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ARTICLE

INTERNATIONAL TREATIES AND THE NATIONAL DEVELOPMENT OF BOSNIAN MUSLIMS: FROM BERLIN TO SAINT-GERMAIN

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Abstract

The impact of international treaties and laws on the identities of nations is an under-researched subject. Although it is possible to obtain some information about the impact of different international agreements on the development of nations in a disconnected manner in different publications, it has so far been difficult to find a systematic and comprehensive study on the matter. The same gap also exists in the academic studies on the emergence of Bosniak identity and nationalism. This article aims to fill this gap by examining the impact of the international agreements signed over a period of more than forty years on the national development of the Bosnian Muslims who assumed an important position in the defense policies that the Ottomans began to follow from the 17th century onwards. However, in the first half of the 19th century, conflicts would erupt between the Ottoman government and the Bosnian ajans (local leaders). Istanbul's centralization efforts created unrest in Bosnia and led the Bosnian Muslims to emphasize their Bosniak identity (Bošnjaštvo) to differentiate themselves from the Ottomans. On the other hand, in the late Ottoman period, the conflicts between the Serbs, the Montenegrins, and the Ottoman Empire and the Bosnian Muslims who sided with it were perceived as a struggle between Christianity and Islam. This process resulted in the strengthening of

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Bosnian Muslims' Muslim identity (Muslimanstvo). After the Berlin Treaty of 1878, the Bosnian Muslims found themselves within the Austro-Hungarian Empire, creating disappointment and anger among them as they thought that they had been let down by the Ottomans, and ultimately bolstering their Bosniak identity. The Istanbul Convention of 1879, the Protocol of 1909 between the Austro-Hungarian and Ottoman Empires, the Istanbul Treaty of 1914, and the Minority Treaty of 1919, which regulated the rights of Muslims, all underlined their Muslim identity. The Protocol of 1909, which marked the end of Ottoman sovereignty in Bosnia and Herzegovina, was a major trauma for the Bosnian Muslims. It not only underlined their Muslim identity by defining Muslims' rights but also contributed to their Bosniak identity by severing their links with the Ottoman Empire indefinitely. However, the political conditions in Bosnia and Herzegovina in the decades to come pushed Muslimhood as the identity of the Bosnian Muslims to the forefront.

Keywords

Bosnian Muslims, international treaties, identity, nationalism, Austro-Hungarian Empire

Introduction

The first international treaties on the protection of minorities were concerned with religious rights.¹ In the Balkans, “the protection of minorities,” as a concept of international law, has its roots in “the protection of religious minorities.” In the 18th and 19th centuries, the European powers signed several treaties with the Ottoman Empire for the protection of its Christian citizens. Gradually, Austria, France, and Russia became the protector countries for the Ottoman Christians. With the sultanic decree of 1856 (*Hatt-ı Hümayun*), the Ottoman Empire promised full freedom to all the religious communities under its rule. According to Article 62 of the Berlin Treaty, the Ottoman Empire confirmed the religious freedom of all its citizens.²

The great powers also imposed minority protection on the newly established Balkan nation states in the 19th century. With the London Protocol of 1830, Greece was obliged to provide religious equality and freedom to its citizens. The Berlin Treaty imposed certain regulations on Serbia, Montenegro, Romania, and Bulgaria to prevent discriminatory treatment of their religious communities in terms of their civil and political rights. These regulations were similar to those

previously imposed on the Ottoman Empire. Regulations concerning minority protection would continue within the frameworks of bilateral agreements until World War I.³

After World War I, the problem of national minorities became acute because of the extensive territorial reshaping.

After World War I, the problem of national minorities became acute because of the extensive territorial reshaping.⁴ The minority question was mentioned more and more in the press and public opinions of different countries. Here, the term “minority” refers to the ethnic or national minorities which differ from the majority in a particular country by their race, language, or religion. In this new period, particularly the question of ethnic minority was no

longer considered as an issue of domestic politics but rather as a question of international importance.⁵

During the Versailles Peace Conference, a special committee was established to focus on the situation of the minorities in Eastern and Central Europe. Initially, its main concern was the Jews living in Poland. However, the peace agreements signed after World War I with the other Central and Eastern European countries also included some obligations concerning the minorities. The so-called minority treaties were first imposed on the newly established countries like Czechoslovakia and Poland. The Saint-Germain Treaty, which was signed between Austria and the Allied and Associated Powers on 10 September 1919, obliged the Kingdom of the Serbs, Croats, and Slovenes to make a separate treaty on its minorities. The Kingdom of the Serbs, Croats, and Slovenes tried to convince the other countries at the conference that it was the heir to the former Serbian Kingdom. With this and some other arguments, its officials tried to avoid signing the Minority Treaty.⁶ However, under the existing international conditions, they had to sign it.⁷ Later, the same obligations concerning the minorities were imposed on the countries which would join the League of Nations. The Scandinavian countries, France, Italy, Britain, and Belgium did not sign the minority treaties.⁸

In the interwar period, the Kingdom of the Serbs, Croats, and Slovenes signed several treaties with its neighbors for the regulation of the rights of the minorities. The Bled Treaty, which was signed in 1927 with Romania, was supposed to regulate the Romanian elementary schools in the Yugoslav part of Banat and the Yugoslav schools in Romanian Banat. However, it was not until the signing

of a new convention on the minority schools by the two countries in 1933 that this issue was resolved. The Kingdom of the Serbs, Croats, and Slovenes signed four treaties with Italy up to 1925 to regulate the rights of the Italians in the kingdom and the Yugoslavs in Italy.⁹ Among all the treaties signed by the kingdom, the Saint-Germain Treaty was the only one which directly concerned Bosnia and Herzegovina.¹⁰

The Muslims of the Kingdom of the Serbs, Croats, and Slovenes gained an international status of “minority” with Article 10 of the Minority Treaty signed in 1919. According to this article, the family and personal issues of the Muslims would be regulated according to Muslim customs. The Minority Treaty considered the Muslims a “religious community” (*vjerska zajednica*). It is important to note, that Article 10 was the product of a long historical process. With Article 11, the treaty put the rights of the Muslims under international protection. In other words, for the first time, the distinctiveness of the Bosnian Muslims gained an international protection. The Minority Treaty made a new and important contribution to the affirmation of the identity of the Bosnian Muslims and to the formation of a Muslim nation.¹¹

The Berlin Treaty and Bosnian Muslims

The Berlin Treaty was the most important single treaty in the 19th century in shaping the borders of the Balkan countries. With this treaty, Serbia, Montenegro, and Romania gained their independence while Bulgaria became autonomous. The same treaty would also have important consequences for Bosnia and Herzegovina, since the Austro-Hungarian Empire was given the right to occupy these two provinces with Article 25. Despite the fact that the Austro-Hungarian Empire became the de facto ruler of these provinces, Bosnia and Herzegovina would continue to remain under the sovereignty of the Ottoman Empire. The legal status of these provinces was a kind of *nudum ius*.¹² Bosnia and Herzegovina’s complicated international status was of great importance for the political developments in these provinces in the decades to come.¹³

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With the Berlin Congress, the Austro-Hungarian Empire did not assume any concrete responsibility towards its new citizens in Bosnia and Herzegovina. However, the rights of the Muslims would be clarified by the Istanbul Convention (or the so-called Yenipazar Convention) signed by the Austro-Hungarian and Ottoman Empires on 21 April 1879. In the convention's preamble, it was confirmed that the occupation of Bosnia and Herzegovina would not threaten the sovereignty of the sultan in these two provinces. According to the convention's first article, former officials who possessed the necessary requirements for their jobs would remain in their posts. In the case of their change, Austria-Hungary would prefer to appoint new officials from among the local population.¹⁴

According to the convention's second article, all religions in Bosnia and Herzegovina would be granted freedom of practice, and particularly the Muslims would enjoy total freedom in communication with their religious leaders (ulema) and the Austrian officials would pay maximum attention to the protection of the lives and properties of the Muslims. Those who attacked the lives, properties, or religion of the Muslims would be severely punished. The Muslims were allowed to mention the name of the sultan in their prayers and to hoist the Ottoman flag on the minarets according to the custom. The third article of the convention states that the revenues of Bosnia and Herzegovina would be spent only on meeting the needs of these provinces.¹⁵

Some rights granted to the Muslims by the Istanbul Convention were violated or not fulfilled. These would constitute some of the most important demands of the Bosnian Muslims in the years to come. The first Muslim party, the Muslim National Organization (*Muslimanska narodna organizacija*, MNO) established in 1906, particularly stressed that from the perspective of international law, Bosnia and Herzegovina was an integral part of the Ottoman Empire.¹⁶ Furthermore, the Muslims were encouraged by the Ottoman officials to be the watchdogs of the provisions of the Istanbul Convention and to protect their rights.¹⁷

The Bosnians offered a fierce resistance which would continue for nearly three months to the Austro-Hungarian occupation. The Austro-Hungarian army needed more than 150,000 troops to crush this resistance. The Muslims constituted the core of the resistance, while the Serbs and some Croats and Jews also supported it. The Muslims and the Serbs cooperated in cities such as Sarajevo, Banjaluka, and Mostar.¹⁸ The Ottoman policy towards the armed resistance against the Austro-Hungarian invasion was ambiguous.¹⁹ The Ottoman government hoped

that the resistance would be successful so that they could delay the occupation through diplomacy and change the Treaty of Berlin.²⁰ Since open support to the resistance was diplomatically impossible, the Ottomans secretly sent troops and munitions.²¹ However, this help was not sufficient to change the situation on the ground. The resistance against the Austro-Hungarian army would gradually gain an anti-Ottoman character, since the local people thought that the Ottomans had let them down. The fact that some Ottoman officials who stayed in Bosnia were forced to wear Bosnian clothes shows that the resistance was more than an act of self-defense driven by patriotic feelings.²² It created a certain sense of unity among the Bosnians as well as strengthening the Bosniak identity of the Muslims against the Ottomans.²³

Despite the fact that Bosnia and Herzegovina was placed temporarily under the direct control of the Austro-Hungarian monarch, the country was ruled for thirty years like a no-man's land. Bosnia and Herzegovina had no assembly until 1910 and had no representatives in Vienna or Budapest.²⁴ After 1890, approximately 10,000 foreigners were settled in the newly established agrarian colonies in Bosnia and Herzegovina.²⁵ The rhetoric used by the Austrians and Germans concerning Bosnia and Herzegovina shows that Austrian and German public opinion considered Bosnia and Herzegovina as a kind of colony.²⁶

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After the occupation, the relationship between the religious communities and the state in Bosnia-Herzegovina was based on the Austro-Hungarian regulation of 1874. The Austro-Hungarian government granted the status of "recognized religions" to six religious communities: the Islamic, Roman Catholic, Serbian Orthodox, Evangelical, Greek Catholic, and Judaic communities. Islam, the former dominant religion, became just one of the recognized religions in a non-Muslim state and the Bosniaks became a religious minority.²⁷ Furthermore, the Muslims, who constituted the upper class in Bosnian society by representing the state during the Ottoman period, were afraid that they might be treated at the same level as the tenants (*kmets*) by the new government.²⁸

The Catholics would adapt themselves more easily to the new Catholic Austro-Hungarian regime than the other groups in Bosnia. Moreover, the Orthodox

Christians and Jews had already established their own communal organizations under the Ottoman *millet* system. Creating a new system for Islamic affairs, independent from the state, was a new challenge for the Bosnian Muslims.²⁹ The Austro-Hungarian government responded positively to the demand of some Muslims to create a new religious institution and the *Medžlis-i Ulema*, which was composed of four high-ranking clerics (*ulema*) with the religious leader (*Reisül Ulema*) at its head, was established. The Islamic Religious Community (*Islamska vjerska zajednica*, IVZ), which was organized in 1882, was the first national-religious organization of the Bosnian Muslims independent from the *Shajkh-al-Islam* in Istanbul.³⁰

The Austro-Hungarian government was determined to reduce the influence of the Ottoman Empire in Bosnia and Herzegovina, despite the fact that according to the Istanbul Convention, the Muslims were free in their contacts with their religious leaders.

After the occupation, the Ottoman bureaucrats had left Bosnia and Herzegovina and the Muslims had lost their contacts not only with the *Shajkh-al-Islam* but also with the Ministry of Vakufs³¹ (or the *Evkaf Ministry*) in Istanbul.³² The new religious body was responsible for the religious education (*mearif*) and hierarchy (*ilmiyye*) as well as for the religious foundations. The connection between the shari'ah courts and the IVZ was relatively weak, since

these courts were part of the justice system of the new administration.³³ The Austro-Hungarian government was determined to reduce the influence of the Ottoman Empire in Bosnia and Herzegovina, despite the fact that according to the Istanbul Convention, the Muslims were free in their contacts with their religious leaders. In contrast to the Albanian religious authorities, who cut their links with Istanbul on their own will, the Bosnian Muslims tried to keep the connection with *Shajkh-al-Islam* intact.³⁴ The issue of relations with Istanbul would play an important role in the Muslim autonomy movement (*pokret za vjersku i vakufsko mearifsku autonomiju*) during the Austro-Hungarian period.

Despite the violations of the Istanbul Convention, the Austro-Hungarian government provided a more liberal political climate for the Muslims compared with the political regimes in Serbia, Montenegro, and Bulgaria.³⁵ This would create suitable conditions for the national development of the Bosnian Muslims. However, the Bosnian Muslims, who used to represent the state during the Ottoman period, first lost their former political status and gradually their economic and social privileges. This would lead to an inevitable conflict

between the Bosnian Muslims and the cultural and religious values of the new administration. The fact that the nationality policy of the Austro-Hungarian government was basically based on the Muslims could not prevent the emergence of the Muslim opposition, which would result in the establishment of the first political party of Bosnia-Herzegovina, the MNO, in 1906.

Communication among the Muslims was composed of personal networks such as business and patron-client relations, personal friendships, marriage alliances, etc.³⁶ The personal networks of the Bosnian Muslims were not confined to Bosnia and Herzegovina and reached Istanbul. After the occupation, the official links between the Bosnian Muslims and the Ottoman government were replaced by unofficial links. Džabić, the leader of the Muslim autonomy movement, was in touch with the Ottoman government and was taking directions from Ottoman officials.³⁷ Despite the fact that Bosnia and Herzegovina was ruled by the Austro-Hungarian Empire, it was still nominally under the sovereignty of the Ottoman Empire. Bosnia and Herzegovina's complicated international structure provided a suitable base for the continuation of Ottoman influence, particularly among the Muslims. The pan-Islamic policy of the Ottoman government would play an important role in the spread of the Muslim opposition in Bosnia and Herzegovina.³⁸

However, the main stimulus behind the Muslim opposition was to be found in Bosnian society.³⁹ During the Austro-Hungarian period, Bosnia and Herzegovina witnessed an intensive industrialization and bureaucratization process. The Muslims, who constituted the majority of the city population, had difficulties in adjusting to the new economic and social conditions. Since there was no established Muslim bourgeoisie, different Muslim elite groups would take the lead in the national development of the Bosnian Muslims during this modernization process. Intellectuals, landowners, and clerics constituted the most important Muslim elite groups.⁴⁰

The conflict and rivalry within the Muslim elite and between the Muslim elite, on the one side, and the Austro-Hungarian government (*Landesregierung*) in Bosnia-Herzegovina and the elites of the Bosnian Serbs and Croats, on the other, would shape the national development of the Bosnian Muslims. The main forms of the elite conflicts were: (1) the conflict between the landowners and the government; (2) the conflict between the Muslim and Croat clerics; (3) the conflict between the Muslim clerics and the government; and (4) the conflict between the radical and moderate wings of the Muslim elite.⁴¹

The Protocol of 1909 between the Austro-Hungarian and Ottoman Empires

On 7 October 1908, the Austro-Hungarian Empire proclaimed the annexation of Bosnia and Herzegovina. The Ottoman protests and the boycott of Austrian goods did not bring any concrete result and the Ottoman Empire had no choice but to accept the annexation on 26 February 1909. German support for the annexation played an important role in this decision.⁴² After the annexation, Bosnia and Herzegovina became a Habsburg province; however, it occupied a unique place within the framework of the empire. In the dualist structure of the monarchy, it belonged neither to Austria (*Cislajtaniji*) nor Hungary (*Translajtaniji*), and with its different legal system it constituted a *corpus separatum*. The Bosnians were neither Austrian nor Hungarian citizens but “members of the land of Bosnia and Herzegovina” (*bosansko hercegovački zemaljski pripadnici*). Until the proclamation of the constitution in 1910, Bosnia and Herzegovina did not enjoy the right of self-government or equal political rights with the other two parts of the monarchy and had no say in common affairs.⁴³

After the annexation of Bosnia-Herzegovina, Austria-Hungary and the Ottoman Empire signed a protocol on 26 February 1909 on Bosnia and Herzegovina and Sandžak Novipazar. With this protocol, the Ottoman Empire recognized the decision of the Austro-Hungarian Empire to annex Bosnia-Herzegovina. In return, Austria-Hungary gave up its rights to Sandžak deriving from the Berlin Treaty and the Istanbul Convention.⁴⁴ According to Article 4, the Muslims were assured freedom and the right to practice their religion publicly as in the past. The Muslims would continue to enjoy the same civil and political rights as other citizens of different religious backgrounds. The name of the sultan as caliph would continue to be pronounced in the public prayers of the Muslims. The rights of the vakufs would be respected as in the past and no obstacle would be placed in the way of the Muslims’ relations with their spiritual leaders in Istanbul. The *Reisül Ulema* was explicitly given the right to contact the *Shajkh-al-Islam* in Istanbul.⁴⁵ This was an important step taken by the *Landesregierung*. However, from then onward, the practice of religious rituals and the mentioning of the name of the sultan in the prayers were not signs of Ottoman sovereignty but merely the rights enjoyed by the Muslim religious leaders. All in all, it is possible to say that this protocol did not drastically change the status of the Muslims, with the exception of the change in the nomination of the *Reisül Ulema*.⁴⁶

The protocol created a new political atmosphere in Bosnia and Herzegovina. It paved the way for the religious autonomy granted by the Austro-Hungarian

Empire to the Muslims in 1909. This was followed by the promulgation of the constitution and the opening of the first Bosnian Assembly in 1910. This religious autonomy marked an important milestone in the national development of the Bosnian Muslims by strengthening their feeling of distinctiveness. Furthermore, the Muslims were represented as a separate group in the Bosnian Assembly. Finally, the religious autonomy of 1909 constituted the basis for the recognition of the Muslims of the Yugoslav Kingdom as a religious minority by the Minority Treaty.

The Istanbul Treaty of 1914

After the Balkan Wars, during the London Conference in December 1912, the issue of the protection of the national and religious minorities was raised; however, no concrete results were achieved. Likewise, the Bucharest Treaty, which ended the Balkan Wars, did not regulate the rights of minorities. However, the Peace Treaty signed between the Ottoman Empire and Serbia on 14 March 1914 brought some concrete measures for the protection of the Muslims in Serbia.⁴⁷

According to Article 8 of this treaty, the Muslims would enjoy the same civil and political rights as the other Serbian citizens of different religions. They would enjoy total freedom in the practice of their religious rituals and their customs would be respected. The Muslims could resume mentioning the name of the sultan as caliph in their prayers and they would elect the muftis of their regions. The chief mufti would be nominated by the Serbian king from among three candidates elected by the muftis. The religious leader of the Muslims would obtain his *menshura* (authorization) from the *Shaykh-al-Islam* in Istanbul through the mediation of the Serbian embassy. The Islamic Community was also responsible for the administration and control of the vakufs. Beyond the religious and vakuf issues, the muftis would be in charge of the family law of the Muslims.⁴⁸ According to Article 9 of the treaty, all the private Muslim schools and their properties would be recognized by the state. In these schools, although teaching of the Serbian language would be obligatory, they were allowed to use the Turkish (Ottoman) language in their education in conformity with the official program. A special school would be established to educate muftis, and not only the government officials but also the chief mufti and muftis would be able to control this school.⁴⁹

The rights granted to the Muslims with this treaty were more concrete and precise than those in the Istanbul Convention (1879) and the Protocol of 1909. However, the actual situation of the Islamic Community would remain similar

and the nomination of the Muslim religious leader would be carried out by the Serbian king and the mufti of Serbia jointly, but not by the sultan. The Istanbul Treaty was ratified by the Serbian Assembly, but the beginning of World War I prevented it from taking effect and it was annulled by the Serbian government on 26 December 1914.⁵⁰

The Saint-Germain Treaty and Bosnian Muslims

The Saint-German Treaty was signed between the Allied and Associated powers and Austria after World War I on 10 September 1919. Article 51 obliged the Kingdom of the Serbs, Croats, and Slovenes to accept the necessary regulations to protect the interests of citizens who were different from the majority of citizens by their race, language, or religion. Article 51 also envisaged a separate treaty between the Kingdom of the Serbs, Croats, and Slovenes and the great powers for the protection of the minorities.⁵¹ With this treaty, the kingdom would no longer be responsible for the obligations included in Article 35 of the

Berlin Treaty,⁵ which had secured the civil, political, and religious rights of its citizens.

Article 51 obliged the Kingdom of the Serbs, Croats, and Slovenes to accept the necessary regulations to protect the interests of citizens who were different from the majority of citizens by their race, language, or religion.

Initially, the Kingdom of the Serbs, Croats, and Slovenes and Romania did not sign the minority treaties. Belgrade wanted the regulations concerning the minorities to be confined to the newly gained territories. The government in Belgrade considered this as an important national issue and the delegation of the kingdom was instructed not to sign the treaty if it was detrimental to

the interests of the state. This issue would even lead to the resignation of the Davidović government in Belgrade, and the Yugoslav delegation was called back for further discussions.⁵³ The Yugoslav delegation had used different arguments, geographic, historic, ethnic, democratic, religious, or strategic in character, to justify its position during the peace conference. However, the basic concept upon which the position of the kingdom largely relied was the “nationality principle.”⁵⁴ Paradoxically, the Kingdom of the Serbs, Croats, and Slovenes tried to prevent the implementation of this principle for the minorities in the south of its own territory. The new state would be based on the idea that Serbs, Croats, and Slovenes were tribes of one nation with three names (*troimeni narod*) and was not inclined to accept the existence of minorities.⁵⁵

During the conference, the kingdom's delegation underlined that Serbia, in contrast to Romania, had treated its minorities well in the past. According to the Yugoslav delegation, the Macedonian Slavs were Serbs and they did not constitute a minority. As far as the Muslims were concerned, the delegation stated that their situation was already regulated by the Istanbul Treaty in 1914, despite the fact that this treaty had been annulled at the beginning of the war.⁵⁶ The delegation decisively resisted the granting of national minority rights to the Albanians and Orthodox Macedonians. It accepted the religious rights of the Muslims, but rejected their national rights, which was a clear indication, according to Milan Bartoš, of the dominance of the idea of a Greater Serbia in Belgrade.⁵⁷

The demand of the kingdom's delegation led by Nikola Pašić not to implement the Minority Treaty in the parts of the kingdom which were annexed after the Bucharest Treaty of 1913 was rejected by the Supreme Council and the president of the conference, Georges Clemenceau.⁵⁸ Having received Clemenceau's letter, the Kingdom of the Serbs, Croats, and Slovenes had no choice but to accept the Minority Treaty. The officials in Belgrade came to the conclusion that not signing the treaty might have serious consequences.⁵⁹ Finally, with a declaration on 5 December 1919, the kingdom joined the treaty. In May 1920, a preliminary law was issued which included the texts of the Minority Treaty and the declaration of the kingdom's delegation as well as the letters of Nikola Pašić and Georges Clemenceau.⁶⁰ The law concerning the Saint-Germain and Minority Treaties would take effect in 1922.⁶¹

In the minority treaties, the articles concerning the minorities can be classified into two groups: those which define the rights of all citizens (or residents) including the minorities and those which define only the rights of the minorities.⁶² As far as the Minority Treaty signed by the Kingdom of Serbs, Croats, and Slovenes is concerned, the first nine articles were similar to the other minority treaties.⁶³ Article 2 of the treaty gave full assurance for the protection of the lives and freedoms of citizens and foreigners regardless of their religious, ethnic, or language background. All citizens would have the right to practice their religions publicly or privately, as long as they did not violate the public order or morality. Article 7 ensured that all citizens were equal before the law and would enjoy equal civil and political rights regardless of their race, religion, or language. Article 8 stated that citizens who constituted ethnic, religious, or linguistic minorities would enjoy the same treatment, and legal and de facto guarantees as other citizens. They had the same rights to establish private charity, religious, and social organizations, and schools and other educational

institutions where they would be free to use their native languages and practice their religions.⁶⁴

According to Article 9, in the towns and districts where the minorities constituted an important part of the population, they would enjoy the help of the government to conduct education in elementary schools in their native languages while the teaching of the official language would be obligatory. However, this article would hold only for the territories which were assigned to Serbia or to the Kingdom of the Serbs, Croats, and Slovenes after 1 January 1913.⁶⁵ In other words, Macedonia, Kosovo, and Sandžak were excluded from the implementation of Article 9. Thus, the Albanians, who were the largest minority, were deprived of all their national rights. The Turkish and Bulgarian minorities as well as the Muslims in Sandžak were in the same situation.⁶⁶

With Article 10 of the Minority Treaty, the Kingdom of the Serbs, Croats, and Slovenes agreed that Muslim family and personal issues would be regulated according to the customs of the Muslims. The government would take measures for the nomination of the *Reisül Ulema* and would assure the protection of the mosques, graveyards, and other Muslim religious institutions. It would provide all the necessary facilities and permissions for the already existing religious foundations (*vakufs*) and religious or Muslim charity organizations, and would not withhold any of the necessary facilities for the establishment of new religious or charity organizations, which were assured for other private organizations of the same kind.⁶⁷

With the exception of the part about the nomination of the *Reisül Ulema*, Article 10 was identical to Article 14 of the Minority Treaty signed by Greece. This article was the only specific regulation concerning the Muslims in the minority protection system created by the Versailles Peace Conference.⁶⁸ With the signing of the Minority Treaty, the Kingdom of the Serbs, Croats, and Slovenes became responsible to the League of Nations but not to certain countries. With Article 11 of the Minority Treaty, the government agreed that its responsibilities concerning the rights of the members of the minorities of different races, religions, or languages were of international importance and that they would be put under the guarantee of the League of Nations. In other words, the League of Nations was supposed to function like a watchdog for the implementation of the Minority Treaty, which could not be changed without the consent of the majority of the member countries in the Council of the League of Nations. According to the same article, the Kingdom of the Serbs, Croats, and Slovenes also accepted that every member country had a right to warn the

Council of the League of Nations in the case of the violation or the existence of a threat of violation of any of its responsibilities towards minorities.⁶⁹

In these situations, the council could take measures and give instructions which would be appropriate and efficient for the given conditions. In the case of the divergence of ideas concerning legal or factual matters, this would be considered as an international conflict in character and the State of the Serbs, Croats, and Slovenes agreed that this conflict would be brought to the Permanent Court of International Justice, if the other side demanded this. Finally, there was no Court of Appeal for the verdicts of the Permanent Court of International Justice.⁷⁰ The members of the minorities were also granted the right to turn directly to the Secretary of the League of Nations, although they needed the support of one of the members of the council to continue with the process.⁷¹

The legal status of the minorities in the Kingdom of the Serbs, Croats, and Slovenes was basically regulated by the Minority Treaty, then by the bilateral treaties made with Italy, Romania, and Germany, and finally to a lesser degree by the constitutions and laws.⁷² One of the most important questions which had to be solved by the constitution was the structure of the new state. This issue was strictly connected to the kingdom's national question.⁷³ The radicals and the democrats stressed the idea that one nation should have a unified state.⁷⁴

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Between the alternatives of centralized or decentralized states (unity or federation), centralization would gain the upper hand. The constitutional draft of Stojan Protić, the ideologue of the Radical Party, was drastically different from the so-called Vidovdan Constitution of 1921 in terms of the territorial division of the state, and the relations between the state and the local administrations.⁷⁵ His decentralized constitutional draft was very close to a federation.⁷⁶ Protić was dealing with the Yugoslav question and the relations between the Serbs and Croats in the name of the Radical Party.⁷⁷ However, his constitutional draft did not reflect the ideas of his party, and the constitutional committee would accept the centralized constitutional draft of Nikola Pašić.⁷⁸

The Vidovdan Constitution ignored the national differences and historical traditions of different regions. In the state symbols, only three nations were recognized, and the Macedonians, Montenegrins, and Albanians were not considered as national minorities. This was an important violation of the minority rights but had no consequence. The official language of the state was “Serbo-Croatian-Slovenian,” a language which has never existed. The Bosnian Muslims were allowed to keep their identity and distinctiveness only as a religious minority.⁷⁹ The Vidovdan Constitution had only one provision concerning the minorities: according to Article 16, the minorities of other races and languages could use their mother tongue in the primary schools, and the use of this right was regulated by the 1929 Law on National Schools which considered it in principle as an issue to be addressed case by case rather than as a right.⁸⁰

On the other hand, the Vidovdan Constitution was quite a liberal constitution for its period in terms of basic human rights, freedoms, and equality of citizens. Despite its deficiencies, it is possible to say that, to a certain degree, it reflected the spirit of the Minority Treaty. At the beginning, it had created a certain hope that the rights of the minorities would be respected.⁸¹ According to Article 4, all citizens were equal before the law, and Article 12 stated that civil and political rights would be enjoyed regardless of religious backgrounds.⁸²

After the dictatorship, a new constitution was proclaimed in 1931. The so-called *oktroirani ustav* (imposed constitution) of 1931 was more centralist and unitarist than the Vidovdan Constitution and paid much less attention to the Minority Treaty.⁸³ Even the modest existence of the regulations concerning the minorities in the constitution of 1921 would disappear in this new constitution. There was no single provision concerning the minorities in the constitution of 1931.⁸⁴ As before, the treatment of the minorities was dependent on the relations between the Kingdom of the Serbs, Croats, and Slovenes and the kin-states of the minorities.⁸⁵ The Germans and Hungarians enjoyed more rights than the other minorities.⁸⁶

In Article 3, the “Serbo-Croatian-Slovenian” language was declared as the official language and there was no guarantee for the use of the minority languages.⁸⁷ With Article 13, the establishment of all political parties and gymnastic organizations on a regional, racial, and religious basis were banned.⁸⁸ This was an open violation of Article 8 of the Minority Treaty.⁸⁹ According to Article 16, all public and private schools were obliged to develop a consciousness of citizenship in the spirit of national unity,⁹⁰ which constituted another violation of the Minority Treaty.⁹¹

Despite the fact that there was no mention of shari'ah courts in the Minority Treaty, these courts were the most important body for the implementation of Article 10. In other words, the Minority Treaty created an international basis for the domestic legal framework of the shari'ah courts, which were an important Muslim tradition. According to Article 109 of the Vidovdan Constitution, the state shari'ah courts would decide on the Muslims' family and hereditary issues.⁹² The same regulation was taken over by Article 100 of the Constitution of 1931.⁹³ According to Article 11 of the constitution of 1931, the representatives of the recognized religions could make contact with their religious leaders outside the kingdom if it was necessary according to their religious rules. The way in which this contact would take place was to be determined by law.⁹⁴ This regulation shows that the Muslims were granted more rights than in Article 10 of the Minority Treaty, at least on paper.⁹⁵

The shari'ah courts were regulated on the basis of the Vidovdan Constitution by the law of 21 March 1929. According to this law, the judges of the shari'ah courts were not religious officials but members of the state bureaucracy. There were two categories of shari'ah courts: county courts and the Supreme Shari'ah Court, which would function as the high court for the ordinary shari'ah courts. These courts were also in charge of conflicts concerning the vakufs. The autonomy of the vakuf administration within the legal framework of the kingdom was admitted by Article 12 of the Vidovdan Constitution.⁹⁶ The constitution of 1931 confirmed this autonomy in Article 11.⁹⁷

The shari'ah courts played a central role in the identity of the Muslims. In the interwar period, for the majority of Muslims, the shari'ah was a part of religion and its implementation had a symbolic meaning for the freedom of

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Islam in Bosnia.⁹⁸ These courts were considered by the Muslims as an important legacy inherited from the previous periods through religious education, tradition, and customs.⁹⁹ Except for some individual critics, there was no political or religious trend among the Muslims which was against the implementation of shari'ah law. Most of the time, the Muslim press, regardless of its political orientation, would respond jointly to the critics of the shari'ah courts.¹⁰⁰ The Muslim religious leaders and politicians were both in favor of keeping shari'ah

law. Thus, shari'ah law was considered as a *ius singulare*¹⁰¹ for the Muslims of Yugoslavia.¹⁰²

From the very outset of their political activities, the Muslims made demands concerning the shari'ah courts and vakufs.¹⁰³ These demands were more stringent than those rights defined in Article 10 of the Minority Treaty. As early as 1919, in the program of the Muslim party (Yugoslav Muslim Organization, JMO), which was published in *Vrijeme* (8 January 1919), the Muslims had asked for constitutional regulation for the equality of Islam with other religions. They also demanded a constitutional guarantee for autonomy in religious, vakuf, and educational (*mearif*) affairs, and for freedom in their relations with the caliphate in Istanbul like the one the Catholics had in their relations with the Vatican. Special emphasis was put on the constitutional regulation of the shari'ah courts.¹⁰⁴ In addition to the Minority Treaty, the political efforts of the JMO and Džemijet (the political party of the Turks and Albanians) as the strongest Muslim parties, also contributed significantly to shari'ah law being protected by constitutional guarantee.¹⁰⁵

From a legal perspective, with the Minority Treaty, the Bosnian Muslims gained individual and collective protection at the international level (Articles 2, 6, 7, 8, 9, and 10).¹⁰⁶ The famous Article 10 of the Minority Treaty did not meet all the demands of the Muslim religious and political elite, but it provided an international basis for the domestic regulation of Muslim family and personal issues according to their customs. More importantly, for the first time, with Article 11, the rights of the Muslims were put under the control of an international organization.

All these would deepen the feeling of distinctiveness of the Bosnian Muslims and contribute to their national development despite the fact that they were recognized as a religious minority by the Minority Treaty. The pressure on the Muslims and their suffering, particularly in the early years of the Kingdom of the Serbs, Croats, and Slovenes, show that the system of international protection did not produce the expected results.¹⁰⁷ However, the Minority Treaty put a certain pressure on the government in Belgrade which was particularly sensitive towards French public opinion.

The book of the French journalist Charles Rivet, *Chez les Slaves libérés. en Yougoslavie* [*Among the Liberated Slavs: In Yugoslavia*] (Paris: Librairie académique, 1919) was banned by the Ministry of Internal Affairs of the kingdom on the grounds that it was biased and did not reflect reality. However,

this book was in circulation among the delegates of the Peace Conference along with some other propaganda material.¹⁰⁸ Rivet's sharp criticism of the regime of the Kingdom of the Serbs, Croats, and Slovenes, and particularly the complaints of the *Reisül Ulema* Džemaludin Čaušević about the conditions of the Muslims, disturbed the Serbian nationalists and the government in Belgrade, which considered them detrimental to the kingdom's international image. In the spring of 1919, Čaušević, in his interview with Charles Rivet for the journal *Temps*, complained about the atrocities committed against the Muslims and asked for protection from France.¹⁰⁹ The state officials put pressure on Čaušević to withdraw his statement but he did not give way.¹¹⁰

The Minority Treaty created mixed reactions among the Bosnian Muslims. The strongest Muslim party, the JMO, did not take a clear position towards the Minority Treaty. However, some sharp criticism would come from the opposition. Šukrija Kurtović, a pro Serb Muslim publicist and politician, stated that the Muslims were not and should not be a minority, and claimed that their status was now worse than before. According to another Muslim intellectual, Muhamed Hadžić, the Muslims did not need Muslim customs and shari'ah courts, but civil courts and total integration into the national and social reality. The Muslim and non-Muslim critics of Article 10 of the Minority Treaty stressed that this article was an obstacle to the integration of the Muslim community into the "nation with three names" and would lead to their isolation.¹¹¹

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In October 1920, some prominent Muslims in Bosnia and Herzegovina received a brochure entitled "The Saint-Germain Treaty is verified!" with the signature of Jusuf Kazazić, from Mostar. The brochure stated that Belgrade did not keep its promises and pointed to the conditions under which the Muslims were suffering. It stressed that the Saint-Germain Treaty had considered the Muslims as a religious minority and was a guarantee for their religious and material existence. It announced that the people of Mostar had decided to publish the political journal *Samoodređenje* (Self-determination) which would seek total and unlimited national self-determination within the domestic structure of the state. Furthermore, the brochure defended the rights of the landowners on the basis of the Saint-Germain Treaty. It stated

that the aim of the agrarian reform was to destroy the Muslims in the cities and that this violated the Saint-Germain Treaty. A petition would be submitted to the League of Nations through the mediation of France and Britain. Ironically, the brochure stated that the Muslims could also claim that they were a “racial minority” since they were called by the Serbs “Asiatic people” who should be expelled to Asia.¹¹²

In the eyes of the government officials, application to the League of Nations through the foreign powers on the basis of the Saint-Germain Treaty might cause foreign intervention in the domestic affairs of the Kingdom of the Serbs, Croats, and Slovenes and was considered treason. Therefore, an investigation was started into the brochure issue.¹¹³ Furthermore, the discussions among the Muslims on whether they should obtain foreign help concerning the agrarian reform on the basis of the Saint-Germain Treaty, as well as the statements of Mehmed Spaho, the leader of the JMO, on the subject, were scrutinized by the police.¹¹⁴ The pressure of the government on the Muslims and their organizations explains the cautious approach of the JMO and its leader to the Minority Treaty.

Conclusion

Since the Berlin Treaty, every single international treaty concerning the Bosnian Muslims and Bosnia and Herzegovina had important consequences for the national development of the Bosnian Muslims and Bosnian society. The complicated international status of Bosnia and Herzegovina after the Berlin Treaty was of great importance for the political developments in these provinces. The occupation of Bosnia and Herzegovina by the Austro-Hungarian Empire was supposed to be temporary and the country was still under the sovereignty of the Ottoman Empire. This encouraged the Muslim opposition against the Austro-Hungarian government. The Istanbul (Yenipazar) Convention of 1879 not only confirmed the Ottoman sovereignty in Bosnia and Herzegovina, but also regulated the rights of the Bosnian Muslims.

The Berlin Treaty and Istanbul Convention provided a very suitable basis for the national development of the Muslims. The Ottoman government was following a pan-Islamic policy towards Bosnia and Herzegovina and the leader of the Muslim movement, Džabić, was in contact with the Ottoman government. The Ottoman officials encouraged the Muslims to protect their rights deriving from the Istanbul Convention. In the years to come, some of the rights provided by the Istanbul Convention would turn into the political demands of the Bosnian Muslims.

Despite the fact that the pan-Islamic policy of the Ottoman government paved the way for the spread of the Muslim opposition, the domestic dynamics constituted the main factor behind this opposition. The industrialization and bureaucratization process during the Austro-Hungarian period triggered the conflicts within the Muslim elite and between the Muslim elite, on the one side, and the Austro-Hungarian government and the elites of the Bosnian Serbs and Croats, on the other. These conflicts would be decisive in the national development of the Bosnian Muslims.

After the annexation of Bosnia and Herzegovina by the Austro-Hungarian Empire, the Ottomans and the Austro-Hungarians signed a protocol in 1909 on the status of Bosnia and Herzegovina and Sandžak Novipazar. The conditions of the Muslims did not change drastically with this protocol, but it created an appropriate political climate for the Austrians to grant religious autonomy to the Muslims in 1909, to promulgate a constitution for Bosnia and Herzegovina, and to open the Bosnian Assembly in 1910. Religious autonomy was an important landmark in the national development of the Bosnian Muslims since it drastically deepened their feeling of distinctiveness. Furthermore, in the Bosnian Assembly, the Muslims were represented as a separate group. The Istanbul Treaty signed between the Ottoman Empire and Serbia after the Balkan Wars, on 14 March 1914, respected the Muslim rituals and customs; however, it could not be implemented since the parties were on opposing sides during the First World War.

The roots of Article 10 of the Minority Treaty can be traced back to the last quarter of the 19th century. A comparison with the 1879, 1909, and 1914 regulations shows that the Minority Treaty of 1919 included lesser obligations in terms of the protection of minorities.¹¹⁵ However, the Minority Treaty stimulated the national development of the Bosnian Muslims which had already started during the Austro-Hungarian period. With this treaty, the Muslims could confirm their identity and distinctiveness only as a religious minority; in those years, however, there was a strong interconnection between religion and nationhood in Bosnia and Herzegovina.

More importantly, for the first time in their history, an international organization provided a guarantee for the customs and the distinctive identity of the Bosnian Muslims. The government of the Kingdom of the Serbs, Croats, and Slovenes, which wanted to create Serbs or Yugoslavs out of the Muslims, had to recognize them as a minority.¹¹⁶ Moreover, the international protection came in a period in which the Muslims were in desperate need of it.

However, the Bosnian Muslims faced atrocities particularly during the kingdom's early years and the government was slow to take the necessary measures to stop them. Despite the fact that the minority protection system of the League of Nations could not prevent the suppression of Muslims, it put a certain international pressure on the government and, added to this, Belgrade was particularly sensitive towards French public opinion. In other words, the conditions of the Muslims could have been worse without the Minority Treaty.

Finally, the Istanbul Convention of 1879, the Protocol of 1909 between the Austro-Hungarian and Ottoman Empires, the Istanbul Treaty of 1914, and the Minority Treaty of 1919, which regulated the rights of Muslims, underlined the Muslimhood (Muslimanstvo) of the Bosnian Muslims. The Berlin Treaty of 1878 created disappointment and anger among the Bosnian Muslims against the Ottomans and strengthened their Bosniakhood (Bošnjaštvo). The Protocol of 1909, which marked the end of Ottoman sovereignty in Bosnia and Herzegovina, was another disappointment for the Bosnian Muslims: it not only underlined the Muslimhood of the Bosnian Muslims by defining the rights of Muslims, but also contributed to their Bosniakhood by severing their links with the Ottoman Empire indefinitely. However, the political conditions in Bosnia and Herzegovina in the decades to come pushed Muslimhood as the identity of the Bosnian Muslims to the forefront.

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- 114 In his meeting with the members of the Association of Landowners (*Udruženje zemljoposjednika*) on 7 September 1921, Mehmet Spaho stated that an action on the basis of the Saint-Germain Treaty would be too early and that they should wait for the appropriate moment. On another occasion, Spaho stated that the Muslims could protect their rights through legal means and that there was no need to talk about the Saint-Germain Treaty. Ibid., pp. 6-8.
- 115 Degan, "Međunarodnopravno uređenje," p. 93.
- 116 Ibid., p. 103.