

The Legal Framework of the Church Protectorate in the Lands of the Sublime Porte

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Introduction

The focus in this chapter is on the legal concept of the church protectorate, what is meant by it and how it was handled in theory and practice. The term church protectorate is used for protocols regulating the working relationship between the Ottoman office holders and diplomatic envoys from European catholic powers. It is, in fact, a collection of facts and their problems which search out the safeguards of perceived rights and entitlements, embedded in legal constraints, in view of attempts to counteract or thwart them. I will discuss first the interpretation of historical prerogatives understood by the Habsburg Mediterranean and the legal aspects when called upon to accommodate perceived rights and then present a case study of how such prerogatives were handled in Cairo. The perspective of the long durée is required in studying this shared living space of different ethnic and religious groups which existed from the very beginning of the Muslim conquest of Arabia. The new rulers of the shared spaces recognized that there were different ways to regulate everyday life. The flux and flow of negotiations, of trust building, of legislation regulating commerce and domestic legal arrangements were endless. They found expression not only in the establishment of international treaties, national laws and civic practice in the Ottoman Empire but also in religious and in particular liturgical applications in Roman Catholic worship.

Historical Overview

The Church Protectorate is a legal term used for the right of protection exercised by a Christian power over Christians, foreigners and indigenous people, in countries which profess religious traditions different to Christianity. This study will concentrate on the group of regions loosely termed the Levant, which formed part of the political entity of the Sublime Porte. The great majority of peoples of the Ottoman empire were Muslims, but Jewish communities and large Christian populations from pre-Islamic times, for instance in Armenia, Syria, Palestine and Egypt, lived among them. The church protectorate over the Christians came to

signify assistance to people and properties but only as far as established treaties consented to this assistance explicitly or tacitly.¹

The right goes back to the time when Byzantine domination in Palestine and Syria had come to a halt with the defeat of the army of the Armenian born Byzantine Emperor Heraclius (610–41) by Muslim Arabs at the battle of Yarmuk in 636, near the Yarmuk River east of the Sea of Galilee. When Jerusalem surrendered in 638, treaties were concluded which gave the Christians the status of tolerated peoples in exchange for paying taxes,² and gave the Greek Christians tenure over the Holy Places.³ In consequence, with the growth of the new religion of Islam, the *ummah* (the community of peoples) emerged as a community beyond narrow tribal affiliations and this new community was faced with the need to accommodate peoples of different religions living in their midst. These came to be protected by the Islamic practice of *dhimmi*, the clearly demarcated neighbourhoods under the rule of the *dhimmi*'s own religious and later consular leaders. Their task was to represent their members vis à vis the Muslim authorities.⁴ Christians and Jews did not enjoy all the political rights of Muslims, but were held equal with regard to property laws and contracts which paid a special tax, *jizya*, to finance the Muslim authorities' efforts to protect the *dhimmis*.

Charlemagne⁵ secured a share in the sovereignty over the Holy Places in Jerusalem from Caliph Harun al-Rashid, when a mission from the emperor travelled to the Caliph and offered Harun friendship in 799.⁶ Harun granted guarantees to Charlemagne's subjects on their visit to the Holy Places. Much later, the sultans ratified church appointments, albeit they frequently created pretexts for interference and conflicts. The documents detailing these rights and duties are

¹ For the situation of the Roman Catholic church in present day Turkey see Buğra Poyraz, *The History of the Church Diplomacy in Turkey (from the Religious Protectorate to the Direct Diplomatic Relations)* (Istanbul: Libra Kitapçılık ve Yayincılık, 2016).

² Vrej Nersessian, *Treasures from the Ark: 1700 Years of Armenian Christian Art* (London: The British Library, 2001), 153.

³ Bertold Spuler, *Die europäische Diplomatie in Konstantinopel bis zum Frieden von Belgrad (1739)* (Breslau: Pribatsch, 1935), 217–18.

⁴ On the legal status of *dhimmi* see Maribel Fiero and John V. Tolan, eds., *The Legal Status of Dimmi-s in the Islamic West (Second/Eighth–Ninth/Fifteenth Centuries)* (Turnhout: Brepols, 2013); Arthur S. Tritton, *The Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of Umar* (London: Humphrey Milford and Oxford University Press, 1930); Najwa Al-Qattan, "Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination", *International Journal of Middle East Studies* 31, no. 3 (1999): 429–44.

⁵ King of the Franks from 768, of the Lombards from 774, and Emperor of the Romans from 800 to 814.

⁶ Harun al-Rashid, ruled from 786 to 809.

called *firman* (treaties, commands, or written decrees) emanating from the sultan. They were authenticated by a member of the imperial divan who checked the “correctness of official documents in the light of existing statutes and precedents”.⁷

Once the crusaders had conquered Palestine, a French speaking Christian kingdom was set up. Baldwin II, King of Jerusalem, granted a charter of protection to Latin Christians, in particular to Venetians in 1123, and his successor, his daughter Melisende, Queen of Jerusalem, did so for people from Marseille in 1136. The first Sultan of Egypt and Syria, Saladin,⁸ granted the same to the Pisans in 1173.⁹ The emperor in the west and his successors, called to look after the religious needs of their coreligionists, founded charitable institutions, monasteries and churches in the Holy Places of Palestine to assist the inhabitants as well as the pilgrims in pursuit of their religious duties. In one of the oldest *firmani* for Jerusalem the Frankish monks—or French clergy—were granted permission by King Joseph, recte An-Nasir Yusuph, great-grandson of Saladin, to put lead on the cupola of the Church of Mount Sion in Jerusalem.¹⁰ Another *firman* was granted between 1260 and 1277 by the Mamluk Sultan of Egypt Baybars al Bunduqdari,¹¹ specifying that the city authorities of Jerusalem could not permit the Greeks to live in properties in the church of the Holy Sepulchre which had belonged to the French monks since ancient times.¹² Ever since Baybars’ time tenure over most of the Holy Places was granted to the Latins, the collective name for Levantines or Latin Christians, i.e. Italians, French, or other Europeans, having lived in Muslim countries mostly along the Mediterranean coast since the Byzantine and Ottoman times. They kept these rights until the middle of the seventeenth century, when tenure reverted back to the Greeks. From then onwards there was keen competition between the Latins and the Greeks to protect the Holy Places.¹³

After the fall of Acre to the Mamluks in 1191 and the collapse of the Christian kingdom, the Latin Christians turned for help to the west when they felt oppressed

⁷ Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), 338–39.

⁸ King Joseph, recte An-Naṣir Yūsuf, Ayyubid Emir of Syria, 1137–93, ruled 1174–93.

⁹ Edward A. van Dyck, *Capitulations of the Ottoman Empire since the Year 1150* (Washington: Government Printing Office, 1881), 88.

¹⁰ Eutimio Castellani, *Catalogo dei firmani ed altri documenti legali emanati in lingua araba e turca concernenti i santuari, le proprietà, i diritti della Custodia di Terra Santa conservati nell’archivio della stessa custodia in Gerusalemme* (Jerusalem: Tipografia dei PP. Francescani, 1922), no. 2, in the years 1250 to 1260.

¹¹ 1223/28–77, sultan of Egypt, defeated the Seventh Crusade of King Louis IX of France.

¹² Castellani, *Catalogo dei firmani*, no. 3, in the years 1260 to 1277.

¹³ Spuler, *Europäische Diplomatie*, 218.

by Muslim rulers. International relations between the rulers of the Islamic lands and the western European Christian powers had significantly decreased, but the Byzantine emperors continued to grant treaties called capitulations,¹⁴ that is commercial foreign privileges listed in chapters and not capitulation in the modern military sense. In essence, they were unilateral contracts in which the Muslim rulers gave guarantees and commercial privileges to the Franks or Latin Christians. The Franks still remained foreigners, but the Capitulations safeguarded for them “a uniform regime”¹⁵ of religious, individual and commercial privileges under Mamluk as well as Ottoman rule. For pilgrims, for instance, the high point of their pilgrimage was to go to confession and communion in the church of the Holy Sepulchre.¹⁶ The foreign residents were intent to safeguard their perceived rights of religious practices and not being coerced into religious conversion via a required political submission.¹⁷

It was a measure of protection from local aggression in return for payment. In essence, *dhimmi* were what we would call nowadays second-class citizens and often referred to as unbelievers. Most of the Latin Christians were descendants of traders from the maritime republics of Venice, Genoa, Pisa, Ancona and Ragusa who had colonies in the eastern Mediterranean. The Venetians had a centuries-old presence in the Levant; the republic had appointed consuls since the middle ages. Other Latins were descendants from the period of the Crusader states. Still others may have been converts to Roman Catholicism, or they were Eastern Christians who had resided there for centuries. *Dhimmi* gradually diminished in numbers due to conversion, even if the pace of conversion among Christians was slower than that of other religions. People converted to avoid oppression, or to avoid a life of inferior status in comparison to the mainstream societies, or because they

¹⁴ John Wansbrough and Halil İnalçık, ‘Imtiyāzât’, in *The Encyclopaedia of Islam: Second Edition*, eds. P. Bearman et al., vol. 3 (Leiden and London: Brill and Luzac & Co, 1971), col. 1178b–79a.

¹⁵ Jean L. G. Pélissié du Rausas, *Le régime des capitulations dans l’empire ottoman*, vol. 1 (Paris: A. Rousseau, 1902), 2.

¹⁶ Mordechay Lewy, “Konfessionelle Konfrontation und Ambiguität zwischen protestantischen Pilgern und katholischen Mönchen in Jerusalem des 17. Jahrhunderts”, in *Andacht oder Abenteuer: Von der Wilsnackfahrt im Spätmittelalter zu Reiselust und Reisefrust in der frühen Neuzeit*, eds. Hartmut Kühne and Gunhild Roth (Tübingen: Narr Verlag, 2020), 269–315.

¹⁷ Baber Johansen, “Entre revelation et tyrannie: Le droit des non-musulmans d’après les juristes musulmans”, in idem, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden and Boston: Brill, 1999), 235, on the Muslim *fiqh*, the legal foundation of Islamic religious, political and civil life.

found it easier after the fall of Constantinople to endure Ottoman in contrast to Byzantine persecutions.¹⁸

In the years after the fall of Constantinople on 29 May 1453 the Maronites of Lebanon, the Latins of Palestine and most of the Greek islands, which once held Latin Catholic communities, came under Ottoman rule. The Papal response to this development was initially a call to a crusade, but the response from the Catholic monarchs of Europe was weak. French interest, for example, lay in an alliance with the Turks to break the dominance of the house of Habsburg in Europe. This would bind the forces of the Habsburgs to concentrate on their wars against the Turks in the Eastern Europe. Francis I, King of France, entered with the Turks into trade relations, which in turn were also favourable to Christians in the Islamic lands. In 1528 he appealed to Süleyman the Magnificent to restore a church, which had been turned into a mosque, to the Christians of Jerusalem. Whilst the sultan refused this request, he did promise to allow the Christians to maintain possession of all the other Holy Places under their charge and to defend them against all oppression. The treaty of 1535 between Francis I and Süleyman the Magnificent declared that the French residents in Süleyman's empire were not subject to the jurisdiction of the Ottomans, but to their consul in Istanbul, who had the authority to judge them in legal cases.¹⁹ To the Ottomans the French king occupied the highest office, whereas the Habsburgs were addressed as Kings of Vienna. The French subjects were given special "trade privileges granted unilaterally by the sultan".²⁰ What started out as trade privileges in time developed into and incorporated the protection of the Holy Places, a sort of "unofficial protectorate over all Catholics in the Levant", once the political power of the Ottoman "alliance" declined.²¹

¹⁸ The following examples are limited to *firmans* and *hoggets* or verdicts for Jerusalem. See Castellani, *Catalogo dei firmani*, (the spelling of names follows Castellani): no. 29, 4 October 1397, *firman*, in which the Saracen King Ex-Zaher Barkuk (who ruled 1382–89 and 1390–99) granted the French clergy permission to repair a damaged part of the Church of the Holy Sepulchre; *ibid.*, no. 30, 1382–99, *firman*, in which King Ex-Zaher Barkuk repeated that the French should not be harassed or experience injustice; *ibid.*, no. 38, 22 September 1411, *hogget* permitting the French monks to bring European carpenters, masons as well as timber and lead to the country; *ibid.*, no. 41, 24 November 1427, *firman*, in which King Barsabai Asceraf Seif-eddin confirmed old privileges to the French monks in the church of Monte Sion; *ibid.*, no. 42, 18 October 1431, *firman*, in which King Barsabai Asceraf Seif-eddin ordered not to harass the French clergy.

¹⁹ Alexandre Miltitz, *Manuel des Consuls*, 4 vols. (London: A. Asher, 1837–42), vol. 1, 524.

²⁰ Hochedlinger, *Austria's Wars of Emergence: War, State and Society in the Habsburg Monarchy* (Harrows: Longman, 2003), 65.

²¹ *Ibid.*, 65.

Capitulations

Capitulations were duly concluded between the kings of France and the Ottoman sultans. The sultans now conferred the privilege of extra-territorial jurisdiction within their boundaries on the Christian subjects of a Christian state, which in its turn meant that the Catholics in the Ottoman Empire had recourse to a protector at the Porte in the person of the French ambassador from the seventeenth century onwards.

The consuls of the kings of France, empowered to judge the civil and criminal affairs of French subjects according to French law, were able to appeal to the officers of the sultan for aid in the execution of their sentences.²² Likewise the baili of Venice: in 1532 the first *firman* requested by Francesco Barbaro,²³ the bailo (originally porter or carrier), the resident Venetian ambassador, stated that nobody was allowed to harass the clergy in Bethlehem by requesting money under threat of taking away the lead and marble of their churches.²⁴ The baili continued to obtain *firmani* for a variety of requests by the Latin Christians, their rights of protection of the Holy Places, unhindered exercise of their priestly duties, repair of properties, requests of protection against Greek, Georgian and Armenian claims, and so on. Also priests were employed in French and Venetian consulates as chaplains. The French ambassadors and consuls pursued the same line of requests in clerical and civil matters. It was from these treaties that the prerogatives called church protections derived.²⁵

Commerce was the main object of negotiation in the Capitulations, but church protection also became a point of stipulation. In 1604 Henry IV, King of France, secured from Sultan Ahmed I the inclusion of two clauses about church protection: article IV spelt out that the subjects of the French king were free to visit the Holy Places without hindrance, and article V stated that the communities of religious living in Jerusalem and their members may stay there and come and go without hindrance.²⁶ Christian subjects from Habsburg lands also wanted

²² Castellani, *Catalogo dei firmani*, for all *firmani* and *hoggets* dealing with Palestine, passim.

²³ Maria P. Pedani, *I "Documenti Turchi" dell'Archivio di Stato di Venezia* (Rome: Ministero per i beni culturali e ambientali, Ufficio centrale per i beni archivistici, 1994), 76.

²⁴ Castellani, *Catalogo dei firmani*, no. 88, 7 May 1532.

²⁵ Dorothea McEwan, "Catholic Copts, Riformati and the Capitulation: A Case Study in Church Protection in Egypt", in *Eastern Christianity. Studies in Modern History, Religion and Politics*, ed. Anthony O'Mahony (London: Melisende, 2004), 490–530, here 491. See also Pélissié du Rausas, *Régime des capitulations*, vol. 1, Capitulations with France, 1535, article V.

²⁶ Karl-Heinz Ziegler, "The Peace Treaties of the Ottoman Empire with European Christian Powers", in *Peace Treaties and International Law in European History*, ed. Randall Lesaffer (Cambridge: Cambridge University Press, 2009), 343–44.

the opportunity to seek assistance from the Habsburg envoys in the Ottoman empire. The Habsburg emperors were equally keen to enter into trade relations and to conclude Capitulations with a view to obtaining economic advantages. From 1528 to 1599 sixty imperial diplomatic missions arrived in Istanbul.²⁷ In November 1545 and June 1547 Emperor Charles V concluded treaties which permitted merchants to travel back and forth within the lands of the Sublime Porte, and this permission was renewed in the treaty of Zsitva-Torok in 1606.²⁸ In 1562 the imperial envoy Albert de Wyss was the first imperial ambassador who took residence in Istanbul,²⁹ but not yet under the title internuntius. This title was first used by the ministers of Poland at the court of the sultan, who were given the title *küçük elçi*, meaning little ambassador, the style for diplomats ranking between ambassadors and minister plenipotentiary (*envoyés extraordinaires et ministerères plénipotentiaires*).³⁰ It was adopted by the Austrian ministers, and used for the first time by the Hungarian born imperial interpreter and now minister or Internuntius Stephan Bologh on 13 September 1627, later on also termed ambassador or great ambassador.³¹

²⁷ Peter Meienberger, *Johann Rudolf Schmidt zum Schwarzenhorn als kaiserlicher Resident in Konstantinopel in den Jahren 1629–1643: Ein Beitrag zur Geschichte der diplomatischen Beziehungen zwischen Österreich und der Türkei in der ersten Hälfte des 17. Jahrhunderts* (Frankfurt a. M.: Peter Lang, 1973), 12, referring to Spuler, *Europäische Diplomatie*, 303, who maintains that it is not possible to state, neither with regard to French nor to Austrian permanent envoys, whether they were in fact the first envoys who were allowed to stay for an extended time or whether they had not planned to stay for an extended time.

²⁸ Wansbrough and İnalçık, “İmtiyâzât”, 1185b.

²⁹ Albert de Wyss, letter of accreditation 17 July 1562. Miltitz, *Manuel des Consuls*, vol. 2, part 2, 1410.

³⁰ Internuntius was originally the title for a papal envoy, ranking below ambassador, in states which due to lack of necessity did not have diplomatic relations with the pope.

³¹ Miltitz, *Manuel des Consuls*, vol. 2, part 2, 1410, 1840. Miltitz quotes Abraham van Wicquefort, *L'Ambassadeurs et ses fonctions (...)*, 2 vols. (Amsterdam: Janssons a Waesberge, 1730), vol. 1, 115: *Le mot [Nonce] est un peu plus latin que celui d'Ambassadeur, mais il signifie la même chose; sinon qu'il désigne particulièrement le Ministre Représentant du Pape comme l'Internonce est son Envoyé extraordinaire*. Meienberger, *Johann Rudolf Schmidt zum Schwarzenhorn*, 14, lists as “great ambassador” Johann Rudolf Schmidt from 1629 to 1643 and the same as resident from 1650 to 1651. Alexander Greifenklau was great ambassador from 1643 to 1648 and Simon Reniger from 1649 to 1665. A complete list of imperial and royal diplomatic and consular personnel in the Ottoman Empire is still a desideratum. In 2013, Suna Suner, *Opera and Diplomacy from the Ottoman World to Papal Rome* (unpublished PhD diss., University of Vienna, 2013) produced a number of lists arranged according to ranks with names and years of residence in the Ottoman Empire: *Internuntien und Nuntien des heiligen römischen Reichs* (1521–1806); *Botschafter und Gesandte des Kaisertums Österreich* (1804–67); *Botschafter von Österreich-Ungarn* (1867–1918); *Generalkonsuln in*

In 1615 Emperor Matthias negotiated with Sultan Ahmed I the renewal of the Zsitva-Torok protocol of 11 November 1606, which established the principle of parity and reciprocity between the two powers for the first time. Article 7 stipulated “that the followers of the pope, priests and monks or Jesuits will be given permission to build churches in the lands of the emperor of the Turks, in which they continue the old traditions and the rules of their orders, read the gospels, congregate and say mass”.³² In addition the sultan conceded to the emperor the establishment of consulates with their own jurisdiction.³³ This article was confirmed in the peace treaty of Karlovitz (Karlovci Sremski in Croatia), between Emperor Leopold I and Sultan Mustafa II on 26 January 1699, which drastically reduced Turkey’s power in Europe, and was yet again confirmed in the peace treaty of Passarowitz (Požarevac in Serbia), between Emperor Charles VI and Sultan Ahmed III on 21 July 1718.³⁴ This treaty was re-confirmed in subsequent bilateral treaties between the two powers just as much as the so-called *Lettres patentes* of 1740 between the Ottoman Empire and France. In particular articles 1, 32-38, 40, 82 and 84 treated “the questions of protection of the French or Catholic Christians on their way to Jerusalem and Catholic monks, priests, bishops, consuls and translators in Jerusalem”.³⁵ At Zsitva-Torok, for the first time, the Ottoman sultan recognized

Istanbul (1846–1918); *K.K. Generalkonsuln des Kaisertums Österreich; K.u.K. Generalkonsuln Österreich-Ungarns* (1867–1918). See also Erwin Matsch, *Geschichte des auswärtigen Dienstes von Österreich* (Vienna: Böhlau, 1980), 127, listing personnel from Damian Hugo Graf Virmont 1719–20 to Johann Markgraf von Pallavicini, 1906–18. See also Ludwig Bittner and Lothar Groß, eds., *Repertorium der diplomatischen Vertreter aller Länder seit dem Westfälischen Frieden (1648)* (Oldenburg and Berlin: Gerhard Stalling, 1936), vol. 1, 171–72; Ernst D. Petritsch, *Regesten der osmanischen Dokumente im Österreichischen Staatsarchiv* (Vienna: Das Staatsarchiv, 1991).

³² Ignace Baron de Testa, *Recueil des Traités de la S Porte avec des états étrangers*, 11 vols. (Paris : Amyot, 1864–94), vol. 9, 22. (Author’s translation).

³³ *Ibid.*, 55.

³⁴ Leopold Neumann, *Recueil des traités et conventions conclus par l’Autriche avec les puissances étrangères depuis 1763 jusqu’à nos jours*, 32 vol. (Leipzig et al.: Brockhaus et al., 1855–1912), vol. 1.

³⁵ Testa, *Recueil des Traités*, vol. 9, 186, art. 35: [...] *religieux francs-français et ceux qui en dependent d’eux qui iront à Jérusalem—des deux ordres religieux français savoir les Jésuites et les Capucines les Consuls, les dragoman de France ainsi que leurs religieux et leurs évêques[...]*. In the sixteenth and seventeenth centuries the European powers relied on local translators when negotiating with the Sublime Porte. But these proved often ‘untrustworthy’, as they were hired by the Ottomans. In 1640 the diplomat Johann Rudolf Schmidt, resident in Constantinople, was able to hire Croatian youths to learn Ottoman and “retain them as translators” (Author’s translation). The Austrians started to train *Sprachknaben*, following the French example, in the eighteenth century. See Karl A. Roeder, *Austria’s Eastern Question 1700–1790* (Princeton: Princeton University Press, 1982), 9.

the equality of status of the Holy Roman emperor with his own by giving him the title *padishah*, from the Persian for Master King, which was the sultan's own title. Before this, the Holy Roman emperor had been regarded as mere *kiral* (king) of Vienna in Ottoman diplomacy until the early seventeenth century.³⁶

The official treaties in the Capitulations with France of 1673 and 1740, articles 33, 35, 36 and 82, dealt expressly with the foreign Roman Catholics who were able to enjoy a precarious tolerance granted to them.³⁷ The heads of the Roman Catholic communities were able to appeal to the king for assistance, who in turn contacted the ambassadors and consuls accredited at the Porte to obtain justice and protection. Non-Catholic clergy did not have such benefactors, but then the Greek and Armenian patriarchs enjoyed their own treaties with the Islamic authorities.

There follows a few examples on the protection of Latins in Jerusalem. As requested by the ambassador of France, a *firman* was issued on 10 September 1623 reiterating that the French clergy must not be attacked by the Dervishes and taken into slavery by them.³⁸ On 21 February 1651 a very comprehensive *firman* was obtained from Johann Rudolf Schmidt von Schwarzenhorn, in which he was styled "Rodolfo Ambassador of Germany",³⁹ which dealt with 12 points: first, the French clergy must not be imprisoned; second, all important quarrels had to be referred to the Sublime Porte; third, the Custodian did not have to pay the usual taxes for his first three years of office; fourth, clergy must not be charged a fee for church services on the Mount of Olives, in the church of the Sepulchre of Mary, in St. John in Bethany,⁴⁰ on the river Jordan and in Villa Salata;⁴¹ fifth,

³⁶ Mehmet S. Birdal, *The Holy Roman Empire and the Ottomans: From Global Imperial Power to Absolutist States* (London: I. B. Tauris, 2011), 6.

³⁷ Pélissié du Rausas, *Le régime des capitulations*, vol. 1, 198.

³⁸ Castellani, *Catalogo dei firmani*, no. 274, 10 September 1623: [...] *che caddero schiavi*.

³⁹ Johann Rudolf Schmidt von Schwarzenhorn, 1590–1667, was captured by the Turks in 1610, but freed by the Habsburg envoy Johann Jakob Kurz von Senftenau in 1624. He became interpreter in 1625, was imperial resident, that is, permanent chargé d'affaires in Constantinople from 1629 to his return to Vienna in 1643. He was made imperial internuntius in 1648, went on missions to Constantinople in 1649 and 1650–51. See Theodor Vetter, "Schmid von Schwarzenhorn, Johann Rudolf Freiherr", in *Allgemeine Deutsche Biographie*, ed. Historische Commission bei der Königlichen Akademie der Wissenschaften, vol. 31 (Leipzig: Duncker & Humblot, 1890), 695–99; see Meienberger, *Johann Rudolf Schmidt zum Schwarzenhorn*.

⁴⁰ Church of St John the Baptist, in the West Bank.

⁴¹ The *Villa Salata* is a misspelling in the document. In an anonymous travelogue from the second half of the thirteenth century the course of the river Jordan is described as emptying into the Dead Sea, called *vallis Sallinarum dicitur [...] Mare Mortuum*. The river Jordan is, of course, a location sought out by pilgrims to see the spot where reportedly Jesus was baptized. From there they walked to the Dead Sea where one thought to see the submerged

Roman Catholic clergy may also officiate in Bethphage on the Mount of Olives; sixth, nobody must harass their pilgrims; seventh, the officials who come from Damascus under the pretext of a church visitation must not take money from the clergy; eighth, the Dragomans who converted to the Latin faith and thus assisted the Latins, must not be bothered neither by Greeks nor by anybody else; ninth, if a superior or any monk died, his goods were to be inherited by the monks; tenth, when the clergy wished to travel from one part to another, and their departure did not cause any inconvenience, the governors must not harass them by saying that they did not have a permit; eleventh, the clergy must not be charged fees for their building works; twelfth, nobody was allowed to treat them unfairly in any way.⁴² This *firman* was confirmed in the following year specifying that the French clergy were free to employ as dragomans anybody they chose and from any religion.⁴³ Remarkably, though not obliged, the ambassador of Germany was given the right to oversee all the points mentioned in the Capitulations. These rights were no longer under the exclusive guardianship of the French ambassador, but also under the guardianship of his Habsburg co-religionist. In 1659 the ambassador of Germany August von Mayern⁴⁴ obtained another *firman* which confirmed which sanctuaries and convents were under the care of the French clergy,⁴⁵ re-issued on 13 October 1700.⁴⁶

At the request of Walter Count Leslie,⁴⁷ the “ambassador of Vienna”, a *firman* was obtained on 8 December 1665 stating that all clergy and members of religious orders of Latin rite had the right to repair their properties; they were allowed to travel with their belongings without paying customs and tax; on the death of one

cities of Sodom and Gomorra. Castellani’s list was reprinted in 1986 omitting the term *Villa Salata*. See Reinhold Röhrich, *Bibliotheca geographica Palaestinae* (Berlin: Reuther, 1890), 64, no. 70.

⁴² Castellani, *Catalogo dei firmani*, no. 361, 21 February 1651. I thank Mordechay Lewy for the Röhrich reference.

⁴³ *Ibid.*, no. 364, 13 January 1652.

⁴⁴ Augustin Mayern, Freiherr von Mayerberg, died in 1688, imperial internuntius, went in 1659 with seven ships to Constantinople, to bring the news of the coronation of Emperor Leopold I, 1640–1705, ruled 1658–1705. See Johann G. M. von Mühlfeld, “Augustin Mayern”, *Archiv für Geschichte, Statistik, Literatur und Kunst* 18, 23 and 25 May 1827, 345–46; Joseph von Hammer-Purgstall, *Geschichte des Osmanischen Reiches*, 6 vols. (Pesth: C. A. Hartleben’s Verlag, 1834–36), vol. 3, 512. The phrase ‘French clergy’ was used for Latin clergy.

⁴⁵ Castellani, *Catalogo dei firmani*, no. 396, 2 September 1659.

⁴⁶ *Ibid.*, no. 723, 13 October 1700.

⁴⁷ Walter Count Leslie, 1606–67, Imperial Field Marshal, from May 1665 to March 1666 Imperial Ambassador in Constantinople. See David Worthington, *Scots in Hapsburg Service, 1618–1648* (Boston: Brill, 2004), 153–288.

of their members his effects would be given to his fellow clergy; they were not requested to pay blood money if one of them was murdered in their quarters; they should not be imprisoned for such deeds; a fee, called *avania*, considered to be extortionate, should not be imposed on foreigners, who requested to enter the churches of the French.⁴⁸ Another *firman* of the same day listed the properties under the care of the French clergy⁴⁹ and gave permission to the three nations—the French, Greeks and Armenians—to repair their part of the church of the Holy Sepulchre, always a topic of friction.⁵⁰ The “ambassador of Germany” Albrecht Graf Caprara obtained a *firman* ordering the Greek patriarch not to harass the French clergy over their burial ground in Jerusalem and not to ask more than a third of the burial fees.⁵¹ On 13 October 1700 the imperial ambassador obtained a *firman* stating that the French clergy are allowed to operate in their churches without harassment by the local people and should not suffer any tyrannical persecution, contrary to the Capitulations.⁵²

Doubtless, analysing these documents as well as those obtained by the French authorities pertaining to this, it is difficult to establish any exclusive rights or protection by one or other of the European powers. The wording of these legal instruments is near identical in phrasing. The Habsburgs secured a right of protection over ‘the religious’ in the Ottoman empire which was extended to cover the Franciscan mission in Upper Egypt from the seventeenth century onwards and the Austrian mission in the Sudan from 1848 onwards.⁵³ When a Coptic Catholic hierarchy was established in Egypt by Pope Leo XIII in 1895, the new Patriarch Kyrillos Makarios and his suffragan bishops placed themselves under the protection of Austria—after Austria had paid for the building of over fifty churches from Giza near Cairo along the Nile valley to Aswan.⁵⁴

⁴⁸ Castellani, *Catalogo dei firmani*, no. 437, 8 December 1665.

⁴⁹ *Ibid.*, no. 438, 8 December 1665.

⁵⁰ *Ibid.*, no. 456, 12 May 1668.

⁵¹ *Ibid.*, no. 622, 2 October 1682. Caprara, 1627–91, Imperial general and diplomat, left for Istanbul in April 1682 and returned in June 1683. The Imperial resident was Georg Christof von Khuniz, 1680–83, who during the siege of Vienna, negotiated with the Turks in Vienna until he was able to flee the camp. Bittner and Groß, *Repertorium*, 172.

⁵² Castellani, *Catalogo dei firmani*, no. 724, 13 October 1700.

⁵³ See Dorothea McEwan, *A Catholic Sudan – Dream, Mission, Reality: A Study of the Roman Catholic Mission to Central Africa and its protection by the Hapsburg Empire from 1846 to 1900 (1914) as revealed in the correspondence of the Imperial and Royal Austro-Hungarian Consulate Khartoum* (Rome: Stabilimento Tipografico Julia, 1987).

⁵⁴ Eadem, *Habsburg als Schutzmacht der Katholiken in Ägypten: Kurzfassung der Studie über das österreichische Kirchenprotektorat von seinen Anfängen bis zu seiner Abschaffung im Jahre 1914* (Wiesbaden: Harrassowitz, 1982), 85–133.

The needs and claims of the Habsburg Mediterranean were interpreted and pursued on the strength of the Capitulations. The protagonists, the Habsburg—and the other Catholic—rulers on the one hand and the Ottoman rulers on the other, had created a space for mutual transactions, promoted by one side and adhered to in law by the other side.

The Liturgical Prerogatives

In addition to the legal instruments which were granted for a short time only or only for the rule of a particular king or sultan, there arose customs which are loosely termed church protection and which are quite apart from the legal protection of the Latins. These honours, the so-called *Honneurs de l'Église* or *Kirchenehren*, were enacted in the liturgy of the Latins as rights which the catholic powers claimed in their spheres of interest, hence also in the Habsburg Mediterranean. These covenants were jealously guarded by their diplomatic representatives.⁵⁵ Thus, the ambassadors and consuls were given pride of place, on a bench or dais to the right of the altar, where they were censed by the officiating priests before the clergy censed the congregation, and where the gospels were given to them to be kissed, after having been kissed by the clergy.

Before the priest sprinkled the congregation in church with holy water, the vessel containing the holy water was handed to the diplomatic representative present so that he could cross himself with the aspergillum, the holy water sprinkler. On especially solemn occasions the representative of the protectorate power was met at the entrance of the church by the officiating priest and was there handed the aspergillum dipped into holy water. After the reading of the gospel by the deacon, the Bible was first presented to the officiating priest to be kissed and then to the representative of the protectorate power. At the offertory, after having walked around the altar with the censer, first the priest and then the representative of the protectorate power were honoured by being censed three times. After the *Agnus Dei*, the officiating priest gave the sign of peace to the other priests by embracing them, laying his hands on their shoulders and saying the words *pax tecum* (peace be with you). After that the first of the assisting priests took a silver salver, decorated with the lamb and the cross, from the altar and presented it to be kissed by the representative of the protectorate power saying *pax tecum*.⁵⁶ These rituals which seem somewhat arcane to us today, were visible legal agreements.

⁵⁵ Eadem, "Catholic Copts", 529.

⁵⁶ Eadem, "Catholic Copts", 493–94, summarizing von Eberhard F. Graf von Mülinen, *Die lateinische Kirche im türkischen Reich*, 2nd edition (Berlin: Hoffmann, 1903), 47.

They had evolved over the centuries and demonstrated publicly which power was standing behind which community. In later developments the representative of the Habsburg empire in Egypt added to their financial and legal protective role that of arbitrating in local quarrels and of commissioning local so-called patrons to be managers or procurators of the churches of the Catholic Copts.

The Situation in Egypt: A Case Study

The Roman Catholic situation in Egypt was different from that of Jerusalem and Palestine. Egypt had from antiquity on a large Christian population, the Orthodox Copts. However, during the crusades small Latin churches and mission stations were established in the ports—in 1219 St Francis had landed in Damietta—to facilitate the travels of pilgrims to the Holy Land. Once the Roman Catholic powers gained protection over the Holy Places, this protection covered the whole area of the *Custodia di Terra Santa* (the Custody of the Holy Land), under the care of the Custodian of the Order of the Friars Minor or Franciscans. He was for centuries the highest Latin dignitary in the Levant. The Custody covered not only Palestine, but also Lower Egypt, the area from Alexandria to Cairo. Thus, the Franciscan friars functioned as chaplains to the Europeans living in Egypt. After the setting up in Rome of a central authority for the propagation of the gospel, the *Sacra Congregazione della Propaganda Fide*, in 1622, this central authority started to make contacts with the Patriarch of the Coptic Orthodox Church in Egypt.⁵⁷ As the patriarch resided in Cairo, it was decided to establish a Latin church there in 1632. The location was 12 Bendaqah Street in the district Mouski, in fact, the house of the Venetian merchant and Consul Domenico Savio.⁵⁸ Bendaqah means Venice, denoting the place where Venetian merchants had their quarters.⁵⁹ In the following year, the *Propaganda Fide* established the so-called prefecture of Egypt and Ethiopia, an administrative unit which was to oversee the negotiations to effect the much desired union with the Copts in Egypt and the Orthodox Christians in Ethiopia. Pilgrims from these countries travelled to the Holy Places along the Blue Nile in Ethiopia and then the Nile in Sudan and Egypt. This prefecture of

⁵⁷ Gaudenzio Manfredi, *La Figura del "praefectus missionum" nelle prefetture d'Egitto-Etiopia e dell'altro Egitto-Etiopia affidate ai Fratelli Minori 1630–1792* (Cairo: Edizioni del Centro Franciscano di Studi Orientali Cristiani, 1958), 50.

⁵⁸ Consul Savio made a similar arrangement with the Franciscans in Alexandria. The church in Mouski was declared a cathedral in 1858.

⁵⁹ For a summary of the presence of Venetian merchants and Consuls in the sixteenth century in Egypt see Maria P. Pedani, "Venetian Consuls in Egypt and Syria in the Ottoman Age", *Mediterranean World* 18 (2006): 7–21.

Egypt was placed under the care of the Custodian in the Terra Sancta, a member of the Osservanti branch of the order, while a Roman Catholic church in Cairo was under the spiritual care of another branch of the order, called Riformati,⁶⁰ within the Custody of the Terra Sancta.

In Egypt petty squabbles between the two branches littered their history. The new little monastery in Cairo became the residence of members of both branches, the house of which, however, in time had to be divided into two separate units. Complaints were sent to Rome whereupon the Riformati mission in Cairo was dissolved in 1653 and the fathers were told to move to Rosetta.⁶¹ When the efforts towards a union with the Coptic Orthodox church came to a standstill, the Osservanti kept their post in Cairo as chaplains to Europeans of the Latin rite.⁶² Nine years later the Riformati were called back to Cairo and charged to renew the work towards union. Again, they were unsuccessful, only very few Orthodox Copts had converted to Roman Catholicism and again the Riformati were asked to hand over their work to the Osservanti or return to Europe. However, P. Francesco Maria da Salemi, Prefect of the Riformati, faced with the perennial fact of having neither enough personnel nor financial resources, submitted a new plan for the work of the Riformati mission to the Propaganda Fide. And again, they were entrusted with continuing their mission work in Egypt with a view to effect a union with Rome in 1686.⁶³ Their work proved very hard and was not blessed with mass conversions. The mission was taken over by the Osservanti again; this time, however, the Riformati did not leave and were given permission to work in Upper Egypt where stations were established in the Nile valley in Akhmîm, Girgiâ, Farshût, Tahtâ and Isna⁶⁴ and to assist missionaries travelling to Ethiopia. Still, very few Orthodox Copts converted and among them very few Coptic clerics, one of the reasons being that they were married and had to support their families. The European missionaries had to continue in their roles as parish priests not only to Latin communities but also to the Catholic Copts.

In Cairo, members of the two branches of the order still lived in the same house; the archival sources let us glimpse the endless complaints by both orders about each other. A total division was the result, windows and doors between

⁶⁰ McEwan, "Catholic Copts", 497. Before the unification of all branches of Franciscans in the Order of Friars Minor in 1897, Osservanti and Riformati were two major groupings, at times in competition with each other.

⁶¹ *Ibid.*, 54.

⁶² *Ibid.*, 55.

⁶³ *Ibid.*, 68.

⁶⁴ *Ibid.*, 88.

the two parts of the house were bricked up.⁶⁵ Apart from these internal quarrels, both branches suffered from periodic persecutions and in their wake requested interventions by the consuls to obtain *firmans*. The Osservanti were recognized as parish priests in Cairo, their chapel became the French consular chapel. The Riformati were recognized as the missionaries for Upper Egypt, their mission area started just outside of Cairo, and extended through Upper Egypt until Ethiopia. The republic of Venice, which had traders acting as consuls in the Levant for centuries, did not have consuls in Cairo from 1677 to 1744. Commerce had been bad in the wake of wars and as a consequence sea routes along the African coastline instead of overland from India to the Eastern shore of the Mediterranean were chosen. Many merchants and their families left Egypt.⁶⁶ However, the Venetian consulate was established again in 1744 and the new consul Giovanni Ferro⁶⁷ declared the church of the Riformati as the official Venetian consular chapel. In 1782 it became officially recognized by Rome as the parish church for the Latin Christians and the Catholic Copts.⁶⁸

With the dissolution of the Venetian republic in 1798, when parts of its lands came under imperial Austrian rule, the missions now looked for protection to the Austrian representatives in Egypt, at first mostly Italian Christian as well as Ottoman merchants.⁶⁹ One prominent member among the Ottoman merchants in the second half of the eighteenth century was the *Doganiere generale d'Egitto* (the tax collector or manager of customs), Antonio Cassis Faraone. Born of Syrian Christian extraction in Damascus in 1745, he moved to Cairo and became head of the imperial Ottoman tax collection in Egypt. He formed a commercial company with the Italian merchants Rossetti and Belletti and acted for the Riformati when called upon to do so. In consequence, he came into contact with Austrian consular authorities and after a number of successful interventions in support of them—one of them to declare the church of the Riformati in Cairo the first one in Egypt under Austrian imperial protection—he was officially congratulated by the Austrian religious authorities. In 1783 he was ennobled by the Habsburgs, one

⁶⁵ Ibid., 98.

⁶⁶ Pedani, “Venetian Consuls”, 20.

⁶⁷ The Ferro family is mentioned in Pedani, *I “Documenti Turchi”*, 13, 192, 537–38: Antonio Ferro is called Venetian ambassador in Istanbul on 31 May 1487; Girolamo Ferro is called Bailo on 26 July 1560; Giovanni Ferro is called Consul of Egypt on 13 April 1763 in a *berat* of Mustafa III in which the sultan appointed Girolamo Marsan to succeed Giovanni Ferro as consul in Egypt, “quoting some dispositions of the Capitulations”.

⁶⁸ Manfredi, *La Figura del “praefectus missionum”*, 112; McEwan, *Habsburg als Schutzmacht der Katholiken in Ägypten*, 21–22.

⁶⁹ McEwan, “Catholic Copts”, 501–04.

year later he landed in Trieste, apparently fleeing from the Ottoman authorities. He must have brought enough sums of money to purchase large estates in Gorizia and Gradisca, among them the former Benedictine convent Santa Maria outside Aquileia, today the National Archaeological Museum of Aquileia. He died in Trieste on 25 or 30 November 1805.⁷⁰

The situation of the Latins and the converted Copts was an extremely difficult one. The orthodox Copts mistrusted the Latins because of their avowed aim of conversion, and there were very few Latins. This changed in the course of the nineteenth century, when the ancient Capitulations provided a legal framework for the mission in Upper Egypt and the Austrian imperial consulate. The financial situation for Catholic Copts improved with the setting up of collection associations in Austria in the second half of the nineteenth century. However, the rich or influential converts also requested certain rights which they thought were conducive to the practice of the old rights of protection exercised by the diplomatic organs. Thus, church procurators were appointed, usually rich members of a particular parish, who, indeed, helped the missionaries a great deal in looking after the parishes, but expected to be granted special status or Austrian protection *ad personam*, in fact diplomatic protection. Examples range from land transactions to compensation for services rendered. The Egyptian government was powerless to stop the procurators, the Austrian authorities felt press ganged into supporting them. In the second half of the nineteenth century the community of Catholic Copts grew to such an extent that the Coptic Catholics were able to establish their own hierarchy beyond the missionary orders in 1895.⁷¹

Conclusion

When analysing the Capitulations or *firmans*, obtained by France or by the Habsburg rulers, it is difficult to establish exclusive rights for protection by one or the other European powers. The wording of legal instruments debated and issued is near identical in phrasing. The Habsburgs secured a right of protection over the Roman Catholic religious communities in the Ottoman empire which was extended to cover the Franciscan mission in Upper Egypt from the seventeenth

⁷⁰ Eadem, *Habsburg als Schutzmacht der Katholiken in Ägypten*, 42–67; Annalisa Giovannini, “Francesco Leopoldo Cassis Faraone: Il proprietario delle antiche terre di Iside”, in *Antichità egizie e Italia: Prospettive di ricerca e indagini sul campo. Atti del III Convegno Nazionale Veneto di Egittologia*, eds. Emanuele M. Ciampini and Paola Zanovello (Venice: Edizioni Ca’Foscari-Digital Publishing, 2014), 141–48.

⁷¹ McEwan, *Habsburg als Schutzmacht der Katholiken in Ägypten*, 87–91.

century onwards and the Austrian mission in the Sudan from 1848 onward. The long road from legal insecurity and arbitrary interpretations of laws for non-Muslims living in the lands of the Sublime Port to the acceptance by official Ottoman authorities of outside involvement in cases involving foreign and domestic non-Muslim minorities and eventually treaty parity, a certain parity in diplomatic relations, had taken centuries.

In modern times the regulated and protected status of *dhimmi* or *millet*, legally protected religious minority groups, was regarded as inappropriate—in fact an obstacle to modernisation—and became obsolete. The church protectorate engendered antipathy against the Catholics as it was seen to be meddling in the affairs of another state. The protectorate was gradually relaxed in the nineteenth century with the accession of Sultan Abd-el Mejid I in 1839 and his edict Hatt-i Sharif of Gülhane (in Istanbul), in which he proclaimed the principle of equality of all subjects regardless of religion, in part influenced by his decision to gain support from the British empire. Turkey abolished the regulations on 1 October 1914 as “one of the important aims of war of the Ottoman peoples”, in the words of the Austrian ambassador in Berlin, Gottfried Prinz zu Hohenlohe-Schillingsfürst.⁷²

The treaty of Lausanne in 1923 led to the Allies agreeing to nullify the Capitulations in return for Turkish judicial reforms. The perceived and accepted right of the Capitulations rested on interpretations of the rights of non-believers in the Muslim society. In theory legal practices and legal norms existed side by side but were open to interpretations which in practice ebbed and flowed with political exigencies. Yet it was one way to deal with religious minorities. It was, despite its shortcomings, an enlightened procedure which had existed in a political entity over a very long time and space. It was also one way for Habsburg rulers and subjects alike to make their views heard and accepted in the Mediterranean. Was religion used as a political lever? It depends on which side of the argument you stand. Certainly, the ethical point of reference was religion or religions, and politicians accepted that there were ethical points of reference. The topic of religious minorities and their requests for protection in an environment deemed hostile to them in a large variety of nations and religions remains a concern to this day.

⁷² HHStA Vienna, pA, no. XII, 466, report 17 January 1917.