkish Republic, see: Ostorog, Leo, *The Angora Reform*, London, 1928; C. M. Bishop, "Reform in the Turkish Judicial System," *American Bar Association Journal*, April, 1926, XII, 248-249; R. Secteran, "Le nouveau code civil turc," *Bulletin mensuel de la sodete de legislation comparee*, 1926-27, LVI, 361-386; J. Y. Brinton, "Law Reforms in Turkey," *The Treaty with Turkey*, General Committee of American Institutions and Associations in Favor of Ratification of the Treaty with Turkey, N. Y., 1926, pp. 122-132; "New Judicial Era Dawns in Turkey," *ibid.*, pp. 132-135; Halide Edib, "Dictatorship and Reforms in Turkey," *Yale Review*, Autumn 1929, XIX, 27-44; J. Y. Brinton, "Turkey's New System of Laws and Courts," *Cur. Hist.*, January, 1927, XXV, 498-503; A. H. Lybyer, "Turkey Walks Abreast

curb the intense nationalistic feeling kindling in the heart of the Turkish nation as a result of the War in order to put into practice these newly adopted systems and to make their faithful administration possible.

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with the Modern World: The Turkish Government's New Civil Code," *ibid.*, July, 1926, XXIV, 576-582; *The Near East Year Book, and Who's Who*, 1927 [edited by H. T. M. Bell], pp. 840-842.

## CHAPTER XIII

### AMERICA AND THE NEW TURKEY

#### ACTIVITIES OF AMERICAN MISSIONARIES AFTER THE WAR

The effect of the World War on Near Eastern affairs can hardly be overemphasized. Perhaps in no other part of the world has the effect of the War been so apparent. The detachment of the Arabian countries from the former Turkish Empire, on the one hand, and the victory of the Turks over the Greeks in Asia Minor, on the other, largely reduced the non-Moslem population of Turkey. The people among whom the American missionaries mostly worked<sup>1</sup> have been greatly diminished through massacre, disease and expulsion; most of the surviving Armenians migrated *en masse* to Syria and Mesopotamia, and the Greeks residing in Turkey have, as a result of the Lausanne conference, been exchanged with the only exception of those domiciled in Constantinople.<sup>2</sup> And to this, we must add the strict regulations of the New Turkish Republic by which all foreign institutions became subject to Turkish law and inspection. Religious instruction in schools is no more allowed by Modern Turkey; evangelistic work is limited to private conversation; Turkish language and Turkish history are to be taught in all schools, and instructors to teach such

<sup>1</sup> *Supra*, pp. 140-142.

<sup>2</sup> *Supra*, pp. 240 ff.

courses in foreign schools are to be appointed by the Turkish ministry of education.

With very few exceptions, there is no more relief work undertaken by Americans in the New Turkey, and it was this very fact that led to the withdrawal of the Near East Relief from Asia Minor in 1923.<sup>3</sup> Of the total \$1,033,000 expended by the Near East Relief in 1929 only \$25,000, it was reported at the annual meeting of the organization's trustees, was spent in Turkey.<sup>4</sup> As to the educational institutions in Turkey, the only option left for the missionaries is either to discontinue their work or to continue subject to Turkish regulations. Commenting on the situation in 1923, Dr. C. F. Gates, President of Robert College, asserted that the Americans must either adapt their educational work to the new conditions or withdraw from the field entirely.<sup>5</sup>

The continuance of our educational work depends upon our convincing the Turks that this work is valuable to them. No clause in a treaty could protect us if the Turk were determined to get rid of us, for it would be easy for them to hamper our work with restrictions which would make it impossible for us to continue.<sup>6</sup>

A few schools preferred to discontinue while others

<sup>3</sup> *Supra*, p. 151.

<sup>4</sup> *New York Times*, February 7, 1930, p. 11, col. 1. On the activities of the Near East Relief since its organization in 1915, see General Report of the General Secretary to the Board of Trustees, for Calendar year 1927, January 4, 1928, by Charles V. Vickrey.

<sup>5</sup> *Our World*, July, 1923, III, 88.

<sup>6</sup> *The Treaty with Turkey*, General Committee of American Institutions and Associations in favor of Ratification of the Treaty with Turkey, New York, 1926, p. 62.

are still continuing their educational work subject to Turkish regulations.<sup>7</sup>

#### AMERICAN ECONOMIC INTERESTS IN TURKEY

It is of interest to note that American economic interests in the Ottoman Empire were, indeed, up to the latter part of the nineteenth century negligible. The total American exports to Turkey for the year 1890 did not exceed \$45,000 while the imports from Turkey to the United States for the same year amounted to \$3,863,657.<sup>8</sup> In his article written shortly before the World War to the *North American Review*, J. B. Osborne, formerly chief of the Bureau of Trade Relations of the Department of State, placed the investments of American capital in the Near East at \$10,000,000, this covering Greece, Egypt, Turkey and the Balkan states.<sup>9</sup>

<sup>7</sup> On the question of American schools in Turkey, see: G. Horton, *The Blight of Asia*, N. Y., 1926, chs. xxx, xxxi; "American Missionary and Philanthropic Enterprise in Turkey," *Foreign Policy Association*, Information Service, II, No. 22, Jan. 5, 1927; E. M. Earle, "American Missions in the Near East," *Foreign Affairs*, April, 1929, VII, 398-417; L. Vrooman, "The Place of Missions in the New Turkey," *The International Review of Missions*, July, 1929, XVIII, 401-409; E. H. Bierstadt, *The Great Betrayal*, N. Y., 1924, ch. iv., Florence Wilson, *Near East Educational Survey*, Carnegie Endowment for International Peace, 1928, pp. 16-52; F. E. Ross and others, *The Near East and American Philanthropy*, N. Y., 1929; E. W. Riggs, "The Missionary Situation in Turkey," *The Missionary Review of the World*, March, 1923, XLVI, 182-186; C. T. Riggs, "Turkey, the Treaties and the Missionaries," *ibid.*, XL, new series, May, 1927, pp. 343-348.

<sup>8</sup> *Statistical Abstract of the United States*, 1910, p. 376.

<sup>9</sup> G. B. Ravndal, "American Trade Relations with the Near East," p. 12.

The chief American articles exported into Turkey are canned

Turco-American trade began to grow up, however, during the few years preceding the World War and following the close of the War, reaching the highest point of development in 1920. In March, 1911, an American chamber of commerce for the Levant, with a membership of 600, was organized in Constantinople,<sup>10</sup> and in 1920, the Guaranty Trust Company of New York established a branch in Constantinople with the aim of offering American banking facilities to American business in Turkey.<sup>11</sup> The following table shows the extent of Turco-American trade for the years 1913, 1919-1926:

Year	Exports to Turkey	Imports from Turkey
1913. . . . .	\$3,629,245	\$22,146,838
1919. . . . .	25,231,722	37,003,002
1920. . . . .	42,247,798	39,766,936
1921. . . . .	23,947,110	13,246,638 <sup>12</sup>
1922. . . . .	14,349,000	12,436,000
1923. . . . .	3,464,000	12,888,000 <sup>TM</sup>
1924. . . . .	3,664,000	14,588,000 <sup>TM</sup>
1925. . . . .	3,380,000	14,648,000 <sup>15</sup>
1926. . . . .	2,927,000	16,832,000 <sup>16</sup>

goods, petroleum, agricultural machinery, wheat, rice, sugar and other foodstuffs, while Turkish exports to the United States principally comprise tobacco, Smyrna figs, raisins, rugs originally imported from Persia, raw furs, skins, mohair, wool, nuts, etc.

<sup>10</sup> G. B. Ravndal, "American Trade Relations with the Near East," p. 13.

<sup>11</sup> See E. M. Earle, *Turkey, the Great Powers, and the Bagdad Railway*, N. Y., 1924, p. 338. The interests of this American bank were later transferred to a British concern.

<sup>12</sup> *Statistical Abstract of the United States*, 1921, pp. 451, 457. Beginning in 1921 there has been a falling off in trade due largely to the Turco-Greek war and the post war economic depression throughout the Near East.

<sup>13</sup> *Ibid*, 1923, pp. 454, 458.

<sup>14</sup> *Ibid*, 1924, pp. 436-437.

<sup>15</sup> *Ibid*, 1925, pp. 452-453.

<sup>16</sup> *Ibid*, 1926, pp. 460-461.

## THE CHESTER CONCESSION—A HISTORICAL BACKGROUND

In connection with the Turco-American economic relations it is of historical interest to give a brief account of the famous American concession known as the "Chester Concession," as this account is, somewhat indirectly, connected with the history of the capitulations, while, on the other hand, the concession has played a cardinal role as an international issue in the settlement of the Near Eastern problems at Lausanne:<sup>17</sup> American attempts to secure concessions in Turkey date back to the latter part of the nineteenth century when a group of Americans pursued in 1898 an investigation of the economic advantages that Turkey could offer to American investments. They met with little encouragement, however, and they soon lost interest; but shortly thereafter, a second attempt was made by Admiral

<sup>17</sup> On the Chester Concession, see: E. J. Bing, "Chester and Turkey, Inc.," *The New Republic*, 1923, XXXIV, 290; A. Bullard, "Turkey's Bid for America's Aid," *Our World*, July, 1923, III, 6-13; John Carter, "The Bitter Conflict over Turkish Oilfields," *Cur. Hist.*, January, 1926, XXIII, 492-497; A. L. P. Dennis, "Chester Concession inflames World Struggle for Oil," *New York Times*, April 22, 1923, p. 1; E. M. Earle, *Turkey, the Great Powers, and the Bagdad Railway*, pp. 336-50; "La Concession Chester et Paccord Franco-Turc de 1914," *L'Europe nouvelle*, May 12, 1923, VI, 596-604; E. A. Powell, *The Struggle for Power in Moslem Asia*, pp. 197-205; C. Price, "The Chester Concession," *Fortnightly Review*, June, 1923, CXIII, 901-918; H. Woodhouse, "The Chester Concession as an aid to New Turkey," *Cur. Hist.*, June, 1923, XVIII, 393-400; "Le projet Chester et les concessions Francaises en Anatolie," *Revue politique et parlementaire*, May 10, 1923, CXV, 217-232; H. Woodhouse, "American Oil Claims in Turkey," *Cur. Hist.*, March, 1922, XV, 953-959.

Chester whose influence as American naval officer in Turkish waters and whose ability as a diplomat won him the favor of Sultan Abdul Hamid, thereby paving the way for the acquisition of economic rights in Turkey. The rights granted by Abdul Hamid's Government which included the construction of most of the public works of Turkey came to be known later as the "Chester Concession," and with these in his possession, Admiral Chester succeeded in winning the support of American financiers who organized the first Ottoman-American Development Company. The Concession was approved by the Turkish Government and was ready for parliament in 1909 when the Grand Vizier stopped it.<sup>18</sup> As a result of the Balkan wars and German interests

<sup>18</sup> The concession included most of the public works of Turkey granting appropriate guaranties for the payment of the cost. It is maintained that the Department of State expressed deep interest in the enterprise and it is even asserted that it was willing to relinquish the capitulations in order to secure the concession. "Philander C. Knox, Secretary of State during the latter part of the negotiation period," writes Mr. Woodhouse, "displayed—as he authorized Admiral Chester to state—his deep interest in securing the concession, and the Assistant Secretary, Huntington Wilson, who was commissioned in 1909 to proceed to Constantinople to felicitate the new Sultan of the Ottoman Empire on his coronation, publicly stated that the principal object of his visit was to aid the American claim. Moreover, in the presence of Admiral Chester he informed the American Ambassador that the department would be willing, in order to secure the concession, to give up our treaty rights to the 'capitulations' in Turkey, as had been done a short while before in the case of Japan." (*Cur. Hist.*, March, 1922, XV, 959.) It is to be noted, however, that there is no official written statement made by the Department of State to the effect that it would be willing to relinquish the American capitulatory rights in Turkey.

in Turkey it has never been ratified, and consequently, the Ottoman-American Development Company turned over in 1912 its assets to the Ottoman-American Exploration Company. "It is not impossible," remarks Clair Price, "that it (the concession) was a factor in the refusal of the United States Government to declare war on the Turks in 1917; Constantinople broke off diplomatic relations with Washington, but the break went no further."<sup>19</sup> A new Ottoman-American Development Company of which Major General George W. Goethals, the builder of the Panama canal, became the president and C. A. Barnard the secretary-treasurer was organized after the World War under the laws of Delaware, thus taking over the assets of the Ottoman-American Exploration Company. To this second Ottoman-American Development Company, the rights in the Chester Concession are said to have been sold by Admiral Chester.

#### NATIONALIST TURKEY GRANTS CHESTER CONCESSION TO AMERICAN CONCERN

Distrustful of the European nations and eager to win American support at the Lausanne conference, the New Eepublic of Turkey granted in April, 1923, a concession much larger than the original Chester concession to the new Ottoman-American Development Company. The concession, passed by the Grand National Assembly by a vote of 185 to 21, gave rise

« *Fortnightly Review*, June, 1923, CXIII, 902.

to a political embroglio entangling the United States with Near Eastern affairs. There was great excitement about it in the United States and abroad; it was even declared by some Americans that it was " the worst kind of capitalistic imperialism." The concession, however, was not a monopoly, as after giving the concession Turkey surveyed several railroad lines to be constructed independently by the Turkish Government. Furthermore, the company was a private commercial company; the United States Government held no interest in it, although the Department of State made the statement that the Government would give protection to the lawful transactions of its citizens abroad.

The concession<sup>20</sup> was not only that of railroad building; it was an enterprise involving the construction of telegraph, telephone lines, electric lighting and the erection of a new Turkish capital, hotels, banks and several other minor obligations. It was to last for 99 years, unless the Turkish Government would choose to exercise its right of purchasing the interests of the company after thirty years. After meeting expenses, the proceeds were to be distributed through dividends to the stockholders at the rate of 12 per cent and through the division of any remainder in the proportion of 30 per cent to the Turkish Government and 70 per cent to the company. The concession provided that the company was to

<sup>20</sup> For the text of the concession, see *Cur. Hist.*, 1923, XVIII, 485-490.

be subject to Turkish taxation, except that it was to be exempt from import duties on its construction materials and on coal imported for the operation of the lines for a period of twenty years dating from the day of ratification of the agreement. It was also agreed that unskilled work was to be wholly carried out by Turkish labor and that foreign experts were to be replaced by trained Turks when such men could be furnished. The basis of "kilometric guarantee"<sup>21</sup> upon which railroad concessions were granted before the World War was abandoned and port concessions and mining rights in a zone of 20 kms. on each side along the railroad were granted instead.

According to this arrangement, the construction of a railroad covering some 24,000 miles would have involved mining rights in an area of some 96,000 square miles including the Arghana copper mines and part of the Mosul oilfields. It was finally stipulated that Turkish nationals were to have the privilege of acquiring 50 per cent of the shares of the corporations to be formed by the Ottoman-American Development Company for the purpose of carrying out the various business enterprises embodied in the concession. All foreign industrial and financial in-

<sup>21</sup> This system is based on a guarantee of a minimum annual income to be given beforehand by the Turkish Government to the railroad company; in case this income is not secured from the railroad activities, the deficiency is to be paid by the Turkish treasury to the company. (See E. M. Earle, *Turkey, the Great Powers, and the Bagdad Railway*, p. 77.)

terests were also to be allowed to join provided they would cooperate in keeping the project free from politics. It is to be noted, however, that the concession granted by the New Turkish Republic conflicted with previous concessions claimed to have been granted before the War by the Turkish Government to England and France, although none of these concessions claimed have been ratified by the Turkish parliament.

ANGLO-AMERICAN CONTROVERSY AND THE TURKISH  
PETROLEUM COMPANY

The British Government firmly objected to the grant of the Chester Concession on the ground that it included a part of the oil deposits of the vilayet of Mosul, the right to which had been granted before the War by the Turkish Government. It is to be remembered that Mosul was occupied by the British in 1918 immediately after the armistice with Turkey was signed, and Nationalist Turkey thus refused to recognize the detachment of that region as forming a part of Iraq. The question was left for special arbitration as no agreement could be reached, and it was not until 1926 that Turkey finally agreed to relinquish its claim to that territory.<sup>22</sup>

<sup>22</sup> On the question of Mosul, see: "The Mosul Puzzle," *L'Europe nouvelle*, VIII, September 12, 1925 (special edition in English); Quincy Wright, "The Mosul Dispute," *A. J. I. L.*, 1926, XX, 453-464; Le Fur, Louis, "L'Affaire de Mossoul," *R. G. D. L. P.*, 2eime serie, 1926, VIII, 60-103; A. B. Keith, "The League of Nations and Mosul," *Journal of Comparative Legislation and International Law*,

In a note dated April 30, 1923, the British Ambassador in Washington protested to the Secretary of State, declaring that the British Government would not recognize any concession in Mesopotamia granted by the Turkish Government at Angora.<sup>23</sup> Similarly,

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3d ser, February, 1926, VIII, 38-49; H. W. Briggs, "L'Avis consultatif no 12 de la Cour Permanente de Justice Internationale dans l'affaire de Mossoul," *R. D. I. L. C.*, 3eme serie, 1927, VIII, 626-655; J. H. W. Verzijl, "La classification des differends internationaux et la nature du litige Anglo-Turc relatif au vilayet de Mossoul," *ibid.*, 3eme serie, 1925, VI, 732-759; Hugh F. Spender, "The Mosul Question at Geneva," *Fortnightly Review*, 1925, CXVIII, 596-606; D. Heathcote, "Mosul and the Turks/" *ibid.*, November, 1925, CXVIII, 607-615; F. H. Simmonds, "Locarno, Washington, and Mosul," *American Review of Reviews*, February, 1926, LXXII, 517-24; "The Mosul Question," by V. F. M., *Reference Service on International Affairs of the American Library in Paris, Inc.*, 1926; Louis Fischer, "America and Mosul," *The Nation*, N. Y., December 30, 1925, CXXI, 756-757; K. Williams, "The Significance of Mosul," *Nineteenth Century and After*, March, 1926, XCIX, 349-355; F. W. Chardin, "The Mosul Question," *Contemporary Review*, July, 1925, CXXVIII, 57-63; "The Mosul Question," *United States Editorial Research Reports*, October 26, 1925, pp. 674-683; P. E. J. Bomli, *L'affaire de Mossoul*, Amsterdam, 1929; P. Crouzet, "La question de Mossoul," *Revue hebdomadaire*, Paris, January, 1923, pp. 346-352; Gontaut-Biron, *La France et la question de Mossoul*, Paris, 1923; L. Crutiansky, *La question de Mossoul devant le consed de la Societe des Nations*, Paris, 1927; "British Interests in Mesopotamia," *Foreign Policy Association*, Information Service, No. 4, November 17, 1925 f "The Turco-Iraq Boundary Dispute," *ibid.*, No. 3, November 5, 1925; John Carter, "The Bitter Conflict over Turkish Oilfields," *Cur. Hist.*, January, 1926, XXIII, 492-497; J. B. Whitton, "Avis consultatif de la Cour permanente de justice internationale de la Haye du 21 novembre 1925 sur l'Interpretation de l'article 3, sec. 2, du traite de Lausanne de 24 juillet 1923, a propos de la frontiere entre la Turquie et l'Irak," *R. G. D. I. P.*, 2eme serie, 1925, VII, 403 et seq.; Par/. P., Cmd. 2557; *ibid.*, Cmd. 2562; *ibid.*, Cmd 2563; *ibid.*, Cmd. 2565; *ibid.*, Cmd. 2624; *ibid.*, Cmd. 2912.

<sup>23</sup> *Senate Document No. 97, 68th Cong., 1st sess., p. 56.*

on May 2, 1923, the British High Commissioner in Constantinople was instructed to register a protest against the grant of the Chester Concession and to declare that the British Government would not recognize its validity in so far as it included public rights within the Kingdom of Iraq.<sup>24</sup> This was announced in the House of Commons in a statement made by the Foreign Office regarding the Concession.<sup>25</sup>

To understand the conflict with the British claims, one must go into the story of Anglo-American controversy over oil interests<sup>26</sup> and the historical ac-

<sup>24</sup> Faisal, third son of the King of Hedjaz, who led the fighting in Arabia against the Turks in the World War was crowned King of Iraq in August, 1921, at Bagdad.

<sup>25</sup> *New York Times*, May 3, 1923, p. 6, col. 1.

<sup>26</sup> The question as to the control of the world's oil supply has become a source of controversy between England and the United States, especially since the close of the World War, when the supreme importance of oil in warfare began to be fully realized. The question was raised with regard to monopoly of oilfields in territories under the influence of the British Empire. In a special Consular Instruction dated May 31, 1919, and in another Diplomatic and Consular Instruction dated August 16, 1919, the Department of State instructed its diplomatic and consular officials "to obtain and forward certain specific information relating to mining laws and legal restrictions imposed upon foreigners in securing or operating mineral concessions within their consular districts." (*S. Doc. No. 272*, 66th Cong., 2d sess., 1919-1920, XV, Miscellaneous II, pp. 15-17.) A resolution was also passed by the Senate in March, 1920, requesting the President, if not incompatible with the public interests, to inform the Senate as to the restrictions placed on American citizens in British controlled petroleum areas. (*Ibid.*, pp. 1-2.) The information brought out that direct and indirect restrictions were placed on American nationals in the following ways: 1. By debarring foreign nationals from owning or operating oil-producing properties in the British Isles, colonies, and protectorates. 2. By direct participation in ownership and con-

count of the formation of the so-called " Turkish Petroleum Company." The incident of the formation of the Turkish Petroleum Company constitutes one of the most important international issues of the twentieth century, throwing light on the economic interests of the great powers in the Near East and in the prosecution of the War.<sup>27</sup> The Company, formed by pre-war German and British interests and incorporated in England, was promised by the Ottoman Government a lease over the oil deposits of the Mosul and the Bagdad vilayets. The Anglo-Persian Oil Company which is controlled by the British Government held 50 per cent of the stock of the Company, while the " Shell " group and the Ger-

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trol of petroleum companies. 3. By arrangements to prevent British oil companies from selling their properties to foreign owned or controlled companies. 4. By orders in council that prohibit the transfer of shares in British oil companies to other than British subjects or nationals. (Ibid., p. 4. See also Report of the Federal Trade Commission on Foreign Ownership in the Petroleum Industry, February 12, 1923, pp. ix-x and *S. Doc. No. 97*, 68th Cong., 1st sess., " Oil concessions in Foreign Countries.") In the meantime, by art of Congress entitled, "act to promote the mining of Coal, Phosphate, Oil, Oil Shale, Gas, and Sodium on the Public Domain," and passed on February 25, 1920, the acquisition of properties by the nationals of any foreign country that denies reciprocity to Americans was forbidden. (See *U. S. Stat. L.*, 66th Cong., XLI, part I, Public Laws, p. 438.)

<sup>27</sup> For a historical account of the formation of the Company, see: E. M. Earle, "The Turkish Petroleum Company—a Study in Oleaginous Diplomacy," *Political Science Quarterly*, June, 1924, no. 2, XXXIX, pp. 265-279; *The Oil Encyclopedia*, London, 1922, pp. 311-313; *The Petroleum Year Book*, London, 1923; "American Oil Interests in Mesopotamia," *Foreign Policy Association*, Information Service, II, No. 6, May 22, 1926.

mans held 25 per cent each. During the War, the German 25 per cent interests passed into the hands of the British Public Trustee as Custodian of Enemy Property and were later transferred to the French as a result of the San Remo agreement of April 24, 1920,<sup>28</sup> by the terms of which the Company was to be under permanent British control.<sup>29</sup>

The American Government refused to recognize the claims of the Turkish Petroleum Company and protested against the San Remo arrangement on the ground that it was formed in violation of the principle of equality of opportunities. In its protest, it stressed the significance of oil problems in the international sphere and insisted that publicity of applications for concessions should be secured and that subjects of all nations be given equal opportunity in the mandated territories.<sup>30</sup> In his note of November 20, 1920, to the British Government, Secretary Colby asserted that on account of the shortage of petroleum, "and the continuing necessity of replenishing the world's supply by drawing upon the latent resources of undeveloped regions, it is of the highest importance to apply to the petroleum industry the most enlightened principles recognized by nations as appropriate for the peaceful ordering of

<sup>28</sup> For text, see: *International Conciliation*, Pamphlet No. 166, September, 1921, pp. 52-55; J. Loder, *The Truth about Mesopotamia, Palestine and Syria*, p. 184; *Parl. P.*, Cmd. 675, pp. 181-183.

<sup>29</sup> See 8. *Doc.*, No. 97, 68th Cong., 1st sess., p. 52.

<sup>30</sup> See "Correspondence between His Majesty's Government and the United States Ambassador respecting Economic Rights in Mandated Territories," *Miscellaneous*, No. 10 (1921), Cmd. 1226.

their economic relations."<sup>31</sup> Similarly, in a letter dated November 17, 1921, the American Ambassador in London informed the British Foreign Office that the American Government would not recognize the claim of the Turkish Petroleum Company and if the claim continued to be asserted that it should be determined by a suitable arbitration.<sup>32</sup> In the Lausanne Conferences the British tried to secure recognition of the claim but were blocked again by the United States' delegates. In a note to Lord Curzon (Feb. 1, 1923), the American delegate reasserted the same American position in regard to the nonvalidity of the claim, confirming particularly the statement that the claim be determined by a suitable arbitration if it continued to be asserted.<sup>33</sup> Consequently, France and England agreed to allow 25 per cent of the stock holding in the Company to American interests.<sup>34</sup>

<sup>31</sup> For the texts of the notes exchanged between the two governments during the years 1920-1921, see "Mandate for Palestine," pp. 27-45 (pamphlet prepared by the Department of State, 1927); also, *Part. P.*, Cmd. 675.

<sup>32</sup> See *S. Doc.* No. 97, 68th Cong., 1st sess., pp. 50, 53.

<sup>33</sup> *Ibid.*, p. 56.

<sup>34</sup> The stock holdings in the Company were distributed as follows:

	Per cent
1. Share of Anglo-Persian Oil Co. Ltd. (owned in part by the British Government) . . . . .	23J
2. Share of Dutch Shell Interests (partly British owned) . . . . .	23J
3. Share of French group . . . . .	23J
4. Share of American group (The Near East Development Co.) . . . . .	23\$
5. Share of Mr. C. S. Gulbenkian . . . . .	5

The British protest against the Chester Concession thus seemed to appear as one against a concession which conflicted with interests already shared by American capital. This situation left the Department of State in a critical position as to whether the American Government should support the British claims for the concession of the oilfields of Mosul or should on the other hand support the Chester Concession. On May 3, 1923, Mr. J. C. Grew, the head of the American delegation to the Lausanne Conference, announced that the American Government would not support any grant of concessions which would abrogate acquired rights of other nationals.<sup>15</sup> The question was finally solved as Mosul was ultimately given to Iraq, and accordingly, the Iraq Government granted (March 14, 1925) a seventy-five year oil concession in the vilayets of Bagdad and Mosul to the Turkish Petroleum Company.<sup>36</sup>

<sup>35</sup> *New York Times*, May 3, 1923, p. 1, col. 6.

<sup>36</sup> In the tripartite treaty between England and Iraq and Turkey regarding the settlement of the frontier between Turkey and Iraq signed at Angora, June 5, 1926 (*Treaty Series* No. 18, 1927, Cmd. 2912). Turkey recognized the vilayet of Mosul as forming a part of the Kingdom of Iraq, and the Iraq Government agreed to pay to the Turkish Government for a period of twenty-five years from the coming into force of the treaty 10 per cent on all royalties which it shall receive from its oil fields in accordance with the terms of the concession of March, 1925, granted by Iraq to the Turkish Petroleum Company. (See Augur, "The Mosul Treaty," *Fort, Review*, new series, CXX, July, 1926, pp. 51-56.)

## FRENCH CLAIMS AND THE LAUSANNE SETTLEMENT

The French Government protested against the Chester Concession on the ground that a promise was given by the Turkish Government in 1914 to the effect of building a railroad line from Sivas to Samsoun in return for which France agreed to extend a loan of 1,000,000,000 francs, half the amount having actually been advanced when the World War broke out. It is to be noted that the concession for the construction of this line was embodied in the Chester Concession; another right conceded in the American Concession which conflicted with French interests was the right of building a new harbor at Yamurtalik near the port of Alexandretta, the latter being a French port in Syria.

In the protest, Premier Poincare declared that the action could not be interpreted other than " a deliberately unfriendly act, of a nature to influence adversely the coming negotiations at Lausanne." To this, the Angora Government replied that the fact that only half of the loan was advanced released Turkey from any obligation under the terms of the bargain. The French Government, however, maintained that Turkey joined the War before the second half of the loan was due.<sup>37</sup>

The question of concessions alleged to have been granted by the Turkish Government prior to the World War was one of the most difficult problems

<sup>37</sup> *New York Times*, April 12, 1923, p. 1, col. 6.

before the Lausanne conferences. After a series of diplomatic debates, however, the status of most concessions was defined by a protocol signed at Lausanne by the representatives of the British Empire, France, Italy, Greece, Roumania, the Serb-Croat-Slovene state, and Turkey, the first article of which reads as follows:

Concessionary contracts and subsequent agreements relating thereto, duly entered into before the 29th October, 1914, between the Ottoman Government or any local authority, on the one hand, and nationals (including companies) of the Contracting Powers, other than Turkey, on the other hand, are maintained.<sup>38</sup>

#### THE FATE OF THE CHESTER CONCESSION

As to the fate of the Chester Concession, it may be briefly stated that the enterprise proved to be a total failure: In August, 1923, the Chester group transferred their rights to a Canadian group for a consideration of \$300,000 plus 10 per cent of any possible profits, and in November of the same year, Arthur T. Chester charged the management of the Company with false and misleading statements as well as poor business methods. The voting trust, created on December 6, 1922, to assume American control, was dissolved on November 12, 1923, and

<sup>38</sup> *Treaty Series* No. 16 (1923), Cmd. 1929, p. 2033.

On the concessions and the treaty of Lausanne, see J. Teyssaire, "Les concessions et le traite de Lausanne," *R. G. D. I. P.*, 1928, XXXV, 447-465 and Ogier, "L'elaboration des clauses economiques du traite de Lausanne," *Rev. dr. int. de Lapradelle et Politis*, 1927, I, 301 et seq

shortly thereafter it was known in Constantinople that the Canadian group were negotiating with London and Paris financial concerns. Consequently, the Turkish Ministry of Public Works announced in December, 1923, the annulment of the Concession.

#### AMERICA AND THE LAUSANNE CONFERENCES

The role played by the United States in the Lausanne settlement was, as it has already been indicated, of an advisory nature.<sup>39</sup> The American representatives were present at the Lausanne conferences as observers representing American interests.<sup>40</sup> The matters of particular concern to the United States were specified in an aide-memoire dated October 30, 1922, in which the American Government informed the Allies of its willingness to send representatives; these were summarized as follows:

1. The maintenance of the capitulations which may be essential to the appropriate safeguarding of non-Moslem interests.
2. The protection, under proper guaranties, of philanthropic, educational and religious institutions.
3. Appropriate undertakings in regard to the freedom of opportunity, without discrimination or special privilege, for commercial enterprise.

<sup>39</sup> See *supra*, p. 225.

<sup>40</sup> The United States sent to the first conference three "observers": R. W. Child, U. S. Ambassador to Italy; J. C. Grew, U. S. Minister to Switzerland, and Rear Admiral Mark L. Bristol, American High Commissioner at Constantinople. At the second conference, Mr. Grew alone represented the United States.

4. Indemnity for losses suffered by Americans in Turkey as a result of arbitrary and illegal acts.
5. Suitable provisions for the protection of minorities.
6. Assurances touching the freedom of the Straits.
7. Reasonable opportunity for archaeological research and study.<sup>41</sup>

In his statement of January 31, 1923, the American delegate at the Lausanne Conference declared that the United States was represented at Lausanne for three purposes.

Our country is represented to protect American interests, idealist or commercial, humane or financial, without discrimination. It is represented to protect, whenever possible, humanitarian interests regardless of their nationality. It is represented to serve in all appropriate ways the cause of peace.<sup>42</sup>

Although the American representatives were not a party to the Allied settlement, their presence at the conferences helped to smooth up many of the difficulties through their mediative and placatory spirit. They were authorized, shortly before the Allied treaty of Lausanne was signed, to negotiate a separate treaty with Turkey, and on the conclusion of the negotiations on August 6, 1923, two treaties were signed—an extradition treaty to replace that of 1874 and a general treaty referred to as the American Treaty of Lausanne.<sup>43</sup>

<sup>41</sup> *New York Times*, November 1, 1922, p. 6, col. 2.

<sup>42</sup> *Turkey* No. 1 (1923), Cmd. 1814, p. 441.

<sup>43</sup> On the American Treaty of Lausanne, see: P. M. Brown, "The Lausanne Treaty," *A. J. I. L.*, 1927, XXI, 503; *ibid.*, 1924, XVIII,

## THE UNRATIFIED AMERICAN TREATY OF LAUSANNE

The American Treaty of Lausanne, consisting of 32 articles,<sup>44</sup> is based on the principles of reciprocity and provides for the complete abrogation of the capitulations and the previous treaties between the United States and Turkey.<sup>45</sup> It is, more or less, elaborated on a basis following the lines of the Allied settlement; the most-favored nation clause inserted therein gives the nationals of the United States the right to claim the privileges granted to the nationals of other countries having treaty relations with Turkey. It is to be noted that while the Allied

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113; A. L. P. Dennis, "The United States and the New Turkey," *North American Review*, June, 1923; E. M. Earle, "Ratify the Turkish Treaty," *Nation*, N. Y., January 23, 1924; "Turco-American Treaty of Lausanne," *Foreign Policy Association Information Service*, April 24, 1926, II, No. 4; E. W. Turlington, "The American Treaty of Lausanne," *World Peace Foundation Pamphlets*, 1924, VII, No 10; A. J. L. L., October, 1924, XVIII, 696-706; *The Forum*, 1925, LXXIII, 136-139; *ibid.*, December, 1924, LXXII, 734-745; *Report of the 68th Luncheon Meeting, Foreign Policy Association*, Pamphlet No. 26, Series of 1923-24; "Lausanne Treaty, Turkey and Armenia," A Folio of letters, Telegrams, Statements and Articles. *The American Committee Opposed to Ratification of the Lausanne Treaty*; "Missionaries and the Lausanne Treaty," *ibid.*; *Chicago Council on Foreign Relations*, Report of March 7, 1925, Pamphlet No. 6; "Turco-American Treaty of Amity and Commerce," *Foreign Policy Association*, Pamphlet No. 27, Series of 1923-24; *The Near East and India*, January 27, 1927, XXXI, 75.

<sup>44</sup> For the text of the treaty, see *Executive Z*, 68th Cong., 1st sess., May 3, 1924. The text with the minutes of the negotiations and an official summary of the treaty are found in "The Treaty with Turkey," *General Committee of American Institutions and Associations in Favor of Ratification of the Treaty with Turkey*.

<sup>45</sup> See preamble and arts. II, XXX.

Treaty of Lausanne provides that the question of admitting foreigners in Turkey to the various professions is to form the subject of separate arrangements with the powers concerned,<sup>46</sup> this American treaty concedes to American nationals the right to engage in every kind of profession not forbidden by law to all foreigners.<sup>47</sup> In matters of personal status, as in the Allied settlement, Americans in Turkey are to be subject exclusively to the jurisdiction of American courts sitting outside Turkey, although Turkish tribunals may assume jurisdiction in such matters provided all interested parties agree to submit thereto.<sup>48</sup> The treaty also assures to the United States most-favored treatment with regard to the passage of ships through the Straits without having to adhere to the Turkish-Allied Straits Convention.<sup>49</sup> As to the responsibility for arrears of taxes not authorized by the capitulations, as in the Allied arrangement,<sup>50</sup> the treaty provides that American nationals shall be exempt from the payment, on account of fiscal years prior to the fiscal year 1922-1923, of any impost, tax or surtax to which they were not subject on August 1, 1914.<sup>51</sup>

The status of American institutions was defined in a letter sent by the Turkish delegation on Au-

<sup>40</sup> See *supra*, p. 238.

<sup>47</sup> See art. III.

<sup>48</sup> See art. VIII.

<sup>49</sup> See art. X.

<sup>50</sup> See *supra*, p. 234.

<sup>51</sup> See art. XXIX.

gust 4, 1923, to the envoy extraordinary and minister plenipotentiary of the United States to the Peace Conference. Therein Turkey undertook to treat American institutions and establishments as similar institutions and establishments of the principal Allied Powers were to be treated in accordance with the letter of the Turkish delegation of July 24, 1923, addressed to France, Italy and Great Britain to this effect.<sup>52</sup>

The Treaty appeared before the United States Senate for approval but failed of ratification<sup>53</sup> on the assumptions that it abrogated the capitulations, that it did not contain guaranties for the protection of non-Moslems in Turkey, that it failed to give a satisfactory arrangement regarding the Armenian question, that it did not provide for the recognition of the American nationality of former Turkish subjects naturalized in the United States, and that it did not guarantee the protection of educational and religious institutions in Turkey. It was held that the pre-war treaties between Turkey and the United States could not be terminated without a new treaty to be concluded in accordance with the constitutional procedure in each country. This situation has evidently caused the suspension of regularly defined

<sup>52</sup> See *supra*, p. 238 and Appendix VII.

<sup>53</sup> The vote taken by the Senate in its executive session (1926) was 50 to 34 in favor of the treaty, but the treaty failed of ratification because of the constitutional requirements of two-thirds majority support.

relations between the two countries in view of the fact that according to the old Turco-American treaties most of the American rights were determined by the most-favored nation clause.<sup>54</sup> Under these circumstances could the United States claim the former capitulatory rights when the principal powers relinquished theirs? The only way to maintain the capitulations, as Mr. Hughes stated on January 23, 1924,<sup>55</sup> would be to fight for them. Expressing his view on the Turco-American treaty, Fethi Bey, Prime Minister of the Turkish Republic in 1924, said:

.... the new American treaty gives Americans the same rights as Europeans in Turkey. If the American Senate does not ratify the document, will this not result inevitably in giving Europeans a favored position?

Of course, the previous antiquated Turko-American treaty has lapsed and will have no force, because it was negotiated with a Turkish regime which no longer exists. That treaty and that regime have collapsed, like the unspeakable system of capitulations.<sup>66</sup>

#### TURCO-AMERICAN DIPLOMATIC RELATIONS

The treaty having failed of ratification by the United States Senate, Turco-American relations

<sup>54</sup> Commenting on this point, the Turkish Ambassador in Washington said: "The United States enjoys some of the privileges of the capitulation by virtue of the most favored nation clause inserted in the treaty concluded with Turkey in 1830, that is, the United States became the beneficiary of the capitulations only incidentally." *New York Times*, September 12, 1914, p. 4, col. 2.

<sup>65</sup> *World Peace Foundation Pamphlets*, 1924, VII, No. 10, p. 596

<sup>56</sup> Quoted in *ibid*, from *New York Times*, October 31, 1924.

have been regulated by a series of agreements giving the United States most-favored nation treatment in Turkey. The first temporary agreement was signed, February 17-18, 1926, reciprocally according, for six months from February 20, 1926, equality of treatment in customs matters.<sup>57</sup> This was extended on July 20, 1926, to February 20, 1927,<sup>58</sup> and on February 17, 1927, to February 20, 1928,<sup>59</sup> and thereafter, tacitly, for three months.<sup>60</sup> Another *modus Vivendi* was signed on May 19, 1928, extending the original agreement from May 20, 1928, to April 10, 1929;<sup>81</sup> and on April 11, 1929, this was continued for an additional year.<sup>62</sup>

A new treaty of commerce and navigation, consisting of five articles, was signed at Ankara (Angora)

<sup>07</sup> This commercial agreement was intended to regulate Turco-American relations pending the ratification of the American Treaty of Lausanne which was awaiting action by the Senate; but the treaty, as it has been indicated, was rejected by the Senate, thus making it necessary to extend the temporary agreement.

<sup>58</sup> *United States Daily*, July 22, 1926, p. 1, col. 2.

<sup>59</sup> *Ibid.*, March 15, 1927, p. 1.

<sup>60</sup> The *modus Vivendi* of Feb. 17, 1927, provided for the establishment of diplomatic and consular representation. The appointment of ambassadors was to be made by both the United States and Turkey as soon as possible. Accordingly, on October 12, 1927, Mr. Joseph C. Grew, former under-secretary of state presented his credentials as American ambassador to Turkey, and shortly thereafter Moukhtar Bey was received in Washington as Turkish ambassador to the United States. The receipt of the latter by the American Government met with protests from officials of the American Committee opposed to the Ratification of the American Treaty of Lausanne. (See *U. S. Daily*, Nov. 29, 1927, p. 1 col. 4 and p. 2 columns 2, 3; *ibid.*, Nov. 30, 1927, p. 3 col. 2; *ibid.*, Dec. 2, 1927, p. 3 col. 2.)

<sup>61</sup> *Ibid.*, May 22, 1928, p. 1.

<sup>62</sup> *U. S. Commerce Reports*, April 22, 1929, p. 242.

on October 1, 1929, providing for reciprocal most-favored nation treatment.<sup>63</sup> It is to be noted that this laconic document did not make mention of the capitulations, tacitly presuming that they do not exist any longer and that all former treaties between Turkey and the United States had been terminated. The treaty is to remain in force, after the exchange of ratifications, for a period of three years and to continue thereafter unless either of the two parties shall have notified the other of an intention to terminate it; in the latter case, the termination would take effect one year after the date of notification.<sup>64</sup>

### CONCLUSION

From this brief historical survey of American interests and activities in Turkey and the account of Turkish-American relations made in Chapter VII, we may conclude that the United States had humanitarian interests and a deep sentimental interest in Turkey and that up to the early part of the twentieth century American economic and financial interests had been more or less negligible compared with the large sums invested in humanitarian enterprises. The major effects of the World War on Turco-American relations seem to be: first, a decline in

<sup>63</sup> For the text of the treaty, see *Executive A*, 71st Cong., 2d sess., December 5, 1929.

<sup>64</sup> The treaty was ratified by the Senate and exchange of ratification took place at Ankara in April, 1930. (See Publications of the Department of State, Press Releases, April 26, 1930, p. 197.)

American philanthropic, educational and religious activities in Turkey on account of Turkish regulations, abrogation of capitulations and decrease of population, especially the population among whom American missionaries worked before the War; second, a development of trade relations especially during the two years following the Armistice.

The question as to America's policy towards Turkey can hardly be definitely answered. The American Government had favored the creation of an independent Armenia, had declined to yield to the complete abrogation of the capitulations, and had disapproved Turkish control of the Straits. In none of these was the American position maintained: The Armenian cause was left aside; the capitulations were abrogated, and the question of the Straits can hardly be considered to have been settled in complete harmony with the American view. That the United States has always stood for the open door policy and for the principle of equal economic opportunity, can hardly be questioned; but this again can have no more effect on Modern Turkey. The New Turkish Republic is so jealous of its sovereign rights that it would not allow a foreign power to dictate a policy for her to adopt in her relations with foreign nations, and that Turkey of to-day can take care of her own affairs is virtually proved by her present position in the international sphere. On the whole, however, the Nationalist Turks realize that the

United States did not participate in the formation of the intensely hated treaty of Sevres; that the American Government had no voice in the authorization of the Greek occupation of Smyrna; and last, but not least, they still remember the part of Wilson's twelfth point assuring to the Turks sovereign rights over the Turkish portions of the Ottoman Empire.

## CHAPTER XIV

### THE LEGAL ASPECTS OF THE ABROGATION OF THE CAPITULATIONS

#### INTRODUCTORY

Having completed the historical account of the ultimate termination of the capitulatory regime in Turkey, it remains now to discuss the principles of international law involved in that termination. In surveying the historical evolution of the international recognition of the capitulations it has been explained how capitulatory provisions became gradually part of treaties of a political nature,<sup>1</sup> and granted that these may be said to have become as such in the later period, the question arises now as to how the duration of the capitulatory treaties was to be determined. How long were they to last and how could they be abrogated? To answer this question, we must go into the subject of treaties.

#### DURATION OF CAPITULATORY TREATIES

In no capitulation was the duration of the grant of privileges determined. It was unanimously insisted by the powers, however, that they were perpetual and that they could be abrogated only by the consent of the parties concerned. This idea of perpetuity

<sup>1</sup> See ch. viii.

was based on the terms of the French treaty of May 28, 1740,<sup>2</sup> which, contrary to the previous customary practice of renewing the capitulations on the accession of a new Sultan, stipulates that the treaty shall be observed not only during the reign of the signatory Sultan, but also during the reign of his successors.<sup>3</sup> Art. LXXXV of the treaty pro-

<sup>2</sup> Sec supra, pp. 58-59

<sup>3</sup> The capitulations, with a few exceptions, were practically renewed on the accession of every new Sultan. The reason for this act is attributed by many writers to the idea that Islam forbids the making of perpetual peace with Western Powers. Van Dyck holds that "Moslem rulers cannot, if they wish, enter into a lasting peace, but can only make temporary truces to be broken at pleasure by the prince and in the interest of the believers." (Van Dyck, "Report on the Capitulations," p. 26.) Sir Travers Twiss confirms this opinion asserting that the Koran "prohibits all relations of equality and reciprocity between the House of Islam and the nations of the unbelievers, and allows the state of war between the Faithful and those who do not acknowledge the Divine mission of Mohamet to be suspended indeed by treaty engagements, but never to be converted into a normal state of permanent peace." (T. Twiss, "Consular Jurisdiction in the Levant and the Status of Foreigners in the Ottoman Law Courts," p. 10; cf. also, H. Bonfils, *Manuel de droit international public*, 7th ed., 1914, pp. 496, 601.) It is doubtful, however, whether the reason for this renewal of the capitulations can be attributed to this doctrine. It is to be noted that when the capitulations were not renewed on the accession of a new Sultan the *status quo* continued to be applied, and we should also remember that the Powers encouraged the practice of this renewal of the capitulations motivated by the desire to insert additional privileges. Hence, the explanation advanced by some authors that the practice is to be attributed to the old conception of the state seems to be the logical one. That the state is a legal entity or a political corporation in which sovereignty is perpetual and continuous was inconceivable in the middle ages. The old idea that the person of the king is the state rendered all arrangements made by him limited to his life-time. This is well illustrated in the treaty of 1535 whereby it was provided that the

vides that " never shall the contrary to the present articles be allowed." The word " never " was construed as to have given a perpetual character to the capitulations. This explanation, however, loses its significance in the light of the fact that most if not all peace treaties or treaties of friendship provide for perpetual peace. In this case, can belligerent powers in the event of war accuse each other of violating treaties of friendship on the ground that they provide for perpetual peace? It is thus held that the provision, " he will be constantly given testimonial of sincerity and good friendship," found in the same treaty of 1740, renders the duration of the capitulations dependent on the existence of that friendship, and hence when this testimonial is wanting, the promise that " never shall the contrary be allowed " becomes inoperative and the capitulations *ipso facto* come to an end.<sup>4</sup>

Moreover, it is uniformly accepted that there are no perpetual treaties in the absolute sense of the word.<sup>5</sup> " It seems impossible," says Spinoza's corn-

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agents " have negotiated, made, and concluded a valid and pure peace and sincere concord in the name of the above, Grand Signer and King of France *during their lives*, etc." (See Appendix I.)

<sup>4</sup> Abi-Chahla, H., *L'Extinction des capitulations en Turquie et dans les regions Arabes*, p. 125.

<sup>5</sup> " A vrai dire tous les traites sont temporaires, et il n'y a pas de traite' perpetuels dans le sens absolu du mot, car on ne saurait rien imaginer de plus irrational que de prendre des engagements immuables, tandis qu'il n'y a rien d'immuable dans la nature." (Pradier-Fodere, *Traite de droit international public Europeen et Americain*, Paris, 1885, II, 502.)

mentator, " on any political or ethical principles whatever, to lay it down as an absolute proposition that the obligation of treaties is perpetual."<sup>6</sup> Hence if we admit this impossibility, the theory of the permanence of the capitulations becomes of little significance, and the situation by which the duration of capitulatory treaties was not defined cannot, therefore, be construed so as to mean, in the absolute sense of the word, that they could never cease to be binding. If the causes which had led the foreign powers to insist on the continuation of the capitulations were removed, there is no reason why the capitulatory system should not come to an end. The capitulations are liable to fall of themselves if security as interpreted by the law of the family of nations is fairly granted to foreigners.

#### TERMINATION OF TREATIES

We are thus driven towards one of the most unsettled questions of international law, namely, the question as to how treaties may cease to be binding. Without going into the classification of treaties, on which opinions differ, we may say that generally treaties may cease to be binding by: physical or moral impossibility of execution; expiration of the time for which the obligation has been contracted; complete execution of the stipulations; mutual consent; loss of the thing by *force majeure* or by some other inevitable accident for the delivery of which

obligation was assumed; substantial change in the state of facts and conditions upon which the treaty was founded; and finally, war.

Treaties may also be voidable, though not necessarily void, if concluded under duress,<sup>7</sup> that is, if force has been resorted to as a pressure upon the agents of a state in the formation thereof, and if formed in excess of powers of the agents of a state, *sub spe rati*, or through fraud. If we separately examine each of these conditions or causes by which a treaty may cease to be binding, we come face to face with two situations in which capitulatory treaties may be involved, namely, the effect of war on treaties and the effect of the principle of the change of conditions known as *rebus sic stantibus*.

#### THE EFFECT OF WAR ON TREATIES

As to the effect of war on treaties, "the whole question remains as yet unsettled."<sup>8</sup> In dealing with

<sup>7</sup> Unlike the Chinese extraterritorial treaties, the Turkish capitulatory treaties, as it has been explained above (ch. i), were originally spontaneously granted without the application of force on the part of the western nations. The doctrine of duress is thus unlikely to be involved in the case of the capitulations. (On the question of duress in international law, see J. P. Bullington, "International Treaties and the Clause 'Rebus Sic Stantibus/' " *University of Pennsylvania Law Review*, 1927-1928, LXXVI, 161-165.)

<sup>8</sup> Oppenheim, L., *International Law*, 3d ed., London, 1921, II, 145.

"There are few questions," confirms Sir Cecil Hurst, "upon which people concerned with the practical application of the rules of international law find the text-books less helpful than that of the effect of war upon treaties in force between belligerents." (*The British Year Book of International Law*, 1921-1922, p. 38.)

capitulatory treaties there arises an additional difficulty of greater significance. While for the purpose of study and definition of status, treaties have been classified under various categories, it is uncertain as to which of the classes capitulatory treaties belong. Capitulatory treaties bear clauses of various character; some are political, others are commercial, and still others are juridical and financial, all ultimately condensed into a treaty.

By no means are all treaties annulled through a declaration of war.<sup>9</sup> There exist treaties of such

<sup>9</sup> The subject of the effect of war on treaties has been dealt with by many authorities; reference may be made to the following works: *Annuaire de l'institut de droit international*, XXIII, 251; H. Bonfils, *Manuel de droit international public*, 7th ed., Paris, 1914, p. 583; S. B. Crandall, *Treaties their Making and Enforcement*, 1916, pp. 442-456; G. B. Davis, *Elements of International Law*, 3d ed., pp. 239-285; P. Fauchille, *Traite de droit-international public*, Seme edition, Pans, 1921, tome II, pp. 54-62; Funck-Brentano et Sorel, *Precis du droit des gens*, Pans, 1900, p. 247; Hall, *International Law*, 7th ed., 1917, p. 398; Hurst, Sir Cecil, "The Effect of War on Treaties," *The British Year Book of International Law*, 1921-22, pp. 37-47; R. Jacomet, *La guerre et les traites*, 1909; T. J. Lawrence, *The Principles of International Law*, 4th ed., 1910, pp. 360-365; E. Lemonon, "Les capitulations en Turquie et en Egypte pendant la guerre Italo-Turque," *R. D. I. L. C.*, 2eme serie, 1913, XV, 471-488; M. A. Murabelli, "La guerre Italo-Turque et le droit des gens," *ibid.*, 1912, XIV, 437-448; Oppenheim, *International Law*, 3d ed., 1921, II, 145; Phillimore, Sir Robert, *International Law*, 3d ed., London, 1885 and III, 792; C. Phillipson, *Termination of War and Treaties of Peace*, 1916, p. 250; H. E. Richards, Introduction to Oakes and Mowat's, *The Great European Treaties of the Nineteenth Century*, Oxford, 1918; J. B. Scott, *Resolutions of the Institute of International Law*, Carnegie Endowment for International Peace, N. Y., 1916, p. 172; T. Twiss, *The Law of Nations*, 1884, I, 417, 440 and II, 264; Westlake, *International Law*, 1907, II, 29-32. See also: *Clunet*, 1921,

character that they are to operate in the event of war and have been made with that object. It is certainly inconceivable to consider the capitulations as coming under this class of treaties since the immunities and privileges enjoyed in a country granting extraterritorial rights are unquestionably imbued with the spirit of peaceful relations. There also exist treaties which affect third parties and treaties which have been fully executed. These, it is uniformly accepted, are not affected by the state of belligerency.

There is also another class of treaties which, in the absence of any agreement, are held to be suspended during the period of the war and to resume effect at the end of hostilities. Examples of such treaties are those which provide for mutual enforcement of judgments, extradition, property tenure, public debts and other rights of a vested nature.<sup>10</sup> The question arises now as to how would the capitulations be affected by war. Would they be annulled by the state of belligerency? Would they continue

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XLVIII, 96; *R. G. D. I. P.*, 1897, IV, 532; *ibid.*, 1898, V, 154; *ibid.*, 1902, IX, 202; *ibid.*, 1903, X, 69.

<sup>10</sup> See the following cases: *Frau Ilisabe* (4c. Rob. 63, 1801); *North Atlantic Coast Fisheries Arbitration Award* (J. B. Scott, *The Hague Court Reports*, 1916, pp. 141-225); *Russo-Dutch Loan* (Pitt Cobbett, *Cases and Opinions on International Law*, ed. 1913, II, 38); *Society for the Propagation of the Gospel v. Newhaven* (S. C. of the United States, 1823, 8 Wheat, 464, 5 L. Ed. 662); *Sutton v. Sutton* (Court of Chancery, 1830. 1 Russ & M. 663); *Techt v. Hughes* (229 N. Y. 222, 1920). A documented account of the effect of war upon treaties and private rights under treaties is given in *Yale Law-Journal*, February, 1929, XXXVIII, 514-520.

to operate despite the declaration of war, or would they be suspended for the period of hostilities only? Opinions differ and no one answer can be considered unanimous.

#### THE EFFECT OF WAR ON CAPITULATORY TREATIES

It is maintained by some writers that the capitulations guaranteeing the rights of foreigners are not suppressed by the state of war, but, on the contrary, they are more necessary in time of war than they are in time of peace and that they should, therefore, continue to operate despite the act of hostility. According to Professor Mestre, the aim of capitulations is to protect foreigners residing in the Ottoman Empire, and under these conditions it would be inadmissible that they should cease to be applied especially at a moment when this protection becomes most necessary, namely, in time of war.<sup>11</sup> Lemonon confirms this opinion asserting that " it is precisely

<sup>11</sup> " Les capitulations ne sont pas des traites conclus a la suite d'une guerre; ce sont des arrangements dont l'un des buts est la protection des etrangers residant dans l'Empire Ottoman; dans ces conditions, il serait inadmissible qu'elles ne dussent plus s'appliquer precisement au moment ou cette protection devient le plus necessaire, c'est a dire en temps de guerre. Ainsi ni la denonciation unilaterale de Septembre, 1914, ni l'etat de guerre posterieur n'ont eu pour resultat d'abroger les capitulations. En principe, elles subsistent donc encore aujourd'hui. Si, en fait, leur application a ete suspendue, c'est uniquement parce que lors de la declaration de guerre les Puissances ont rappele leurs consuls." (Achille Mestre, " L'Agonie des capitulations," *Revue de Paris*, July 1, 1923, XXX, 152. See also, H. Abi-Chahla, *L'Extinction des capitulations en Turquie et dans les regions Arabes*, pp. 123-124.)

in time of war, when the stirrings and the fanaticism of the Mohammedans are over-excited, that this immunity is most necessary to Christian populations."<sup>12</sup> Another reason of a more juridical character, according to him, is the idea that all the capitulations of the European countries are similar and their aim is the same; they possess, therefore, an international character and cannot be suppressed without affecting the interests of the Western Powers collectively.<sup>13</sup>

These assumptions have been contested by some authors on the grounds that over-excitement in time of war is a natural phenomenon in every country, whether Christian or Mohammedan,<sup>14</sup> and that the similarity of the various capitulatory conventions can, by no means, give them a multilateral character, since they are separately concluded by the servient country with each of the powers.<sup>15</sup>

<sup>12</sup> #. *D. L. L. C.*, 2eme serie, 1913, XV, 481.

<sup>13</sup> "L'immunité de juridiction accordée aux étrangers en Turquie présente un intérêt européen évident, et sa suppression, relativement à certains d'entre eux, ne peut laisser aucune grande puissance indifférente." (Lemonon, M. E., "Les capitulations en Turquie et en Égypte pendant la guerre Italo-Turque," *ibid.*, 1913, XV, 482)

<sup>14</sup> "La dernière guerre nous a montré que les<sup>1</sup> Européens n'étaient pas beaucoup plus civilisés, à ce point de vue, que les autres nations. Si alors un régime de garantie et de sécurité est nécessaire pendant la guerre, il faut l'imposer à tous les pays sans distinction de religion ou de race." (H. Abi-Chahla, *op. cit.*, p. 128.)

"*Ibid.*, p. 129.

## DIVISIBILITY OF TREATIES

There are also writers who adhere to the theory of the divisibility of capitulatory conventions. Du Bausas seems to divide the capitulations into three categories, namely, clauses dealing with Commerce, clauses dealing with residence, and clauses of a political nature.<sup>10</sup> This tripartite division would ultimately facilitate the suspension or abrogation of some and the application of others in time of war.<sup>17</sup>

While Article II of the resolutions of 1912 of the Institute of International Law recognizes that treaties of a political nature are terminated by war,<sup>18</sup> Article III, on the other hand, confirms the idea of divisibility of treaties asserting that " if in the same acts occur clauses of different kinds, only those shall be considered annulled which come under the categories enumerated in Article II. When, however, the

<sup>10</sup> Du RaiiN^s, *Lc regime des capitulations dans VEmpire Ottoman*, I, 91, 98-101.

<sup>17</sup> This theory of divisibility of treaties was to some extent recognized in the case of the Jay treaty of 1794 whereby some of the clauses of the treaty were held to have been only suspended by the state of war while other provisions were held to have terminated (See Karnuth et al. v United States et al. A. J. / L, July, 1929, **XXIII**, 645; also editorial comment by W. C. Dennis, *ibid.*, p. 602.)

<sup>18</sup> " War, however, automatically terminates.

" 1. Agreements of international associations, treaties concerning subsidies, treaties establishing a right of security or a sphere of influence, and generally, treaties of a political nature;

"2 All treaties, the application or the interpretation of which shall have been the direct cause of the war, in consequence of the official acts of either of the governments before the opening of hostilities."

treaty is of the character of an indivisible act, it terminates as a whole." <sup>19</sup> Basing his theory on these resolutions, Lemonon holds that only the political clauses of the capitulations are annulled in time of war and that the commercial and the juridical clauses should not be affected by war since they do not come under the categories enumerated in Article II of the said resolutions.<sup>20</sup> He even goes further, suggesting

<sup>19</sup> J. B. Scott, *Resolutions of the Institute of International Law*, Carnegie Endowment for International Peace, New York, 1916, p 172.

<sup>20</sup> It is to be noted that it is uniformly accepted now that war gives an end to commercial relations between enemy subjects, and that in order to resume operation, pre-war agreements must be renewed by an express provision to be inserted in the treaty of peace. Tenekides asserts that war puts an end to all commercial treaties. "The war, according to the prevailing doctrine," he remarks, "is to them a cause of a definite extinction and not simple suspension. These treaties do not revive automatically at the end of hostilities. They can revive only when they are renewed in vigor by the treaty of peace." (*Clunet*, 1921, XLVIII, 96.) Most continental writers advocate the same view. In the words of Bonfils: "La guerre est pour eux une cause d'extinction definitive, et non une cause de simple suspension. La paix conclue, ils ne revivent pas, a moins qu'ils ne soient expressément renouvelés dans le traite de paix." (Bonfils et Fauchille, *Manuel de droit international public*, 7th ed., Paris, 1914, p. 584 ) Confirming the same opinion, Vattel says- "Les Conventions, les Traités faits avec une Nation, sont rompus ou annulés par la Guerre qui s'élève entre les Contractants; soit parce qu'ils supposent tacitement l'état de paix, soit parce que chacun pouvant dépouiller son ennemi de ce qui lui appartient, il lui ôte les droits, qu'il lui avait donnés par des Traités." (E. Vattel, *Le droit des gens ou principes de la loi naturelle*, livre III, ch. X, p. 146, sec. 175.) "Theory and practice," says Sir Cecil Hurst, "coincide in this case, for the future economic and commercial relations between the two countries are almost invariably provided for in the treaty of peace by which a war is concluded." (*British Year Book of International Law*, 1921-1922. p. 43.)

This view that commercial treaties are annulled by the state of

that a provision should have been added to Article III of the resolutions of the Institute of International Law to affirm that when the political clauses of a treaty are secondary, the treaty as a whole should be maintained.<sup>21</sup> This theory of the divisi-

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war and need renewal at the end of hostilities has been recognized in international usage: In Article XI of the Franco-German peace treaty of Francfort-sur-le-Mein (May 10, 1871) it was stated that " the treaties of commerce with the different states of Germany *having been annulled by the war*, the French and the German governments will adopt as the basis of their commercial relations the regime of reciprocal treatment on the footing of the most favored nation " (*Recueil des traites, Conventions, etc, relatifs a la paix avec l'Allemagne*, Paris, 1872, pp. 65-75.) Similarly, the peace treaty of Shimonoseki (April 17, 1895) between China and Japan (art. VI) provided that " all treaties between Japan and China *having come to an end in consequence of the war*, China engages, etc. . . ." (*Recueil des traites et conventions conclus entre VEmpire du Japon et les puissances etrangeres*, Tokio, 1918, pp. 71-76.) In the Spanish-American war of 1898, the Spanish decree of April 24, 1898, expressly declared in its first article that " the state of war existing between Spain and the United States leads to the ending of the treaties of peace and friendship of October 27, 1795, of the protocol of January 12, 1877, and of all the other accords, treaties or conventions in force between the two countries. . . ." (*R. G. D. I. P.*, 1898, V, 676.) Again, at the end of the Russo-Japanese war the treaty of peace of Portsmouth of December 5, 1905 (Art. XII), recognized the view that the war had annulled the Russo-Japanese treaty of commerce and navigation of May 27, 1895. (*Recueil des traites et conventions conclus entre VEmpire du Japon et les puissances etrangeres*, Tokio, 1918, pp. 344-355; also, *A. J. L. L.* Supplement, 1907, I, pp. 17-22.) And finally it is to be noted that the same view was upheld in the World War. On August 10, 1914, Germany notified the enemy powers that all commercial treaties with them had lapsed at the opening of hostilities. (P. Fauchille, *Traite de droit international public*, Same edition, p. 58 ) It is noteworthy to mention, however, that in 1858 the Court of Aix held that treaties of commerce were not extinguished by war, but only suspended on the principle—*cessante causa, tol litur effectus*.

<sup>21</sup> *R. D. L. L. C.*, 2<sup>me</sup> serie, 1913, XV, 479-480.

bility of treaties, however, seems to be impracticable, due to the difficulty involved in the determination of the character of the various clauses in a treaty, and therefore it won few exponents.<sup>22</sup>

#### OTHER OPINIONS OF WRITERS OF INTERNATIONAL LAW

Speaking of the resolutions of the Institute of International Law, Sir Cecil Hurst remarks that " their weak point . . . is that they are inspired too much with the doctrine, so prevalent in many quarters before 1914, that war was only an affair between the armed forces of the belligerent states,

<sup>22</sup> It is to be noted in this connection that no writer has seriously challenged the view that the capitulations are mostly imbued with the spirit of commercial intercourse and constitute commercial instruments. " None seriously contest," says Tenekides, " that the capitulations are treaties of commerce." (See *Clunet*, 1921, XLVIII, 96.) Beginning with the eighteenth century and thereafter, capitulatory agreements came to bear the titles of treaties of friendship, peace, commerce or navigation (See the titles of the following treaties: The treaty of Austria of July 27, 1718, Noradounghian, *Recueil d'actes internatwnaux de l'Empire Ottoman*, 220, I; the treaty of Sweden of January 10, 1737, *ibid.*, I, 239; the treaty of Sicilly of April 7, 1740, *ibid.*, I, 270; the treaty of England of January 6, 1809, *ibid.*, II, 81; the treaty of the United States of May 7, 1830, *ibid.*, II, 192; the treaty of Belgium of August 3, 1839, *ibid.*, II, 276; the treaty of Sardinia of Sept. 2, 1839, *ibid.*, II, 283.) Moreover, in most peace treaties the capitulations have been dealt with under the heading of commercial relations; Art. CCLXI of the treaty of Sevres of August 10, 1920, reestablishing the capitulations comes under the heading of commercial relations. (See *A. J. I. L.*, Supplement, 1921, XV, 247.) Thus if the capitulations constitute commercial treaties, and if it is, on the other hand, admitted that commercial agreements are abrogated by war and need renewal at the end of hostilities, then capitulatory treaties are accordingly to be deemed terminated by the state of belligerency.

and that its juridical effect upon the relations of the civil elements of the population should be kept in the background."<sup>23</sup> He suggests that the intention of the parties at the time when they made the treaty should be taken as the decisive element rather than the character and nature of the treaty stipulations. "The position as to the continuance of extra-territorial rights in favor of enemy subjects," he continues, "is thus somewhat confused. It may also be difficult to provide for their exercise, as war entails the withdrawal of the consular officers maintained by the enemy power. The special rights of protection fulfilled by the consular staff must therefore cease to be carried out unless they are undertaken by the representatives of the Power to whom the care of enemy interests is confided."<sup>24</sup> It is also to be noted that a capitulatory treaty would automatically terminate if the right to insist on the withdrawal of enemy subjects is exercised by the belligerent servient state.<sup>25</sup> "There seems no reason," says H. E.

<sup>23</sup> *The British Year Book of International Law*, 1921-1922, p. 39

"Ibid., p. 45.

<sup>25</sup> Sir Cecil Hurst, however, does not seem to entirely agree on the idea that war terminates extraterritorial agreements. "The view that such jurisdictional privileges should remain in force," he maintains, "is not unreasonable. It is not only the individuals who are exempt from the local jurisdiction, but also their property other than land, and even if the individuals can be expelled, it is not likely that they can take all their property with them. The original basis of the immunity from the local courts was that the local legal system was so different from that to which the foreigner was accustomed, that it would not have been just that it should apply to the foreigner. War would not alter this fact, and the presumption that the

Richards, " why rights conferred by treaty on one state to be exercised in the territory of another state should be in any different position from that of other treaty rights. The better opinion, therefore, seems to be that so-called servitudes created by treaty stand in no different position than other treaty rights, and are affected by war in no different way."<sup>20</sup> Confirming the same view, Professor Westlake maintains that " the stipulation of a servitude to be enjoyed in the territory or territorial waters of the other belligerent is not one that can revive after a peace which does not mention *it*."<sup>21</sup>

#### INTERNATIONAL USAGE

The last opinion, namely, that the state of war terminates capitulatory obligations seems to be in consonance with international usage as it has received recognition in practically all the peace treaties with Turkey: At the end of the Crimean War, the peace treaty of Paris of 1856 provided for the restoration of the pre-war capitulatory conventions. " Until the Treaties or Conventions which existed before the war between the belligerent Powers have been either renewed or replaced by new Acts," asserted Article XXXII of the treaty, " commerce of

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intention was that the foreigners who remained in the country, and their property, continued to enjoy the immunity is, therefore, not difficult to defend." (Ibid., p. 45.)

<sup>26</sup> See introduction to Oakes and Mowat's, *The European Treaties of the Nineteenth Century*, Oxford, 1918.

27 Westlake, *International Law*, 1907, II, 29.

importation or of exportation shall take place reciprocally on the footing of the regulations in force before the war; and in all other matters their subjects shall be respectively treated upon the footing of the most favored nation.<sup>7,28</sup>

In the Russo-Turkish war of 1878, the Turkish Government suppressed the capitulatory privileges enjoyed by Russian nationals in Turkey. Deemed, then, as having been annulled by the state of war, the capitulations were reestablished by triumphant Russia in the peace treaty of March 17, 1878, signed at San Stefano. Article XXIII provided that " all the treaties, conventions, and agreements, previously concluded between the two High Contracting Parties relative to commerce, jurisdiction, and the position of Russian subjects in Turkey, *and which had been abrogated by the state of war*, shall come into force again, with the exception of the clauses affected by the present act."<sup>9</sup> This was confirmed in Article X of the treaty of Constantinople of Jan. 27/Feb. 8, 1879,<sup>30</sup> drawn after the revision of the treaty of San Stefano by the Congress of Berlin.

At the beginning of hostilities between Turkey and Greece in 1897, the Ottoman Government again declared its intention to suppress the capitulations concerning the Greeks, but this time the European Powers intervened through their ambassadors in

<sup>28</sup> T. E. Holland, *The European Concert in the Eastern Question*, p. 254. See also *supra*, p. 183.

<sup>29</sup> For text, see T. E. Holland, *op. cit.*, pp. 335-348.

<sup>30</sup> For text, see Noradounghian, *op. cit.*, IV, 206.

Constantinople on the ground that the privileges enjoyed by the Greeks in Turkey were the result of European arrangements. It is to be noted, however, that while protesting against the Turkish declaration, the Powers impliedly recognized the view that war terminates capitulatory privileges and expressly referred to the case as being exceptional. It was declared in the memorandum of May 25, 1897, that "*if the treaties betveen the belligerents are in principle annulled by the state of war, and need renewal, the privileges and immunities enjoyed by the Greeks in Turkey have been conceded by virtue of arrangements concluded with the Great Powers which could not be affected by the rupture of relations between the belligerents.*"<sup>31</sup>

In the Turco-Italian war of 1911, Turkey also declared the denunciation of the capitulations concerning the Italians.<sup>32</sup> The Grand Vizier ordered the minister of interior to inform the authorities of the vilayets that the treaties and the capitulatory conventions with Italy had been annulled by the state of war and that the local officials could act towards the Italians as towards any Ottoman subject without being required to consult the German consuls to whom the care of Italian interests was entrusted. Following hostilities, by Article V of the peace treaty of Lausanne of October 18, 1912, the capitulations

<sup>31</sup> See *R. D. I. L. C.*, 2eme serie, 1913, XV, 481; also, *R. G. D. I. P.*, 1897, IV, 532.

<sup>32</sup> See *R. G. D. I. P.*, 1912, XIX, 406.

were reinstated.<sup>33</sup> And finally, in the peace treaty of November 1/14, 1913, between Turkey and Greece (Article II), it was similarly necessary to expressly stipulate for the restoration of the Greek capitulations.<sup>34</sup>

This recognition of the effect of war on capitulatory treaties in international usage was not confined to treaty relations with Turkey: In Morocco where foreigners enjoyed capitulatory privileges, the capitulations in favor of enemy subjects were terminated on the outbreak of the World War. In a Dahir dated August 5, 1914, it was declared that "in consequence of the withdrawal of the exequatur of the German consuls (a measure necessitated by the state of war) in the ports and the cities of the French zone in our Empire . . . ., all the effects of the capitulations existing between the German Empire and Morocco are actually suppressed in the French zone."<sup>35</sup> In the case of China, as soon as it declared war against Germany and Austria-Hungary in 1917, the Chinese Government announced that "in consequence thereof, agreements and conventions heretofore concluded between China and Germany, and between China and Austria-Hungary, as well as such

<sup>33</sup> *A. J. I. L.*, Supplement, 1913, VII, 58.

<sup>34</sup> *St. Pap.*, part 1, CVII, 894; also, *R. G. D. I. P.*, Documents, 1914, XXI, 25.

<sup>35</sup> See *R. G. D. I. P.*, Documents, 1915, XXII, 65.

By an identical measure dated August 13, 1914, the capitulations enjoyed by the nationals of Austria-Hungary in Morocco were suppressed. (See *ibid.*, p. 74.)

parts of the international protocols and international agreements as concern only the relations between China and Germany and between China and Austria-Hungary are, in conformity with the law of nations and international practice, hereby abrogated."<sup>86</sup>

We may, therefore, conclude that the view that war terminates capitulatory obligations and an express stipulation of the treaty of peace is necessary to effect restoration seems more in consonance with international usage.<sup>37</sup> This, however, did not solve the question of the capitulations in Turkey by reason of the fact that war would have suppressed only the capitulations in favor of the enemy powers without affecting the rights of the powers in peace with Turkey. It seems that the only way through which Turkey could have given effect to the termination of the capitulations by reason of war would have been to go to war with all the capitulatory powers and furthermore to succeed in defeating her opponents, for victory to the enemy might mean the rees-

»« *China Year Book*, 1921-22, p. 698.

The minister of Holland to whom the German interests were entrusted strongly protested against this declaration. (See article, "Cessation du privilege d'exterritorialite en Chine pour les sujets ennemis," in *Clunet*, 1918, XLV, 1088-1090.)

<sup>87</sup>"The state of war," says Abi-Chahla, "was sufficient to abrogate the capitulations and not to suspend them conditionally until the end of the war, as R. Jacomet affirms. The extinction was definite, and an express stipulation of the treaty of peace was necessary to reestablish the capitulatory regime." (H. Abi-Chahla, *op. cit.*, p. 130.)

establishment of the system with additional privileges. Turkey, therefore, did not expect any release from the capitulatory obligations through the effect of war.<sup>38</sup> She had attempted before the War to win amicably the consent of the powers to relinquish their privileges, but all her efforts met with failure. So the only measure left before her was that of suppressing the capitulations by unilateral act. To this measure she resorted shortly before joining the World War, basing the justification of her act largely on the so-called principle of "*rebus sic stantibus*/' the principle by which treaties may cease to be effective on the ground of change of essential conditions.<sup>39</sup>

THE CLAUSE " REBUS SIC STANTIBUS " <sup>40</sup>

The principle *conventio omnis intelligitur rebus sic stantibus* by which treaties are claimed to terminate on account of change in conditions has been

<sup>38</sup> During the World War Turkey did not refrain, however, from advancing against the Allies the argument that all treaties were annulled by the state of war; but the argument, confirms Turlington, " does not appear to have been largely relied upon by the Turks." (*Yale Law Journal*, 1925-26, XXXV, 334.)

<sup>39</sup> See *supra*, p. 189 et seq.

<sup>40</sup> For discussions of the legal question of the right to annul treaties on the ground of change of conditions, see: Bonfils et Fauchille, *Manuel de droit international public*, 7th ed., Paris, 1914, pp. 580-583; Brierly, J. L., *The Law of Nations, an Introduction to the International Law of Peace*, Oxford, 1928, pp. 168-175; Brierly, " Some Considerations on the Obsolescence of Treaties," *Transactions of the Grotius Society*, XI, 11; Bullington, John P., " International Treaties and the Clause 'Rebus Sic Stantibus,'" *University of Pennsylvania Law Review*, 1927-1928, LXXVI, 153-177; Butler and Maccoby, *The Development of International Law*, 1928, pp. 518-

defended by many writers on international law and claimed by most governments of the members of the family of nations in international usage. It is therefore agreed, remarks Oppenheim, " that all treaties

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525; Cattand, G., *La clause 'rebus sic stantibus' du droit prive au droit international*, Paris, 1929; Cobbett, P., *Leading Cases on International Law*, 4th ed., London, 1922, I, 334; Crandall, S. B., *Treaties, their Making and Enforcement*, 1916, p. 440 et seq.; Piore, P., *International Law Codified* (Borchard's translation), N. Y., 1918, sec 787, 833, 834; Foigniet, R., *Manuel elementaire de droit international public*, 13th ed., Paris, 1926, pp. 421-425; Foster, J. W., *The Practice of Diplomacy*, 1906, pp 298-311; Hall, W. E., *International Law*, 7th ed., p. 363 et seq.; Heffter, A. G., *Le droit international de l'Europe* (traduit par Jules Bergson), Paris, 1883, p. 220 et sec.; Hooper v United States (J. B. Scott, *Cases on International Law*, 1922, pp. 470-473); Idenburg, P. J. A., *De l'idee fondamentale de la clause rebus sic stantibus dans le droit des gens*, Amsterdam, 1923; Keeton, G. W., " The Doctrine of 'Rebus Sic Stantibus,' " *The British Year Book of International Law*, 1929, p. III; Lawrence, T. J., *The Principles of International Law*, 4th ed., pp. 326-330; Martens (De), *Traite de droit international* (traduit par Alfred Leo), Pans, 1883, I, 510-515; McNair, A. D., " La termmaison et la dissolution des traites," *Recueil des cours*, Academic de droit international (1928, II); Merignhac, A., *Traite de droit public international*, Paris, 1905, p. 133; Moore, J. B., *Digest of International Law*, Washington, 1906, V, 535 et sec ; Nys, Ernest, *Le droit international*, nouvelle edition, 1912, vol. II, 531; Oppenheim, L., *International Law*, 2d ed., I, 572 ff; Phillimore, R., *Commentaries upon International Law*, 2d ed., London, 1871, II, 109 et seq.; Phillipson, C, and Buxton, N., *The Question of the Bosphorus and Dardanelles*, 1917, p. 115; Pradier-Fodere, *Traite de droit international public Europeen et Americain*, Paris, 1885, II, 888-889; Redslob, *Histoire des grandes pnnicipes du droit des gens*, Paris, 1923, pp. 397-403; Smith, F. E., *International Law*, 5th ed., 1918, p. 149; Taylor, *A Treatise on International Public Law*, ed. 1901, p. 400; Westlake, *International Law*, 2d ed., 1910, I, 295; Williams, J. F., " The Permanence of Treaties—The Doctrine of Rebus Sic Stantibus and Article 19 of the Covenant of the League," *A. J. L L.*, January, 1928, XXII, 89-104; Woolsey, T. H., " The Unilateral Termination of Treaties," *ibid.*, April, 1926, XX, 346-353.

are concluded under the tacit condition *rebus sic stantibus*."<sup>41</sup>

There are writers who have gone so far as to advocate the idea that a state may repudiate a treaty if it is incompatible with its own development. Heffter, one of the exponents of this doctrine, contends that it is permissible for a state to repudiate a treaty which conflicts with " the rights and welfare of its people."<sup>42</sup> A few writers, on the other hand, hold the opposite view, condemning the theory. Prominent among these is Brierly who summarizes his view as follows :

The doctrine is purely a doctrine of the text writers though it has frequently been used in argument to justify the repudiation of treaty obligations. German controversialists appealed to it to justify the violation of Belgium neutrality in 1914, and Turkey to justify her unilateral abrogation of the Capitulations. But there seems to be no recorded case in which its application has been admitted by both parties to a controversy, or in which it has received judicial recognition from an international tribunal. We must be cautious therefore of regarding the doctrine as a statement of existing international law; it is rather a proposal to admit a new principle. . . . The doctrine itself is essentially unjuridical and even if political motives sometimes lead to a treaty being treated as 'a scrap of paper/ international lawyers need not invent a pseudo-legal principle to justify such acts.<sup>43</sup>

<sup>41</sup> L. Oppenheim, *International Law*, 2d ed., I, 572-573.

<sup>42</sup> Heffter, A. G , *Le droit international de l'Europe*, Paris, 1883, p. 221.

<sup>43</sup> J. L. Brierly, *The Law of Nations*, 1928, pp. 172, 174.

The doctrine has received the support of many nations in cases where acts violating treaty obligations were defended: The United States annulled by the act of Congress of July 7, 1798,<sup>44</sup> the treaties of 1778 with France<sup>45</sup> partly on the ground of change of conditions.<sup>46</sup> France refused to recognize the act, and when in 1800 negotiations were opened in Paris, Napoleon Bonaparte insisted that the United States should recognize the former treaties as having been in force or otherwise the act of 1798 would be considered as an act of war.<sup>47</sup>

In 1870, Russia applied the doctrine as a pretext for her release from some of the provisions of the treaty of Paris of 1856, declaring the denunciation of the clauses relating to the neutralization of the Black Sea.<sup>48</sup> Consequently, a conference was held in London in 1871<sup>49</sup> and Russia's declaration was accepted by the signatory powers of the Treaty in a new convention dated March 13, 1871.<sup>50</sup> In addition, a protocol was signed by the powers represented in

<sup>44</sup> See *U. S. Statutes at Large*, I, 578.

<sup>45</sup> For the texts of the treaties, see *Malloy*, I, 468-483.

<sup>46</sup> See *Hooper v. United States*, J. B. Scott, *Cases on International Law*, 1922, pp. 470-473.

<sup>47</sup> Nys, E., *Le droit international*, nouvelle edition, 1912, II, 534.

<sup>48</sup> See P. Cobbett, *Leading Cases on International Law*, 4th ed., London, 1922, I, 343; also, Stowell and Munro, *International Cases*, 1916, I, 134. For the text of the British reply to the Russian note of denunciation, see Hertslet, *The Map of Europe by Treaty*, III, 1898-1900.

<sup>49</sup> The protocols of the Conference are found in Noradounghian, *op. cit.*, III, 301-332.

<sup>50</sup> *Ibid.*, III, 333-337.

the Conference giving effect to the recognition of the principle of " non-alterations of treaties without consent of contracting parties."<sup>51</sup>

This protocol seems to lose its significance, however, when we consider the circumstances under which it was dictated. It was in response to Russia's declaration of the denunciation of some of the provisions of the treaty of 1856 on the grounds that material changes of naval warfare had taken place and that the said treaty had been violated by some of the signatory Powers. The protocol, therefore, as Mr. Woolsey words it, seems " to amount to no more than a declaration that a treaty cannot be annulled by one of the parties without the consent of the other in circumstances which involve no change in the fundamental conditions on which the treaty is based and which show no violation of the treaty by the other party."<sup>52</sup>

A test case occurring shortly after the declaration of 1871 was signed shows the degree of influence that the protocol exerted on international treaty relations. In spite of her being a party to the protocol, Russia declared in 1886 her withdrawal from

<sup>51</sup> See *supra*, p. 169.

Similarly, in violation of the treaty of Frankfort of 1881 between France and Germany which provided for free access and residence to the nationals of the two parties in each country, Germany placed restrictions on the entrance and residence of French nationals in Alsace-Lorraine on the ground of changed conditions. (See Rolin Jacquemyns, " La question des passeports en Alsace-Lorraine," *R. D. I. L. C.*, 1888, **XX**, 615-623.)

<sup>52</sup> *A. J. I. L.*, April, 1926, **XX**, 349.

Article LIX of the Treaty of Berlin of 1878 relating to the freedom of the port of Batoum.<sup>53</sup> Great Britain protested, but the other signatory powers of the violated treaty seem to have tacitly yielded. Again, in violation of Article XXV of the same treaty, Austria-Hungary declared in October, 1908, the annexation of Bosnia and Herzegovina/<sup>54</sup> and simultaneously, defying Article T, Bulgaria declared herself independent.<sup>55</sup>

The question of applying the doctrine *rebus sic stantibus* to capitulatory treaties, and thus of their

<sup>53</sup> See Jacquemyns, "Suppression de la franchise du port de Batoum," *R. D. I. L. C.*, 1887, XIX, 37-49; cf. also, Martens, *Nouveau recueil general de traitfs*, 2d scr., XIV, 169-171.

<sup>54</sup> See Vcsnitch, "L'Annexion de la Bosme-Herzegovine et le droit international," *R. D. L L C.*, 1909, 2eme serie, XI, 123-141; also, Martens, *Nouveau recueil general de traites*, 3d ser, II, 657-664; *ibid*, IV, 31-53.

<sup>55</sup> It is to be noted that we find a special consideration of this question in Article XIX of the Covenant of the League of Nations which provides that "the assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world" (The relation of the clause *rebus sic stantibus* to the provision of the Covenant is treated by J. F. Williams in his article, "The Permanence of Treaties," *A. J. I. L.*, January, 1928, XXII, 89-104.)

The problem as to when and what treaties may become *inapplicable* and likely to *endanger the peace of the world* is still to be solved. In giving notice of the formal termination of the treaty of 1865 with Belgium (see *infra*, p. 306, n. 62), the Chinese Government asserted that "this declaration is in conformity with the spirit of art. 19 of the Covenant of the League of Nations, which clearly recognizes the fundamental principle of *rebus sic stantibus* governing international treaties which have become inapplicable." (*A. J. I. L.*, 1927, XXI, 292.)

abrogation by the subjected country alone, has sometimes been the subject of debate.<sup>50</sup> The doctrine was defended by the Turkish delegation at the Lausanne Conference in the attempt to secure the complete abolition of the capitulations. It was first maintained that the Turkish capitulations were essentially temporary privileges unilaterally and spontaneously granted and could be withdrawn at the pleasure of the grantor; but even if they were to be considered as forming a part of international treaties, the delegates continued, it did not follow from that that they must remain permanently irrevocable.

"Treaties whose duration is not fixed," they said, "imply the clause *rebus sic stantibus*, in virtue of which a change in the circumstances which have given rise to the conclusion of a treaty may bring about its cancellation by one of the contracting parties, if it is not possible to cancel it by mutual agreement. . . . Moreover, the circumstances and the conditions which had brought this regime into being have completely changed. It is unanimously asserted that the capitulations are absolutely incompatible with the principles of modern public law. . . . The capitulations have their origin in the principle of 'personal law' whereas according to modern legal conceptions each state, in order to be considered as an independent State, must enjoy, within the limits of its frontiers, a complete and full independence. Its laws and institutions must have a completely territorial character."<sup>57</sup>

<sup>56</sup> Cf. Paternostro, "La revision des traites avec le Japon au point de vue du droit international," *R. D. I. L. C.*, 1891, XXIII, 1-29, 176-200; also, Sir Travers Twiss, "La juridiction consulaire dans les pays de l'Orient et .specialement au Japon," *ibid* , 1893, XXV, 213-229.

<sup>57</sup> See Appendix V.

It is often advanced that in order that the clause *rebus sic stantibus* may be applicable, the change of conditions must be vital. Could the change of conditions in the case of the Turkish capitulations be deemed so vital as to render the termination of capitulatory treaties justifiable? Answering the question from the point of view of the Western Powers, the only change which would have made the termination of the capitulations justifiable would have been a complete reform of the Turkish judicial system such as to give the foreigner confidence in the administration of justice to submit himself to the local courts. This may seem to be sound and no one would dare question this contention, but the capitulations, as it has been indicated, had come to wear a political and economic garb, and it became necessary, therefore, to annul the system as a whole in order to be rid of the yoke of the political and economic provisions attached thereto. Turkey has not fought against the capitulations in so far as they concerned the right of national jurisdiction to foreigners as much as it really did fight against the other restrictions embodied in the capitulations which limited the sovereignty of the nation and impeded its progress; for Turkey has, as a matter of fact, allowed independent jurisdiction to its own non-Moslem subjects by both necessity and religious sanction. That some of the powers have been entirely disinterested in the political side of the question can hardly be denied, but it would have been inconceivable, for

instance, to allow some to continue the operation of the capitulatory institution and deprive others of its advantages.<sup>58</sup>

The Turkish answer was that the capitulatory regime was incompatible with modern political concepts and that the Turkish judicial system had been improved and elaborated on western models. It was further contended that the number of countries having capitulatory rights in Turkey was only a dozen while all the other nations had citizens who trafficked and resided in Turkey subject to local jurisdiction.

### CONCLUSION

In conclusion, it may be said that in the last decade of its life, the capitulatory institution in Turkey has been maintained at the mouth of the cannon of the West; the system, in its latest period, was largely, if not wholly, based on force. It is not without interest to note that when Germany and Austria-Hungary lost their material support, they were forced to relin-

<sup>58</sup>"The insistence of the Turks," say Toynbee and Kirkwood, "upon abolishing it (the capitulatory system) was not only natural but legitimate, so far had it gone toward giving foreigners a stranglehold on the economic life of the country." (Toynbee and Kirkwood, *Turkey*, p. 142)

"Apart from all consideration of the justice or desirability of the step," remarks Professor Borchard, "one can understand and sympathize with the attempt of the Turkish Government to rid itself—as it undertook to do by notification of the Powers shortly after the outbreak of the European War of 1914—of the serious encroachments upon national sovereignty imposed by the capitulations." (E. M. Borchard, *The Diplomatic Protection of Citizens Abroad*, p 431.)

quish their extritorial rights by the Western Powers themselves.<sup>59</sup>

It seems that the Western Powers have given heed to the bloody fighting of Anatolia against the capitulations. Germany gave up her extritorial privileges in China substituting understanding for force;<sup>60</sup> Russia followed the example,<sup>61</sup> and Belgium followed in their footsteps.<sup>62</sup> The Powers re-

<sup>59</sup> Under the Treaty of Versailles, Germany relinquished her extritorial rights in China (see arts. 128, 129, *Treaty Series*, No. 4, 1919, Cmd. 153, pp. 69-70), in Siam (see art. 135 of the same treaty, *ibid.*, p. 71), in Egypt (see art. 147, *ibid.*, p. 74), and in Morocco (see art. 142, *ibid.*, p. 73).

Similarly, by the Treaty of Saint-Germain, Austria was forced to relinquish her extritorial privileges in the same countries (see Treaty of Saint-Germain of September 10, 1919, *Treaty Series*, No. 11, 1919, Cmd. 400, arts. 97, 102, 110, 113, 114, pp. 25-28). For the relinquishment of the extritorial rights by Hungary, see the Treaty of Trianon of June 4, 1920, *Treaty Series*, No. 10, 1920, Cmd. 896, arts. 81, 86, 94, 97, 98, pp. 23-26.

<sup>60</sup> In the Sino-German agreement of May 20, 1921, it was provided by Article III that "the citizens of either Republic, residing in the territory of the other, shall, in conformity with the laws and regulations of the country, have the right to travel, to settle down and to carry on commerce or industry in all places where the citizens of another nation are allowed to do so. They are placed, both their persons and properties, under the jurisdiction of the local courts; they shall respect the laws of the country wherein they reside. They shall not pay higher imposts, taxes, or contributions than the nationals of the country." (See *Chinese Social and Political Science Review*, October, 1924; also *China Year Book*, 1925, p. 783.)

<sup>61</sup> Russia relinquished her extritorial rights in China by the convention of May 31, 1924, on General Principles for the Settlement of the Question between the Republic of China and the Union of Soviet Socialist Republics (For the text of the agreement, see *l'Europe nouvelle*, July 26, 1924, VII, arts. 10, 12, p. 960.)

<sup>62</sup> There has been a lengthy correspondence between Belgium and China over the question of Belgian extritorial rights in China.

China declared her intention to terminate the treaty of 1865 with Belgium, expressing her willingness, however, to negotiate a new treaty to be based on the principles of reciprocity. (See Public Documents Supplement of the *Chinese Social and Political Science Review*, January, 1927, XI, 1-60; also: *Chinese Social and Political Science Review*, April, 1928, public documents, XII, 23-33; L. H. Woolsey, "China's Termination of Unequal Treaties," *A. J. I. L.*, April, 1927, XXI, 289-294; *Recued des arrets*, publications of la Cour Permanente de Justice Internationale, ser. A, Nos. 8, 14, 16.) Finally, Belgium yielded and a treaty was signed in November, 1928, by which Belgium gave up her extraterritorial rights in China, although in a declaration annexed to the treaty the operation of Article II of the treaty providing for the relinquishment of extraterritoriality was made to begin on January 1, 1930, or when other powers take like steps. (For the text of the treaty with the declarations annexed thereto, see *North-China Herald*, December 1, 1928, CLXIX, 338.)

As to the extraterritorial treaties with the other powers, the State Council of the Chinese National Government announced on Dec. 28, 1929, by unilateral act, the termination of the extraterritorial system. The official mandate declared that on and after the 1st of January, 1930, all foreigners in China should be subject to the laws, ordinances, and regulations promulgated by the Central and Local Government of China. (See *Chinese Weekly Review*, Jan. 4, 1930, p 164.) While from the Chinese point of view extraterritoriality in China is abolished, it is to be noted that the powers concerned have not conceded to the Chinese unilateral declaration and they still insist that the termination of the system should be effected by mutual cooperation and by gradual procedure (See: *Cur. Hist.*, June, 1929, XXX, 538-539; *ibid*, September, 1929, pp 1174-1176; *World Peace Foundation Pamphlets*, XII, No. 3, pp. 171-182; *Nineteenth Century and After*, October, 1929, CVI, 482-488; *Cur Hist*, November, 1929, XXXI, 294-299.)

The question of the abolition of the capitulations in Turkey is compared with the problem of abolishing extraterritoriality in China by A. J. Toynbee in his interesting article, "Turkey and China." Mr. Toynbee seems to be of the opinion that the abolition of the Turkish capitulations was not brought about by unilateral action on the part of Turkey but was the result of agreement between the powers and Turkey, and that China, therefore, should not deem the process by which the Turkish Capitulations were abrogated a precedent in justifying her unilateral action of December, 1929. He maintains that the powers had never recognized the unilateral termina-

## linquished their extraterritorial privileges in Persia<sup>63</sup>

tion of the capitulations by Turkey in 1914 and that the regime was reestablished in 1918 and continued until 1923 when it was abolished by the treaty of Lausanne of 1923. (See *Avia*, June, 1930, XXX, 423-425, 448-449.) Mr. Toynbee's view may be more or less correct, but a careful study of the text of the treaty of Lausanne seems to suggest the view that the abolition of the capitulations in 1914 is recognized to some extent in the agreement of 1923—if not explicitly, at least impliedly. (See *supra*, pp. 232 ff.)

<sup>63</sup> The system of the capitulations was established in Persia through a series of treaties between Persia and the Western Powers. Important among these we may cite the following: The treaties with Russia of January 21, 1732, and of February 22, 1828 (for the text of the latter treaty, see *St. P.*, XV, 669); the treaties with France of January, 1708 and of July 12, 1855 (for the text of the latter, cf. De Clercq, *Recueil des traites de la France*, VI, 571); the treaty with the United States of December 13, 1856 (see *Malloy*, II, 1371); the treaty with Great Britain of March 4, 1857 (*St. P.*, XLVII, 42); the treaty with Austria of May 17, 1857 (*ibid.*, XLVII, 1159); the treaty with the Netherlands of July 3, 1857 (*ibid.*, p. 516); the treaty with Belgium of July 31, 1857 (*ibid.*, p. 622); the treaty with Denmark of November 30, 1857 (*ibid.*, p. 1156); the treaty with Switzerland of July 23, 1873 (*ibid.*, LXIII, 625). For an extended account of the capitulatory regime in Persia, see James Greenfield, "La condition juridique des étrangers en Perse," *Clunet*, 1907, XXXIV, 257-272, 973-985; also, *Recueil des cours*, Academic de Droit International, 1925, II, VII, 309.

By the Sino-Persian treaty of June 1, 1920, China disclaimed extraterritorial rights in Persia. Article IV of the treaty provided that "the consuls of the High Contracting Parties in China and Persia shall not enjoy the right of consular jurisdiction; the subjects or citizens of the High Contracting Parties shall in these countries be respectively submitted to the jurisdiction of Persia or China for their disputes, lawsuits or the crimes which they will commit." Following the example, Soviet Russia relinquished her capitulatory rights in Persia by the treaty of February 26, 1921 (Martens, *Nouveau recueil general de traites*, 3eme serie, XIII, 173), article XVI of which reads as follows: "By virtue of the communication of Federative Russia, dated June 25, 1919, relative to the annulment of consular jurisdictions it is decided that Russian subjects in Persia as well as Persian subjects in Russia shall be treated from this date

and Siam,<sup>64</sup> and it is to be hoped that understanding,

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on the same footing as the inhabitants of the city wherein they reside." (See P. Fauchille, *Traite de droit international public*, I, Sème partie, Paris, 1926, p. 223.)

A few years later, Persia unilaterally abolished the capitulations by notifying the foreign powers on May 10, 1927, that all extraterritorial agreements were to terminate after a period of one year within which new treaties were to be concluded. It is indeed astounding how the capitulatory treaties came to an end so peacefully and without any objections or difficulties this time. In 1923, the European Powers were compelled against their wishes to relinquish their capitulatory rights in Turkey, but in 1928 they seem to have accepted the changed situation in Persia without raising any objections. (See *European Economic and Political Survey*, July 15, 1928, III, 685-696; also, Mirza Riza Kahn, "La Perse et les traites," *Academic diplomatique Internationale*, seances et travaux, annee 1927, Paris, I, 46-47.)

<sup>64</sup> The most ancient form of the extraterritorial system in Siam was that of the allocation of special residences called "champs" wherein each group of foreigners lived under the authority of a "capitaine" chosen by his nationals. The extraterritorial rights were later defined in a series of treaties; sixteen treaties were concluded by twelve powers between 1826 and 1870. (For the texts of these treaties, see W. H. Pitkin, *Siam's Case for Revision of Obsolete Treaty Obligations*, etc., Supplement, pp. 5-143.)

The achievements of King Chulalongkorn (1868-1910) in the field of reforms in the local system of laws made it necessary to modify the strict provisions of the treaties which applied not only to European subjects but also to those born in the Asiatic colonies who were legally European subjects. As early as 1883 England agreed to modify the treaty stipulations by allowing British subjects residing in the northern provinces of Siam to be amenable to the local courts subject to Great Britain's right to evoke from the Siamese courts any case or to appeal to British courts. This arrangement proved satisfactory and in 1909 Great Britain agreed to extend the provisions of the treaty of 1883 to all British pre-registered subjects throughout Siam. For this arrangement and the agreement with France of 1907 bearing similar provisions, Siam had to pay a heavy price. In the meantime, foreign judicial advisers were appointed, but the goal for a complete judicial and fiscal autonomy was far from being reached by Siam. (For the texts of the treaties concluded

cooperation and good will will be the means which will be used in the solution of the problem of extritoriality still operating in other countries.

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by Siam with the Western Powers between 1883 and 1913, see *ibid.*, pp. 144-235.)

Then came the World War witnessing Siam as an ally to the Allied Powers fighting against Germany for the rights of small nations. To the appeals of Siam at Versailles, President Wilson responded expressing his willingness to relinquish the American extritorial rights. This culminated in the signing of the Siamese-American treaty of 1920 which paved the way for the realization of Siam's aspirations. By this treaty (*A. J. I. L.*, XVI, Supplement, p. 25) the United States, without compensation, granted Siam the right to regulate her own tariff rates and the right of jurisdiction over American nationals subject to slight limitations.

On March 10, 1924, a treaty was signed between Siam and Japan (*League of Nations, Treaty Series*, XXXI, 187, Reg. No. 795) to the effect of relinquishing the Japanese extritorial rights modeled upon the American treaty. France followed the example in her treaty of February 14, 1925 (*ibid.*, XLIII, 193, Reg. No. 1055); the Netherlands in her treaty of June 8, 1925 (*ibid.*, LVI, 57, Reg. No. 1323); Great Britain in her three treaties of July and November, 1925 (*A. J. I. L.*, 1928, XXII, Supplement, pp. 12-35). Treaties with the other European powers were signed in 1925 and in 1926 to the same effect. In the words of F. B. Sayre- "What was inevitable sooner or later has come, not through blood and fighting, but through the method of large-visioned statesmanship and peace. As a result, instead of the folly and waste of war, gam will come to all." (On the capitulations in Siam, see: P. Fauchille, *Trade de droit international public*, I, 3eme partie, Seme ed., pp. 220-222; C. C. Hyde, "The Relinquishment of Extraterritorial Jurisdiction in Siam," *A. J. I. L.*, 1921, XV, 428-430; E. R. James, "Jurisdiction over Foreigners in Siam," *ibid.*, 1922, XVI, 585-603; Moncharville, "Le regime capitulaire an Siam et le traite Franco-Siamois du 14 Fevrier 1925," *R. G. D. L P.*, 1926, XXXIII, 321-356; G. Padoux, "Condition juridique des etrangers au Siam," *Clunet*, 1908, XXXV, 693-713, 1037-1054; *ibid.*, 1910, XXXVII, 78-81; *ibid.*, 1922, XLIX, 551-557; Pila, F., "Les nouveaux accords Franco-Siamois," *L'Europe nouvelle*, February 21, 1925, VIII, 242-244, 258-262; Pitkm, W. H., *Siam's Case for Revision of Obsolete Treaty Obligations admittedly*

*inapplicable to present conditions*, 1919; Regelsperger, G., "Le nouveau traite Franco-Siamois," *R. G. D. I. P.*, 1908, XV, 24-50; Riviere, L., "De la confection au Siam des codes applicables aux nationaux et aux etrangers," *Clunet*, 1912, XXXIX, 413-419; Sayre, F. B., "The Passing of Extraterritoriality in Siam," *A. J. I. L.*, January, 1928, XXII, 70-88; X, "British Extraterritorial Jurisdiction in Siam," *A. J. I. L.*, 1909, III, 954-958; X, "The United States agrees to the Abolition of Extraterritoriality in Siam," *The Weekly Review of the Far East*, July 2, 1921, XVII, 228-238)

## CONCLUSION

Having laid down the concrete facts regarding the nature and history of the capitulatory system and having, in the light of these facts, made conclusive statements, the author may perhaps be permitted now to give his personal view in the following general conclusion. If the reader has followed the trend of the discussion from beginning to end, he will certainly agree that the story of the capitulations presents a worthy lesson to the nations of the world: *Never can a system imposed at the mouth of the cannon be permanent.* Had the powers, instead of being moved by prejudice, intrigue, and selfishness, cooperated in introducing judicial reforms in Turkey; had the powers refrained from attempting to put into practice the impracticable terms of the Treaty of Sevres; had they resorted to good will, understanding and candor in their dealings with the Ottoman Empire, the capitulations would have been gradually and peacefully buried without detriment to any power concerned. But the powers, proud of their strength and still cherishing the dictum "Might makes Right," attempted by threat of arms the subjugation of unyielding Anatolia. The world is informed of the result of this campaign. Will the nations take heed?

The Golden Rule is indeed a humane rule to live by, and it applies politically as well as morally and among nations as among individuals. The old chivalry and thrill of fighting exist no more in this mechanical age. The world of to-day needs peace and understanding and not war and intrigue, for as the Arabian poet says:

"Mansions founded at the mouth of the cannon last not;  
For buildings based on arms crumble fast.  
Only empires on the rock of understanding erected  
With justice for a base shall forever last."

## APPENDIX I

### CAPITULATION OF 1535 WITH FRANCE <sup>1</sup>

Be it known to every body that in the year of Jesus Christ one thousand five hundred and thirty-five, in the month of February, and of Mohammed 941, in the moon of Chaban, Sir Jean de la Foret, privy councilor, and ambassador of the most excellent and most powerful prince Francis, by the grace of God most Christian King of France, accredited to the most powerful and invincible Grand Signior, Sultan Suleiman, Emperor of the Turks, and having discussed with the powerful and magnificent Signior Ibrahim, Serasker of the Sultan, the calamities and disadvantages which are caused by war, and, on the other hand, the good, quiet, and tranquility derived from peace; and knowing how good it is to prefer the one (peace) to the other (war), each of them guaranteeing the above-mentioned monarchs, their superiors, they have negotiated and agreed upon the following chapters and conventions in the name and on the honor of the said monarchies which are the protectors of their component States and the benefactors of their subjects:

I. They have negotiated, made, and concluded a valid and sure peace and sincere concord in the name of the above Grand Signior and King of France during their lives and for the kingdoms, dominions, provinces, castles, cities, ports, harbors, seas, islands, and all other places they hold and possess

<sup>1</sup> This text is reproduced from a translation found in *S. Doc*, No 34, 67th Cong., 1st sess. The French version is found in Testa, *Recueil des traites de la Porte Ottomane*, I, 15-21; also in Noradounghian, G., *Recueil d'actes internationanx de l'Empne Ottoman*, I, 83-87. The text in French and Latin is given in Charnero, E., *Negotiations de la France dans le Levant*, I, 283-294.

at present or may possess in the future so that all subjects and tributaries of said sovereigns who wish may freely and safely, with their belongings and men, navigate on armed or unarmed ships, travel on land, reside, remain in and return to the ports, cities, and all other places in their respective countries for their trade, and the like shall be done for their merchandise.

II. Likewise, the said subjects and tributaries of the said monarchs shall, respectively, be able to buy, sell, exchange, move, and transport by sea and land from one country to the other all kinds of merchandise not prohibited, by paying only the ordinary customs and ancient dues and taxes, to wit, the Turks, in the dominions of the King, shall pay the same as Frenchmen, and the said Frenchmen in the dominions of the Grand Signior shall pay the same as the Turks, without being obliged to pay any other new tribute, impost, or storage due.

III. Likewise, whenever the King shall send to Constantinople or Pera or other places of this Empire a bailiff—just as at present he has a consul at Alexandria—the said bailiff and consul shall be received and maintained in proper authority so that each one of them may in his locality, and without being hindered by any judge, *cadi*, *soubashi*, or other, according to his faith and law, hear, judge, and determine all causes, suits and differences, both civil and criminal, which might arise between merchants and other subjects of the King. Only in case the orders of the said bailiffs and consuls should not be obeyed and that in order to have them executed they should appeal to the *soubashi* or other officer of the Grand Signior, the said *soubashis* or other officers shall lend them the necessary aid and compulsory power. But the *cadi* or other officers of the Grand Signior may not try any difference between the merchants and subjects of the King, even if the said merchants should request it, and if perchance the said *cadis* should hear a case their judgment shall be null and void.

IV. Likewise, in a civil case against Turks, tributaries, or other subjects of the Grand Signior, the merchants and subjects of the King cannot be summoned, molested, or tried unless the said Turks, tributaries, and subjects of the Grand Signior produce a writing from the hand of the opponent, or a "heudjet " (document) from the cadı, bailiff, or consul, outside of which writing or heudjet no other testimony of a Turk, tributary, or other person shall be valid nor received in any part of the States and dominions of the Grand Signior, and the cadıs, soubashıs, or other persons may not hear or try the said subjects of the King without the presence of their dragoman.

V. Likewise, in criminal cases the said merchants and other subjects of the King may not be called before the cadı or other officers of the Grand Signior by Turks, tributaries, or others, and said cadıs may not try them, but must immediately refer them to the Sublime Porte (the official residence of the Grand Vizier) and in the absence of the Porte, to the principal lieutenant of the Grand Signior, where the testimony of the subject of the King and of the tributary of the Grand Signior shall be valid one against the other.

VI. Likewise, as regards religion, it has been expressly promised, concluded, and agreed that the said merchants, their agents, and servants, and all other subjects of the King shall never be molested nor tried by the cadıs, sandjak-beys, or soubashıs, or any person but the Sublime Porte only, and they cannot be made or regarded as Turks (Mohammedans) unless they themselves desire it and profess it openly and without violence. They shall have the right to practice their own religion.

VII. Likewise, when one or more subjects of the King, having made a contract with a subject of the Grand Signior, taken merchandise, or incurred debts, afterwards depart from the State of the Grand Signior without giving satisfaction,

the bailiff, consul, relatives, factor, nor any other subject of the King shall for this reason be in any way coerced or molested, nor shall the King be held responsible. Only His Majesty shall cause full justice to be done to the plaintiff as regards the person and goods of the debtor if they be found within his Kingdom and dominions.

VIII. Likewise, the said merchants, their agents, and servants, and other subjects of the King, their ships, boats, or other equipments, artillery, ammunition, and mariners shall not be seized, coerced, or used by the Grand Signior or other person against their pleasure and desire for any service or duty either on sea or land.

IX. Likewise, all merchants and subjects of the King in all parts of the Empire of the Grand Signior shall be allowed to freely dispose of their property by testament, and having died either a natural or violent death, all their effects—money as well as other goods—shall be distributed according to the testament; if they die intestate, the effects shall be turned over to the heir or his representative by and with the authority of the bailiff or consul at places where there may be one or the other, and where there is neither bailiff nor consul the said effects shall be protected by the inventory in the presence of witnesses; but where said bailiff or consul are present no *cadi*, *beitulmaldji*, or other person shall take possession of the effects, and if they should be in the hands of one of them and the bailiff or consul should demand them they must at once and without contradiction be entirely turned over to the said bailiff or consul or their representative, to be later handed to whom they belong.

X. Likewise, as soon as the present treaty shall have been ratified by the Grand Signior and the King, all persons and subjects shall be set free and liberated who may, respectively, be bought slaves, prisoners of war, or otherwise detained, both in the hands of the said sovereigns or of their subjects, galleys, ships, and all other places and countries owing allegiance to

the said sovereigns,, on the demand and statement of the ambassador,, bailiff,, or consul of the King, or persons delegated by them; and if any of the said slaves should have changed his faith and religion he shall nevertheless be free. And, especially, henceforth reciprocally neither the Grand Signior nor the King, their captains, soldiers, tributary subjects, or mercenaries, shall or may in any manner, on sea or land, take, buy, sell, or detain as a slave any prisoner of war. But if a pirate or other person of the country of one of the said sovereigns should attempt to capture or destroy the goods or persons owing allegiance to the other sovereign, the sovereign of the country where the malefactor is found must and should be obliged to punish him as a disturber of the peace and to make an example to others, and also to return to the injured party whatever may be found to have been taken from him by the malefactor. If the said malefactor should escape without being caught and punished at once, he shall be banished from his country with his accomplices, and all their goods shall be confiscated by the sovereign, who shall also cause the malefactor and his companions to be punished if they should ever be in his power; and out of the said confiscation shall be paid the damages, and the injured party shall to that end have recourse to the protectors of the present peace, who shall be the Serasker on the part of the Sultan, and the " grand-maitre " of France on the part of the King.

XI. Likewise, when the navies of the said Grand Signior and King, respectively, meet vessels of the subjects of the other, they shall be obliged to lower the sails and hoist the flags of their ruler, in order to be recognized thereby and not be detained or otherwise molested by said navy or any unit thereof; but if any wrong or damage be inflicted upon them, the ruler to whom the navy belongs shall be obliged to make immediate reparation. When private ships of the subjects of said rulers meet they shall each hoist the flag of its ruler,

salute each other by firing one gun, and reply truthfully when asked who they are. But after having spoken and recognized each other one shall not forcibly enter or visit the other, nor hinder it under any pretext whatsoever.

XIT. Likewise, when a vessel belonging to subjects of the King arrives, by accident or otherwise, in the ports or on the coasts of the Grand Signior, it shall receive food and other necessaries against a reasonable payment, without being obliged to discharge and pay duties, and it shall be allowed to go wherever it pleases; and having come to Constantinople, it shall be ready to leave after having obtained and paid for the heudjet (permit) of emin (official), and having been searched and visited by the said emin, the}^ must not be visited at any other place, except the castles of the straits of Gallipoli, without, however, paying anything there or elsewhere, in the name of the Grand Signior or his officers, for the departure.

XIII. Likewise, if any ship belonging to the subjects of one of the said sovereigns should, by accident or otherwise, suffer shipwreck within the dominions and the jurisdiction of the other sovereign all persons escaping from such danger shall remain free and be allowed to collect all their belongings; if all should have died in the shipwreck the goods which shall have been saved shall be consigned to the said bailiff, or consul, or their representative, to be returned to whom they may belong; and the captain general of the sea, the sandjak-bey, soubashi, cadî, or other officer or subject of the Grand Signior shall not, under penalty of punishment, take or claim anything, and they must give facilities and assistance to those who shall be charged with the recovery of the goods.

XIV. Likewise, if a subject of the Grand Signior should lose a slave who has escaped, such subject, claiming that the slave had lived and served on a ship or in a house of a subject of the King, cannot force the subject of the King to do anything but search his ship or house, and if the slave could be

found there, the person who received him should be duly punished by his bailiff or consul and the slave returned to his master. If the slave was neither in their ship nor in their house, said subjects of the King shall not and cannot be molested in this connection.

XV. *No* subject of the King who shall not have resided for 10 full continuous years in the dominions of the Grand Signior shall or can be forced to pay tribute, Kharadj, Avari, Khassabiye, nor the guard neighboring land, storehouses of the Grand Signior, work in an arsenal, or perform any other forced service. In the dominions of the King reciprocal rights shall be granted to the subjects of the Grand Signior.

The King of France has proposed that His Holiness the Pope, the King of England, his brother and perpetual ally, and the King of Scotland should be entitled to adhere to his treaty of peace, if they please, on condition that when desirous of doing so they shall within eight months from date send their ratifications to the Grand Signior and obtain his.

XVI. Likewise, the Grand Signior and the King of France shall within six months exchange the confirmation of the present treaty in valid and due form, with the promise to observe it, and the order to all their lieutenants, judges, officers, and subjects to observe it without bad faith and in all its points; and in order that nobody should plead ignorance, this treaty, after the confirmations have been exchanged, shall be published at Constantinople, Alexandria, Marseille, Narbonne, and other principal cities and ports of the Jurisdiction, kingdoms, and states of the said sovereigns.

## APPENDIX II

### LAW CONCEDED TO FOREIGNERS THE RIGHT OF HOLDING REAL ESTATE IN THE OTTOMAN EMPIRE '

#### IMPERIAL RESCRIPT

Let it be done in conformity with the contents.- 7 Sepher, 1284. (January 18, 1867.)<sup>2</sup>

With the object of developing the prosperity of the country, to put an end to the difficulties, to the abuses and to the uncertainties which have arisen on the subject of the right of foreigners to hold property in the Ottoman Empire, and to complete, in accordance with a precise regulation, the safeguards which are due to financial interests and to administrative action, the following legislative enactments have been promulgated by the order of His Imperial Majesty the Sultan.

#### ART. I

Foreigners are admitted, by the same privilege as Ottoman subjects, and without any other restriction, to enjoy the right of holding Real Estate whether in the city or the country, throughout the Empire, with the exception of the Province of the Hedjaz, by submitting themselves to the laws and regulations which govern Ottoman subjects, as is hereafter stated.

<sup>1</sup> From a translation found in *Malloy*, II, 1346-1348. Another English translation is found in J. Baker, *Turkey*, N. Y., 1877. The French version is given in *St. P.*, LVIII, 22.

<sup>2</sup> The date as given in the French text published in the *British and Foreign State Papers* is June 18, 1867.

This arrangement does not concern subjects of Ottoman birth who have changed their nationality, who shall be governed in this matter by a special law.

#### ART. II

Foreigners, proprietors of Eeal Estate in town or in country, are in consequence placed upon terms of equality with Ottoman subjects in all things that concern their landed property.

The legal effect of this equality is :

1. To oblige them to conform to all the laws and regulations of the police or of the municipality which govern at present or may govern hereafter the enjoyment, the transmission, the alienation and the hypothecation of landed property.

2. To pay all charges and taxes under whatever form or denomination they may be, that are levied, or may be levied hereafter, upon city or country property.

3. To render them directly amenable to the Ottoman civil tribunals in all questions relating to landlord property, and in all real actions, whether as plaintiffs or as defendants, even when either party is a foreigner. In short, they are in all things to hold Eeal Estate by the same title, on the same condition and under the same forms as Ottoman owners and without being able to avail themselves of their personal nationality, except under the reserve of the immunities attached to their persons and their movable goods, according to the treaties.

#### ART. III

In case of the bankruptcy of a foreigner possessing real estate, the assignees of the bankrupt may apply to the authorities and to the Ottoman civil tribunals requiring the sale of the real estate possessed by the bankrupt, and which by its nature and according to law is responsible for the debts of the owner.

The same course shall be followed when a foreigner shall have obtained against another foreigner owning real estate a judgment of condemnation before a foreign tribunal.

For the execution of this judgment against the real estate of his debtor, he shall apply to the competent Ottoman authorities, in order to obtain the sale of that real estate which is responsible for the debts of the owner; and this judgment shall be executed by the Ottoman authorities and tribunals only after they have decided that the real estate of which the sale is required really belongs to the category of that property which may be sold for the payment of debt.

#### ART. IV

Foreigners have the privilege to dispose, by donation or by testament, of that real estate of which such disposition is permitted by law.

As to that real estate of which they may not have disposed, or of which the law does not permit them to dispose by gift or testament, its succession shall be governed in accordance with Ottoman law.

#### ART. V

All foreigners shall enjoy the privileges of the present law, as soon as the Powers on which they depend shall agree to the arrangements proposed by the Sublime Porte for the exercise of the right to hold real estate.

## APPENDIX III

### PROTOCOL RELATIVE TO THE RIGHT OF FOREIGNERS IN RESPECT TO REAL ESTATE IN THE TURKISH DOMINIONS<sup>1</sup>

The law granting foreigners the right of holding real estate<sup>2</sup> does not interfere with the immunities specified by the treaties, and which will continue to protect the person and the movable property of foreigners who may become owners of real estate.

As the exercise of this right of possessing real property may induce foreigners to establish themselves in larger numbers in the Ottoman Empire, the Imperial Government thinks it proper to anticipate and to prevent the difficulties to which the application of this law may give rise in certain localities. Such is the object of the arrangements which follow.

The domicile of any person residing upon the Ottoman soil being inviolable, and as no one can enter it without the consent of the owner, except by virtue of orders emanating from competent authority and with the assistance of the magistrate or functionary invested with the necessary powers—the residence of foreigners is inviolable on the same principle, in conformity with the treaties, and the agents of the public force cannot enter it without the assistance of the Consul or of the delegate of the Consul of the Power on which the Foreigner depends.

<sup>1</sup> *Malloy*, II, 1344-1346. This protocol, the original of which is in the French language, was separately signed by each of the powers interested.

<sup>2</sup> See Appendix II.

By residence we understand the house of inhabitation and its dependencies: that is to say, the out houses, courts, gardens and neighboring enclosures, to the exclusion of all other parts of the property.

In the localities distant by less than nine hours journey from the consular residence, the agents of the public force cannot enter the residence of a foreigner without assistance of a Consul, as was before said.

On his part the Consul is bound to give his immediate assistance to the local authority, so as not to let six hours elapse between the moment which he may be informed and the moment of his departure, or the departure of his delegate, so that the action of the authorities may never be suspended more than twenty-four hours.

In the localities distant by nine hours or more than nine hours of travel from the residence of the Consular agent, the agents of the public force may on the request of the local authority and with the assistance of three members of the Council of the Elders of the Commune, enter into the residence of a foreigner, without being assisted by the Consular Agent, but only in case of urgency, and for the search and the proof of the crime of murder, of attempt at murder; of incendiarism, of armed robbery either with infraction or by night in an inhabited house, of armed rebellion and of the fabrication of counterfeit money, and this entry may be made whether the crime was committed by a foreigner or by an Ottoman subject, and whether it took place in the residence of a foreigner or not in his residence, or in any other place.

These regulations are not applicable but to the parts of the real estate which constitute the residence, as it has been heretofore defined.

Beyond the residence, the action of the police shall be exercised freely and without reserve; but in case a person charged with crime or offence, should be arrested, and the

accused shall be a foreigner, the immunities attached to his person shall be observed in respect to him.

The functionary or the officer charged with the accomplishment of a domiciliary visit, in the exceptional circumstances determined before, and the members of the Council of Elders who shall assist him, will be obliged to make out a *proces-verbal* of the domiciliary visit, and to communicate it immediately to the superior authority under whose jurisdiction they are, and the latter shall transmit it to the nearest Consular agent without delay.

A special regulation will be promulgated by the Sublime Porte, to determine the mode of action of the local police in the several cases provided heretofore.

In localities more distant than nine hours<sup>1</sup> travel from the residence of the Consular agent, in which the law of the judicial organization of the Velayet may be in force, foreigners shall be tried, without the assistance of the Consular delegate by the Council of Elders fulfilling the function of justices of the peace, and by the tribunal of the canton, as well for actions not exceeding one thousand piastres as for offences entailing a fine of five hundred piastres only at the maximum.

Foreigners shall have, in any case, the right of appeal to the tribunal of the Arrondissement against the judgments issued as above stated, and the appeal shall be followed and judged with the assistance of the Consul, in conformity with the treaties.

The appeal shall always suspend the execution of a sentence.

In all cases the forcible execution of the judgments, issued on the conditions determined heretofore shall not take place without the cooperation of the Consul or of his delegate.

The Imperial Government will enact a law which shall determine the rules of procedure to be observed by the parties, in the application of the preceding regulations.

Foreigners, in whatever localities they may be, may freely submit themselves to the jurisdiction of the Council of Elders or of the tribunal of the canton without the assistance of the Consul in cases which do not exceed the competency of these councils or tribunals, reserving always the right of appeal before the tribunal of the Arrondissement, where the case may be brought and tried with the assistance of the Consul or his delegate.

The consent of a foreigner to be tried as above stated, without the assistance of his Consul, shall always be given in writing and in advance of all procedure.

It is well understood that all these restrictions do not concern cases which have for their object questions of real estate, which shall be tried and determined under the conditions established by the law.

The right of defence and the publicity of the hearings shall be assured in all cases to foreigners who may appear before the Ottoman tribunals, as well as to Ottoman subjects.

The preceding dispositions shall remain in force until the revision of the ancient treaties—a revision which the Sublime Porte reserves to itself the right to bring about hereafter by an understanding between it and the friendly Powers.

## APPENDIX IV

IDENTICAL NOTE FROM THE TURKISH MINISTER FOR FOREIGN AFFAIRS TO THE AMBASSADORS IN CONSTANTINOPLE DECLARING THE DECISION OF THE OTTOMAN GOVERNMENT TO ABROGATE THE CAPITULATIONS BEGINNING OCT. 1, 1914 '

SUBLIME PORTE, MINISTRY FOR FOREIGN AFFAIRS,  
CONSTANTINOPLE, September 9, 1914.

Mr. Ambassador: The Imperial Ottoman Government,, in its sentiments of hospitality and sympathy towards the subjects of the friendly Powers, had in former times determined in a special manner the rules to which foreigners coming to the Orient to trade there should be subject, and had communicated those rules to the Powers. Subsequently those rules, which the Sublime Porte had decreed entirely of its own accord, were interpreted as privileges, corroborated and extended by certain practices, and were maintained down to our days under the name of ancient treaties (or Capitulations). Meanwhile these privileges, which on the one hand were found to be in complete opposition to the juridical rules of the century and to the principle of national sovereignty, constituted on the other hand an impediment to the progress and the development of the Ottoman Empire, just as they gave birth to certain inis-

<sup>1</sup>From a translation in *For. Rel.*, 1914, pp. 1092-1093. Another translation is found in *The Times*, London, *Documentary History of the War*, IX, Diplomatic Part 3, pp. 269-271. For the French version, see: *R. G. D. I. P.*, 1914, XXI, 488-489; *ibid.*, 1915, XXII, *Documents*, 139-140; Martens, *Nouveau recueil general de traites*, 3eme serie, X, 741-743.

understandings in its relations with the foreign Powers; and thus they formed an obstacle to the attainment of the desired degree of cordiality and sincerity in those relations.

The Ottoman Empire, surmounting all resistance, continues to march in the path of renaissance and reform which it entered upon in 1255 by the Hatti-Humayoun of Gul-Hane, and, in order to assure for itself the place which was due it in the family of the civilized peoples of Europe, it accepted the most modern juridical principles and did not deviate from the program of supporting the edifice of the State on these foundations. The establishment of the constitutional regime demonstrates with what happy success the efforts of the Ottoman Government in the way of progress were crowned.

However, as consequences deduced from the Capitulations, the intervention of foreigners in the exercise of judiciary power, which constitutes the most important basis of the sovereignty of the State; the limitation of the legislative power, by the claim put forth that many laws could not be applied to foreigners; the fact that a criminal who has committed an offense against public security is screened from the application of the laws on the sole ground of his being of foreign nationality; or again the fact that public action is compromised by the necessity of respecting in regard to the foreign delinquent all sorts of restrictions and conditions; the fact filially that, according to the nationality of the contracting parties, a difference arising from a single contract admits of a different forum and mode of procedure—all these facts and other similar restrictive privileges constitute an insurmountable barrier to all organization of tribunals begun with a view to assuring in the country the perfect working of justice.

Likewise, that consequence of the Capitulations which renders foreigners exempt and free from taxes in the Ottoman

Empire renders the Sublime Porte powerless not only to procure the necessary means for providing for the carrying out of reforms, but even for satisfying current administrative needs, without having recourse to a loan. In the same order of ideas, the obstacles raised to the increase of indirect taxes result in raising the quota of direct taxes and in overburdening the Ottoman taxpayers. The fact that foreigners trading in the Ottoman Empire and enjoying there all sorts of immunities and privileges are less heavily taxed than Ottomans constitutes at the same time a manifest injustice and an infringement of the independence and dignity of the State. The Imperial Government, in spite of all these obstacles, was zealously pursuing its efforts at reform when the unforeseen outbreak of the general war brought the financial difficulties in the country to the last degree of acuteness, endangering the accomplishment of all the work which had been begun or the undertaking of which had been decided upon. Now the Sublime Porte is convinced that the only means of salvation for Turkey is to bring into being this work of reform and of development as soon as possible, and it is likewise convinced that all the steps that it takes in this direction will meet with the encouragement of all the friendly Powers.

It is on the basis of this conviction that the decision has been taken to abrogate, reckoning from October 1, 1914, the Capitulations, which up to the present have constituted a hindrance to all progress in the Empire, as well as all privileges and toleration accessory to these Capitulations or resulting from them, and to adopt as the basis of relations with all States the general principles of international law.

While having the honor of communicating the present decision, which as it is to open an era of happiness for the Ottoman Empire will for this reason, I have no doubt, be received with satisfaction . . . . , I consider it my duty to add that the Sublime Porte, inspired exclusively in its decision

by the higher interests of the Ottoman land, does not nourish, in abrogating the Capitulations, any unfriendly thought in regard to any Power and that it is quite disposed to enter upon negotiations with a view to concluding . . . . treaties of commerce on the basis of the general principles of public international law.

Kindly accept (etc.).

SAID HALIM.

## APPENDIX V

### MEMORANDUM READ BY THE TURKISH DELEGATE AT THE LAUSANNE CONFERENCE AT THE MEETING OF DE- CEMBER 2, 1922, OF THE COMMISSION ON THE RE- GIME OF FOREIGNERS '

The origin of the Capitulations, which set up a regime plainly contrary to the rules of modern international public law, and which restrict the sovereignty exercised by a State, within the limits of its territory, over persons and property, is of an importance which must be generally recognized. The system which was in force almost everywhere in the middle ages was that of "personal" law, a system which was not then considered to be incompatible with the prerogatives of the sovereignty of the State. Thus foreign communities were granted privileges in virtue of which consuls undertook the duties of the public authorities in regard to the maintenance of order, and applied their national laws in matters which concerned their nationals alone.

This same idea further exercised a certain influence on the relations between foreigners and natives, and there was considered to be no objection to the laws of the country being applied to foreigners only in the restricted way. It was for this reason that the crusaders, when they passed Constantinople, were able to obtain the grant of certain privileges from the Byzantine Emperors. The Venetians and the Genoese who lived in Galata received similar privileges also. In the same way, long before the occupation of Constantinople by the Turks, the Moslem colony in that city was subjected to the

<sup>1</sup> *Turkey No. 1 (1923). Cmd. 1814, pp. 471-480.*

jurisdiction of a *cadi*, who exercised jurisdiction in accordance with the *Sheri* law. When Mohammed II seized Constantinople, he maintained, although he was in no way obliged to do so, the privileges enjoyed by the Venetians and the Genoese.

If, at a period when the Ottoman Empire had reached the zenith of its glory and its power, Soleyman I granted privileges to the Frankish community, he did so merely because at that time the sovereignty of the State did not possess an absolute and exclusive character as it does to-day. No one could justly maintain to-day that, in granting these privileges, the Sultan contemplated any restriction or diminution of the sovereignty of his Empire. All these privileges, as have been stated above, arose out of the system of "personal" law, which at that time was generally in force.

Further, foreigners who came to Turkey to establish themselves there, or to engage in trade, were subject to restrictions imposed not only by their own respective Governments but also by the Ottoman authorities.

They were, generally speaking, carefully chosen and responsible persons, who deposited a bond with their Governments in order to be allowed to come to Turkey. Moreover, their stay in that country was of limited duration.

Later, as international commercial relations gradually developed, the number of foreigners coming to Turkey increased. On the other hand, the Western States gradually abolished the regulations which required their subjects either to obtain permission for a journey to the east or to deposit the necessary bond.

On lines parallel with this development of international relations there arose not only in theory but also in practice the idea of substituting for the conception of "personal" law that of "territorial" law, and, at the same time, the juridical character of the State becoming better understood, the right to legislate and to administer justice became one of the ex-

elusive attributes of sovereignty. It is for this reason that the modern State considers it a perfectly natural consequence of its power that foreigners living on its territory should not be exempted from the application of the laws in force therein. Above all, it will not tolerate that foreigners should have, in any respect whatever, rights and privileges which would place them above its own nationals, since it would consider such a state of affairs to be an infringement of its sovereignty and a danger to its security. Finally, by the treaties and conventions which it concludes with perfect independence, it regulates the conditions under which foreigners may remain upon its territory, and determines the laws and regulations to which they must conform while they are there.

The anomalous character of the capitulatory regime in relation to public international law and to modern conceptions of sovereignty was recognized by the Powers who took part in the Congress of Paris in 1856.

Indeed, the Earl of Clarendon, at the meeting of the 28th March of this Congress, declared himself in favour of "the necessity which lay upon the contracting Powers, who had called Turkey to become part of the political system of Europe, to give striking evidence of the sentiments which united them and of their solicitude for the general interests of their respective subjects by endeavouring to come to an agreement for the purpose of harmonizing the relations of their commerce and navigation with the new position which would be assigned to the Ottoman Empire/'

Count Waleski supported this opinion, and recommended its adoption on the ground of the new principles to which the deliberations of the Congress would give rise.

Again, Count Cavour drew attention to the fact "that no Power possesses a commercial legislation more liberal than that of Turkey, and the anarchy which prevails in the transactions or rather in the personal relations of foreigners re-

siding in the Ottoman Empire has its origin in stipulations due to an exceptional situation." Following on Ali Pasha's statements regarding "the suppression of the Capitulations/" the other plenipotentiaries, including Baron de Bourguency, openly recognized that the Capitulations corresponded to a situation which the Treaty of Peace would inevitably tend to bring to an end., and that the privileges which they provided for in the case of individuals limited the authority of the Sublime Porte in a regrettable way. After this exchange of views the plenipotentiaries unanimously agreed that it was necessary to revise the stipulations which determined the commercial relations of the Porte with other Powers, as well as the conditions under which foreigners resided in Turkey, and decided to record in the protocol the hope that a discussion should be opened at Constantinople, after the conclusion of peace between the Porte and the representatives of the other contracting Powers, with a view to attain this two-fold object in a manner fitted to give entire satisfaction to all legitimate interests.

This shows that as long as sixty-six years ago the representatives of England, France and Italy recognized, in so solemn a Congress as the one described, the necessity of terminating the Capitulations because of their incompatibility with modern conceptions of law, and because of the manner in which they infringed the sovereignty of the State.

During the period subsequent to the conclusion of the Treaty of Paris, Turkey has worked feverishly at the perfection of her judicial system, which she had already taken in hand.

The commercial code, the penal code, the codes of civil and penal procedure, as well as the laws regarding the "Tribunaux de Paix," and also all the administrative laws and regulations, have been elaborated on the model of codes and laws in force in European countries.

Above all, it has quite recently been possible to carry out a very important reform in the civil law, by which our judicial institutions have been completely secularized; the free will of the parties in the matter of contracts and agreements has been recognized as paramount, and the principle of the freedom of the will has been accorded the same place as in Europe; further, while these laws were being elaborated and promulgated, a faculty of law was instituted at Constantinople, whose programme is more or less identical with that of the corresponding faculties in Europe. This situation has produced during forty years a body of distinguished judges and advocates, who possess all the necessary qualifications, and it is to them that at the present time the important task of administering justice is assigned.

A considerable number of young men have since the change of regime in 1908 studied in the various faculties of law of the Empire, and are now appointed to various posts in the magistracy.

Once our judicial organization and reform had been carried out on the basis of European institutions, the necessity for the suppression of the Capitulations was again accepted on various dates and on various occasions by the Governments which had already recognized the same necessity at the Congress of Paris. These Governments would thus admit that our judicial organization had become considerably modernized and could guarantee the rights of the foreigners living in our country. They agreed therefore that they entertained no serious objection to the abolition of the capitulatory regime.

Indeed, in a clause in the protocol which Turkey and Austria-Hungary signed in 1909 after the annexation of Bosnia-Herzegovina, this latter Power agreed to the abolition of the capitulatory regime. The Treaty of Lausanne, concluded three years later, also contained an article by which Italy entered into the same engagement; Italy recognized the justice of the

point of view of the Sublime Porte and affirmed her intention to afford the Sublime Porte her full and sincere support.

Since that date Austria, Germany and, recently, Eussia have explicitly agreed to the abolition of the Capitulations by the Turkish Government and categorically recognized the legitimate right of Turkey to do so. As the deficiencies in our judicial organization have now been remedied, and as on the other hand the Capitulations are provisions absolutely incompatible with the sovereignty of a State, their abrogation ought not to become the subject of any dispute.

The continuation of the capitulatory regime, far from assuring any advantage to foreign nationals, gives rise to innumerable difficulties in business and prejudices the interests of Turks and foreigners alike. This point is of the very greatest importance and deserves to be studied with most careful attention. The working of the judicial provisions of the Capitulations should be examined as much in relation to civil and commercial matters as in relation to criminal matters and the execution of judgments.

In the first place, in the case of a civil or commercial action between two foreigners of different nationality, the action must be tried by the consular court of the defendant according to the laws and in conformity with the procedure in force in his country. Hence every foreigner residing or carrying on business in Turkey was obliged to be familiar with the national laws of other foreigners with whom he maintained commercial relations, and to take them into consideration when drawing up documents or concluding contracts. Similarly, in the same country there were in existence as many laws, as many judges and as many courts as there were Powers. In the case of an appeal, application had to be made to the court of appeal of the country of which these foreigners were nationals; and naturally, even if one succeeded in surmounting these difficulties and appeared, together with the other party to the suit, before the mixed tribunal, numerous obstacles

did not fail to arise anew in the course of the proceedings. The foreign members of these mixed tribunals were for the most part men who were not fully initiated in the knowledge of law; most of them believed that instead of administering the law and doing justice, their duty consisted in pronouncing as a general rule in favor of the foreigner. Furthermore, these members, having very often other occupations, did not attend the tribunal regularly, the result being that the cases were subjected to interminable delays. Foreigners suffered as much as the Turks. The absence of judges and dragomans is more frequent in cases where the foreigner is defendant. The records of the First Commercial Court of Constantinople often make mention of cases which lasted from twenty to thirty years. For example, questions of minor importance, such as a notification, often pass out of the domain of the courts into that of diplomacy and give rise to endless controversy between the Government and the Embassies. When it was foreseen that the proceedings would go against the foreigner, or when a judgment unfavourable to the foreigner had been pronounced, the absence of the foreigner or the unjustifiable refusal of the dragoman to sign the judgment prevented the settlement of the dispute. The same difficulties arose, of course, when the foreigner was plaintiff. The attitude of the foreign members (who supported the foreigner with great partiality as though they were his advocates), and especially that of the dragomans, caused regrettable misunderstandings which caused the matter to be transferred from the judicial domain to that of diplomacy. This state of affairs caused the suits to drag on for a very long time and made it impossible for the Commercial Court to bring them to an end. Once the judgment had been pronounced, difficulties of every kind likewise attached to its execution. Indeed, it was no rare thing to see judgments given against foreigners remain unexecuted.

It is easy to see that this deplorable situation prejudiced the rights of foreigners no less than those of the Turks.

On the one hand the Turks, foreseeing the fatal consequences of any disputes which might arise, acted most warily and cautiously towards the foreigners with whom they desired to enter into relations, and even endeavoured to avoid them as much as possible. On the other hand the foreigners, coming up against more or less the same difficulties, did not develop their commercial relations in Turkey to the extent that they could have wished, and even, however desirous they might be of invoking the competence of courts dealing only with cases between Turks, met the formal prohibition of the diplomatic representatives of their countries. In this connection it is interesting to note that matters with which the mixed tribunals dealt were not numerous.

Companies started with the assistance of foreign capital to exploit great undertakings in Turkey, like the Ottoman Bank, the Societe des Tramways, the Societe des Chemins de Fer, etc., are, as being Ottoman companies, subjected to the jurisdiction of the Turkish courts.

All matters relating to leases or real property, no matter what might be the nationality of the parties, were within the competence of the Turkish courts by virtue of the protocol annexed to the law of the 7th Sefer.

On the other hand, cases between Serbian and Montenegrin nationals who did not enjoy the benefits of the Capitulations have always been tried directly by the courts of the country. The same was the case with the disputes which arose after the World War between Turks and subjects of capitulatory Powers. On this head no complaint has been formulated by the parties.

As regards the provisions of the Capitulations on the penal side, although the inviolability of the individual and his abode and the right of defence before the courts are already assured by the Turkish laws, the powers of the judicial authorities whose duty it was to carry these laws into effect were limited by the restrictions imposed by the Capitulation<sup>^</sup>. Moreover, the

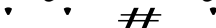
consular authorities made the widest use of these restrictions in order to withhold deliberately from justice offenders who had infringed the public order and security of the country.

Whenever a murderer or the perpetrator of a crime succeeded in reaching the abode of a foreigner, the Turkish police found themselves prevented from entering there and were obliged to suspend the pursuit until the dragoman arrived, and in the meantime the criminal found means of escaping.

The obligation of hearing a witness of foreign nationality in a penal case in the presence of the dragoman led very often to disagreeable results; the witness and the dragoman, or the latter alone, were able by answering the summons or by refusing to appear, to exercise an influence on the progress of the prosecution.

Similar difficulties arose in connection with the execution of sentences in criminal cases, and the sovereignty of the State and the prestige of the judicial authority were as gravely prejudiced.

The best qualified foreign authors have been unable to refrain from recording the deplorable effects of the application of the Capitulations, and have admitted that the circumstances which gave rise to that regime have long since ceased to exist.



Foreign authors recognize, and facts, moreover, confirm that the Capitulations are as prejudicial to Turkish nationals as to foreigners themselves. They allow the latter to escape from the authority of their natural judge, and are, moreover, humiliating and prejudicial to the territorial Power. Accordingly, the Ottoman Government, being no longer able to tolerate them, abolished the Capitulations of this nature by a decision taken on the 9/23 August, 1914.

It is an undoubted fact that in taking such a decision Turkey merely exercised a legitimate right. As a matter of fact, the Capitulations are essentially unilateral acts. In

order that an act may be regarded as reciprocal, it must above all contain reciprocal engagements. From an examination of the texts, the evidence shows that in granting the privileges in question to foreigners in Turkey, the Ottoman emperors had no thought of obtaining similar privileges in favor of their subjects travelling or trading in Europe. It is for this reason that Feraud Giraud says:

These acts are not so much international treaties as grants of privileges.

Professor Louis Renault also observes that " they are voluntary and spontaneous concessions, always revocable and liable to lapse on the death of the sovereign who had granted them/" They lack, he says, that which above everything constitutes a treaty, that which is the distinctive and eventual character of any convention, namely, the reciprocal character to which the reciprocity of the engagements and the double signature bear witness.

Even supposing that the Capitulations were bilateral conventions, it would be unjust to infer from that that they are unchangeable and must remain everlastingly irrevocable.

Treaties whose duration is not fixed imply the clause *rebus sic stantibus*, in virtue of which a change in the circumstances which have given rise to the conclusion of a treaty may bring about its cancellation by one of the contracting parties, if it is not possible to cancel it by mutual agreement.

" Cases must necessarily be admitted in which the State must be able to declare itself freed from any engagement, even when it has not expressly reserved this right by a clause of the treaty. Respect for engagements contracted should not, for example, be pushed to a suicidal extent. Though a State may be required to execute burdensome engagements contracted by it, it cannot be asked to sacrifice its development and its existence to the execution of a treaty."<sup>2</sup>

<sup>2</sup> Pradier-Fodere, 1911, II, 264.

Similarly, Professor Despagnet, the celebrated French jurist, expressed himself as follows:

The cases in which the denunciation of treaties is legitimate may be classed in three categories:

(a) When the observance of the treaty has become dangerous for the political or economic existence of a country.

(b) When the circumstances which have given rise to the treaty have changed and deprived the old agreement of its reason for existence.

(c) Finally, a treaty may be denounced when it has become incompatible with the common international law of civilized states to which the contracting countries subscribe; a modern example would be an old treaty, not formally abrogated, sanctioning the slave trade, which is condemned by modern international law.

In view of the reasons set forth above, the abrogation of the capitulatory system is a necessity more than justified. In fact, the continued application of those extremely detrimental rules was a grave injury to the political existence of the State.

Moreover, the circumstances and the conditions which had brought this regime into being have completely changed. It is unanimously asserted that the Capitulations are absolutely incompatible with the principles of modern public law.

On the other hand, as explained above, the Capitulations have their origin in the principle of "personal law/" whereas according to modern legal conceptions each State, in order to be considered as an independent State, must enjoy, within the limits of its frontiers, a complete and full independence. Its laws and institutions must have a completely territorial character. Therefore the Capitulations in our day form, as Pelissier du Eosas rightly observes, an anomaly and an anachronism.

To sum up, the prejudice and the restriction to the State's right to make laws, on the pretext that the majority of the laws of the country cannot be applied to foreigners;

The impossibility of prosecuting foreigners who have offended against public order and security;

The violation of the principles of public law resulting from the necessity of observing certain conditions and restrictions in relation to the prosecution and arrest of foreign criminals;

The obligation to bring similar suits before different courts and in conformity with different laws and procedure, according to the nationality of the parties;

And the prevention of individuals having recourse to their natural judge, etc.;

Are the regrettable results of the application of the capitulatory regime.

In view of the foregoing, the Government of the Grand National Assembly of Turkey can in no wise agree to the re-establishment of the Capitulations, which are in direct conflict with the modern conception of a State and with the principles of public law. Further, it is well-known that no such regime exists in any of the other European countries, not even in Greece and the other Balkan States.

*NOT* can the Turkish Government adhere to a regime which would, in reality, have a capitulatory nature. The Government of the Grand National Assembly is ready to conclude with the Governments concerned treaties of commerce, settlement and extradition, and consular conventions, on the basis of reciprocity and the principles of general international law.

## APPENDIX VI

### DECLARATION RELATING TO THE ADMINISTRATION OF JUSTICE MADE BY THE TURKISH DELEGATION IN LAUSANNE IN CONNECTION WITH THE PEACE SETTLEMENT, JULY 24, 1923 <sup>x</sup>

The Turkish Delegation has already had occasion to state that the Government of the Grand National Assembly of Turkey is in a position to ensure to foreigners before the Turkish Courts all the safeguards of a good judicial system and to provide therefor in the exercise of its full sovereignty and without any kind of foreign interference. It is nevertheless prepared to have an investigation made and to cause the situation to be studied with a view to the institution of such reforms as may be rendered advisable by the development of manners and civilization.

Animated by this spirit, the Undersigned, acting in virtue of their full powers, desire to make the following Declaration:

#### 1.

The Turkish Government proposes to take immediately into its service, for such period as it may consider necessary, not being less than five years, a number of European legal counsellors whom it will select from a list prepared by the Permanent Court of International Justice of the Hague from among jurists nationals of countries which did not take part in the war of 1914-1918, and who will be engaged as Turkish officials.

<sup>1</sup> *Treaty Series*, No. 16 (1923), Cmd. 1929, p. 201.

## 2.

These legal counsellors will serve under the Minister of Justice; some will be posted in the city of Constantinople and others in the city of Smyrna. They will take part in the work of the legislative commissions. It will be their duty to observe, without interfering in the performance by the magistrates of their duties, the working of the Turkish civil, commercial and criminal courts, and to forward to the Minister of Justice such reports as they may consider necessary; they will be authorized to receive all complaints to which the administration of justice in civil, commercial or criminal matters, the execution of sentences, or the manner of application of the law may give rise, with a view to bringing such complaints to the notice of the Minister of Justice in order to ensure the strict observance of the provisions of Turkish law.

Similarly, they will be authorized to receive such complaints as may be caused by domiciliary visits, perquisitions or arrests; moreover, these measures shall, in the judicial districts of Constantinople and of Smyrna, be brought, immediately after their execution, to the notice of the legal counsellor by the local representative of the Minister of Justice; this official shall in such cases be authorized to correspond direct with the legal counsellor.

## 3.

In cases of minor offences release on bail shall always be ordered, unless this entails danger to public safety or unless such provisional release is calculated to impede the investigation of the case.

## 4.

In civil or commercial matters all references to arbitration and clauses in agreements providing therefor are allowed, and the arbitral decisions rendered in pursuance thereof shall

be executed on being signed by the President of the Court of First Instance, who shall not refuse his signature unless the decision should be contrary to public order.

## 5.

The present Declaration shall remain in force for a period of five years.

Done at Lausanne, the 24th July, 1923.

ISMET,  
DR. KIZA NOUR,  
HASSAN.

## APPENDIX VII

LETTERS EXCHANGED RESPECTING THE TREATMENT TO  
BE ACCORDED BY THE TURKISH GOVERNMENT TO  
RELIGIOUS, SCHOLASTIC AND MEDICAL ESTABLISH-  
MENTS AND CHARITABLE INSTITUTIONS IN TURKEY '  
THE TURKISH DELEGATES TO THE AMERICAN MINISTER

*Delegation of the Government of the Grand National  
Assembly of Turkey to the Peace Conference*

LAUSANNE, August 4, 1923.

*Mr. Minister:*

I have the honor to inform Your Excellency that at one time during the discussions of the " Establishment" Convention signed at Lausanne on July 24, 1923, it had been planned to annex to the aforesaid convention, in the form of a declaration, certain provisions concerning the religious and philanthropic institutions of the nationality of the three inviting Powers.

However, it was finally decided that this declaration should be replaced by letters from the Turkish Delegation addressed to the three inviting Powers.

In transmitting to Your Excellency a copy of these identic letters, I have the honor to inform you that throughout the duration of the " Establishment" Convention in question, similar institutions of the nationality of the United States of America shall enjoy in Turkey, under the same conditions, the same treatment as that accorded to the institutions of the Powers referred to above.

<sup>1</sup> *World Peace Foundation Pamphlets*, No. 10, 1924, **VII**, 602-603.

Accept, Mr. Minister, the assurance of my very high consideration.

(Sgd.) M. ISMET.

His Excellency

MR. GREW

*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America*

etc.,

etc.,

etc.

Bern

**INCLOSURE**

*Delegation of the Government of the Grand National  
Assembly of Turkey to the Peace Conference*

LAUSANNE, July 24, 1923.

EXCELLENCY,

With reference to the " Establishment " Convention signed at Lausanne to-day, and pursuant to the decision taken by the First Committee at its meeting of May 19, 1923, regarding the substitution of an exchange of letters for the declaration, which was to have been annexed to the said convention, I have the honor to declare, in the name of my Government, that the latter will recognize the existence of (British, French, Italian) religious, scholaristic and medical establishments, and charitable institutions recognized as existing in Turkey before October 30, 1914, and that it will favorably examine the status of other (British, French, Italian) institutions of a similar character actually existing in Turkey on the date of the Treaty of Peace signed to-day, with a view to regularizing their position.

The establishments and institutions mentioned above will, as regards fiscal charges of every kind, be treated on a footing of equality with similar Turkish establishments and institutions, and will be subject to administrative measures of a public character, as well as to the laws and regulations govern-

ing the latter. It is, however, understood that the Turkish Government will take into account the conditions under which these establishments carry on their work, and, in so far as schools are concerned, the practical organization of their teaching arrangements.

I avail, etc.,  
(Sgd.) ISMET.

A true copy of the original.  
(Sgd.) TEWFIK KIAMIL.

His Excellency  
(SIR HORACE RUMBOLD, GENERAL PELLE, MR. MONTAGNA)  
*Delegate to the Peace Conference*

etc.,

etc.,

etc.

## APPENDIX VIII

TABLE SHOWING DATES OF TREATIES BETWEEN FOREIGN POWERS AND TURKEY BY WHICH DE JURE RECOGNITION OF THE NEW TURKISH GOVERNMENT IS EXTENDED PROVIDING FOR THE ABROGATION OF THE CAPITULATIONS AND THE ESTABLISHMENT OF DIPLOMATIC AND COMMERCIAL RELATIONS IN ACCORDANCE WITH THE GENERAL PRINCIPLES OF INTERNATIONAL LAW AND ON THE BASIS OF PERFECT RECIPROCITY

- March 1, 1921. Afghanistan and Turkey (text in *Cur. Hist.*, XVII, February, 1923, 768-769; also, *St. P.*, CXVIII, 10-11. Article II).
- March 16, 1921. Russia and Turkey (text in *Cur. Hist.*, XVII, November, 1922, 277-279; also, *St. P.*, 1923, CXVIII, 990-996. Articles VI, VII).
- October 13, 1921. Treaty of Kars. The Transcaucasian Governments of Armenia, Azerbaijan, and Georgia and Turkey (text in *Cur. Hist.*, February, 1923, XVII, 769; also, *St. P.*, 1924, CXX, 906-911. Article III).
- January 2, 1922. Ukraine and Turkey (text in *Cur. Hist.*, XVII, February, 1923, 770; also, *St. P.*, 1924, CXX, 953-957. Article III).
- June 26, 1922. Persia and Turkey (reference in *Washington Post*, June 27, 1922, p. 5).
- July 23, 1923. Poland and Turkey (text in Martens, *Nouveau recueil general de traites*, Series III, XV, 456-57; also, *St. P.*, 1923, CXVIII, 973-975 and League of Nations, *Treaty Series*, XLIX, 347. Article II).

- July 24, 1923. Treaty of Lausanne. England, France, Italy, Japan, Greece, Rumania, Serb-Croat-Slovene Kingdom and Turkey (text in *A. J. I. L.*, Supplement, 1924, XVIII, 1-116. Articles XXVIIT, CXIII).<sup>1</sup>
- December 15, 1923. Albania and Turkey (text in Martens, *op. cit.*, 3eme serie, XV, 471, Article II).
- December 18, 1923. Hungary and Turkey (text in *ibid.*, XV, 6-7; also, *St. P.*, 1923, CXVIII, 627-628. Articles II, III).
- January 28, 1924. Austria and Turkey<sup>2</sup> (text in Martens, *op. cit.*, Series III, XV, 7-8; also, *St. P.*, 1924, CXX, 43-44 and League of Nations, *Treaty Series*, XXXII, 298, Article II).
- March 3, 1924. Germany and Turkey (text in League of Nations, *Treaty Series*, XLI, 239, Articles II, III).<sup>3</sup>

<sup>1</sup> A treaty was also signed between the United States and Turkey August 6, 1923, known as the American Treaty of Lausanne, providing for *de jure* recognition of Nationalist Turkey and for the abolition of the capitulations. The treaty was, however, rejected by the United States Senate January 18, 1927. See *supra*, p. 269.

<sup>2</sup> By the treaty signed on March 12, 1918, between Turkey and Austria, the latter consented to regulate its relations with Turkey in accordance with the general principles of international law and on the basis of reciprocity, but Austria was compelled at the close of the World War to recognize the annulment of all treaties, conventions or accords concluded with Turkey after August 1, 1914 (see Treaty of Saint-Germain of Sept. 10, 1919, *Treaty Series*, No. 11, 1919, Cmd. 400. Art. CCXLII).

<sup>3</sup> Germany, like Austria, had concluded on Jan. 11, 1917, a series of treaties with Turkey recognizing the principle of reciprocity and establishing relations in accordance with the principles of international law (texts in Martens, *op. cit.*, 3eme serie, IX, 691-742) but was later compelled by the treaty of Versailles to recognize the annulment of all agreements made with Turkey after August 1, 1914 (see Article CCXC, *Treaty Series*, No. 4, 1919, Cmd. 153, 138).

- May 31, 1924. Sweden and Turkey (text in Martens, *op. cit.*, Series III, XIV, 420-421; also, *St. P.*, 1924, CXX, 932-933 and League of Nations, *Treaty Series*, XXXVIII, 148, Articles II, III).
- August 16, 1924. The Netherlands and Turkey (text in Martens, *op. cit.*, Series III, XIV, 421-22; also, *St. P.*, 1924, CXX, 828-829 and League of Nations, *Treaty Series*, XXXIX, 148, Articles II, III).
- September 27, 1924. Spain and Turkey (text in Martens, *op. cit.*, Series III, XV, 476-477; also, *St. P.*, 1924, CXX, 927 and League of Nations, *Treaty Series*, XLIII, 307, Article II).
- October 11, 1924. Czechoslovakia and Turkey (text in Martens, *op. cit.*, Series III, XV, 9-10; also, *St. P.*, CXX, 1924, 224-25 and League of Nations, *Treaty Series*, XXXVIII, 318, Articles II, III).
- December 1, 1924. Estonia and Turkey (text in League of Nations, *Treaty Series*, LXX, 78, Article II).
- December 9, 1924. Finland and Turkey (text in *ibid.*, LIX, 287 and Martens, *op. cit.*, Series III, XVIII, 1-2, Article II).
- January 3, 1925. Latvia and Turkey (text in League of Nations, *Treaty Series*, LIX, 81, Article II).
- January 3, 1925. Lithuania and Turkey (text in Martens, *op. cit.*, Series III, XVIII, 654, Article II).
- January 26, 1925. Denmark and Turkey (text in Martens, *op. cit.*, Series III, XIV, 422-423; also, League of Nations, *Treaty Series*, XXXVI, 318, Articles II, III).
- May 2, 1925. Norway and Turkey (text in *ibid.*, LVI, 51 and Martens, *op. cit.*, Series III, XVI, 323-324, Articles II, III).
- September 19, 1925. Switzerland and Turkey (text in League of Nations, *Treaty Series*, LXI, 395 and Martens, *op. cit.*, XVIII, 330-331, Articles II, III).

- October 18, 1925. Bulgaria and Turkey (text in League of Nations, *Treaty Series*, LIV, 125, Article II).
- October 28, 1925. Kingdom of Serbs Croats and Slovenes and Turkey (text in Martens, *op. cit.*, XV, 478-479, Article II).<sup>4</sup>
- January 30, 1926. Chile and Turkey (text in *ibid.*, XVIII, 20-21 and League of Nations, *Treaty Series*, LIX, 249, Article II).
- June 29, 1926. Argentina and Turkey (reference in *Bulletin de L'institut intermediete international*, January, 1927, XVI, 178, and July, 1927, XVII, 185).
- June 23, 1927. Mexico and Turkey (*Commercial and Financial Chronicle*, June 25, 1927, p. 3677).
- September 8, 1927. Brazil and Turkey (*Nieuwe Eotterdam-sche Conranl*, September 9, 1927; Brazil, *Diario Oficial*, September 27, 1928, p. 21559).

<sup>4</sup> The Kingdom of Serbs Croats and Slovenes was also a party to the Treaty of Lausanne of 1923 by which the abolition of the capitulations was recognized.

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NOTE—The bibliography which follows is extensive, although the author does not claim that it is exhaustive. It covers sources of direct value in the present study, and with the exception of the starred references, all the works cited have been consulted, and most of them have been cited in the footnotes. It has not been thought useful to classify the bibliography by periods or topics. Specific classifications have frequently been given in the footnotes, as have references on topics indirectly concerned with the subject. The author takes this occasion to make acknowledgment of the facilities afforded by the Library of the Carnegie Endowment for International Peace, the Library of Congress, the Library of the University of Chicago, and the New York Public Library, in which most of the research has been done. For helpful suggestions, he wishes to express his gratitude to Professor Van Hoesen of Princeton, with whom he had the privilege of taking a course on bibliography.

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