

The Case for an ‘Interim Peace-Sustainable Peace’ Dichotomy from the Middle East: Reconsidering Mosul Arbitration at its Centenary

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ABSTRACT

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This article offers dual concepts of “interim peace” and “sustainable peace” to analyze the nature of state-building and boundary drawing activities. The historical and legal story of the Mosul Vilayet issue of the early 20th century will be examined as a case study reflecting the conditions of sustainability/unsustainability of peace. The simple acceptance of the arbitral decisions by the involved parties without active resistance has been seen as enough to reach interim peace even if the consent is obtained under military threat. On the contrary, sustainable peace emerges out of just treaties made free from fears of imminent destruction and requires that the long-term costs of arbitral decisions over the people who live in the domains of the conflict should be taken into consideration. Throughout the paper, after introducing these twin concepts, the theoretical origins of the debates on the unequal

treaties, and the historical and legal foundations of the criticism about the Mosul arbitration are presented. This study's arguments are grounded in the conceptual and critical interpretation of the official documents and other relevant legal and historiographic sources. The last part of the article is devoted to the enduring humanitarian costs of the perpetuated 'interim peace' in the Mosul Vilayet from coups, civil wars, invasions to the rise of ISIS and beyond.

Keywords: Interim Peace; Sustainable Peace; Dispute Settlement; Unequal Treaties; Mosul Vilayet; Mosul Arbitration.

ÖZ

OKUR, Mehmet Akif, **Orta Doğu'dan Bir "Ara Barış-Sürdürülebilir Barış" İkilemi Örneği: Yüzüncü Yılında Musul Tahkimini Yeniden Düşünmek**, CTAD, Yıl 19, Sayı 37 (Bahar 2023), s. 231 - 259.

Bu makale, devlet inşası ve sınır çizme faaliyetlerinin doğasının analizinde kullanılmak üzere "ara barış" ve "sürdürülebilir barış" şeklinde bir kavram çifti önermektedir. Makalede, 20. yüzyılın başlarındaki Musul Vilayeti meselesinin tarihî ve hukukî öyküsü, barışın sürdürülebilirliğinin/sürdürülemezliğinin şartlarını yansıtan bir vaka çalışması olarak incelenecektir. Söz konusu dönemde, tahkim kararlarının ilgili taraflarca aktif direniş gösterilmeden basitçe kabul edilmesi, rıza askeri tehdit altında alınmış olsa bile barışa ulaşmak için yeterli sayılmıştır. Bu nitelikteki ara barışın aksine, sürdürülebilir barış, yakın bir yıkım korkusundan bağımsız olarak yapılan adil anlaşmalardan doğar ve ihtilaf alanlarında yaşayan insanlar üzerindeki tahkim kararlarının uzun vadeli maliyetlerinin de dikkate alınmasını gerektirir. Bildiri boyunca, önce bu ikiz kavramlar tanıtılacak, daha sonra eşitsiz antlaşmalar tartışmalarının teorik kökenleri, Musul tahkimine yönelik eleştirilerin tarihî ve hukukî temelleri sunulacaktır. Çalışmanın argümanları, resmî belgelerin ve diğer ilgili hukukî ve tarihî kaynakların kavramsal ve eleştirel yorumuna dayanmaktadır. Makalenin son bölümü, Musul Vilayeti'nde darbelerden, iç savaşlardan, işgallerden IŞİD'in yükselişine ve ötesine uzanan "geçici barış"ın kalıcı insanî maliyetlerinin hatırlatılmasına ayrılmıştır.

Anahtar Kelimeler: Ara Barış; Sürdürülebilir Barış; Uyuşmazlık Çözümü; Adaletsiz Antlaşmalar; Musul Vilayeti; Musul Tahkimi.

Introduction

The story of the arbitration award under review in this study began in the last days of the World War I when the British army invaded Mosul (14 November 1918) contrary to the provisions of the Armistice of Mudros (30 October 1918). What followed was a period of local resistance backed by Turkish paramilitary activities, and border skirmishes between regular military

forces.¹ After that, a series of diplomatic struggles were carried out in the conference halls of Lausanne, Istanbul, and Geneva. Turkey demanded a plebiscite that would ask the people of Mosul on whose side they want to use their right to self-determination. London strongly opposed this proposal because the outcome would be in favor of Ankara. In the end, the League of Nations (LON) backed by the Permanent Court of International Justice (PCIJ) refused the option of going to a referendum and adopted British plans regarding the Mosul Vilayet. At that time, both of those institutions were under heavy British influence to the extent that they could not handle the process impartially. As expected, Turkey rejected the LON decision, but six months later, its requirements were enforced with an 'unequal treaty'. On 5 June 1926, Turkey had to sign the Treaty of Ankara leaving this region to newly created Iraq, then under Britain's mandate, against both its and the local population's documented wishes so Mosul was an example of imposed arbitration with all its flaws, biases, and consequences. Besides, the time has proved that the priorities and pledges as stated in the international legal documents over which the decision on the Mosul Vilayet built were groundless. Neither prosperity, peace and stability promised to local inhabitants, nor security-related assurances given to Turkey in return for ceding a country-sized territory have been materialized.

In this article, I would like to review the conventional answer given to a general question by focusing on the historical Mosul Vilayet case: 'What makes an international arbitration award concerning a disputed territory successful?' In the literature, the acceptance or compliance of the outcome without active resistance by the relevant parties have been used as parameters of the narrowest answer.² Acquiescent responses are seen as signs of resolving the conflict between sides, at least temporarily. Nevertheless, if such 'interim peace' is not just and well-grounded, the decision may fail to produce a 'sustainable peace' in the middle and long run. In general, the League of Nations' (LON) resolution of December 16, 1925, on Mosul Vilayet is qualified among the successful cases.³ I criticize this conventional interpretation on the basis of the conceptual distinction between 'interim peace' expressing the balances of a conceded defeat, and 'sustainable peace'. The second emerges out of equal treaties made under conditions free from fears of imminent destruction caused by a rout.

¹ Othman Ali, "The Career of Ozdemir: a Turkish Bid for Northern Iraq, 1921–1923", *Middle Eastern Studies*, Vol. 53, No. 6, 2017, pp. 966-985.

² Lorna Lloyd, "The League of Nations and the Settlement of Dispute", *World Affairs*, Vol. 157, No. 4, 1995, pp. 160-174.

³ H. Müller-Sommerfeld, "The League of Nations, A-Mandates and Minority Rights during the Mandate Period in Iraq (1920–1932)", *Modernity, Minority, and the Public Sphere*, ed. S. Goldstein-Sabbah-H. Murre-van den Berg, Brill, Leiden, 2016, pp. 258-283.

Those kinds of treaties make possible the internalization of arbitral results as 'just' and help to maintain this recognition over an extended period of time by the party which is put under the most burden. Another requirement to reach sustainable peace is to take the long-term human security costs of arbitral decisions that would be imposed on people who live in domains of the conflict into consideration while finalizing the awards.

This study aims to revise the preconception on the 'success' of the Mosul Arbitration while running up to the centennial by concentrating on two aspects of it, one of which reflects its unfairness and the other of its ill-founded character.

Unequal Treaties Debate and 'Interim Peace' in Mosul Vilayet

Unequal Treaties, Legality, and Rightness: A Brief Overview on Theoretical Debates

As a result of more than a hundred years of debates in the field of international law, the treaties that are signed under the threat or actual use of force and push the weaker party to give various concessions or abandon its territories have been defined as unequal. During this period of time, some states that lost their sovereignty over a piece of land with unequal treaties have rejected and declared null and void them or demanded renegotiation even though they were signed a long time ago. Such claims by states have arisen especially in processes of post-colonial independence or regime change.⁴

When we think of the recent Russian demands from Ukraine while its troops have been attacking Kyiv,⁵ it is ironic to remember that the first international document that recorded criticisms concerning unequal treaties was the Treaty of Moscow made between Turkey and the Soviet Union on March 16, 1921. In the first article of this Treaty, it is stated that a peace agreement or some other international obligation that would be imposed upon one of the parties by force will not be accepted as valid. This document was referred to as the legal starting point to claim the invalidity of the unequal treaties during the preliminary work carried out for the Vienna Convention on the Law of Treaties

⁴ Jianlang Wang, *Unequal Treaties and China*, Silkroad Press, 2016 – Dong Wang, "The Discourse of Unequal Treaties in Modern China", *Pacific Affairs*, Vol. 76, No. 3, 2003, pp. 399-425.

⁵ Using military force, Russia has tried to force Ukraine to recognize its 2014 annexation of Crimea and the independence of two separatist statelets in the eastern Donbas border region. It is a clear example of how alive the unequal treaties issue is, even today. Max Seddon et al, "Ukraine and Russia explore neutrality plan in peace talks", *The Financial Times*, 16 March 2022, <https://www.ft.com/content/7b341e46-d375-4817-be67-802b7fa77ef1> (Accessed: 20 March 2022).

(VCLT).⁶ The Kellogg-Briand Pact (1928) and Article 2(4) of the UN Convention (1945) are considered as other milestones in turning the invalidity of those treaties signed under the use or threat of force into a binding rule. These documents eliminated war as an instrument of international politics and paved the way for Article 52 of the VCLT: '*A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.*'⁷

What are the parameters of 'threat' and 'use of force' mentioned here? Do they just mean military pressure? While this article was being negotiated, the acceptance of economic, political, and psychological pressures was proposed in addition to military force as reasons to avoid treaties although not approved by the majority too.⁸

Today, there is no doubt that the unequal treaties made after the coming into effect of VCLT have no legal value. At this point, the question pertaining to our topic is whether it is possible to apply this *jus cogens* rule of VCLT retrospectively. Article 4 of the VCLT shows us a way while defining the nonretroactivity of the Convention. It indicates that the rules that have already acquired common-law status can be enforced retroactively.⁹ As a matter of fact, during the meetings of the international law committee that prepared the VCLT, it was mentioned that Article 52 could be applied retrospectively even until back to the Covenant of the LON. However, there is still no consensus on the exact commencing date.¹⁰ In an important case, the International Court of Justice's (ICJ) decision concerning the matter of fisheries between Britain and Iceland confirmed the validity of Article 52 for the disputes that occurred before VCLT.¹¹

Article 62 of the VCLT is also significant for the unequal treaty debate. This is the place of the *rebus sic stantibus* principle which outlines the exception to the doctrine of *pacta sunt servanda* (agreements must be kept) by expressing

⁶ United Nations, *Vienna Convention on the Law of Treaties (with annex)*, Concluded at Vienna on May 23rd., New York, 1969. – United Nations, *Yearbook of the International Law Commission*, Vol. 1, New York, 1966, p. 31.

⁷ Ibid.

⁸ Ibid.

⁹ Katherine A. Greenberg, "Hong Kong's Future: Can the People's Republic of China Invalidate the Treaty of Nanking as an Unequal Treaty?", *Fordham International Law Journal*, Vol. 7, No. 3, 1983, p. 549.

¹⁰ Ibid, pp. 554-556.

¹¹ International Court of Justice, United Kingdom v. Iceland, *International Court of Justice Reports*, 1973, p. 14.

that any fundamental alteration in the circumstances could invalidate the treaties.¹² In the context of this principle, the thesis of ‘unequality’ questions the previously signed treaties’ legitimacy through using the sovereignty transfers as an opportunity to challenge them. During the processes of change in sovereignty, leading to the emergence of successors, the newly independent states like ex-colonies can adopt the policy of rejecting the unequal treaties made by their predecessors entirely or selectively. Handing over sovereignty means a fundamental change within the circumstances in which the unequal treaties were made and provides the successor states with a generally justifiable excuse to ignore old treaties even though failing to acquire international law’s full support. In some examples, this rightness has enabled parties of unequal treaties to renegotiate terms and made room for the acceptance of successor states’ significant demands.¹³ Similarly, during these conjunctures, neighboring states that had to leave the land to the predecessor state by being forced to sign an unequal treaty also can think to review their commitment to these old documents since the predecessor state changes the other side of the frontier by withdrawing from the border.

Tragic historical experiences like the Mosul Vilayet issue have fed to the long debate summarized above in international law. Today, the efforts to change state borders by military force are shaking the world order again. In this conjuncture, studies of past cases can remind us why the boundaries drawn by the unequal treaties imposed with the leverage of arbitral awards could not create conditions for sustainable peace. The following subsections are devoted to this purpose.

¹² United Nations, Vienna Convention on the Law of Treaties, *Treaty Series 1155,1(18232)*, New York, 1980, pp.332-353 – Mehmet Akif Okur, “Men-Zor Tezi ve Eşitsiz Anlaşmalar Tartışmasının Işığında Musul Vilayeti: Türkiye'nin Tarihi Hakları/Haklılığı Meselesi”, *Yüzyıllık Sorun: Musul Vilayeti (Tarih, Toplum ve Siyaset)*, ed. Zekeriya. Kurşun - Davut Hut, Vakıfbank Kültür Yayınları, İstanbul, 2020, pp. 317-360. Turkey applied this principle to alter the status quo built by Lausanne Conference on different occasions. One of them was the thesis of Prime Minister Menderes and his Foreign Minister Fatin Rüştü Zorlu defended at the London Conference in 1955. This "Men-Zor thesis" interpreted the Lausanne Treaty's 16th and 20th articles in a way refusing the UK's right of sovereignty transfer over Cyprus to a third party without taking the approval of Turkey, by referring to the minutes of the Lausanne debates.

¹³ Greenberg, *ibid*, p. 554-556.

The LON and Mosul Question: On the Way to the Unequal Treaty

The renowned international law jurist Ingrid Detter defines the above-introduced term, unequal treaties, by referring to the historical conditions that states may encounter while struggling for independence:¹⁴

‘... A state that has just gained its independence may, for various reasons, find difficulties in making itself heard in international relations; it may sometimes find itself compelled to enter into treaties with more dominating states, treaties which only favor the stronger of the parties, treaties which even sometimes conflict with the long-term national interest of the weaker state. Such treaties are often referred to as being ‘unequal’.’

What happened both during the process that ended with the Treaty of 1926 and the circumstances on the eve of the signing date have the significant characteristics of an unequal treaty as defined above. The main reasons for Britain’s contention on Mosul were oil wealth¹⁵ and strategic interests related to the Middle East’s new geopolitical design, which required the exclusion of Turkey from the region.¹⁶ The emphasis on the strategic argument is less common in the literature than the widely accepted oil-interest thesis. The report presented to the British Cabinet by high profile special committee consisting of eight ministers is a top-level articulation of it:¹⁷

‘... The return of the Turks to Iraq and the downfall of the Arab Kingdom would carry with it consequences of a far-reaching character. It is not to be anticipated that, a victorious Turkey would halt at Mosul. She would demand and she would obtain, because at any time she could seize, Baghdad. Neither, having recovered Baghdad, would she be willing to stop short of Basrah... ... Nor would the consequences, in all probability, be confined to the Kingdom of Iraq alone. The presence of a victorious Turkey at the head of the Persian Gulf could hardly leave British interests in that sea and in the adjoining area, from which the oil supplies of the British Navy are mainly drawn, unimpaired... ... the return of the Turks to Iraq would be the inevitable prelude to an agitation which would not cease until Syria and Palestine had experienced a similar fate. If this were the case, Britain would

¹⁴ Ingrid Detter, “The Problem of Unequal Treaties”, *The International and Comparative Law Quarterly*, Vol. 15, No. 4, 1966, p. 1070.

¹⁵ Jonathan Conlin, “An Oily Entente: France, Britain, and the Mosul Question, 1916-1925”, *Diplomacy & Statecraft*, Vol. 31, No. 2, 2020, pp. 231-256.

¹⁶ Susan Pedersen, “Back to the League of Nations”, *The American Historical Review*, Vol. 112, No. 4, 2007, p. 1106. - Peter J. Beck, “ ‘A Tedious and Perilous Controversy’: Britain and the Settlement of the Mosul Dispute, 1918-1926”, *Middle Eastern Studies*, Vol. 17, No. 2, 1981, p. 257.

¹⁷ Cabinet of the United Kingdom, Conclusions of Meetings of the Cabinet, Jan.11th-May 16th, 1923, Nos. 1(23)-28(23), Vol. XIV, (Secret), *Committee on Iraq Report*, March 23, 1923, (Secret/IRQ41), HMS Office, London, 1923, p. 4.

have fought the Asiatic war in vain, Turkey would have been the victor, not in Europe alone, but in Asia also, and her triumph would not be a mere reversion to the status quo ante, but would plant an aggressive Islamic State in a central site, where she would be in a position to control the fortunes of the Middle East, with results to British interests in those regions, and even in India, that might well in the long run be disastrous.'

In Lausanne, because of Lord Curzon's insistence, who was under the advice of the oil interests and geopolitical vision reflected above-quoted report, a deadlock occurred. To preserve the compromises over other articles of the Lausanne Treaty, Turkey agreed to disagree, and the final decision was postponed. Referring to the Council of LON was among the accepted options for the conflict's final solution.¹⁸ During the LON phase, Turkey encountered strong internal and external pressures aiming to push Ankara to acquiesce to the status quo built up by the British invasion. Meanwhile, Britain had followed a two-stage strategy.

Firstly, London used its influence over LON in a way that would erode Turkey's legal and moral standing on the Mosul issue in the eyes of the international community. When the dispute was referred to the LON, the legal framework that Ankara accepted in Lausanne¹⁹ was changed to Turkey's detriment from mediation to binding arbitration by the Council of the LON's and the PCIJ's decisions. On the other hand, relevant literature indicates that the Investigation Commissions sent to Mosul Vilayet were put under pressure. Britain struggled to manipulate the Commissions' fact-gathering and reporting activities in the region. The same determined pressures diverted the votes in the Mosul Sub-committee examining the reports of the field investigations, too.

After these ground preparation activities, the second stage came. Turkey was forced to either give up its sovereignty over Mosul Vilayet or confront war, economic and diplomatic isolation. Being worn out due to the series of wars that had lasted for more than a decade, Ankara had to accept Mosul Vilayet's cession with a Treaty that was akin to Deter's portrayal above.

The Council of the LON Decision on Mosul and its Critics

The primary official documents and other supportive evidence of the time indicate that two LON Inquiry Commissions sent to Mosul with fact-finding missions were under pressure to substantiate the British arguments. Besides some members' easily identifiable biases, British authorities restricted and

¹⁸ TBMM, "Lozan Sulh Muahedenamesinin Kabulüne Dair Kanunlar", *Düstur*, Üçüncü Tertip, Cilt 5, Kanun No 340, 11 Ağustos 1339-14 Teşrinievvel 1340, İstanbul, 1931, pp. 20-21.

¹⁹ Great Britain Foreign Office, Lausanne Conference on Near Eastern Affairs 1922-1923, *Records of Proceeding and Draft Terms of Peace, Turkey*, No 1, HMS Office, London, 1923, p. 402.

pressured those Commissions during their surveying activities on the ground and later.²⁰ Even if they were written under such unfavorable conditions, those reports still contain some balanced sections. However, all of them were neutralized and prevented from being effective over the Council of LON's final decision on Mosul due to intense British efforts. Among them, some passages from the report of the first Commission led by Einar af Wirsen are especially noteworthy for the argument of this study. As an example, the below paragraph clearly points out that the Council of LON had no legal authority to decide Mosul Vilayet's fate. Sovereignty transfer would have only been possible with Turkey's 'renunciation'. Moreover, of course, such renunciation should have relied on free will in order not to be questioned as 'unequal':²¹

It is indisputable that Turkey retains her legal sovereignty over the disputed territory so long as she does not renounce her rights. Iraq has no legal right or right of conquest over that territory. The Iraq State did not exist at the termination of hostilities. Iraq as it actually exists can only comprise the undisputed part of the country.'

In addition to this exact legal status of the territory, the report shows that the majority of the population living in Mosul Vilayet was on Turkey's side, too. A sizeable portion of the population, especially in the cities of the region like Kirkuk, Arbil, Altunkopru, Kifri, Tal-Afar, and Tauk, was Turkmen, and they wanted to be part of Turkey,²² but support for Turkish rule was not limited to ethnic lines and was shared by all groups that inhabited the region, although with different degrees and conditions. This was the reason why Britain refused self-determination through a referendum option: 'If certain guarantees of local administration were not to be given to the Kurds, the majority of the people

²⁰ Fadhil Hussain, *The Mosul Problem: A Study in Anglo-Iraqi-Turkish Diplomacy and Public Opinion*, PhD Dissertation, Indiana University, 1952, p. 182.

²¹ League of Nations, *Question of the Frontier Between Turkey and Iraq, Report submitted to the Council by the Commission instituted by the Council Resolution of September 30th, 1924, Geneva, August 20th, 1925*, pp. 184-186.

²² The League of Nations report depicts Turkish presence in the Vilayet as such: "It is obvious, however, that the basic stock of the population of these towns along what is known as the 'high-road' is Turkish. The leading men are Turkish, and in several of their houses we were able to note, without questioning them, that they spoke Turkish with the members of their families. We may mention that even the Christians of Kirkuk speak Turkish among themselves... The town of Arbil is divided into seven boroughs. We interviewed the Mukhtars of these boroughs. When asked what was their nationality, five replied that they were Turks, one that he was as much a Turk as a Kurd, and the seventh stated that he was a Jew... Turkish is spoken all along the high-road in all localities of any importance. The little town of Altun Kenpri is definitely Turkish. The population of Tuz-Khurmatli is, except for a few Jewish families, entirely Turkish or Turkoman... We estimate the population of Qara Tepe to be 75 percent Turk/Turkoman... Tuz-Khurmatli and Tauq are also mainly Turkish..." In addition, "persons who now call themselves Arabs recognize their Turkish origin." Ibid, p. 38, 37.

would have preferred Turkish to Arab sovereignty.²³ The pro-Turkish Kurdish tribes²⁴ with whom the Commission had a meeting were punished after the LON delegation left Mosul. The British air force RAF organized fierce air and land attacks on the Kurdish populated regions under the pretext of ‘establishing stability.’²⁵ Turkey repeatedly protested against these attacks before the LON.²⁶

What were the Arabs in Mosul Vilayet thinking about the change in sovereignty? The Commission ascertained the sympathy that the Arabs felt towards Turkey with the following sentences:²⁷

“Many Arabs, particularly those of the poorer classes, are pro-Turkish and sometimes give touching expression to their sympathies. The most strongly nationalist Arabs say that they would prefer Turkey to an Iraq under foreign control. The committee was surprised when the Yazidis said that they preferred Turkey. Jews and Christians also opted for Turkey to Iraq unless the British administration continued.”

Interestingly, the report told that even pro-Iraqi people would have preferred Turkey under some conditions:²⁸

“There is no national Iraqi feeling. Taken as a whole, the opinions expressed in favour of Iraq were in most cases based on considerations of private or community interest rather than on common patriotism. (For this reason,) Many of the partisans of Iraq state that if the mandatory regime were shortly to come to an end they would rather be restored to Turkey.”

Not only those passages but also the stipulations set by the Wirsén Commission bothered Britain. According to the report, 25 years-long effective LON mandate, participation of Kurdish officials in the administration, and the use of Kurdish as an official language at the schools and courts in Mosul Vilayet were requirements for the union of this territory with Iraq. If not, “*the majority of the people would have preferred Turkish to Arab sovereignty.*”²⁹ When it comes to Ankara, the logical inconsistency between the above-quoted passages

²³ Ibid, p. 185.

²⁴ Mohammad Sabah Kareem, “Winston Churchill’s Middle Eastern Strategy and the Idea of a Kurdish Buffer State, 1921–1922”, *The International History Review*, Vol. 44, No. 6, 2022, p. 1223 – Jordi Tejel Gorgas, “Making borders from below: the emergence of the Turkish–Iraqi Frontier, 1918–1925”, *Middle Eastern Studies*, Vol. 54, No. 5, 2018, p. 815.

²⁵ League of Nations, *ibid*, p. 89.

²⁶ Aryo Makko, “Arbitrator in a World of Wars: The League of Nations and The Mosul Dispute, 1924–1925”, *Diplomacy & Statecraft*, Vol. 21, No. 4, 2010, p. 639.

²⁷ League of Nations, *ibid*, p. 78.

²⁸ Ibid, p. 16, 78.

²⁹ Ibid., p. 85, 88

favoring Turkey and the final pro-British judgment reached was subject to criticism. Turkey reminded its official position vis a vis the role of the Council of LON regarding the Mosul issue while rejecting the concluding advice of the Commission. In Lausanne, the Turkish delegation had accepted the LON option conditionally, as a non-binding mediation process requiring unanimity, including Turkey, for the final decision,³⁰ so a solution based on this advice would be of no effect because Turkey did not accept it. After the Turkish refusal, clashes erupted between British and Turkish forces over the interim boundary. Royal Air Force and Navy increased their harassment toward Turkey.³¹

Upon the request of Britain aiming to overwhelm Turkey's objection, LON asked PCIJ to interpret the relevant article of the Lausanne Treaty. Ankara could not prevent this act but declared that it did not consent to the application of the Council to PCIJ³² which had been widely criticized for behaving politically in the interwar period.³³ Then, despite criticisms from prominent International Law scholars³⁴, and contrary to its previous decisions,³⁵ PCIJ delivered an advisory opinion controversial in terms of procedure and content. For example, three of the seven judges on the panel with a voting right were nationals of countries that had been at war against Turkey in the World War I. One of them was British and there was no Turkish member.³⁶ Besides, two years ago, PCIJ had refused to give advice on the Status of the Eastern Carelia

³⁰ A. Berriedale Keith, "The League of Nations and Mosul", *Journal of Comparative Legislation and International Law*, Vol. 8, No. 1, 1926, pp. 38-39, 44. – Lord Curzon, Extracts from Minutes of the 22nd Meeting, January 23rd, 1923, at 6.00 p.m., under the Presidency of Lord Curzon, <http://www.legal-tools.org/doc/do6ydo>, pp. 144-146. (Accessed 20 March 2022).

³¹ Makko, *ibid*, p. 641

³² Permanent Court of International Justice, Article 3, Paragraph 2, Of The Treaty of Lausanne (Frontier Between Turkey and Iraq), *Collection of Advisory Opinions*, Series B, No. 12, 1925, p. 8.

³³ Edwin M. Borchard, "The Customs Union Advisory Opinion", *The American Journal of International Law*, Vol. 25, No. 4, 1931, p. 715. – Valentin Jeutner, "Judicial imperialism and the PCIJ's interpretation of the 1923 Treaty of Lausanne (Part I)", *Völkerrechtsblog*, 2019, <https://voelkerrechtsblog.org/judicial-imperialism-and-the-pcijs-interpretation-of-the-1923-treaty-of-lausanne-part-i/> (Accessed 25 March 2019).

³⁴ M. Gilbert Gidel, *Article 3, Paragraph 2, du Traite de Lausanne*, Imprimerie Chaix, Paris, 1925.

³⁵ Philippe Lalolende, "The Death of the Eastern Carelia Doctrine: Has Compulsory Jurisdiction Arrived in the World Court?", *University of Toronto Faculty of Law Review*, Vol. 37, No. 80, 1979, p. 87.

³⁶ Ake Hammarskjöld, "Sidelights on the Permanent Court of International Justice", *Michigan Law Review*, Vol. 25, No. 4, 1927, p. 330.

case, because Russia rejected being part of the application, like Turkey.³⁷ PCIJ advised that the verdict of the Council of the League of Nations will be mandatory and must be taken by a kind of unanimity not counting the votes of the respective parties, namely Britain and Turkey.³⁸

The Council of the LON voted on this 'advisory opinion' and turned it into a binding decision. This voting cleared the ground for Britain's victory. Turkey reacted with those words: "*The advisory decision of the Court of International Justice cannot be binding for the Republic of Turkey.*"³⁹

In the meantime, before the declaration of the PCIJ judgment, another British move was underway. Turkey's protests complaining about British punishments, which occurred in the form of aerial bombardment and other military forms on the inhabitants of Mosul vilayet who favored Turkey during the work of the Wirsén commission, were not effectively investigated by the LON. Contrarily, the British counter-request was accepted, and a new Commission was sent to Mosul to check the claims on border clashes, aerial violations between the sides, and the 'situation of the Christians banished from Turkey'. British influence over the LON members was potent, but dissenting votes were still possible because of the 'Turkish claims' legal strength. Thus, a new report on how Turkey badly treated its Christian minorities would have affected the general public and voting preferences of their representatives at the Council of the LON.⁴⁰

This second report⁴¹ included many controversial statements serving the British goal.⁴² Even Johan Laidoner, the President of this Commission, needed to add notes to the supplement of the report indicating that on some occasions

³⁷ Permanent Court of International Justice, Third Ordinary Session, *Status of the Eastern Carelia, Advisory Opinion*, 1923, http://www.worldcourts.com/pcij/eng/decisions/1923.07.23_eastern_carelia.html, (Accessed 10 March 2019).

³⁸ Permanent Court of International Justice, *ibid*, p. 33.

³⁹ League of Nations, Fourth Meeting (Public), Held at Geneva on Tuesday, December 8th, 1925, at 3.30 p.m. (7), 1926, p. 121.

⁴⁰ Tanno Tilgar, "Laidoneri komisjoni raportite kritikast ja retseptioonist seoses kindrali tegevusega Iraagis I", *Tuna*, Vol. 14, No. 3, 2011, p. 54.

⁴¹ Mai Taha, "Self-determination, oil and Islam in the face of the League of Nations: The Mosul Dispute and the 'non-European' legal terrain", *Statehood and Self-determination: Reconciling Tradition and Modernity in International Law*, ed. D. French, Cambridge University Press, Cambridge, 2013, p. 343.

⁴² İhsan Şerif Kaymaz, *Musul Sorunu, Emperyalizm ve Kürtler*, Kaynak Yayınları, İstanbul, 2014, pp. 512-515.

they just recorded unsubstantiated telling of the people chosen by British authorities with sentences like: ‘...information we received but which we could not check...’ ‘...The incidents mentioned in II and III of the present report do not, in my opinion, present any importance from the point of view of the decision of the Council...’⁴³ Laidoner admitted the one-sided attitudes of the Commission members by describing the whole group as ‘*Turkophobs*’. This orientation of the Commission was observable from the outside. For example, French Council in Baghdad, Mr. Jardine, warned Laidoner to approach the testimonies suspiciously because ‘...The Commission had been heavily influenced by the stories of the fugitives. For him, ‘...everything could easily have been the result of attracting Zakho's refugees themselves, attracting money...’⁴⁴

Ultimately, the publication of the Laidoner Report triggered an anti-Turkish campaign in the international press⁴⁵ and helped Britain while lobbying over the Council of the LON and Mosul Subcommittee to secure unanimity.⁴⁶ Swedish Johan Unden, rapporteur and then president of the Mosul Subcommittee, firstly persuaded Brazil, and Japan to refuse the British-supported resolution in favor of a third-way plan of the Wirsén Report dividing Mosul Vilayet between Turkey and Iraq.⁴⁷ To change the opinion of Unden, Britain used pressure tactics backed by the anti-Turkish climate and guaranteed a new treaty with Iraq, accepting a prolonged mandate demanded in the Wirsén Report. In fact, the promised 25 years period was significantly reduced with the addition of the LON membership as an option to end the mandate.⁴⁸

British efforts covered secret and open deals for other votes too. This way of conduct proved why the Council of LON, a political institution, was not suitable for arbitration. Delegates of member states looked at their government's policies to align with, and governments used their vote on Mosul arbitration as a bargaining chip to further their national interests in other issues. For example, British Foreign Secretary Chamberlain and his French counterpart

⁴³ Johan Laidoner, *Christian Deportations in the Neighbourhood of the Brussels Line*, League of Nations, Geneva, December 14th 1925. [https://biblio-archiv.unog.ch/Dateien/CouncilMSD/C-785\(a\)M-281\(a9-1925-VII_EN.pdf](https://biblio-archiv.unog.ch/Dateien/CouncilMSD/C-785(a)M-281(a9-1925-VII_EN.pdf), (Accessed: 17 April 2019).

⁴⁴ Tanno Tilgar, “J. Laidoneri komisjoni raportite kriitikast ja retseptioonist seoses kindrali tegevusega Iraagis II”, *Tuna*, Vol. 14, No. 4, 2011, p. 35.

⁴⁵ B. William Dana, *The Commercial and Financial Chronicle*, Vol. 121, No. 3156, 19 December 19, 1925.

⁴⁶ Beck, *ibid*, p. 270.

⁴⁷ John Rogers, “The Foreign Policy of Small States: Sweden and the Mosul Crisis, 1924–1925”, *Contemporary European History*, Vol. 16, No. 3, 2007, pp. 363–364.

⁴⁸ Tilgar, *ibid*, (2011a), p. 57.

Aristide Briand agreed to increase French pressure over Unden ‘...to restrain his *pro-Turkish tendencies...*’ as part of general rapprochement negotiations among them. Mussolini’s support was guaranteed with the Anglo-Italian agreement on Ethiopia. In return for the favorable vote, Spain demanded help in Moroccan affairs and support its desire to have a permanent seat in the Council.⁴⁹

On 14 December, the French President of the Council Aristide Briand kept his promise to the British and pushed Unden to change his posture in a secret meeting. The following day, Unden persuaded Brazilian, and Japanese delegates to be with, not against, the majority.⁵⁰ The Council of the LON convened on December 16, 1925, and voted in favor of leaving Mosul Vilayet to Iraq under the British mandatory administration. As would be expected, the Turkish government declared the decision invalid and said: ‘...that a state’s sovereign rights over a territory could only come to an end through her consent and for this reason, I announce that our sovereignty rights over the entire Mosul Vilayet remain unchanged.’⁵¹

As the above summarized historical records show, the Council of the LON transgressed the core principles of arbitration by not behaving even-handedly. Its political nature surpassed the requirements of impartiality, and political give and take bargains determined the final result. Although Turkey was alone in the LON corridors, several scholars of the time indicated this feature of the decision. For example, the Dean of the University of Geneva, William E. Rappard, described Mosul as a political issue for which none of the international courts could find a solution in a speech he delivered after the voting.⁵² Herbert Whittaker Briggs, who worked in the prestigious UN International Law Commission later, also criticized the Council of the LON for acting like an arbitrator without resorting to mechanisms of compromise. Regarding the decision taken in PCIJ, Briggs accused the court of giving false meanings to the words of Article 3(2) of the Treaty of Lausanne.⁵³ He also drew attention to the fact that the principle of *in dubio mitius*, which stipulated that when any uncertainty emerges in interpreting international treaties, the party shouldering the responsibility should be burdened with the least trouble,

⁴⁹ Beck, *ibid*, p. 270.

⁵⁰ Rogers, *ibid*, p. 364.

⁵¹ Tevfik Rüstü Aras, Seventh Meeting (Public), Held at Geneva on Thursday, December 10th, 1925, at 10 a.m., *League of Nations Official Journal*, No. 7, 1926, p.187.

⁵² William Emmanuel Rappard, *Problems of Peace: Lectures Delivered at the Geneva Institute of International Relations, at the Palais des Nations*, Oxford University Press, Oxford, 1927, pp. 352-353.

⁵³ Herbert Whittaker Briggs, L’Avis Consultatif No. 12 de la Cour Permanente de Justice Internationale dans L’Affaire de Mossoul, *Revue de Droit international et de Législation Comparée*, (8)3d ser., 1927, pp. 634-637.

was violated.⁵⁴ Some PCIJ judges, like Court's President Hans Max Huber and William Moore, joined Briggs in criticizing the Mosul Advisory Opinion later. As mentioned before, the existence of a British judge on the bench, while there was no Turkish counterpart, annoyed even those members of PCIJ seriously and raised suspicions about impartiality and independence.⁵⁵

LON's following steps facilitated by this decision of the PCIJ faced the same harsh comments from scholars too. Dr. Leon Crutiansky blamed the Council for not entirely complying with the international law on the Mosul question and emphasized that Turkey was right in terms of the legal principles.⁵⁶ As another ring in the chain of international jurists that criticized the LON in those days, Dr. Pieter Elias Johannes Bomli states in his doctoral thesis that the Council's decision regarding Mosul was taken through unlawful considerations. According to Bomli, the decision in question did not guarantee the legal transfer of sovereignty over Mosul from Turkey to Iraq. To this end, a treaty must have been signed with Turkey. For this reason, the mainstay of Iraq's sovereignty over the region could not be the Council's decision.⁵⁷

Interim Peace Through Coercion: The Open and Implied Threats in the Last Juncture of the Unequal Treaty Process

As indicated above, the VCLT considers those treaties signed under the threat or use of force invalid. Some scholars like Matthew Craven widens the scope of coercion beyond the direct projection of force by including military interventions to the neighboring countries and the presence of army elements near the concerned region. According to Craven, in the examples of Japan and Siam, the Opium Wars with China and the British Navy's existence in the area made the nearby countries feel that it was impossible to resist. The frequent bombardment of the adjacent ports reinforced this perception and paved the way for unequal treaties.⁵⁸

⁵⁴ Ibid, p. 640 - Chang-fa Lo, *Codification, Treaty Interpretation Under the Vienna Convention on the Law of Treaties: A New Round of Codification*, Springer, Singapore, 2017, pp. 247-249.

⁵⁵ Ole Spiermann, *International Legal Argument in the Permanent Court of International Justice: The Rise of the International Judiciary*, Cambridge University Press, Cambridge, 2004, p. 231.

⁵⁶ Leon Crutiansky, *La Question de Mossoul devant le conseil de la Société des nations. Thèse pour le doctorat en droit*, Université de Paris, 1927. – Hussain, *ibid*, p. 289.

⁵⁷ Matthew Craven, "What Happened to Unequal Treaties? The Continuities of Informal Empire", *Nordic Journal of International Law*, Vol. 74, No. 3-4, 2005, p. 351.

⁵⁸ Sevtap Demirci, *The Lausanne Conference: The Evolution of Turkish and British Diplomatic Strategies, 1922-1923*, PhD Dissertation, The London School of Economics and Political Science, 1997, pp. 166-174.

It is possible to see all these forms of coercive pressures in the handing over of the Mosul Vilayet. Initially, an unlawful invasion that violated the Armistice of Mudros occurred on 14 November 1918. London retained its control in the region by using force against both the Ottoman citizens living in Mosul Vilayet, who challenged the British rule, and Turkey, which tried to return to those territories that legally belonged to it before, during, and after the Lausanne Conference.⁵⁹ Britain used the Sheikh Sait Rebellion in Turkey, organized levies, and made preparations with military plans and coalition-building initiatives for an expected confrontation. Showing how impossible it was to restore authority over the region because of British military might could force Ankara to abandon its rights over Mosul Vilayet. The British ultimate goal was to compel Turkey to sign an agreement accepting the status quo by employing a military operation that would extend to Istanbul through the air and naval forces, if necessary.

British documents show that Royal Air Force (RAF) was placed at the center of new strategic considerations by reason of airstrikes' proven success on Turkish forces and logistic lines in 1923 and 1924. According to the plan, the war would not be limited to a frontline in the north of Mosul Vilayet, but a part of the territories that were within Lausanne boundaries of Turkey would be occupied as well with the involvement of the Navy. However, the Committee of Imperial Defence (CID) took the British public's anti-war inclinations into account and advised that the LON be called out to impose sanctions against Turkey. CID proposal suggested that Turkey's non-recognition of the LON's decision could be used as an excuse to justify the potential conflicts. In case of military escalation, Turkey would first be subjected to an aerial bombardment. Then the British Navy would invade İmroz (Imbros) and Bozcaada (Tenedos) islands. Later, the Navy would cross the Straits with heavy air support and blockade Istanbul. The British internal correspondence records the preparations made to bring troops from India for this purpose and the air and naval drills in the Aegean Sea in August 1925. In addition to these, CID discussed the imposition of economic sanctions on Ankara and the possibility of the LON member's overall contribution to this struggle against Turkey.⁶⁰

During the Locarno process (October-December 1925), Britain attempted to have other great powers' support against Turkey by strengthening its relations with allies. France gave permission to Britain's RAF to use its airbases in Syria during a war that might erupt due to Mosul Vilayet and undertook that it would prevent Ankara from using the Nusaybin railway line for military

⁵⁹ Beck, *ibid*, pp. 268-269.

⁶⁰ *Ibid*, pp. 269-270.

shipment. Besides, Britain came to an agreement with Italy concerning the Ethiopia question in December 1925. In exchange for that, Mussolini promised to back Britain against Turkey in the event of a conflict over Mosul Vilayet.⁶¹

Antonis Klapsis' research based on archives traces the preliminary steps of the Mussolini-Chamberlain agreement back to 1924. Britain would recognize Italy's interests in certain regions. In exchange for that, Italy would threaten Anatolia and support Britain during a likely war over Mosul.⁶² By referring to the Greek diplomatic missions' correspondence, Klapsis shows that Turkey was aware of the meetings held between Britain and Italy. In case of a military conflict between Turkey and Britain, Mussolini promised to land troops in Anatolia on the condition that London would recognize his gains. As a matter of fact, Turkey embarked on a partial mobilization after Mussolini delivered threatening statements in public. Within this conjuncture, the Pangalos government in Greece got closer to Italy and prepared to attack Eastern Thrace and Western Anatolia if Turkey had a conflict with Italy, Britain, or both.⁶³ Aware of the potential triple threat, Ankara proposed a treaty to Rome, including 'a full political neutrality towards the third parties' on February 23, 1926. However, this offer was rejected on April 26. Then, Turkey called Greece and Italy for a tripartite agreement. This attempt also shared the same fate. During May 1926, just a few weeks before the unequal Treaty, Turkey's doubts and the pressure over it were increasing. Peter J. Beck, summarizes the role of renewed alliances in Turkey's acceptance of the unequal treaty as follows: '*The cooperation of the great powers, which was backed by a threat of material and moral sanctions, undoubtedly contributed to the decision of Turkey...*'⁶⁴

The address delivered by the Turkish Foreign Secretary Tevfik Rustu Aras in the Grand National Assembly of Turkey (GNAT) after the Treaty of Ankara was signed on June 5, 1926, explains how Turkey submitted to the terms of interim peace under unequal treaty conditions. Aras told the Assembly that the agreement was reached by making '*sacrifices*' to not face war again under the present unfavorable conditions. Interestingly, Aras also argued that the Turkish thesis regarding Mosul Vilayet was still legally valid. Besides, he reiterated that the LON acted unlawfully, and Turkey was bent on not recognizing the Mosul decision of the LON. This speech demonstrates that Turkey did not perceive

⁶¹ Antonis Klapsis, "Attempting to Revise the Treaty of Lausanne: Greek Foreign Policy and Italy during the Pangalos Dictatorship, 1925–1926", *Diplomacy & Statecraft*, Vol. 25, No. 2, 2014, p. 243.

⁶² *Ibid.*, p. 244.

⁶³ *Ibid.*, p. 252.

⁶⁴ Beck, *ibid.*, p. 270.

the Treaty as ‘just’. The acquiescence of the loss of territory without internalizing the outcome as fair means that a significant requirement to reach sustainable peace defined in the first section of this article did not fulfill. The concern behind the Treaty of Ankara was the possibility to return to the war chapter and re-experience internal destabilization if the dispute did not end, as seen in other unequal treaty cases of the 19th and 20th centuries. So these statements of Aras left half-open the Mosul notebook:⁶⁵

‘... this evidence (on Turkey’s Mosul thesis) still completely preserve their legal value; however, even though they left their mark in people’s consciousness, they were not influential on the international institutions of the day and the votes of the political figures.’

Şükrü Kaya, who was head of the Foreign Secretary Commission of GNAT, took the floor from Aras in the session held on June 7, 1926, just before the Treaty of Ankara was put to the confirmation vote. The Critical reasoning of his remarks was identical with Aras’; ‘*sacrifice required by conditions,*’ ‘*peace and good relations in return for providing security to Turkey.*’⁶⁶

The issue of Turkey’s security, mentioned by Kaya, had an important place in the Treaty of 1926 with a special border zone and border security regime definition. In articles 1 and 5, it was stated that the Turkish-Iraqi frontier was definitively and unchangeably set. Article 10 established a border zone of 75-km on both sides, and Article 12 banned any propaganda against both countries and the organization of any adverse meetings in this area. Particular arrangements were carried out concerning armed individuals, groups, plundering activities, and banditry. Thus, this interim peace, established through coercive methods, promised Turkey security, thanks to solid security commitments in the Treaty organizing the transfer of sovereignty over a country-sized territory.⁶⁷ But, just like the order, prosperity and progress promised to the people of Mosul Vilayet in exchange for its accession to Iraq, this pledge has not been met accordingly.

⁶⁵ Tevfik Rüştü Aras, *TBMM, 2. Dönem 26. Cilt 115. Birleşim*, 1926, p.165, <http://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d02/c026/tbmm02026115.pdf>, (Accessed 24 April 2021).

⁶⁶ Şükrü Kaya, *TBMM, 2. Dönem 26. Cilt, 115. Birleşim*, 1926, p.166, <http://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d02/c026/tbmm02026115.pdf>, (Accessed 24 April 2021).

⁶⁷ TBMM, No 911, 1926, https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc004/kanuntbmmc004/kanuntbmmc00400911.pdf, (Accessed 24 April 2021).

After Unequal Treaty: A Hundred Years of Sustained Instability Without Peace

From the perspective of human security, the long-term results of the unequal treaty have been detrimental to both sides of the border and even beyond. This region has suffered a hundred years of chronic instability and conflict caused by repeated invasions, political violence, coup d'états, dictatorship, civil wars, violent inter-communal clashes, intra-group struggles, and eventually the emergence of terrorist organizations and multiple militias abusing the weakened state authority. The rise of ISIS and subsequent dramatic events like atrocities committed in multiple places from Sinjar to Tal-Afar and disastrous battles on and around Mosul City are among the latest major scenes of this bloody theatre.⁶⁸

Actually, this picture is the realization of a destiny that could be anticipated when the region was severed from Turkey. The first LON Commission's report which I highlighted the 'dual character' of it above, depicted the unstable future awaiting Iraq with those sentences: '*...it would certainly be better for the Vilayet of Mosul to be placed under Turkish sovereignty, since the internal and external situation of Turkey is incomparably more stable...*'⁶⁹ than Iraq unless certain conditions were met. Otherwise, the people of the Vilayet would find themselves amidst political and economic upheavals. The history confirmed what this under-heard warning pointed at, with pain and destruction.

The other side of the border has also suffered from the unkept promises of the Treaty. Ankara's doubts about the southern borders have never disappeared because of both the transborder criminal activities and ceaseless waves of separatist violence.⁷⁰ Moreover, the memory constructed by the trauma of injustice was regularly felt during the times of repeated regional upheavals. In a reflexive dialectic, these usual crises have contributed to the waning of perceptions about the sustainability of peace on the basis of the 1926 status quo.⁷¹

⁶⁸ Karim Asad Ahmed Khan, *Report of the Special Adviser*, (S/2021/419), May 2021, <https://reliefweb.int/report/iraq/sixth-report-special-adviser-and-head-united-nations-investigative-team-promote>. United Nations, (Accessed 24 April 2021).

⁶⁹ League of Nations, *ibid*, p. 85.

⁷⁰ Mitchel P. Roth - Murat Sever, "The Kurdish Workers Party (PKK) as Criminal Syndicate: Funding Terrorism through Organized Crime, A Case Study", *Studies in Conflict & Terrorism*, Vol. 30, No. 10, 2007, pp. 901-920.

⁷¹ The latest high-level reflections of this state of mind were seen during the crisis that erupted with the seizing control of Mosul by ISIS and KRG's attempt to conduct a referendum for independence. Turkish President Erdogan said: "*Our physical boundaries are different from the boundaries of our heart. We should differentiate between them. We of course show respect for physical boundaries;*

A few more brush strokes drawing the silhouette of this past can help us to realize the depth, persistence, and scope of the instability in the region. The last years of British rule were a period of renewed uprisings against both Britain and Iraq in the Mosul Vilayet.⁷² Under the shadow of the Barzani Revolt, Britain ended its Mandate over Iraq with an agreement awarding significant privileges to London like military bases and free passage rights for its troops in 1932. What followed was the rebellions of various ethnic and religious groups like Assyrians, Yazidis, and Shias⁷³. In 1936, this still open uncertainty and chaos chapter of Iraq recorded the first coup. During the course of Iraq's history, bloody coups invited counter-coups, and purges among the circles of the ruling elite as occurred in the early period of Saddam's reign. Such a political turbulence paved the way for the second military invasion of Iraq by Britain in 1941 with results for Turkey. What Tevfik Rustu Aras, Kemal Atatürk's foreign minister, told indicates that internal clashes of the governing elite in Baghdad and returning of Britain dissolved Turkey's plans to have a confederate with Iraq to overcome the terms of the unequal treaty: *'Turkey also considered building a confederation with Iraq in the future... ..However, the pro-Turkish statesmen in the country who would help realize this goal were assassinated.'*⁷⁴

Mosul Vilayet territories witnessed another uprising against Baghdad in line with World War II balances in 1943. Mustafa Barzani led Kurdish tribes to revolt, and after the failure went to Iran to join the Soviet-backed 'Mahabad Republic'.⁷⁵ With the end of the war, Turkey turned to Britain and the US to balance the mounting Soviet pressures. At this conjuncture, Britain tried to relate Iraq and Turkey with the British Middle East strategy. The visit of the Iraqi Regent Abdullillah and Nuri Sait Pasha to Istanbul, arriving from London

but we cannot draw boundaries to our heart, nor do we allow it. Some ask us, 'why do you care about Iraq, why do you care about Syria.'... '...Can we leave Mosul on its own? We are present in the history of Mosul. And what is it they are doing now? They are plotting to grab Mosul from the people of Mosul and offer it to others. But we insist that in Mosul should live the people of Mosul...' "Recep Tayyip Erdoğan, 'We Are Present in the History of Mosul', Presidency of the Republic of Turkey, 15 October 2016, <https://www.tccb.gov.tr/en/news/542/53641/>, (Accessed 12 April 2021).

⁷² M. R. Izady, "Kurds and the Formation of the State of Iraq, 1917–1932", *The Creation of Iraq, 1914-1921*, ed. R. Simon-E. Tejirian, Cambridge University Press, 2004, pp. 95-109.

⁷³ Adeed Dawisha, *Iraq: A Political History from Independence to Occupation*, Princeton University Press, Princeton, 2009, p. 39.

⁷⁴ Quoting from Ömer Kürkçüoğlu, Nevin Yazıcı, "1926-1956 Dönemi Türk Dış Politikasında Mosul Sorunu", *Cumhuriyet Tarihi Araştırmaları Dergisi (CTAD)*, Vol. 7, No. 14, 2011, p. 157.

⁷⁵ Mehmet Akif Kumral, *Rethinking Turkey-Iraq Relations: The Dilemma of Partial Cooperation*, Palgrave Macmillan, New York, 2016, p. 83.

with a British warship, opened this period in September 1945.⁷⁶ Until the abolishment of the Hashimite Monarchy by a coup, Britain had kept its influence over Baghdad either through the direct presence or via dependent political elite, despite growing discontent that sometimes erupted with violent ways like the Iraqi intifada in 1952.⁷⁷

The coup d'état of 14 July 1958 revived Turkey's interest in Mosul Vilayet and the Menderes government prepared for possible intervention as a first reaction.⁷⁸ Later, Ankara's perceptions evolved in another direction. But subsequent events like the Mosul revolt and Kirkuk massacre against Turkmens have opened a long destabilization era in the history of the region and damaged the traditional ties between ethnic groups living in the Vilayet.⁷⁹ This period of turmoil can be seen as another milestone, after the German-British rivalry of World War II, in the course of events that have turned the territory of Mosul Vilayet into a zone of conflict among local populations and proxy organizations. Regional actors and great powers have supported competing militias, terrorist groups and invested in the cleavages between Baghdad and peripheral power holders. Since 1961, the separatist insurrection against Baghdad has survived at intervals. The Kurdish organizations KDP and PUK led the revolts against Iraq and fought among themselves. Throughout the history of this long-standing uprising, multiple states from and out of the region have used these militant groups as proxies. From a human security perspective, members of all parties to the conflict have suffered heavy losses. One of the peaks of mass violence was witnessed in Halabja during the Anfal Campaign. In 1988 and 1991 hundreds of thousands of Kurdish civilians sought refuge from Turkey by crossing the border due to the armed clashes.⁸⁰ In Altınköprü, Turkmens gave heavy losses in front of Saddam Hussein's forces, too. Under these conditions, a group of important Kurdish tribal chieftains, who called themselves 'The Mosul Vilayet Council' made a declaration questioning the 1925 arbitral award of the League of Nations and searched for the possibilities of seceding from Iraq in 1992. They kept their

⁷⁶ Gürbüz Arslan, "Nuri Sait Paşa'nın Türkiye Ziyareti ve 1946 Türkiye-Irak Dostluk ve İyi Komşuluk Antlaşması", *Yakın Dönem Türkiye Araştırmaları*, Vol. 17, No. 34, 2018, p. 275.

⁷⁷ Dawisha, *ibid*, p. 110.

⁷⁸ Ayşegül Sever, "The Compliant Ally? Turkey and the West in the Middle East", *Middle Eastern Studies*, Vol. 34, No 2, 1998, p. 84.

⁷⁹ Arbella Bet-Shlimon, *City of Black Gold Oil, Ethnicity, and the Making of Modern Kirkuk*, Stanford University Press, California, 2019, pp. 135-164. – Kumral, *ibid*, pp. 105-106.

⁸⁰ Suna Gülfer İhlamur-Öner, "Turkey's Refugee Regime Stretched to the Limit? The Case of Iraqi and Syrian Refugee Flows", *Perceptions*, Vol. 18, No. 3, 2013, pp. 191-228.

contacts with Ankara even after the US invasion of Iraq and examined the likelihood of developing closer ties with Turkey.⁸¹

Nevertheless, in the meantime, Mosul Vilayet has become a safe haven for Turkey's sworn enemies. PKK emerged within the context of Cold War rivalries and has survived till today by finding refuge in the region thanks to the surrounding chaotic atmosphere. Thus, the security dimension of the border issue between Turkey and Iraq resurfaced with the rise of PKK terrorism. In 1983 and 1984, under the shadow of the Iran-Iraq war, Ankara and Baghdad signed two agreements on border security permitting 'hot pursuit' operations within 5 kilometers depth of each side's territory.⁸² From then on, Turkey conducted more than twenty major military operations within the area of old Mosul Vilayet, and Operation Claw-Tiger was the latest of them.⁸³

U.S.-UK-led coalition's invasion of Iraq in 2003 was a momentous turning point for the entire region.⁸⁴ Iraq returned back to the mandate conditions it had experienced in the first half of the 20th century. This new period legalized an autonomous entity dominated by Kurdish parties in the country's north, along the Turkish border. During this conjuncture, unabated PKK attacks directed attention to the boundary issue as a security problem once again. Besides, another terrorist organization emerged and deeply shook the strategic balances. In 2014, when ISIS captured Mosul and its surroundings, large segments of the Vilayet's inhabitants from all identity groups faced a humanitarian catastrophe. Some of them sought refuge from Turkey once again. Erbil-based Kurdish Regional Government (KRG) called Turkey to help. Despite protests from the Iraqi government, Turkish armed forces established a military base in Bashika near Mosul City and trained local forces to fight against ISIS. Three years later, following the defeat of ISIS, the leadership of the KRG attempted to hold a referendum aiming to open the way for the declaration of independence. This time, Turkey and the Iraqi government came together,

⁸¹ Martin van Bruinessen, "Kurdish Challenges (EUISS, 2005)", *Looking into Iraq*, ed. W. Posch, Chaillot Paper, No 9. Institute for Security Studies, Paris, 2005, p. 65. – "63 Kürt aşireti Türkiye'ye bağlanmak istiyor", *Habertürk*, 11 January 2007, <https://www.haberturk.com/gundem/haber/42674-63-kurt-asireti-turkiyeye-baglanmak-istiyor> (Accessed 11 May 2021).

⁸² Kumral, *ibid*, p. 121.

⁸³ Sercan Semih Akutay - Davut Ateş, "Türkiye'nin Sınır Ötesi Operasyonlarının Hukuki Çerçevesi", *Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi*, Vol. 17, No. 3, 2013, pp. 109-146.

⁸⁴ Muhammed Kürşad Özekin, "From British Mandate to post Anglo-American Invasion: Reproduction of Ethno-sectarian Divides and the Breakdown of Social Cohesion in Mosul", *Digest of Middle East Studies*, 2020, Vol. 29, No. 1, pp. 16-21.

reiterated support for the territorial integrity of Iraq, and opposed the plebiscite.

From then on, neither the general Iraqi politics nor the security situation in the northern part of the country could have been stabilized. US-Iran tensions, Shiite militias' gaining strength, the erosion of relative calm in the zone of KRG with the increasing ambitions of PKK and other groups, and the continuing presence of ISIS-like organizations are just a portion of the long list indicating an unpleasant future for the region.

Conclusion

The past of institutionalized dispute resolution regarding transformations of political geography is long enough to re-evaluate the related outcomes of the old decisions by taking time into consideration as a testing frame. To have such an assessment, a critical approach against the parameters which have been accepted to define 'success' is needed. In this regard, I suggested two concepts, 'interim peace' and 'sustainable peace', and operationalized them by using the Mosul Vilayet issue as a case.

This article shows that the Mosul decision was part of an unequal treaty process in the form of forced arbitration through a detailed analysis of historical documents and other relevant sources. Then it focuses on the history of Iraq and Mosul Vilayet, which has been flowing through the structure built by this settlement. The cumulative result of the last century shows how the way of dispute resolution at Mosul Vilayet has not kept its promises of security, stability, prosperity and not produced conditions for peace internalization, although it was paraded as a success story once the interim peace was reached.

When we look closer at the concept of 'unequal treaty' and the historical-legal story of the Mosul Vilayet issue, it is possible to understand the 'original sin' of the international community which blocked the path of sustainable peace by supporting coercive arbitration. Retrospective studies using the historical-legal method like this paper may hopefully contribute to the rising of a kind of awareness, exposing that principal fault and betterment of our dispute resolution toolbox.

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