THE RECASTING OF THE OTTOMAN PUBLIC DEBT AND
THE ABOLITION OF THE CAPITULATIONS REGIME IN THE
INTERNATIONAL LEGAL ACTION OF TURKEY LED BY
MUSTAFA KEMAL ATATÜRK

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ABSTRACT

The recast of the international debt contracted by the former Ottoman Empire and the overcoming of the capitulations regime that had afflicted Turkey for centuries, are two of the most relevant sectors in which the political and diplomatic action promoted by Mustafa Kemal Atatürk has been expressed. Extremely relevant in this regard are the different disciplines established, respectively, by the Treaty of Sèvres in 1920 and then by the Treaty of Lausanne in 1923. After the Ottoman Government defaulted in 1875, an agreement (the Decree of Muharrem) was concluded in 1881 between the Ottoman Government and representatives of its foreign and domestic creditors for the resumption of payments on Ottoman bonds, and a European control of a part of the Imperial revenues was instituted through the Administration of the Ottoman Public Debt. At the same time, the Ottoman Empire was burdened by capitulations, conferring rights and privileges in favour of their subjects resident or trading in the Ottoman lands, following the policy towards European States of the Byzantine Empire. According to these capitulations, traders entering the Ottoman Empire were exempt from local prosecution, local taxation, local conscription, and the searching of their domicile. The capitulations were initially made during the Ottoman Empire’s military dominance, to entice and encourage commercial exchanges with Western merc-

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hants. However, after dominance shifted to Europe, significant economic and political advantages were granted to the European Powers by the Ottoman Empire. Both regimes, substantially maintained by the Treaty of Sèvres, were considered unacceptable by the Nationalist Movement led by Mustafa Kemal and therefore became the subject of negotiations during the Conference of Lausanne. The definitive overcoming of both of them, therefore represents one of the most evident examples of the reacquisition of the full sovereignty of the Republic of Turkey.

**Keywords:** Ottoman Public Debt, capitulations regime in the Ottoman Empire, Treaty of Sèvres, Treaty of Lausanne, diplomatic action of the Republic of Turkey after the First World War
A General Outline: Early Restrictions of Turkish Sovereignty

The recast of the international debt contracted by the former Ottoman Empire and the overcoming of the capitulations regime that had afflicted Turkey for centuries, are two of the most relevant sectors, very interesting for international law, in which the political and diplomatic action promoted by Mustafa Kemal Atatürk has been expressed.¹ This action should be viewed as part of the activities due to the Turkish revolutionaries that resulted in the creation and shaping of the modern Republic of Turkey, as a consequence of the defeat of the Ottoman Empire in 1918, the subsequent occupation of Constantinople and the partitioning of the Ottoman territories by the Allies under the terms of the Armistice of Mudros.²

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² The Armistice of Mudros was concluded on 30 October 1918 and ended the hostilities in the Middle-Eastern theatre between the Ottoman Empire and the Allies of the First World War. It was signed by the Ottoman Minister of Marine Affairs Rauf Bey and the British Admiral Somerset Arthur Gough-Calthorpe. As part of several conditions to the Armistice, the Ottomans surrendered their remaining garrisons outside Anatolia, as well as granted the Allies the right to occupy forts controlling the Straits of the Dardanelles and the Bosphorus; and the right to occupy the same, in case of disorder, any Ottoman territory in the event of a threat to their security. The Ottoman Army, including the Ottoman Air Force, was demobilized, and all ports, railways, and other strategic points were made available for use by the Allies. In the Caucasus, the Ottomans had to retreat to within the pre-war borders between the Ottoman and the Russian Empires.
In the aftermath of the First World War, indeed, Turkey firmly refused any proposal that would compromise its sovereignty, such as the control of Turkish finances, the capitulations, the Straits and other issues. On the one hand, among the economic and financial questions dealt with, Turkey recognized the large debt the Ottoman Empire had acquired and agreed that it would be distributed among the successor States of the Empire according to an allocation determined by the Council of the Administration of the Ottoman Public Debt set out in 1881. Pursuant to a special Protocol annexed to the Treaty of Lausanne, commercial concessions that entered into force before 29 October 1914 between the Ottoman Government and nationals of the Contracting Parties were preserved and put into conformity with the new economic conditions. These stipulations were an important embodiment of the principle of readaptation of concessions that had been granted by a Government before the outbreak of war and which were regarded as suspended during the War. Particularly important was the diplomatic activity that the Turkish Government promoted in the Conference held in Paris in 1925, consecrated also in the Treaty of Paris of 1933, with which Turkey decreased the total amount of the debt to its favour.

On the other hand, the privileges and rights granted to foreign nationals, especially exemption from Turkish courts’ jurisdiction,
were unilaterally denounced in 1914 but had been reaffirmed in the Treaty of Sèvres. These capitulations had become an enroachment on Turkish self-government; hence the stipulation in Article 28 of the Treaty of Lausanne on the complete abolition of the capitulations in Turkey in every aspect was an important step towards reclamation of a full Turkish sovereignty. However, pursuant to a special Declaration annexed to the Treaty, European legal counsellors were to take part in the work of the legislative commissions and observe the workings of the Turkish courts. Also, Turkish courts were to recognize private agreements reached by the Parties, and settlement of questions of personal status of foreigners by their own law and their own national courts.\footnote{Dominik Zimmermann, “Lausanne Peace Treaty (1923)”, cit., p. 651.}

Many years before the establishment of a foreign financial control, the European Powers had obtained the right to interfere in other important spheres of Ottoman administration.

In point of time, Europe’s position was established in 1535 by the Treaty of capitulations which Sultan Suleiman the Magnificent signed with King Francis I of France, renewed and developed by Sultan Mahmut I in 1740, and confirmed by other later treaties with France as, for instance, those of 1802, 1808 and 1861.\footnote{France had already signed a first treaty with the Mamluk Sultanate of Egypt in 1500, during the reigns of King Louis XII and Sultan Bayezid II, in which the Sultan of Egypt had made concessions to the French and the Catalans, and which would be later extended by Suleiman the Magnificent. The Treaty of 1535 was included in the Franco-Ottoman Alliance, one of the most important foreign alliances of France, which was exceptional, as the first non-ideological alliance between a Christian and a Muslim State, and caused a scandal in the Christian world. It lasted intermittently for more than two and a half centuries, until the Napoleonic campaign in Egypt, in 1798-1801.} Their most important stipulations were the right of the subjects of foreign Governments who resided within the Empire to be judged according to their own laws and in the established consular courts; the freedom from Ottoman taxation; the limitation on the customs duties to be levied on goods of
foreign origin. The first two of these provisions placed foreigners outside the law of the Empire; the third gave a privileged position to imports and eventually placed the bulk of trade in the hands of foreigners.\(^7\)

France and Russia first claimed the right to protect Christian minorities: France originally by the aforesaid Treaty of 1535, which recognized its right to protect the Catholics in the Empire; Russia by virtue of the Treaty of Kuchuk-Kainarji of 1774.\(^8\) These two States fought the Crimean War in 1853-1856 for this privilege. In the negotiations that culminated in the Treaty of Paris of 1856, which guaranteed the integrity of the Ottoman Empire itself, the Concert of Europe also obtained the right to interfere in the Ottoman domestic administration. The Edict of 3 November 1839 (Gülhane Hatti-Sherif) which was the first attempt to define the rights of the Christian subjects, had been very vague.\(^9\) An article of the Protocol of Vienna of 1 February 1855 therefore envisaged “the immunities of the Christian population of the Empire”. The British Ambassador at Constantinople, Lord Stratford de Redcliffe, dispatched in January 1856 a note to the Sultan’s Government making clear the necessity “of including in the same chart” the religious privileges of the Christians and the administrative

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\(^8\) The Treaty of Kuchuk-Kainarji was meant to demonstrate that if France and Austria could protect churches of their particular brand of Christianity in Constantinople, Russia could do the same for its own church. Russia’s right to build a church in Constantinople, pursuant to Article XIV of the Treaty, later expanded into Russian claims to protect all Orthodox Christians under Ottoman rule. The clause relating to the Orthodox Church opened foreign interference in the Ottoman Empire’s relations with its Christian subjects. In 1853, the Crimean War would have broken out over Russian assertion of a right to protect Orthodox Christians in Turkey and the Turkish denial that there was any such right.

\(^9\) The Gülhane Hatti-Sherif, in fact, did not enact any official legal changes but merely made royal promises to the Ottoman Empire’s subjects, and they were never fully implemented due to Christian nationalism and resentment among Muslim populations in these areas. See William L. Cleveland, *A History of the Modern Middle East*, Westview Press, Boulder, Colorado, 2013, p. 76 f.
reforms which must reconstruct their social and political condition.\textsuperscript{10} While the Congress of Paris was in session, the Edict of 18 February 1856 (Hatti-Humayoun) was issued, and by Article IX of the Treaty of Paris Sultan Abdulmejid I communicated this chart of reform to the Powers. The chart contained a statement of “the religious privileges of the Christians and the administrative reforms” necessary to guarantee their security.\textsuperscript{11} European diplomacy, originally interested in protecting the minorities in the exercise of their religions, added the right to oversee the necessary administrative reforms. In effect, this granted a right which could be exercised at any time, inasmuch as the minorities were widely scattered, and new methods of administration necessitated recasting much of the machinery of local government throughout the Empire.\textsuperscript{12}

In the field of finance, the Ottoman Government was prohibited by treaty from raising its custom duties. In 1856, the Imperial Ottoman Bank was established and a year later Great Britain claimed a substantial control over the operations of this institution.\textsuperscript{13}


\textsuperscript{11} The Hatti-Humayoun applied previous reforms to all the subjects of the Empire, without distinction of class or religion, “for the security of their persons and property and the preservation of their honor”. The act granted that all forms of religion would have been freely worshiped, no subject would have been hindered in the exercise of the religion, nor in any way annoyed. No one would have been compelled to change their religion. The Hatti-Humayoun also granted the full freedom of the repair, according to their original plan, of buildings set apart for religious worship, schools, hospitals and cemeteries, if these activities were performed at “non-mixed communities” under the towns, small boroughs and villages. All commercial, correctional and criminal suits between Muslims and Christians or other non-Muslim subjects, or between Christians or other non-Muslims of different sects, would have been referred to “mixed tribunals”.


\textsuperscript{13} Its functions were very limited as compared with those following the reorganization in 1863 and the extension of its privileges in 1875. Cf. Edhem Eldem, “The (Imperial) Ottoman Bank, Istanbul”, Financial History Review, Vol. 6, No. 1, 1999, p. 85 ff;
1856, the Austrian Government dispatched a financial adviser to assist in the proposed administrative and fiscal reform. In 1858, British and French delegates joined with the Austrian expert to form the consultative High Council of the Treasury. In June 1860 this Council was transformed into a High Council of Finances to supervise the new financial administration. In three different loan contracts Turkey admitted the principle of having representatives of the bondholders on the commissions to administer the revenues earmarked for their service.\textsuperscript{14}

The period from 1875 to 1882 was too full of influences exerted on the Ottoman Government in regard to finance to allow of treatment here. At the instigation of the Russian Ambassador, Count Nikolay Pavlovich Ignatyev, the Grand Vizier Mahmud Nedim Pasha suspended the service on the foreign debt in 1875.\textsuperscript{15} The Congress of Berlin exercised sufficient pressure on the Ottoman Government for the Administration of the Public Debt to be set up in 1882. During the last two decades of the Nineteenth century a series of loans were floated with the aid of the Public Debt for the purpose primarily of railroad construction. In almost every case, the administration of these loans was confided to the Council or to the Imperial Ottoman Bank.

In truth, Europe’s attitude was that of a tutor. On 10 January 1876, the French Foreign Minister Louis Décazes wrote that “Turkey is in tutelage”. In 1879, the British Secretary of State for Foreign Af-


\textsuperscript{15} Christopher G.A. Clay, \textit{Gold for the Sultan: Western Bankers and Ottoman Finances}, cit., p. 220 ff.
fairs Lord Derby uttered the same opinion, saying that “The daily surveillance of which Turkey is the object in her domestic affairs has reduced her sovereign authority to practically zero”.  

The Administration of the Ottoman Public Debt: An Instrument of Imperialism, as an “Agent” of the European Powers, with some Benefits for Turkey

In 1875 the Ottoman Government defaulted the charges on a foreign debt of 200.000.000 pounds sterling. Six years later a contract was concluded between the Ottoman Government and representatives of its foreign and domestic creditors for the resumption of payments on Ottoman bonds. This agreement, called the Decree of Muharrem, signed and promulgated on 20 December 1881 (later completed by a Supplementary Decree issued on 14 September 1903), instituted a European control of a part of the Imperial revenues. Thus came into existence, as an international body, the Administration of the Ottoman Public Debt (whose official title was “L’Administration de la

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18 See the French and English texts of the Decree of Muharrem published in Parliamentary Papers, No. Cd.5736, 1911, p. 653 ff. The twenty-one articles of this document were divided into three general groups: those which referred to the reduction, conversion and consolidation of the internal and external debt (Articles I-VII); those which dealt with the service of the consolidated debt and the revenues ceded to the administering body (Articles VIII-XIV); and those which were concerned with the erection of the executive body known as “The Council of Administration”, the organization to function under its direction, and the relations between the Ottoman Government and the Council (Articles XV-XXI). The Supplementary Decree of 1903 accomplished two definite objects: the unification of the unredeemed bonds, replacing them by a new issue; and the abolition of those articles of the Decree of 1881 concerning the ability of the Ottoman Government to participate in profits. Cf. Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 91 ff.
Dette Publique Ottomane”). In 1881 the revenue-collecting agents of this organization numbered over three thousand. Its executive com-
mitte was the Council, composed of six delegates representing the Brit-
tish and the Dutch, the French, the German, the Italian, the Austro-
Hungarian and the Ottoman holders of Turkish securities, and a se-
venth delegate representing a series of priority bonds, largely held by
the Imperial Ottoman Bank.

That the Administration of the Ottoman Public Debt was not a
typical example of foreign financial control is shown by several facts.
Its organic statute was not an international treaty, nor even a diplo-
matic act. The salaries of the members of the Council were paid by
the Ottoman Government. The expenses of the Administration of the
Ottoman Public Debt were met out of receipts from ceded taxes. Ba-
relly a third of Turkish revenues were under the control of the Coun-
cil. Five different nationalities were there represented, yet these dele-
gates were not appointed by their Governments but were representa-
tives of unofficial bondholders’ syndicates. Nevertheless, the vague
sanctions of the Decree of Muharrem gave to that instrument a quality

19 The most detailed study on the Administration of the Ottoman Public Debt still
remains that of Donald C. Blaisdell, European Financial Control in the Ottoman
Empire, cit., p. 2 ff. More recently, see on the topic Murat Birdal, The Ottoman
Public Debt Administration and its Role in the Peripheralization of the Ottoman
Empire, UMI Dissertation Service, Ann Arbor, Michigan, 2007; Murat Birdal, The
Political Economy of Ottoman Public Debt: Insolvency and European Financial
Control in the Late Nineteenth Century, I.B. Tauris, London-New York, 2010;
Gianpaolo Conte, Gaetano Sabatini, “The Ottoman External Debt and its Features
under European Financial Control (1881-1914)”, The Journal of European Economic

20 Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p.
2.

21 The legal nature of the Decree of Muharrem was unique. It possessed elements of
Ottoman public law but was not a unilateral act of the Ottoman Government. More
specifically, it was a private bilateral agreement between the Ottoman Government
and its creditors, which was given the sanction of the Sultan and then officially
promulgated. According to its Article XXI, moreover, the Ottoman Government was
bound to “immediately communicate the present Decree to the Powers”.

22 There can be no doubt that the members of the Council of the Administration of
the Ottoman Public Debt served in an unofficial capacity: see Donald C. Blaisdell,
European Financial Control in the Ottoman Empire, cit., p. 103.
of elasticity which allowed the Powers of Europe to keep their hands free to act, in case of need, on motives of expediency, rather than on the basis of strictly defined obligations.\(^2^3\) The unofficial character of the Council’s membership signified a minimum of mutual official responsibility between each representative and his Government. At the same time, this condition permitted each delegate to extend his interests and activities almost without limit. The relatively small proportion of Ottoman revenues administered by the Council created the illusion that in fact the Imperial Government remained the dominating factor in Ottoman finance. Nevertheless, the Council was sufficiently influential to guide Turkish financial policy in directions advantageous to the Council and its associated enterprises. The diversity of nationalities represented in the Council made that committee the representative of a class of European society, rather than the deputy of a single European State or group of States. The supposed inadequacy of the Decree of Muharrem in reality was its most potential attribute.\(^2^4\)

The activities of this Administration were far-reaching in their direct and indirect results. As the guardian of the loans included in the Decree of Muharrem, the Council was the organ erected to safeguard the investments in Ottoman securities made prior to this date by European capitalistic society. Over 1,000,000 sterling invested in these bonds represented the earnings and savings of ten of thousands of Europeans. In the middle of the Nineteenth century, Englishmen and Frenchmen had been attracted to Ottoman bonds by the prospects of

\(^{23}\) Article XX of the Decree of Muharrem provided in fact that “In case the Government suspends or causes the present agreement to cease functioning, the bondholders will regain entirely the fullness of their rights established by the original contracts, insofar as their bonds will not have been redeemed.”. Basically, the absence of a definite diplomatic sanction caused the Decree to be regarded with respect by virtue of the very uncertainty of action which might result in case of its abrogation.

\(^{24}\) Donald C. Blaisdell, *European Financial Control in the Ottoman Empire*, cit., p. 7 f.
a liberal return on their money, particularly as these bonds were sanctioned, in their opinion, by a favourable attitude of their Governments.

Later on, when doubts were afloat concerning Turkish good faith, possessors of ready capital were encouraged to lend yet more money to Turkey by the establishment of the Imperial Ottoman Bank which, despite its name, was the child of French and English capital. This institution, through the many prospect-uses issued under its aegis, stressed the gratifying extent of Turkish resources. Ottoman revenues had begun to rise; but so had the foreign indebtedness. Foreign ambassadors agreed with Sultan Abdulaziz that he should expand his Navy. Thus he indulged in a pet extravagance, the purchase of ironclads. The charges on the external and internal debts increased; another loan and yet another was necessary. Wily representatives of Paris and London banking houses persuaded Turkish officials that the best way to pay off a rapidly mounting debt was to increase it by floating another loan. Finally, in 1875 the process broke down under its own weight. A weak Grand Vizier and an unscrupulous, but powerful, Russian Ambassador brought about the default which caused the temporary ruin of Turkish credit.\(^{25}\)

As European integrity and administrative skill were manifestly necessary, Sultan Abdul Hamid II ceded to his creditors sufficiently wide powers and adequate revenues to insure interest and sinking fund charges. But he did not part with enough to impair seriously his financial sovereignty. To manage this foreign debt, consolidated in 1881 by the Decree of Muharrem, was the primary function of the Council. In this capacity, it was eminently successful; by 1903 nearly a quarter of the bonds had been redeemed.\(^{26}\)

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\(^{25}\) Donald C. Blaisdell, *European Financial Control in the Ottoman Empire*, cit., p. 2.

\(^{26}\) Donald C. Blaisdell, *European Financial Control in the Ottoman Empire*, cit., p. 3. See also Giampaolo Conte, Gaetano Sabatini, “The Ottoman External Debt and its Features under European Financial Control (1881-1914)”, cit., p. 82 ff.
In 1907 the Public Debt began the discharge of a function which made it the ally of the Powers of Europe in their relations with the Ottoman Empire. At that time, because the British Secretary of State for Foreign Affairs Sir Edward Grey was convinced that the Council was the only available organ that could function in the matter as the “agent” of the Powers, the Public Debt agreed to supervise the collection of a three per cent customs surtax, levied in order to meet Macedonian budget deficits. The Powers, whose consent was necessary to any upward revision of Turkish import duties, agreed to this surtax on the condition that the proceeds therefrom be applied to the improvement of conditions in Macedonia. The dissatisfaction of Sir Grey because the Council of the Public Debt was not originally named as the “effective guarantee” of the employment of this revenue in Macedonia was removed in the Commercial and Customs Convention of 25 April 1907 between the Ottoman Empire, France, Italy, Germany, Great Britain, Austria-Hungary and Russia. Thus the Public Debt, in functioning under the terms of this Convention, showed its willingness to participate in a political programme, as well as to undertake the discharge of obligations of an economic character.

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27 Donald C. Blaisdell, *European Financial Control in the Ottoman Empire*, cit., p. 154 ff.
28 The part played by the Administration of the Ottoman Public Debt was described in Article VI of the Commercial and Customs Convention of 1907: “The portion which by virtue of existing laws shall remain at the disposal of the Imperial Ottoman Government out of the sums encashed on account of the customs increase shall be devoted exclusively to the financial requirements of the three Roumelian vilayets. In accordance with the undertaking given by the Council of the Ottoman Public Debt Administration by a letter dated December 17, 1906, addressed to the Imperial Commissioner on the Public Debt, the sums mentioned in the preceding paragraph shall be placed annually to the credit of the budget of the three vilayets of Roumelia by the Administration of the Ottoman Public Debt. The collection and payment of these sums shall be made in conformity with the agreements arrived at between the Sublime Porte and the Public Debt Administration.”.
29 Donald C. Blaisdell, *European Financial Control in the Ottoman Empire*, cit., pp. 5 ff. and 158 ff.
Finally, the existence of the Administration of the Ottoman Public Debt created conditions which benefited both the Imperial Government and the population of the Empire. The able management of the Council exerted a salutary influence on Ottoman finances. The Government was enabled to borrow in the money markets of Europe on much more favourable terms than had been possible prior to 1881.\textsuperscript{30} After that date, the usual interest rate on Ottoman Government bonds was three or four per cent, and the issue prices of these loans were ordinarily eighty or ninety per cent of par. The average issue price of the loans negotiated before the institution of the Administration was in the neighborhood of sixty per cent, with an interest rate of five or six per cent.\textsuperscript{31}

Theoretically, the Administration was a department of the Ottoman Government. Practically, it functioned as a largely independent section of the Ministry of Finance.\textsuperscript{32} Thus, by the integrity and efficiency of its management, the Council afforded to the Government and to the population a striking example of the best features of European financial administration. Adjudication of taxes took place on schedule; accounts were closed on time; coupons on the consolidated debt were met at maturity. Within its own ranks, the Administration never condoned dilatory methods; in its business with the Government, the Council was continually pressing matters for solution. Salaries of native officials and laborers employed in the Administration of the Public Debt were adequate and were paid when due. On no occasion did the number of Europeans employed in the Administration exceed seven


\textsuperscript{31} Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit., p. 6.

\textsuperscript{32} Cf. Giampaolo Conte, Gaetano Sabatini, “The Ottoman External Debt and its Features under European Financial Control (1881-1914)”, cit., p. 72.
or eight per cent of the total. The policy of regular payment of sufficient salaries practically wiped out, within the Administration’s ranks, the abuses of bribery and of retention of collected receipts by local revenue agents, two vices which had sorely troubled the Imperial Government in attempts to reform its financial administration. Indeed, to become an employee of the Administration was the ambition of many Turkish and Ottoman Christians. 33

The Capitulations Regime: Contents and Developments of a System of Privileges Conceived for Western States Nationals

From the first half of the Sixteenth century until the first two decades of the Twentieth century, there was a big difference in the organization of foreign trade between the Ottoman Empire and Western Europe. In terms of institutional structure, this difference was very significant for the commercial actors in their business in the Eastern Mediterranean Sea. While companies and strong organizations were important for the Western Europeans, for the Ottomans capitulations were the main instrument in the organization of foreign trade during the mercantilist age. 34

33 Moreover, direct benefits to the native peasantry can be traced to the cooperation of the Council with foreign railway companies and banks. In the adjudication of taxes assigned as railway guarantees or as security for Government loans, the agents of the Administration of the Ottoman Public Debt had an effective voice in all proceedings. These employees spurred on procrastinating Government officials who were charged with the actioning of pledged taxes; the Council in Constantinople was an exacting master, and obligations to the Ottoman Bank and to the Deutsche Bank had to be rigidly discharged. Thus, under ordinary circumstances, the peasants were assured a fair price for their grain and could depend on the auctions being held at favourable moments. The operation of the railways increased the productivity of the regions traversed by assuring the natives of means of transportation for all production beyond local requirements. See Philip L. Cottrell, “A Survey of European Investment in Turkey, 1854-1914: Banks and the Finance of the State and Railway Construction”, in Philip L. Cottrell, Iain L. Fraser, Monika Pohle Fraser (eds.), East meets West: Banking, Commerce and Investment in the Ottoman Empire, cit., p. 59 ff.

34 The capitulations regime subsisting between the Ottoman Empire and the European Powers has been widely studied by several Authors both in dating years, and in more recent times. Cf., among the first ones, Gérard Pélissié du Rausas, Le régime
The name of “capitulations” is used in the diplomatic language to indicate the set of privileges that States not belonging to the Concert of Europe (Ottoman Empire, Barbarian and Muslim States, and the Far East) granted to the Europeans who settled and trafficked on their territory. These States were for this reason called “capitulation Countries”. The benefits consisted in the substitution of the jurisdiction of foreign consuls, in respect of their own compatriots, in the jurisdiction of indigenous authorities. Under the usual term of “consular jurisdiction” are understood, in addition to the attributions of the proper judicial power, other attributions pertaining to the executive power (such as, for instance, those of the police). In the field of international relations, the capitulatory regime is therefore opposed to the international law regime to indicate the particular international legal situation of these States, in what most significantly differentiated them from the international situation of common law in force between States of European or Christian civilization (precisely, according to the meaning that can be said to be officially consecrated by Article VIII of the Treaty of Berlin of 13 July 1878, in what concerns “the immunities
and privileges of foreigners, as well as the rights of consular jurisdiction and protection as established by the Capitulations and usages (...).”).

The basis of the said capitulatory system was fundamentally of a conventional nature and derived from the original capitulations. Particular importance in the history of capitulations is attributed to the aforementioned Treaty concluded in 1535 by Francis I of France with Suleiman the Magnificent, although, since the conquest of Constantinople, Genoese and Venetians had already entered into relations with Turkey and with some Treaties of 1453 and 1454, respectively, they had obtained from Sultan Mehmed II the formal recognition of the privileges so far enjoyed, through the concessions of the Byzantine Empire, of the Crusader princes and, after their fall, of caliphs and sultans. But the great political ascendant of France and the particular significance to which it rose the fact of a political union with the Ottoman Empire, which France achieved with the aforementioned Treaty (besides the connection of simple commercial relationships), justified its great renown.

The Treaty of 1535 became the model of similar treaties held by other European Powers with Turkey; practice then exercised an extensive influence on the original dispositions. The constant content of the capitulations, which remained the same until the outbreak of the First World War, concerned: a) the right of the consuls to exercise the police (power of order and compulsion) over the subjects of their State and therefore also the right to expel them from their district; b) the right of the consuls to judge in civil and criminal matters in all disputes, in which the two parties were subjects of their own State (in disputes between subjects of different States of Christian civilization

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could judge the consul of the defendant or accused, pursuant of the principle *actor sequitur forum rei*, and in those between subjects of a Christian and indigenous State, could judge the consul, if the subject of his State is defendant or accused, and the local magistrates with the assistance of the consul, otherwise); c) the so-called condition of extraterritoriality of the consuls, common to that of diplomatic agents, extended also to their families and employees, together with the other prerogatives of the right of guard, of the freedom of the neighborhood including, besides the lodging of the consul, the district of the city where he and his countrymen came together to live.\(^{37}\)

The Treaty of 1535 generalized the rules of law and extended to all the provinces of the Ottoman Empire the application of principles and customs that had long been followed in most Muslim Countries; rather than an exception to the common law, that Treaty was its application or pure and simple confirmation. Only later did this exception take hold. In the States of European civilization took root a distrust for the systems of justice and administration of States with different civilizations. In these latter, grew consequently a resentment for the capitulations regime (considered a toll of inferiority) and an aspiration to place their international relations with other States on an equal level.\(^{38}\)

Between the end of the Sixteenth century and the beginning of the Seventeenth century, became more and more evident the corrosive potential of an instrument that the Ottomans had used to obtain political-diplomatic advantages, but which will eventually prove to be the lock-pick by which the economic power of the Europeans managed to unhinge the foundations of the Empire.\(^{39}\) In the second half of

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the Sixteenth century, the capitular States officially recognized by the Sultan were Venice, Poland and France, but was above all the latter that benefited from the situation. To enjoy the same treatment, English, Portuguese, Spanish, Catalan or Sicilian merchants were forced to sail under the flag of France, which thus became a sort of privileged ally of the Ottomans, increasing the volume of their commercial traffic and above all hoping to exploit this alliance against the Habsburgs. But in 1580 Sultan Murad III decided to grant the capitulation favour also to Queen Elizabeth I of England, starting a real war between the European Powers to gain this kind of advantages.  

Throughout the Seventeenth century, France and England confronted each other on the terrain of commercial penetration into the Ottoman Empire. This was a terrain on which other competitors were soon added, such as Holland, which managed to obtain its first capitulations in 1612, or the Habsburg Empire, which achieved similar advantages in 1667. France attempted to regain a dominant position by being named “protector” of all Christian merchants who did not have an ambassador in Constantinople, but British pressure eventually managed to make the “most-favoured nation principle”, which authorized traders to choose a power of their liking. The French were left only with the symbolic privilege of protecting Christian pilgrims who went to the Holy Land, which subsequently allowed them to proclaim themselves protectors of all Catholics present in the territories of the Empire.  

In the long run, the outcome of these events would have been lethal for the Ottoman Empire. Over time, commercial concessions

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41 See Mehmet Bulut, “The Ottoman Approach to the Western Europeans in the Levant during the Early Modern Period”, cit., p. 260 ff.  
42 Gérard Pélissié du Rausas, Le régime des capitulations dans l’Empire ottoman, cit., p. 128 ff.
were transformed into potentates capable of eroding, thanks to economic penetration, the political power of the Ottoman Government. From unilateral favours granted by the Sultan, the capitulations became stable bilateral agreements, which increasingly brought benefits to the European Powers and imposed customs imbalances so unfavourable to the Ottomans that their artisan and industrial production finally collapsed.\footnote{Umut Özsu, “Ottoman Empire”, cit., p. 435, mentions a Capitulation signed between France and the Ottoman Empire on 30 May 1740 as a key in this regard. In addition to augmenting the immunities conceded to France in earlier grants, this was the first treaty in which the Sultan bound himself to concessions in perpetuo: unlike previous capitulations, generally couched as grants of limited duration that needed to be confirmed by each new Sultan, the Ottoman Empire here committed itself to a set of concessions whose effectiveness was not contingent upon formal acts of renewal. The Capitulation of 1740 also granted the most-favoured nation status to France, with Louis XV being characterized as a “sincère et ancien ami” of the Sultan. Finally, it was also notable for its exhaustiveness, comprising no less than eighty-five provisions on issues ranging from cooperation against North African pirates to free passage for pilgrims to Jerusalem.}

If the Ottoman Empire never underwent direct colonial domination, however, capitulations remain the classic example of an “invasion” which, without military conquests or occupations, would have nevertheless been decisive in determining the agony of the Empire.\footnote{Mehmet Bulut, “The Ottoman Approach to the Western Europeans in the Levant during the Early Modern Period”, cit., p. 260 ff.}

A first attempt to abolish the capitulations system was made by Ali Pasha, who was the Grand Vizier between 1713 and 1716. He was very much opposed to capitulations and catholic missionary activities in the Empire. He seriously dealt with the privileges which became detrimental as the Empire got weaker, and realized that the privileges had a lack of strong legal basis. They were the results of ex parte privileges granting practice, therefore, could have been canceled unilaterally.\footnote{Ali Pasha could not reach his target because he was martyred in the battle of Petrovaradin, in 1716. Marquess Jean Louis d’Usson de Bonnac, the French Ambassador in the Ottoman Empire between 1716 and 1724, wrote a report to King Louis XV mentioning that if Ali Pasha would not have been killed in the battle, he would have abolished the privileges that France enjoyed. See Emre Karabacak, “The Abolition of Capitulations in the Ottoman Empire”, cit., p. 2.}
Until the Tanzimat period (1839-1876), there was no serious effort to abolish the capitulations, but in the second half of the Nineteenth century, these attempts dramatically increased. After the Crimean War, the Grand Vizier Mehmet Emin Ali Pasha brought the capitulatory regime into question in the Congress of Paris, where he acted as Ottoman representative.⁴⁶ The responses to Ali Pasha’s attempt to negotiate the capitulatory system were positive: the 14th Protocol of the Treaty of Paris of 25 March 1856, already contained the declaration of the European Powers that the assumptions to which the capitulations responded should have ceased due to the Treaty itself (from which Turkey was allowed to be part of the international European society). Unfortunately, this statement was never realized.⁴⁷ Even if Ali Pasha’s attempt gave no result, it was the beginning of several other attempts to get rid of capitulations. Attempts in 1862, 1867, 1869 and 1871 were also inconclusive. As the Ottomans westernized the Empire, they argued that the capitulations were not necessary anymore because the legal system of the Empire itself was modernized enough to provide justice for all but the privileged parties were not in favour of an equal system. They were enjoying an advantageous position and they were exploiting the sources of the Ottoman Empire irresponsibly. The Empire was in their hand and it became almost a colony to be exploited to the fullest.⁴⁸

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⁴⁶ Mehmet Emin Ali Pasha said: “You both pressing us to make reforms and blocking us with the capitulations.”. He argued that problems which were stemmed from the capitulations affected negatively the relations between the Empire and the foreigners because, with the capitulatory regime, it was really hard to work the State apparatuses smoothly. See Emre Karabacak, “The Abolition of Capitulations in the Ottoman Empire”, cit., p. 2.


Ottoman Public Debt and Capitulations Regime in the Aftermath of the First World War: The Unfair Clauses of the Treaty of Sèvres

The life of the Administration of the Ottoman Public Debt can be divided into two parts: the twenty years following 1882, a period in Turkish history of relative calm, seriously interrupted only by the Greco-Turkish War of 1897; and a second period of roughly the same duration subsequent 1902, a period of strong contrast to the first.49 Events of first class importance followed one another in quick succession. After a few years of comparative quiet immediately following 1903, the Young Turks Revolution of 1908-09 was followed by a war with Italy which detached the Libyan provinces of Tripolitania and Cyrenaica. Almost simultaneously with the conclusion of peace with Italy, the allied Balkan Countries opened hostilities and, in the course of the two Balkan Wars of 1912-13, definitely wrested from the Ottoman Empire four-fifths of its territories in Europe. There came, in 1914, the entrance of Turkey into the First World War on the side of the Central Powers.50

At the same time, under the Young Turks regime the efforts to abolish capitulations gained momentum. In the political program of the Committee of Union and Progress (CUP) accepted in 1908 and subsequently confirmed in the CUP Conventions which were held in 1911 and 1913, there was a clear emphasis on the legal egalitarianism showing the intention to abolish capitulations which were apparently against the equality before the law. The capitulations provided favourable conditions to the privileged foreigners to be exempted from the legal obligations. They were protected by their Countries even the accusations were clearly proved. These conditions were totally against the sovereignty of the Ottoman Empire, thus they would have been

49 Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 177.
50 Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 177; Feroz Ahmad, “The Late Ottoman Empire”, in Marian Kent (ed.), The Great Powers and the End of the Ottoman Empire, cit., p. 7 ff.
abolished.\textsuperscript{51} Turkey, whose entry into the ranks of the constitutional States had quite a new date, in 1908, given the occasion to put back on the spot the abolition of capitulations (see the Treaty with Austria of 26 February 1909, and the Treaty of Peace with Italy, signed at Ouchy on 18 November 1912), denounced the capitulations unilaterally through a Declaration issued by Sultan Mehmed V on 9 September 1914, before the state of war existed between it and the Allied Nations in the First World War.\textsuperscript{52}

This struggle was concluded in 1918 by the above-mentioned Armistice of Mudros and the occupation by Allied Forces of strategic points in the Ottoman Empire. The Nationalist Movement, however, under Mustafa Kemal, prolonged hostilities against Greece, and in 1922

\textsuperscript{51} See Feroz Ahmad, “The Late Ottoman Empire”, cit., p. 19 ff.; Umut Özsu, “Ottoman Empire”, cit., p. 442 ff. The first event on which the Committee of Union and Progress declared its intention to abrogate the capitulations was the CUP Convention of 1911. The Committee clearly took a stand against the capitulatory system that challenged State authority. The members of the Committee were aware of the detrimental effects of the privileges. They were the greatest obstacles to creating a developed competitive capitalist economy according to their agenda, that is why the abolition of the capitulations was crucial to achieving the goals of development. In the Convention of 1913, CUP revealed its nationalist economic agenda. It was declared that the members were aiming to create a national economy that had no space for the privileges that blocked the developmental economic policies. The capitulations created a privileged class composed of foreigners and Ottoman subjects who enjoyed shelters that protected from the legal liabilities and sanctions. With these shelters, there could have been no national economy in which a national bourgeoisie further their interests (Emre Karabacak, “The Abolition of Capitulations in the Ottoman Empire”, cit., p. 3 f.).

\textsuperscript{52} See for details Habib Abi-Chahla, L’extinction des capitulations en Turquie et dans les regions arabes, cit., p. 92 f.; Emre Karabacak, “The Abolition of Capitulations in the Ottoman Empire”, cit., p. 13 ff. The text of the Declaration was as follows: “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 with 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 the basis of its relations with the other powers the general principles of international law.”.
drove it out of Anatolia.\textsuperscript{53} In the following summer, the Treaty of La-
usanne, negotiated between the new Turkish Government and the Al-
lied Powers, replaced the unratified Treaty of Sèvres.\textsuperscript{54}

It is extremely interesting, in particular, to focus here attention on
the clauses of the Treaty of Sèvres concerning the settlement of the
Ottoman Public Debt and the capitulations regime.

To the majority of those who held Ottoman bonds and to their
champions, the Allied Powers, the conclusion of the First World War
brought high hopes. The opportunity was at hand to consolidate their
ownership of the ceded revenues. Moreover, in their opinion, this was
the occasion to strenghten the position of the Council. In order to at-
tain these objectives, the defects in the sanctions of the Decree of Mu-
harrem were to be remedied by the provisions of an international tre-

ty.\textsuperscript{55} Indeed, for a time it seemed that these aspirations were to be
realized. In cooperation with partisans of the bondholders, the Allied

\textsuperscript{53} Michel Paillarès, \textit{Le kémalisme devant les alliés: l'entrée en scène du kémalisme,
le traité de Sèvres, l'accord d'Angora, vers la paix d'orient}, Éditions du Bosphore,
Constantinople, 1922; Feroz Ahmad, “The Late Ottoman Empire”, cit., p. 8 f. The
Treaty of Sèvres forced Turkey to cede Thrace, up to the Chatalja lines to Greece.
Turkey also renounced to Greece all rights over Imbros and Tenedos, retaining the
small territories of Constantinople, the islands of Marmara, and a tiny strip of Euro-
pean territory. The Straits of Bosphorus were placed under an international com-
mission, as they were now open to all. Turkey was furthermore forced to transfer to Gre-
ece the exercise of her rights of sovereignty over Izmir in addition to a considerable
hinterland, merely retaining a “flag over an outer fort”. Though Greece administered
the Izmir enclave, its sovereignty remained, nominally, with the Sultan. According to
the provisions of the Treaty, Izmir was to maintain a local Parliament and, if within
five years time she asked to be incorporated within the Kingdom of Greece, the pro-
vision was made that the League of Nations would hold a plebiscite to decide on such
matters. About the Greco-Turkish War of 1919-22, cf. Stanford J. Shaw, Ezel Kural
Shaw, \textit{History of the Ottoman Empire and Modern Turkey}, cit., p. 392 ff.; David
Fromkin, \textit{A Peace to end all Peace: The Fall of the Ottoman Empire and the Crea-
tion of the Modern Middle East}, Avon Books, New York, 1990, p. 86 ff.; Patrick Kin-
ross, \textit{ Atatürk: The Rebirth of a Nation}, cit., p. 306 ff.

\textsuperscript{54} Cf. Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit.,
p. 177.

\textsuperscript{55} Cf. Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit.,
p. 193.
and Associated Powers drafted and then imposed upon the vanquished Ottoman Empire the humiliating Treaty between them and Turkey, signed at Sèvres on 10 August 1920.\textsuperscript{56} The financial clauses of this Treaty (Part VIII, Articles 231-260) provided the superstructure of the financial control which the Allies proposed to exercise over Turkey. The foundation, of many years’ standing, was found to exist in the Administration of the Ottoman Public Debt.

In the future, so Article 246 of the Treaty of Sèvres provided, the Council was to be reorganized to include only the delegates of the British, the French and the Italian bondholders, and the representative of the Imperial Ottoman Bank.\textsuperscript{57} Thus constituted, the Council was authorized to give administrative advice and assistance to the Turkish Ministry of Finances, under conditions to be determined by the Financial Commission.\textsuperscript{58} Furthermore, under Article 251, the reorganized Council should have reviewed all transactions made by the attenuated portion thereof during the War. Any disbursements which were not in accordance with its powers and duties as defined in the Decree of Muharrem or otherwise before the War were to be reimbursed to the Council by the Turkish Government as soon as, in the opinion of the Financial Commission, such payment was possible. The new Council was to have the power of reviewing any action taken by its predecessor during the War, and to annul any obligation which in its opinion was prejudicial to the interests of the bondholders and which was not in
accord with the powers of the Council. The Allied Governments were to decide by majority vote and after having consulted the bondholders whether the newly-formed Council should, upon the expiration of its members’ terms, had to be maintained or replaced by the Financial Commission.

Under such a regime, the future actions of the Council would no doubt coincide with the desires of Allied holders of Ottoman Government bonds. Not only was the reconstituted Council envisaged as functioning unrestricted by obligations to the Turkish Government, but also, composed solely of nationals of the Allied Powers, it would be unhampered in the future by the presence of potentially hostile elements. Nor, indeed, would the financial tutelage of Turkey henceforth be shared by other Powers possessing interests at variance with those of Allied nationals. Also, by virtue of the Treaty of Sèvres, as stated above, the Council possessed the power to review actions taken during the War; thus conceivably the entire financial policy of the period 1914-18 could be overturned to the advantage of Allied bondholders. Moreover, the Turkish Government was to be held accountable for the reimbursement of sums disbursed by the old Council in contravention of its powers. An Allied Financial Commission was to decide when such repayment was to be made; and, as concerns the meaning of the organic statutes of the Public Debt, the exclusion from the Council of nationals of the Central Powers and the existence of an Allied-constituted Commission assured an interpretation as favourable to Allied desires as that reached during the War had been consonant with Turco-Germans aims.

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59 See Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 193 f.
60 Article 246, para. 6, of the Treaty of Sèvres of 1920. See also Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 194.
61 See Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 194.
62 Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 194.
It is hardly necessary to comment at length upon the state of economic vassalage to which Turkey would have been reduced by the Treaty of Sèvres. The essential elements of official fiscal surveillance (the sanctioning by a diplomatic act of the future conditions of service of the Public Debt and the official character of the executive) were to be achieved by the eventual merger of the Public Debt into the international Financial Commission.\(^3\) Moreover, this international body representing the Allied Powers would have been supreme in every phase of Turkish economy. Not a single item of the economic order in Turkey as forecast by the Treaty of Sèvres would have remained within the sole jurisdiction of the Turkish Government. Currency improvement, economic regeneration, tax reform, Government financing (both domestic and foreign), tariff policy concessions, all resources of the Country: all fell within the domain mapped out for the International Financial Commission. By this ring of economic servitudes, Turkey would have become effectively shackled to the Allied Powers.\(^4\)

As regards capitulations, Article 261 of the Treaty of Sèvres gave no room for doubt as to what the Allies’ intentions were: the capitulatory regime resulting from treaties, conventions or usage would have been restored in favour of the Allied Powers which directly or indirectly had enjoyed that benefit before 1 August 1914, and would have been extended to the Allied Powers which did not enjoy the same benefit on that date.

\(^{3}\) Sir Adam Block, the British delegate in the Council of the Public Debt, said in his Special Report for 1921-22 that “An international financial commission assumes the rights and attributions of the Turkish Government in regard to the Debt Council, which in due course will be merged with the commission. That is to say, an official international body controlling Ottoman finances under a solemn treaty will take the place of an institution whose delegates are appointed by unofficial syndicates representing the bondholders.”.

\(^{4}\) Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 196 f.
The property, rights and interests situated in territory which was under Turkish sovereignty on 1 August 1914, and belonging to nationals of Allied Powers who were not during the War Turkish nationals, or of companies controlled by them, would have been immediately restored to their owners free of all taxes levied by or under the authority of the Turkish Government or authorities, except such as would have been leviable in accordance with capitulations. Where property had been confiscated during the War or sequestrated in such a way that its owners enjoyed no benefit therefrom, it would have been restored free of all taxes whatever.\(^65\) The Turkish Government would have taken all the measures in its power to return the owner to possession of his property free from any encumbrance or burden for which he could have been accused without his consent. It would indemnified all Third Parties injured by the restitution.\(^66\) If the restitution could not have been effected, or if the property, rights or interests had been damaged or injured, whether they had been seized or not, the owner would have been entitled to compensation. Claims made in this respect by the Allied Powers nationals or by companies controlled by them would have been investigated and the total of the compensation would have been determined by an Arbitral Commission to be appointed by the Council of the League of Nations. Such compensation would have been borne by the Turkish Government and could have been charged upon the property of Turkish nationals within the territory or under the control of the claimant’s State.\(^67\)

\(^{65}\) Article 287, para. 1, of the Treaty of Sèvres of 1920.

\(^{66}\) Article 287, para. 2, of the Treaty of Sèvres of 1920.

\(^{67}\) Article 287, para. 3, of the Treaty of Sèvres of 1920. This provision did not impose any obligation on the Turkish Government to pay compensation for damage to property, rights and interests effected since 30 October 1918 in a territory in the effective occupation of the Allied Powers and detached from Turkey by the Treaty of Sèvres itself. Compensation for any damage to such property, rights and interests inflicted by the occupying authorities since the above-mentioned date would have been a charge on the Allied authorities responsible.
Finally, unless otherwise expressly provided for in the Treaty of Sèvres, no provision could have prejudiced the broader rights conferred on the citizens of the Allied Powers from capitulations or from any other provisions that could have been replaced.\textsuperscript{68}

**The Situation of the Ottoman Public Debt after the Treaty of Sèvres: The Diplomatic Action of Turkey under the Leadership of Mustafa Kemal Atatürk**

The policy pursued by the Ottoman Public Debt subsequent to the occupation of Constantinople by the Allied Forces was in harmony with the principles finally incorporated into the Treaty of Sèvres. Following the expulsion of the German and Austrian members in December 1918, the Council attempted to establish relations with the agencies of the Administration of the Ottoman Public Debt in the interior, in order that normal activities might be undertaken once more.\textsuperscript{69} Its object was to consolidate the position of the Council. Although the operations of the War had created chaos in the Ottoman Empire, the lines of communication between headquarters in Constantinople and the head offices in the provinces had been maintained. These lines were not ruptured by the change in the composition of the Council. The organization of the Administration of the Ottoman Public Debt remained practically intact, except in those parts of the Empire that were occupied by the Allied Forces. In these places, the Council attempted to continue to receive the revenues, but if this was impossible, uttered protests concerning its rights, pending a definitive settlement. The helplessness of the Ottoman Government and the ability of the Public Debt to call on the Allied High Commissioners in the case of need, both contributed to stimulate the hopes that the future would

\textsuperscript{68} Article 373 of the Treaty of Sèvres of 1920.

\textsuperscript{69} See Donald C. Blaisdell, *European Financial Control in the Ottoman Empire*, cit., p. 197.
find the Public Debt even more firmly intrenched than before the War.\textsuperscript{70}

The assistance of the Allied political authorities was not of a nature, however, to overcome certain formidable handicaps, such as the depreciation of the Turkish pound. This depreciation was hardly the most serious obstacle which blocked the path of the Council.\textsuperscript{71} Greater significance assumed in this period the increase in strength of the Nationalist Movement. The Sixth Decision of the Turkish National Pact, made by the last term of the Ottoman Parliament on 28 January 1920, declaring support for the demands of the Nationalist Movement led by Mustafa Kemal stated in fact that “It is a fundamental condition of our life and continued existence that we (…) should enjoy complete independence and liberty (…) in order that our national and economic development should be rendered possible. (…) For this reason we are opposed to restrictions to our development in (…) financial and other matters.”.\textsuperscript{72} Even before the issuing of this document, the incipient nationalist uprising had followed a policy of collecting for its own use the revenues of the Country as they successively came under its control.

In December 1919, the Council had already realized the nature of the situation in the interior and, in order to protect itself, had notified the Imperial Ottoman Bank, the National Bank of Turkey, the Deutscher Bank and the various railway companies of the alienation by Nationalist Forces of the revenues of the Council. On 15 January 1920 a

\textsuperscript{70} See Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit., p. 197.

\textsuperscript{71} Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit., p. 198.

\textsuperscript{72} This and the others Decisions worried the Allies. They resulted in the occupation of Constantinople by the British, French and Italian troops on 16 March 1920, and the establishment of a new Turkish nationalist Parliament (the Grand National Assembly of Turkey) in Ankara. This also intensified the Turkish War of Independence against the Allies. The Decisions of the Turkish National Pact taken by the late Ottoman Parliament were later used as the basis for the claims of the Grand National Assembly in the Treaty of Kars and of the new Republic of Turkey in the Treaty of Lausanne.
protest was sent to the Allied High Commissioners; the attention of the Sultan’s Treasury was also called to the situation, and on 1 April 1920 that Department of the Constantinople Government enjoined in the future the action of the Kemalists in seizing the revenues of the Council. This injunction of the Sultan’s Government had little effect on the policy of the Nationalist Government. As the Nationalist Movement spread its control over Anatolia, it continued to increase its collections at the expense of the Council.73

The years 1921 and 1922 were repetitions of the two preceding ones: steady increases of the powers and collections of the new Government based in Ankara and a corresponding diminution of the revenues and prestige of the Public Debt. Consolidated in its position by the military and diplomatic victories of September and October 1922, the Nationalist Government on 16 October 1922 notified the Council that “inasmuch as the Government of the Grand National Assembly is alone competent to undertake negotiations and conclude contracts relating to taxes imposed by the State, all treaties, conventions, contracts, official decisions, or official concessions which have been or shall be concluded or entered into by the Government at Constantinople, without the approval of the Ankara Government, are null and void. As a consequence, the following are not recognized: neither the loans nor other contracts concluded on the proposal of the Administration at Constantinople, nor payments relating thereto made, for the account of the Treasury, by privileged financial institutions to any administration whatsoever, but made without the adhesion of the Grand National Assembly.”74. Thus, the Council was notified of the intention of the Kemalist Government to be the de facto and ultimately the de iure Government of the Country. A Direction of the Public Debt was instituted

73 Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 198 f.
74 Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 199.
in Ankara; the agencies formerly under the control of the Council gradually became centralized around the executive in Ankara. In April 1923, the new Government collected for its own account the customs surtax in Constantinople; a year later, the remaining revenues under the control of the Public Debt were seized.\textsuperscript{75}

Overshadowing these facts in importance, however, was the Conference of Lausanne of 1922-23 between the Allied Powers and Turkey, and the Treaty of Peace which emerged from these negotiations on 24 July 1923.\textsuperscript{76} Allied subjects on the Council of the Administration of the Public Debt had had a finger in drafting the financial clauses of the Treaty of Sèvres; but when that settlement, although signed, was never ratified, their efforts went for naught. Again, at the Lausanne Proceedings the British, the French and the Italian delegates were important factors in the determination of the Allied viewpoint.\textsuperscript{77} Great Britain, France and Italy fought valiantly at this Conference to salvage some of the points of the Treaty of Sèvres which pertained to the future of the Council. The Turks, however, knew their desires and contested every Allied argument. An early draft of the financial clauses, drawn up by a sub-committee of the Third Commission, included an article confirming the Decrease of Muharrem and the Supplementary

\textsuperscript{75} In the meantime, important happenings took place outside of the Ottoman territory. Due to the initiative of the Allied delegates in the Council of the Administration of the Ottoman Public Debt, effected through the medium of the Allied High Commissioners in Constantinople, the Treaties of Peace with Germany and Austria contained clauses calling for the transfer to the Bank of England and the Bank of France of the gold deposited in German and Austrian banks as security for the first issue of Turkish paper money. Moreover, when those ‘Treaties went into effect, the Allied bondholders’ syndicates brought suit to procure for their use the amounts deposited by the Council in German and Austrian banks during the War. Cf. Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit., p. 199.

\textsuperscript{76} The text of the Treaty of Lausanne of 1923 has been reprinted in Lawrence Martin (ed.), \textit{The Treaties of Peace 1919-1923}, cit., p. 959 ff.

\textsuperscript{77} Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit., p. 200.
Decree of 1902. The Allies were insistent on its inclusion. The Turkish delegation, anyway, categorically refused to accept their arguments and maintained a viewpoint which in the end prevailed. On 13 January 1923, Hassan Bey made the statement that “the Turkish Government was ready to make a declaration [that no change would be introduced into the situation created by the Decree of Muharrem] to the Council of the Debt before the end of the Conference. The bondholders’ syndicates would be informed of it. It is impossible to confirm the Decree of Muharrem by a treaty, since that decree was an internal matter and the Council of the Debt was a private institution.”. On 4 February 1923, Ismet Pasha, the chief Turkish delegate, confirmed this point of view. He said: “We are prepared (...) to make a declaration to the bondholders of the Public Debt regarding the Decree of Muharrem, which defines the position of the Public Debt Administration. We are convinced that the former acts of the Ottoman Government, which have never ceased to inspire the bondholders with full confidence, will constitute a sufficient confirmation of this declaration. (…)”.

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78 French Ambassador Camille Barrère, Chairman of the Third Commission, set forth on 28 November 1922 the Allies point of view: “The Allies could not consent to any discussion regarding the maintenance of the Ottoman Public Debt with all its attributions and guarantees. The Debt was an institution the status of which had been defined by the Decree of Muharrem, and officially communnicated to the Powers. That status was thus placed under their guarantee.” (Parliamentary Papers, No. Cmd.1814, 1923, p. 553). See Donald C. Blaisdell, *European Financial Control in the Ottoman Empire*, cit., p. 200.


By its silence, the Treaty of Lausanne is evidence of the acceptance of the Turkish contention. No statement is contained confirming the Decrees, nor indeed did the Turkish Government ever make the declaration referred to. Bearing in mind the acceptance of the Turkish point of view in regard to the confirmation of the Decrees, it is not surprising to learn that in the provisions of the Treaty of Lausanne itself the rights of the bondholders under the Decree of Muharrem were overturned. The position of the bondholders in respect of their right of ownership of the ceded revenues was essentially modified by the Lausanne settlement, inasmuch as in the territories detached from Turkey as the result of the Balkan Wars or the First World War, new guarantees had to be given to the Debt Council in place of the ceded revenues formerly collected therein. These territories had to contribute separately and severally to the annuities and to the Ottoman Public Debt in the proportion which existed between the average revenue of each territory and the average total revenue of the Ottoman Empire in the years 1910-11 and 1911-12. The Council of the Ottoman Public Debt was entrusted with the preparation of the tables indicating the respective annuities, and any disputes which such distribution could have given rise to, would have been decided by an arbitrator to be named by the Council of the League of Nations.\textsuperscript{81}

The Treaty of Lausanne came into force on 6 August 1924. At the end of that year, the Council announced the contributive annuities due by the States concerned, and appeals from this decision were heard by an arbitrator, Mr. Eugène Borel, whose award was made on 18 April 1925 and communicated by the Council to the debtor States on 30 April 1925. With certain modifications necessitated by the settlement of the differences between Great Britain and Turkey over the delimitation of the Mosul boundary, Mr. Borel’s award contained the

\textsuperscript{81} Donald C. Blaisdell, \textit{European Financial Control in the Ottoman Empire}, cit., p. 202.
definitive partition of the annuities. According to this division, the Republic of Turkey was responsible for sixty-seven per cent of the annuity of the pre-war Ottoman Public Debt. The distribution of the capital was then fixed by a commission instituted by the Treaty of Lausanne, which defined Turkey’s responsibility for seventy per cent of the capital. Among the other debtor States, Greece with eleven per cent and Syria and the Lebanon with eight per cent had the greatest responsibilities. The remaining fourteen per cent was divided among the other States in whose favour territory was detached from the Ottoman Empire during the Balkan Wars and the First World War.  

During the Conference of Paris of 1925, the Republic of Turkey agreed to pay sixty-two per cent of the Ottoman Empire’s pre-1912 debt, and seventy-seven per cent of the Ottoman Empire’s post-1912 debt. With the Treaty of Paris of 22 April 1933, Turkey decreased this amount to its favour and agreed to pay 84,600,000 liras out of the remaining total of 161,300,000 liras of Ottoman Debt. The last payment of the Ottoman Public Debt was made by Turkey on 25 May 1954.

Towards the End of Capitulations: The Government of the Grand National Assembly of Turkey before the Conference of Lausanne

On 18 February 1918, shortly before its final defeat, Germany repaid Turkey for its alliance during the War when it signed a treaty putting a definitive end to its extraterritorial privileges in the Levant. The instrument provided that Germans in Turkey and Turks in Germany should enjoy the same treatment as the natives with respect to the legal and judicial protection of their persons and property.  

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82 Cf. Donald C. Blaisdell, European Financial Control in the Ottoman Empire, cit., p. 203.
Shortly thereafter, on 5 May 1918, following the German example, Austria renounced its capitulatory rights through a similar instrument. On 16 March 1921, the Russian Soviet Federative Socialist Republic, in a Treaty signed at Moscow with the Grand National Assembly of Turkey, also abrogated its historical jurisdictional immunities, on the basis that “The Government of the RSFSR considers any capitulatory regime to be incompatible with the unhindered national development of any country, as well as with the full realization of its sovereign rights. Thus, the Government of the RSFSR considers null and void any acts or entitlements, bearing any relation to the said regime.”.

The final abolition of extraterritorial consular jurisdiction in Turkey, however, occurred as one of many results of the Conference of Lausanne, which created a Special Commission on the Regime of Foreigners in Turkey. The most important question to be addressed within the Special Commission was the ultimate compatibility of Turkish sovereignty and extraterritoriality. Western Powers were extremely reluctant to renounce their citizens’ immunities in what had been the Ottoman Empire. Nevertheless, the Turkish representative to the Conference, Ismet Pasha, repeatedly insisted on the necessity of abolishing the capitulations, “because of their incompatibility with modern conceptions of law, and because of the manner in which they infringed on the sovereignty of the State.”.

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85 Article VI of the Treaty of Moscow of 1921.
While partially supporting the Turkish position, the President of the Commission, Marquess Camillo Garroni, quite pragmatically recognized that further guarantees on the security of aliens in the Middle East, as well as on their property and investment, were needed in order to terminate the capitulatory regimes. Consequently, he stated: “It must be recognized that even under the new regime, Turkish justice has not yet been able to give proof of its worth, and also that Turkey is still subject to laws, some of which are based on religious laws, while others are admitted by Turkey herself to be capable of reform, since they do not harmonize with the requirements of modern international relations.” 89

In sum, the conditions required by the Commission were: a) the provision of convincing guarantees on the judicial treatment of foreigners in Turkey; b) the implementation of further legal reforms based on the European model of justice and legality; c) the employment of foreign judges and, possibly, allowing them to try first instance cases involving aliens; d) the participation of foreign legal experts in Turkish legal reforms; and, finally, e) reserving the executive jurisdiction on cases involving foreigners exclusively to foreign judges.90

Understandably, the Turkish delegation perceived such requirements as a de facto continuation of extraterritorial consular jurisdiction and a direct encroachment on the sovereignty and independence of its Government. Consequently, in February 1923, Ismet Pasha left Lausanne in protest, leading to a temporary collapse of the negotiations. A few months before the conclusion of the Treaty of Lausanne, however, a compromise was reached, and Turkey agreed to employ Western legal advisers, nominated by the Permanent Court of International Justice, to assist its jurists in the drafting and implementation

of further legal reforms. Such experts had no judicial function, and were appointed only for a limited number of years. The Ottoman Empire’s successors also conceded that determinations relating to the personal status of foreigners in issues of marriage, divorce, judicial separation, etc., may be regulated by foreign laws in their national tribunals.\footnote{Cf. Shih Shun Liu, \textit{Extraterritoriality: Its Rise and Decline}, cit., p. 96: “The much-debated declaration was also signed in the form accepted on June 4 by the Turkish delegation. By this declaration, the Turkish Government proposed to engage for a period of not less than five years a number of European legal counsellors, to be selected from a list prepared by the Permanent Court of International Justice front among jurists nationals of countries which did not take part in the World War. These legal counsellors were to serve as Turkish officials under the Minister of Justice, some of them being posted in Constantinople and others in Smyrna.”.}

With the Treaty of Lausanne, after a long and controversial history, the capitulatory system and attendant jurisdictional privileges granted to foreign nationals in the Ottoman Empire finally came to an end. Article 28 of the Treaty expressed the acceptance by the High Contracting Parties of “the complete abolition of the Capitulations in Turkey in every respect.”. On 24 July 1923, a special Convention respecting conditions of residence and business and jurisdiction of European nationals in Turkey was also signed at Lausanne between Great Britain, France, Italy, Japan, Greece, Romania, the Kingdom of Serbs, Croats and Slovenes, and the newborn Republic of Turkey.\footnote{The text of the Convention of Lausanne of 1923 is available in League of Nations, Treaty Series, Publication of Treaties and International Engagements registered with the Secretariat of the League of Nations, Vol. XXVIII, Nos. 1-4, Geneva, 1924, p. 152 ff.} The Convention prescribed that “subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other Contracting Powers, be decided in accordance with the principles of international law.”\footnote{Article 15 of the Convention of Lausanne of 1923.}; at the same time, it reflected the Turkish commitment to ensure foreigners and their property “(...) protection in accordance
with international law and the principles and methods generally adopted in other Countries.”

Each time the Ottoman Empire attempted to abolish the capitulatory system and to claim its right, as did its European counterparts, to exclusive jurisdiction over conduct occurring within its territory, European Governments denied their consent on the basis that its legal system was “not ready”. Nevertheless, Western diplomatic pressures, as well as the gradual assimilation of foreign legal ideas through the presence of extraterritorial communities and legal experts in the country, certainly had an enormous effect on its normative shift towards a positivist conception of legality. Capitulations thus gradually became “one avenue through which Western legal thought and legal procedure were introduced”. The influence that capitulatory jurisdictional privileges, and the desire to terminate them, had on this process of restructuring Turkish indigenous law is illustrated by the speech that Ismet Pasha made at the Lausanne negotiations. Having stressed the failure to abolish capitulations sixty-six years before, during the Conference of Paris of 1856, Ismet Pasha vehemently emphasized the legal “modernization” accomplishments of the Turkish Republic: “During the period subsequent to the conclusion of the Treaty of Paris, Turkey has worked feverishly at the perfection of her judicial system,

94 Article 17 of the Convention of Lausanne of 1923.
95 According to Herbert J. Liebesny, “The Development of Western Judicial Privileges”, in Majid Khadduri, Herbert J. Liebesny, Law in the Middle East: Origin and Development of Islamic Law, The Lawbook Exchange Ltd., Clark, New Jersey, 2010, p. 332, "Historically, however, the capitulations have been an important factor in the legal development of the region once included in the Ottoman Empire. They were one avenue through which Western legal thought and legal procedure were introduced. Also, since the capitulatory rights came to be felt in the nineteenth century as an infringement of sovereignty, they felt a stimulant for judicial reform, since modernization and reform of the judicial system were one way to prove that the capitulations were no longer needed to protect the European merchant from the possible abuses of local courts. The capitulations can thus be regarded as one of the factors which induced the Ottoman Empire and Egypt to adopt continental European codes and procedure and to endeavour to follow European standards in the administration of justice.”.
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 established 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 (…).”.

Ismet Pasha’s statement reveals how the Western Europe’s insistence upon the maintenance of extraterritoriality recurrently invoked the alleged inefficiency of the Ottoman legal system as compared to an ideal-typical positivist legal order. Consequently, a discourse regarding the necessity of comprehensive legal reforms, based on European legal categories, was gradually created and reinforced. The purpose of the above-mentioned Gülhane Hatti-Sherif of 1839, the Hatti-Humayoun of 1856 and the massive projects of codification undertaken during the Tanzimat period, was primarily to consolidate Turkish territorial jurisdiction, eliminate (or at least minimize) the role of religious and customary laws, unify the domestic legal system to guarantee more coherent interpretation of the law and, more generally, construct a modern, European-style Nation-State. It was, however, in the aftermath of the Conference of Lausanne that the most impressive wave of legal reforms began. The Turkish desire to fulfil its promises to further promote the “positivization” of its legal system and prove that it was a “civilized State”, coupled with the new Government of progressive Nationalists led by Mustafa Kemal Atatürk, had a major role in this process. Accordingly, in 1923, the old and increasingly intrusive consular courts were abolished. In 1924, the communal and

96 Cf. Ministère des Affaires Étrangères, Documents Diplomatiques, Conférence de Lausanne, tome premier, 21 novembre 1922-1er février 1923, Commission du régime des étrangers, procès-verbal n. 1, séance du 2 décembre 1922, cit., p. 447.
religious courts were similarly shuttered and, in the course of the same year, a new Constitution was promulgated. 1926 saw the adoption of a revised, Swiss-inspired Civil Code, which was shortly thereafter complemented by revised Penal and Commercial Statutes. Finally, in 1927, a new Civil Procedure Code was adopted, followed by a reformed Code on Criminal Procedure.\textsuperscript{99} It appears, therefore, that, in less than one century, the Ottoman Empire experienced an enormous shift towards a typically Continental tradition of codification and legal positivism. Extraterritorial consular jurisdiction and the attempts to abolish it should be understood as, at least to some extent, informing this process. The increasing attempts to modernize its domestic legal order reflected the belief that, by positivizing its laws, Turkey could rid itself of both Western judicial interference and European insinuations as to the “lack of real law” in the Levant. At the same time, the institutionalization of domestic law, and the corresponding promises to intensify the reformist process, help account for the ultimate willingness of European Governments to accept the abolition of extraterritoriality during the Lausanne negotiations.\textsuperscript{100}

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