FROM THE FRONTIERS OF EMPIRES TO BORDERLANDS OF (IN)JUSTICE

Statehood, Colonialism, and Trapped Minorities in Syria

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The human rights situation in Syria is dire. In particular, North-west Syria is facing a rapidly worsening humanitarian and human rights crisis, as overlapping conflicts and historical oppositions bring Syria and Türkiye into an unlikely alignment against a common enemy: The Kurdish minority.

Türkiye and Syria are regional rivals, and Türkiye has been a prominent supporter of anti-government groups in the civil conflict in Syria.[1] The two States, however, share a hostility to the Kurdish people's aspiration to independent statehood, which would involve the cession of majority-Kurdish areas of both States. Türkiye is concerned that the lack of governmental authority within Syria provides a safe haven for the PKK, a Kurdish rebel group that it views as a terrorist organisation responsible for attacks which have taken place on Türkish territory.[2] In parallel, Kurdish forces have been among the most successful groups in resisting the reimposition of authority by the regime of Bashar al-Assad. This has led to attacks against Kurdish areas by both States, and high levels of suffering among civilians.

The conflict between Türkiye and the PKK in northern Syria is one of the most overlooked disputes in the region.[3] Türkiye has been accused of multiple human rights violations amounting to war crimes, including indiscriminate airstrikes, and the United Nations Independent International Commission of Inquiry has found evidence of abuses in Kurdish areas committed by non-State armed groups supported by Türkiye, including

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[1] European Asylum Support Office, 'Country Guidance Syria' (November 2021), available at https://euaa.europa.eu/country-guidance-syria-2021; Charles Lister/Middle East Institute, 'Turkish-Syrian Re-engagement: Drivers, Limitations, and US Policy Implications', (18 January 2023), available at https://www.mei.edu/publications/turkish-syrian-re-engagement-drivers-limitations-and-us-policy-implications.

[2] E.g. Samia Nakhoul/Nick Tattersall 'Turkish PM sees Islamic State or PKK links to Ankara bombing' (Reuters, 14 October 2015), available at https://www.reuters.com/article/turkey-davutoglu-idINKCN0S81JH20151014; --, 'Istanbul explosion: Suspect arrested after "vile attack"', (Deutsche Welle, 14 November 2022), available at https://www.dw.com/en/istanbul-explosion-suspect-arrested-after-vile-attack/a-63741886.

[3] ICRC Opinion paper, March 2008, p. 3; Yasin Duman, 'Remembering the 'Forgotten' Kurds in Syria', *E-International Relations* (31 October 2014), available at https://www.e-ir.info/2014/10/31/remembering-the-forgotten-kurds-in-syria/.

torture, hostage-taking, and rape.[4] Amnesty International has concluded that there exists 'damning evidence' of war crimes committed by Türkiye against the Kurdish population in Syria.[5]

This essay will consider the ways in which the legacy of colonialism continues to haunt the relationship between Türkiye, Syria, and the Kurdish minority in Syria, and how the resulting power imbalances continue to play a role today.

HISTORICAL MARGINALISATION OF KURDS IN SYRIA

The conflict between Türkiye—and its forerunner, the Ottoman empire—and the Kurds dates back centuries and has been complex and multifaceted. Historically, the Kurds have experienced repression and persecution under the Ottoman empire as well as under its successor States.[6]

Kurds have a long history in the levant, dating back to the start of the common era.[7] During the 15th and 16th centuries, Kurds established semi-independent emirates that fell under Ottoman rule.[8] In the 19th century, as the Ottoman regime tried to centralise power within the empire the emirates lost much of their autonomy, resisted (ultimately unsuccessfully) by a series of tribal revolts aided by European powers.[9] That dynamic intensified as the post-Ottoman States were required by the structures of colonial-era international law to adopt the western nation-State form,[10] and exclusionary measures against the Kurdish minority accelerated as an aspect of nation-State-building.[11] After Syrian independence in 1946, Kurds were denied recognition as a nationality and suffered several waves of forced displacement[12] as well as, in the following decades, discrimination and forced assimilation.[13]

A significant factor in this history was European colonialism. Even prior to the establishment of the League of Nations' mandate system in 1920, the British and French governments in 1916 secretly concluded the Sykes-Picot Agreement, by which they divided the Ottoman Empire into separate spheres of influence, without

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[4] UN Human Rights Council, 'Report of the Independent International Commission of Enquiry on the Syrian Arab Republic' (14 August 2020), UN Doc. No. A/HRC/45/31, at paras. 54, 59-62, 65-69.

[5] Amnesty International UK, 'Press Release: Turkish forces commit war crimes in Syria offensive - fresh evidence' (18 October 2019).

[6] Veli Yadirgi, *The Political Economy of the Kurds of Turkey: From the Ottoman Empire to the Turkish Republic* (Cambridge University Press, 2017), pp. 3-5.

[7] Ferdinand Hennerbichler, 'The Origin of Kurds', (2012) 2(2) *Advances in Anthropology* 64-79, 77.

[8] Yadirgi, *The Political Economy of the Kurds* (n 6), pp. 65, 72.

[9] Piotr Sosnowski, Path Dependence from Proxy Agent to De Facto State: A History of 'Strategic Exploitation' of the Kurds as a Context of the Iraqi Kurdistan Security Policy, (2022) 16(2) *International Journal of Conflict and Violence* 1-13, pp. 6-7; Austrian Federal Ministry of the Interior, 'The Kurds: History – Religion – Language – Politics, Kurdish identity in the Ottoman Empire', pp. 11-12; M. Hakan Yavuz, 'Five stages of the construction of Kurdish nationalism in Turkey' (2021) 7(3) *Nationalism and Ethnic Politics* 1-24, pp. 5-6.

[10] Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004), pp. 3-6, 196-200; Ntina Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020), pp. 56-60.

[11] Yadirgi, *The Political Economy of the Kurds* (n 6), pp. 3-5; 155-161.

[12] Zahra Albarazi/The Statelessness Programme, Tilburg Law School, 'The Stateless Syrians: Report of the Middle East and North Africa Nationality and Statelessness Research Project' (2013), via http://ssrn.com/abstract=2269700, pp. 13-14.

[13] Mustafa Saatci, 'Nation–States and Ethnic Boundaries: Modern Turkish Identity and Turkish–Kurdish Conflict', (2003) 8(4) *Nations and Nationalism* 549-564, p. 557.

consultation of the local populations.[14] What is now Syria was split between two zones—and then two mandates—with the majority under French rule.[15] The resistance of the Syrian people to French colonial rule was strong and played out through armed rebellion, as well as civil disobedience.[16] After years of struggle, Syria gained a reluctantly-granted *de facto* independence in 1946.

The new Syrian State was deeply divided from its first moments. As mandatory power, the French government manipulated ethnic divisions in order to strengthen its control.[17] It kept the country divided along sectarian lines and discouraged the growth of a unified sense of national unity. This contributed to tensions between Kurdish minorities and other ethnic groups in Syria, which continue to affect the relations between populations in Syria today, as well as the wider situation of the Kurds vis-à-vis other States such as Türkiye. These post-colonial fractures have continued to play out, and have contributed to the country's—as well as the region's—instability and conflict.

International law directly contributed to the lack of stability in the region. As Anghie has argued, the structures of international law have, in different periods, served to preserve power imbalances between the colonial and post-colonial States.[18] In Syria, this was visible first in the enforced nationalism of the process of 'Nation-State'-building, followed by direct colonial rule of the mandates period. When the States of the Levant gained their independence, the principle of *uti possidetis iuris* excluded any possibility of the creation of a Kurdish State.[19] Instead, the Kurds were left as a trapped minority, split across the territories of modern-day Syria, Türkiye, Iraq, and Iran. In searching for solutions to the abuses against the Kurdish population of northern Syria, the complicity of international law and the former colonial powers in creating or exacerbating inter-community tensions in the region is an important context which must be taken into account.

IS ALL HOPE LOST?

The international community created the conflict between Türkiye and the Kurds by failing properly to address the grievances of both sides under colonial rule. This led to a growing mistrust and animosity between the two groups. Both sides need a resolution in order to ensure the stability and security of the region. The international community must take responsibility and help facilitate a peaceful solution that is beneficial for all parties.

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[14] Aron W. Hughes, 'The Sykes-Picot Agreement and the making of the modern Middle East' (The Conversation, 12 May 2016), available at https://theconversation.com/the-sykes-picot-agreement-and-the-making-of-the-modern-middle-east-58780.

[15] Michael Provence, 'The Levant Mandates', in Amal Ghazal and Kens Hanssen (eds.), *The Oxford Handbook of Contemporary Middle Eastern and North African History* (Oxford University Press 2015), 109-126, pp. 110-114.

[16] Philip S. Khoury, 'Factionalism among Syrian Nationalists during the French Mandate', 1981) 13(4) *International Journal of Middle East Studies* 441-469; Luís Paulo Bogliolo, 'Damascus, 1925: The Bombing of the City, Humanitarian Relief and Petitioning for Syrian Independence to the League of Nations' (Online Atlas on the History of Humanitarianism and Human Rights by the Leibniz Institute for European History, October 2017), available at https://hhr-atlas.ieg-mainz.de/articles/bogliolo-damascus.

[17] Joyce Laverty Miller, 'The Syrian Revolt of 1925', (1977) 8(4) *International Journal of Middle East Studies* 545–563, pp. 547-549.

[18] Anghie, *Imperialism* (n 10).

[19] *Uti possidetis iuris* is the principle which requires that when colonial entities achieve independence, they respect the boundaries which were set for them by the colonial powers. See Anne Peters, 'The Principle of *Uti Possidetis Juris*: How Relevant is It for Issues of Secession?' in Christian Walter, Antje von Ungern-Sternberg, and Kavus Abushov (eds), *Self-Determination and Secession in International Law* (Oxford University Press 2014), 95-137, pp. 97-99.

The protection of human rights must be at the heart of this process. Human rights can offer a common ground for the resolution of conflicts because they protect individuals and groups from acts of violence and injustice, providing equal rights and security. They promote mutual respect and understanding, as well as helping build trust and reduce tensions between conflicting parties. When respected, human rights create an environment that fosters respect and collaboration. Keeping human rights at the forefront in resolving conflicts is critical to achieving peace and stability.

In resolving a conflict built on such deep historical divisions, human rights may be especially key in helping provide a basis for reconciliation. The international community must encourage all parties to the conflict to adopt a human rights-based framework: Türkiye must recognise the rights of the Kurdish community in Syria and stop hostile actions against them; while the Syrian government should recognise the political, cultural and linguistic rights of the Kurdish people. A negotiated peace between all sides of the conflict is the only way to preserve lasting stability in the region.

The international community's engagement must be active: condemnation is not enough. While the status of the 'Responsibility to Protect' is disputed,[20] the international community's contribution to the historical causes of the conflict is clear. Morally, if not legally, the international community must not be a passive bystander in the face of egregious violations of human rights.

In the words of Desmond Tutu, if you are neutral in situations of injustice, you have chosen the side of the oppressor.

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[20] 2005 World Summit Outcome, annexed to UN General Assembly Resolution 60/1, UN Doc No. A/RES/60/1, paras. 138, 139.