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EDITORIAL

Welcome to the first issue of the World History Journal, a print and electronic journal aiming at bringing an inter-relative view of the development of human history.

At Free World Publishing, we believe that History is not a self-contained discipline, limited to dates and names or places. We believe in fact that human activities inter-relate in all types of activities and that this influences bring about inter-actions and consequences that result in what we term history.

For this reason, the World History Journal is an instrument that accepts as much historic articles in the « traditional » sense (description of places, actions, individuals and dates) as that of other types of history, such as the development of languages, linguistics, letters, the arts, the economy, anthropology, paleontology, etc. Therefore, if you have an article on the historical perspective and development of any subject, we always welcome submissions of this type.

History is the development of the past, explaining our attainments today. It is an inter-relating chains of ideas, events, actions and individual that have driven us to who and what we are today. This key to the past is a powerful instrument to comprehending future events and should therefore benefit from analysis and perception.

We therefore encourage you to submit articles, notes, book review or comments on any subject of historical perspective, whether regional, local or international, in order to share this common understanding of our shared past and the drive to our future.

Thank you for joining our publication and let us begin comprehending through research what we are and how we got here !

With hope,

Louis-Philippe F. Rouillard

Editor-in-Chief, Free World Publishing Inc.



**THE RIGHT TO FREEDOM OF RELIGION GRANTED TO
MINORITIES UNDER TREATIES CONCLUDED
BEFORE THE FIRST WORLD WAR**

by **DR. ANWAR T. FRANGI***

Although not very successful, the treaties concluded before the First World War were early attempts to provide for the protection of minority's religious freedom. They would possibly give us today some useful hints for the better ordering of the complex and wide diversity of human ways of life. That we may live in peace and brotherhood.

INTRODUCTION

1. Every question of minorities¹ needs to be explored from two angles: In terms of rights given to minorities, and in terms of minorities given rights.
2. Some treaties² concluded before the First World War,

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¹ A 'minority' is a non-dominant numerically inferior group of citizens in a State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population. Religious minority is the main type of minority with which the treaties concluded before the First World War were concerned.

² A treaty is a written international agreement concluded between states or other subjects of international law, and governed by international law.

provided for special minority rights, such as the right to religious freedom. Other treaties of the same period provided for general minority rights, such as civil and political rights. On the other hand, instances would be frequent of treaties conferring the right to religious freedom on particular religious minorities, such as the treaties concluded before the Congress of Vienna of 1815.³ There are other numerable instances which may be found of treaties conferring the right to religious freedom on all religious minorities, such as the treaties concluded after the Congress of Vienna.

3. The scope of this paper is limited to the study of religious freedom as a special right given to religious minorities under treaties concluded before the First World War.

4. The concept of religious freedom covered, in most of the treaties of that period, not only the mere existence of the religious minority, but also the retention of property titles to religious institutions, and the autonomy of local religious courts. It did not reflect, however, distinction between belief and outward worship as is the case in modern times; it was rather connected with the toleration of outward exercise of worship, although restrictions were placed on it in some cases. Indeed, there are instances of treaties by which one party bound itself to another, to grant religious freedom to the latter's nationals living in the former's territory provided particular conditions were fulfilled. However, there are other instances of treaties not imposing such conditions on the minority's outward worship.

5. Accordingly, the following instances of treaties conferring the right to religious freedom on minorities before the First

law is the body of rules deemed binding upon states and other international persons in their mutual relations.

³ The Congress of Vienna was an international conference that was called in order to remake Europe after the downfall of Napoleon I.

World War may be distinguished:

- Instances of treaties in which religious freedom was conditionally given to religious minorities (Part I), and
- Instances of treaties where religious freedom was unconditionally given to religious minorities (Part II).

PART I. CONDITIONAL RELIGIOUS FREEDOM GIVEN TO RELIGIOUS MINORITIES

6. In some cases, religious freedom was conditionally given to particular religious minorities; in other cases, it was conditionally given to all religious minorities.

7. In respect of the first type of cases, instances may be found of treaties by which religious freedom was conditional on the application of the laws of the State to which religious minorities originally belonged. Other instances, however, may be found of treaties in which religious freedom was conditional on the application of the laws of the State to which religious minorities newly belonged.

8. Taking into account the above division made under paragraphs 6 and 7, four types of cases where religious freedom was conditionally given to religious minorities under treaties concluded before the First World War, may be distinguished:

(1) Cases where religious freedom given to particular religious minorities was conditional on the application of the laws of the State to which those religious minorities originally belonged;

(2) Cases where religious freedom given to all religious minorities was conditional on the application of the laws of the State to which those religious minorities originally belonged;

(3) Cases where religious freedom given to particular religious minorities was conditional on the application of the laws of the State to which those religious minorities newly belonged; and

(4) Cases where religious freedom given to all religious minorities was conditional on the application of the laws of the State to which those religious minorities newly belonged.

A. Conditional Religious Freedom Given to Particular Religious Minorities

9. In respect of cases falling under category (1), namely, cases where religious freedom given to particular religious minorities was conditional on the application of the laws of the State to which those religious minorities originally belonged, instances would be limited in number and scope of treaties providing for religious freedom. They could narrow down to one type of instance.⁴

10. However, with respect to cases falling under category (3), namely, cases where religious freedom given to particular religious minorities was conditional on the application of the laws of the State to which those religious minorities newly belonged, instances would be very diverse of treaties providing for religious freedom. The following situations may be distinguished:

(a) A situation where religious freedom given to particular religious minorities was conditional

⁴ An example of this can be traced back at least to *The Treaty of 1536* concluded between Francis I of France and Suleiman I of the Ottoman Empire, by virtue of which religious freedom was granted to the French merchants established in Turkey. The treaty provided, *inter alia*, that consuls appointed by the King of France should judge the civil and criminal affairs of French subjects in Turkey according to French Law.

on the established religion of the State where those religious minorities lived;⁵

⁵ Concerning this situation, the following treaties may be cited :

(1) *The Religious Peace Treaty of Augsburg of 1555*, concluded between Ferdinand acting for his brother Emperor Charles V, and the German Princes for the purpose of putting an end to the religious wars of the Reformation. The Peace Treaty legalized the co-existence within the borders of the Empire of Roman Catholicism and Lutheranism, the latter being considered, to the exclusion of Calvinism, the sole representative of Protestantism. Each territory was to adhere to the denomination of its ruling Prince, making religion an affair of the actual ruler. This was just the meaning of the principle *cujus regio, ejus religio*, which animated the Peace Treaty of Augsburg. Clause 15 of the Treaty reads as follows:

In order to bring peace into the Holy Empire of the German nation between the Roman Imperial Majesty and the Electors, Princes and Estates: let neither his Imperial Majesty nor the Electors, Princes and Estate do any violence or harm to any Estate of the Empire on account of the Augsburg Confession, but let them enjoy their religious belief, liturgy, and ceremonies as well as their estates and other rights and privileges in peace.

Clause 16 of the Treaty reads as follows:

Likewise the Estates espousing the Augsburg Confession shall let all the Estates and Princes who cling to the old religion live in absolute peace, and in the enjoyment of all their Estates, rights and privileges.

Clause 18 of the Treaty reads as follows:

Where an Archbishop, Bishop, or other priest of our old religion shall abandon the same, his archbishopric etc. and other benefices shall be abandoned by him. The Chapters and such as are entitled to it by common law shall elect a person espousing the old religion who may enter on the possession of all the rights and incomes of the place.

Clause 24 of the Treaty reads as follows:

In case our subjects should intend leaving their homes in order to settle in another place they shall neither be hindered in the sale of their estates nor injured in their honor.

It is clear that the Peace Treaty was a mere truce. It only provided that Protestants and Catholics in the Free Cities of the Holy Roman Empire were to

live “quietly and peacefully” together. See Schwarzenberger G., *Power Politics: A Study of International Society* (London: Stevens, 1964), p. 450. Also, the Peace Treaty was no declaration of religious freedom, since Catholics and Lutherans were parties to it, to the exclusion of Calvinists. See Grant, A.J., *A History of Europe, 1494-1610*, Vol. 5 (New York: Barnes & Noble Inc., 1951) at 177: “[The Peace Treaty of Augsburg] is not in any way a victory for the principle of religious freedom. The Protestants as a rule were as much convinced as their opponents that to have two religions existing side by side with equal rights would produce nothing but contention, ill-feeling, and disturbance in the communities, and ruin of municipal life.”

Now it could not possibly be concluded from clause 24 of the Peace Treaty which recognized to individuals the right to emigrate for the sake of their religious belief, that the Peace Treaty set forth religious freedom, since (a) it was based on the principle *cujus regio, ejus religio*, and (b) it did not give, under its clause 18, a Catholic Prince, on becoming Lutheran, the right to carry with him his subjects and dignities. See Thompson, J., *Lectures on Foreign History, 1494-1789* (London: B. Blackwell, 1951) at 128: “the Peace must be said to be based on systematic intolerance--the right to each Prince to determine the religion of his state.”

Thus, the Peace Treaty fell far short of the declaration of religious freedom as such, and was well short of the peace in Europe among the different Christian communities. Hence the outbreak of the Thirty Years War.

(2) *The Treaty of Westphalia of 1648* signed by France, Sweden, Spain, the Holy Roman Empire, and the Netherlands, for the purpose of concluding the Thirty Years War. See Israel, F.L., *Major Peace Treaties of Modern History, 1648-1967*, Vol. I (New York: Chelksea House, 1967), pp. 7-49. The views of international law scholars diverge greatly on the Treaty of Westphalia granting religious freedom to minorities:

(a) Some scholars have considered that not only did the Treaty of Westphalia not encourage the protection of minorities (See Roucek, J., “The problem of minorities and the League of Nations,” 15 *Journal of Comparative Legislation and International Law*, 67 (1933) at 72: “[A]s a whole, the Peace of Westphalia did not encourage the protection of minorities; the States were to be unified, rather than divided.”), it also did, substantially, deny religious freedom, since it confirmed the principle *cujus regio, ejus religio* set forth by the Treaty of Augsburg. See Del Russo, A.L., *International Protection of Human Rights* (Washington, D.C.: Lerner Law Book Co., Inc., 1971) at 15: “[The Treaty of Westphalia] set forth for the first time the specific characteristics of the modern

State, legally equal and territorially independent, and within this nationalistic context it sought to provide for religious unity, recognizing in effect to the Sovereign the power to impose to his nationals the prevailing religion. All signatory powers guaranteed to their subjects who belonged to religious minorities the right to leave peacefully the country within two years after settling all their affairs. This was in substance a denial of freedom of religion.”

(b) On the contrary, some scholars have considered that the Treaty of Westphalia did accord religious freedom to minorities. See Green, L.C., “Protection of Minorities in the League of Nations and the United Nations,” in Gotlieb, A., ed., *Human Rights, Federalism, and Minorities* (Toronto: Canadian Institute of International Affairs, 1970) at 181: “[F]or Catholics and Protestants living under the opposite faith, the conditions of public and private religious worship which had obtained at the most favorable date in the year 1624 were to be accepted as decisive, and to be maintained *semper et ubique*... Subjects who in 1627 had been debarred from the free exercise of a religion other than that of their ruler were by the Peace granted the right of private worship, and of educating their children at home or abroad, in conformity with their own faith; they were not to suffer in any civil capacity, but were to be at liberty to emigrate, selling their estates or leaving them to be managed by others.” Contrary to the Treaty of Augsburg, the Treaty of Westphalia adopted a new approach to the question of religious minorities. It made an attempt to resolve the issue of religious freedom in general, by setting forth the principle of joint action. See League of Nations, *The League of Nations and Minorities* (no. 5, Geneva: 1923) at 8: “[A]ll the signatory Powers undertake to defend each and every clause of this treaty, even by armed force.” See also Green, *op. cit.*, p. 181: “The principle of religious liberty and equality was thus placed under international guarantee and accepted as part of the public law of Europe.”

(c) In fact, both views may be true if measured against the situation surrounding the conclusion of the Treaty of Westphalia. (i) Measured against the situation preceding its conclusion, the Treaty of Westphalia may be considered as granting religious freedom to minorities. Protestants and Catholics were allowed, under the Treaty of Westphalia, to live under their opposite faith, which was not the case under the Peace Treaty of Augsburg. From this point of view, the arguments outlined under (b) above, may be legitimate. (ii) However, measured against the situation following its conclusion, the Treaty of Westphalia may be considered as denying religious freedom to minorities. The Treaty of Westphalia confirmed the principle *cujus regio, ejus religio*, set forth by the Treaty of Augsburg. This means minorities whose religion is different from that of the

(b) A situation where religious freedom given to particular religious minorities was conditional on the respect of the established laws of the State to which those religious minorities newly belonged;⁶ and

ruler would not be able to practice without restriction their religion. From this point of view, the arguments outlined under (a) above may be legitimate. (iii) Now, with regard to argument (ii), although it is true that the Treaty of Westphalia confirmed the principle *cujus regio, ejus religio*, religious minorities whose religion was different from that of the ruler were denied free exercise of their religion. And with respect to argument (i), in spite of the fact that the Treaty of Westphalia granted religious minorities living under the ruler's opposite faith free exercise of their religion, minorities were to leave "peacefully" the country of the opposite faith within two years after settling all their affairs (*See Del Russo, op. cit.*). Therefore, the religious freedom given to minorities under the Treaty of Westphalia was a *conditional* one.

⁶ Concerning this situation, the following treaties may be cited :

(1) *The Treaty of Utrecht of 1713* concluded between France and Great Britain, by which France ceded Hudson Bay and Acadia to Great Britain. Under this Treaty the Catholic community living in Hudson Bay and Acadia had one year to depart and those who wished to remain would enjoy freedom in the practice of their religion *as far as allowed by the laws of Great Britain*. Article XIV of the Treaty reads as follows:

Il a été expressément convenu que dans tous les lieux & les colonies qui doivent être cédées ou restituées en vertu de ce Traité par le Roi T.C., les Sujets dudit Roi auront la liberté de se retirer ailleurs dans l'espace d'un an avec tous leurs effets mobilières... Ceux néanmoins qui voudront y demeurer & rester sous la domination de la [Grande Bretagne] doivent jouir de l'exercice de la Religion Catholique Romaine en tant que le permettent les Lois de la [Grande Bretagne].

[It has been expressly agreed that in all the territory and colonies which by virtue of this treaty must be ceded or returned by [the King of France], the subjects of the said king will have the liberty of leaving within a year with all their movable properties. Those who, nevertheless, would choose to stay and remain under the domination of Great Britain, must be

(c) A situation where religious freedom given to particular religious minorities was conditional on the respect of the established laws of the State where those religious minorities lived.⁷

B. Conditional Religious Freedom Given To All Religious Minorities

11. In respect of cases falling in category (2), namely, cases where religious freedom given to all religious minorities was conditional on the application of the laws of the State to which those religious minorities originally belonged, there is no instance

able to enjoy the exercise of the Roman Catholic religion, in so far as the laws of England permit it].

(2) *The Treaty of Peace of Paris of February 10, 1763*, concluded between France, Spain and Great Britain, by which the latter guaranteed to its newly acquired Canadian Roman Catholic community religious freedom *as far as allowed by the laws of Great Britain*. Article IV of the Treaty reads as follows:

...His Britannic Majesty agrees to grant the liberty of the Catholic religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effective orders, that his new Roman Catholic subjects may profess the worship of religion according to the ritual of the Roman church, as far as the laws of Great Britain permit it.

See Parry, C., ed., *The Consolidated Treaty Series, 1760-1764*, vol. 42 (New York: Oceana Publications, Inc., 1969) at 279.

⁷ Concerning this situation, may be cited *the Treaty of Tientsin of 1858*, concluded between Great Britain and China for the protection of Christian minorities in China. Article VIII reads as follows:

The Christian religion, as professed by Protestants or Roman Catholics, inculcates the practice of virtue, and teaches man to do as he would be done by. Persons teaching or professing it, therefore, shall alike be entitled to the protection of the Chinese authorities, nor shall any such, peacefully pursuing their calling, and not offending against the law, be persecuted or interfered with.

of treaty that may possibly be cited therein. The reason lies in the fact that these types of cases mostly concerned cession of territories, where religious freedom was conditionally or unconditionally granted to particular minorities originally belonging to the State ceding the territory.

12. However, with regard to cases falling in category (4), namely, cases where religious freedom given to all religious minorities was conditional on the application of the laws of the State to which those religious minorities newly belonged, instances would be so limited in number and scope of treaties providing for religious freedom that they could narrow down to one type of instance, *i.e.*, an instance where religious freedom given to all religious minorities was restricted to the ceded territories.⁸

PART II. UNCONDITIONAL RELIGIOUS FREEDOM GIVEN TO RELIGIOUS MINORITIES

13. In respect of the second type of religious freedom, namely,

⁸ Concerning this situation, may be cited the *Convention of Constantinople of 1879*, concluded between Austria-Hungary and Turkey respecting the occupation by the former of the Provinces of Bosnia and Herzegovina. Article II of the Convention states as follows:

The freedom and outward exercise of all existing religions shall be assured to persons residing or sojourning in Bosnia and Herzegovina...

See Hurst, M., *Key Treaties for the Great Powers, 1814-1914*, vol. 2 (England: David & Charles 1972) at 583.

It is possible, however, to argue that this instance should not be included under this category, for the right to religious freedom was simply, thus absolutely, and not conditionally, declared. But, although the right to religious freedom was simply declared, it was limited in its exercise to a certain area. As such, the right to religious freedom should be understood as *geographically conditional*.

unconditional religious freedom, there are cases where it was given to particular religious minorities. There are other cases where it was given to all religious minorities.

A. Unconditional Religious Freedom Given To Particular Religious Minorities

14. In respect of the first category of cases, there are instances of treaties where unconditional religious freedom given to particular religious minorities was itself a condition for the enjoyment of other rights. On the other hand, there are instances of treaties in which unconditional religious freedom given to particular religious minorities was not taken as a condition for the enjoyment of other rights.

1. Unconditional Religious Freedom Given to Particular Religious Minorities, Taken as a Condition

15. In respect of the instances of treaties in which unconditional religious freedom given to particular religious minorities was taken as a condition, the following situations may be distinguished:

(a) A situation where unconditional religious freedom given to particular religious minorities was a condition for cession of territories;⁹

⁹ Concerning this situation, may be cited *The Territorial Treaty concluded at Vienna on 20 May 1815* between Austria, France, Great Britain, Prussia, Russia, and Sardinia, which was annexed to the General Treaty of the Congress of Vienna as Act XIII, on cessions made by the Kingdom of Sardinia to the Canton of Geneva, and which regulated the rights of Catholic populations in ceded territory. Article III reads as follows:

...Sa Majesté [the king of Sardinia] ne pouvant Se résoudre à consentir qu'une partie de son territoire soit réunie à un Etat où la religion dominante est différente, sans procurer aux Habitants du pays qu'Elle cède, la certitude qu'ils jouiront du

(b) A situation where unconditional religious freedom given to particular religious minorities was a condition for the application of the principle of non-intervention,¹⁰ and

libre exercice de leur religion...

Il est convenu, que

1. La Religion Catholique Romaine sera maintenue et protégée de la même manière qu'elle l'est maintenant dans toutes les Communes cédées par Sa Majesté le Roi de Sardaigne, et qui seront réunies au Canton de Genève.

...

[His Majesty [the King of Sardinia] cannot consent that a part of his territory be united to a State where the dominant religion is different, without procuring to the Inhabitants of the state He is ceding, the certitude that they shall enjoy the free exercise of their religion...

It is concluded, that

1. The Roman Catholic Religion shall be maintained and protected in the same manner she is now protected in all the Commune ceded by His Majesty the King of Sardinia, and which shall be united to the Canton of Geneva. ...]

(See Parry, *supra* note 6, vol. 64 at 318)

¹⁰ Concerning this situation, the following treaties may be cited :

(1) *Perpetual Peace Treaty of 562*, concluded between the Monarch of Byzance, Justinian, and the "King of Kings" Chosroes of Persia, *inter alia*, for the protection of Christian minorities under the domination of Persia. Some of the rights that the Treaty granted to the Christians communities included the right to profess freely and outwardly the Christian Religion, the right to establish churches, and the right to refuse to join in the official ceremonies of the State religion (Mazdeism). In 571, the Emperor of the East materially assisted Armenia in war with Persia, in spite of the Perpetual Peace Treaty. Criticized for intervening against the King of Kings in spite of the Perpetual Peace Treaty, the Emperor replied: "The Emperor cannot deliver to the enemy a Christian people who are asking him to help." See De Taube, M., "L'Apport de Byzance au développement du droit international occidental," 67 *Recueil des Cours* 233 (1939), pp. 304-305.

(2) *The Treaty of Kutschuk-Kainardji of July 10/21, 1774*, concluded between Russia and the Ottoman Porte. Article XVII of the Treaty

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(c) A situation where unconditional religious freedom given to particular religious minorities was a condition for recognition of the

states as follows:

The Russian Empire restores to the Sublime Porte all the islands of the Archipel that are now under her rule, and in return, the Sublime Porte promises:

... (2) That the Christian Religion shall never be exposed to the slightest persecution, that it shall never be forbidden to repair and rebuild the Churches of the said religion, and that the persons who serve those Churches shall never be insulted or persecuted in any manner.

See Parrys, supra note 6, vol. 45 at 349.

(3) *The Treaty of Paris of 30 March 1856*, concluded between Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, For the Re-establishment of Peace. Article IX(II) of the Treaty states as follows:

Les Puissances Contractantes constatent la haute valeur de cette communication. Il est bien entendu qu'elle ne saurait, en aucun cas, donner le droit aux dites Puissances de s'immiscer, soit collectivement, soit séparément, dans les rapports de Sa Majesté le Sultan avec ses sujets, ni dans l'administration intérieure de son empire.

[The Contracting Powers recognize the high value of this communication. It is clearly understood that it cannot, in any case, give to the said Powers the right to interfere, either collectively or separately, in the relations of His Majesty the Sultan with his subjects, nor in the internal administration of his empire.]

See British and Foreign State Papers, 1855-1856, vol. XLVI, pp. 8-18. For comments on Article IX, *See, e.g., Ganji, M., International Protection of Human Rights* (Geneva: Librarie E. Droz, 1962) pp. 30-31:

The principle of non-intervention in the second paragraph of Article IX was embodied for the sole purpose of providing that, as long as the Sultan was acting in good faith in implementing the *Firman*, the European Powers were to abstain from intervening.

independence of new States.¹¹

2. Unconditional Religious Freedom Given to Particular Religious Minorities, Not Taken as a Condition

16. In respect of the instances of treaties in which unconditional religious freedom given to particular religious minorities was not taken as a condition, the following situations may be distinguished:

(a) A situation where unconditional religious freedom given to particular religious minorities was not taken as a condition, thus maintaining the *status quo* of the protective religious laws of the State to which those religious minorities originally belonged;¹²

¹¹ Concerning this situation, the following treaties may be cited:

(1) *Protocol of 3 February 1830* drawn up at the Conference of London and signed by the representatives of France, Great Britain, and Russia, where religious freedom given to Muslim was stipulated as one of the conditions for the recognition by the contracting Powers of Greek independence. See Capotorti, F., *Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1 (1979), para. 10. See also Del Russo, *supra* note 5, p. 17.

(2) *Protocol of Constantinople of 1856*, by which Moldavia and Wallachia were established as autonomous principalities. (Articles XIII, XVIII).

(3) *The Convention of Paris of August 19, 1858*, Relative to the Organization of the Principalities of Moldavia and Wallachia, concluded between Austria, France, Great Britain, Prussia, Russia, Sardinia and Turkey (Article 46). See Parry, *supra* note 6, vol. 119 at 357-358.

¹² Concerning this situation, the following treaties may be cited:

(1) *The Treaty of Oliva of 1660*, concluded between Sweden and Poland for the protection of the Roman Catholic minority in the territory of Livonia ceded by Poland to Sweden. Article II(3) of the Treaty reads as follows:
The Towns of Royal Prussia which have been during this War in the possession of his Royal Swedish Majesty, and of the Kingdom of Sweden, shall likewise be continued in the

Enjoyment of all the Rights, Liberties and Privileges, in matters Ecclesiastical and Civil, which they enjoyed before this War, (saving the free Exercise of the Catholic and Protestant Religion, as it prevailed in the Said Cities before the War) and his Sacred Royal Majesty of Poland shall hereafter manifest his Goodness, Favor and Protection to their Territories, Magistrates, Communities, Citizens, Inhabitants and Subjects, in the same manner as formerly.

Article IV(2) of the Treaty reads as follows:

As for what appertains to the Catholic Religion and the Exercise of it in Swedish Livonia, all the Inhabitants and Subjects of Livonia, who are of that Religion, shall enjoy all manner of Security and Liberty of Conscience, and shall privately use their own Religion and Worship at home, without Examination or Animadversion.

See Parry, *supra* note 6, vol. 6 at 9. See also Roucek, *supra* note 5; Thornberry, P., *International law and the Rights of Minorities* (Oxford: Clarendon, 1962) at 25; Bagley, I.H., *General Principles and Problems in the Protection of Minorities* (Genève: Imprimeries populaires, 1950) at 66.; de Balogh, A., *La protection internationale des minorités* (Paris: les éditions internationales, 1930) at 24.

(2) *The Treaty of Nijmegen of 1678*, concluded between France and the Netherlands which guaranteed freedom of worship to the Roman Catholic community living in the territories ceded by France to the Netherlands. Article 2 of the Treaty provided that Holland "... promises that all things concerning the exercise of the Roman Catholic religion and the enjoyment of their properties by those who profess it, will be reestablished and maintained without any exception in the city of Maastricht and its dependencies, in the state and in the manner they were regulated by the Capitulation of 1632; and those who have been granted ecclesiastical properties, canonries, provostships and other benefits, will keep them and enjoy them without any interference."

(3) *The Treaty of Dresden of 1745*, concluded between Frederic of Prussia and the Elector of Saxony, for the protection of the protestant minorities in the territories of the two contracting parties. Article 8 of the Treaty states that "Protestant religion will be maintained in the territories of the two contracting parties, in accordance with the Treaty of Westphalia, without its ever being possible to introduce the slightest innovation."

(4) *The Treaty of Warsaw of 1772*, concluded between Austria and Poland for the protection, *inter alia*, of the religious freedom of the Greek

(b) A situation where unconditional religious freedom given to particular religious minorities was not taken as a condition, thus respecting the application of the autonomous laws of the religious minorities,¹³ and

Uniates. Article 5 of the Treaty stipulates that the “dissidents and the Greek Uniates will enjoy, in the provinces transferred by the present treaty, all their possessions and properties.... As far as religion is concerned the *status quo* will prevail...and Her Apostolic, Imperial, and Royal Majesty will never use the rights of the sovereign to prejudice the *status quo*...”

See Israel, *supra* note 5, pp. 129-143.

¹³ Concerning this situation, the following treaties may be cited:

(1) *The International Convention of Constantinople of 24 May 1881*, concluded between Great Britain, Austria-Hungary, France, Germany, Italy, Russia, and Turkey, For the Settlement of the Frontier Between Greece and Turkey. The Convention assures to Muslim communities living in the territories ceded to Greece the free exercise of their religion. Article VIII of the Convention states as follows:

La liberté ainsi que la pratique extérieure du culte sont assurées aux Musulmans dans les territoires cédés à la Grèce. Aucune atteinte ne sera portée à l'autonomie et à la l'organisation hiérarchique des Communautés Musulmanes existantes ou qui pourraient se former, ni à l'administration des fonds et des immeubles qui leur appartiennent.

Aucune entrave ne pourra être apportée aux rapports de ces Communautés avec leurs Chefs spirituels en matière de religion.

Les Tribunaux ... [religieux] locaux continueront à exercer leur juridiction en matière purement religieuse.

[Freedom and the outward exercise of worship shall be assured to Muslims living in the territories ceded to Greece. There shall be no interference with the independence and hierarchical organization of the Muslim Communities at present existing, or which may be formed, nor with the management of the funds and buildings appertaining to them.

No hindrance shall be offered to the relations of such Communities with their spiritual chiefs on religious matters.

(c) A situation where unconditional religious freedom given to particular religious minorities was not taken as a condition for the enjoyment of civil and political rights.¹⁴

The local ... [religious] courts shall continue to exercise their functions on purely religious matters].

See *British and Foreign State Papers, 1880-1881*, vol. LXXII, pp. 382-387.

(2) *The Convention of Athens of November 1/14, 1913*, concluded between Greece and Turkey, set forth provisions for the protection of the rights of Muslims in these countries. Article XI of the Convention of Athens states as follows:

The life, property, honor, religion, and customs of those inhabitants of the territories ceded to Greece who shall remain under the Greek dominion shall be scrupulously respected.

They shall enjoy in full the same civil and political rights as native Greek subjects. The free and public practice of their religion shall be assured to Mussulmans.

The name of his Imperial Majesty the Sultan, as caliph, shall continue to be pronounced in the public prayers of the Mussulmans.

Neither the autonomy nor hierarchical organization of the existing Mussulman communities, nor of those which may be formed, nor the control of the funds and real property which belongs to them shall be interfered with.

Neither shall any interference be made in the relations of the individual Mussulmans or Mussulman communities with their spiritual chiefs, who shall be subject to the Cheik-ul-Islamat at Constantinople, who shall invest the chief mufti.

The muftis, each within his own community, shall be elected by Mussulman electors.

...

See Israel, *supra* note 5, vol. II, 1039, 1043.

¹⁴ Concerning this situation, the following treaties may be cited:

(1) *The Act on the Federative Constitution of Germany*, signed at Vienna on June 8, 1815, and annexed to the Act of the Congress of Vienna. Article XVI of the Constitution states as follows:

[T]he difference between the Christian religions should cause

B. Unconditional Religious Freedom Given To All Religious Minorities

17. In respect of the second category of cases mentioned above at paragraph 13, namely, cases where unconditional religious freedom was given to all religious minorities, there are instances of treaties in which unconditional religious freedom was a condition for the minority's enjoyment of other rights. There are other instances where it was not a condition for the minority's enjoyment of other rights.

1. Unconditional Religious Freedom Given To All Religious Minorities, Taken as a Condition

18. With regard to the first type of treaties, one situation may be cited, namely, a situation where unconditional religious freedom given to all religious minorities was a condition for the recognition of the independence of new States.¹⁵

no difference in the enjoyment by their adherents of civil and political rights...

(2) *The Convention of Constantinople of 24 May 1881*, cited *supra* at note 13. Article III of the Convention states as follows:

La vie, les biens, l'honneur, la religion et les coutumes de ceux des habitants des localités cédées à la Grèce qui resteront sous l'administration hellénique seront scrupuleusement respectés. Ils jouiront entièrement des mêmes droits civils et politiques que les sujets hellènes d'origine.

[The lives, property, honor, religion, and customs of those of the inhabitants of the localities ceded to Greece who shall remain under the Hellenic administration will be scrupulously respected. They will enjoy exactly the same civil and political rights as Hellenic subjects of origin].

¹⁵ Concerning this situation, may be cited the *Treaty of Berlin of 13 July 1878*, concluded between Germany, Austria, Hungary, France, Great Britain, Italy, Russia, and Turkey. The Treaty of Berlin grants independence to the Balkans

2. Unconditional Religious Freedom Given to All Religious Minorities, Not Taken as a Condition

19. With respect to the second type of treaties, one situation may be cited, namely, a situation where unconditional religious freedom given to all religious minorities was not taken as a condition for their enjoyment of civil and political rights.¹⁶

States on the condition that the latter adhere to the principle of non-discrimination on religious grounds. See Capotorti, *supra* note 11, para. 12: "By the Terms of articles 5 and 44 of the Treaty, the Contracting Parties declared that they would recognize Romania and Bulgaria only if the following requirements were met." Articles V(2) and XLIV(2) of the Treaty relating, respectively, to Bulgaria and Romania, reads as follows:

La liberté et la pratique extérieure de tous les cultes sont assurées à tous les ressortissants [de la Bulgarie][de l'Etat de Roumanie], aussi bien qu'aux étrangers, et aucune entrave ne pourra être apportée soit à l'organisation hiérarchique des différentes communions, soit à leurs rapports avec leurs chefs spirituels.

[The freedom and outward exercise of all forms of worship shall be assured to all persons belonging to [Bulgaria][the Roumanian State], as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communities, or to their relations with their spiritual chiefs].

See *British and Foreign State Papers, 1877-1878*, vol. LXIX, pp. 749-767.

¹⁶ Concerning this situation, the following treaties may be cited:

(1) *The Act of July 21, 1814* (Acte signé par le Secrétaire d'Etat pour les Affaires Etrangères du Prince Souverain des Pays-Bas, pour l'acceptation par son Altesse Royale de la Souveraineté des Provinces Belgique-La Haye, le 21 juillet 1814) by which the sovereign Prince of the Netherlands accepted the sovereign of the Belgian Provinces, ensured religious freedom to all forms of religions, and guaranteed the admission of all citizens, irrespective of their religious beliefs, to public office. Although this act, which actually was incorporated as an Annex to Article VIII of *the Treaty of Vienna of 31 May 1815* concluded between Austria and the Netherlands (Annex X, Final Act of the

CONCLUSION

20. From what has been said, it is possible to reduce the rights given to religious minorities under treaties concluded before the

Congress of Vienna) provided special guarantees for the Belgian Catholic community, it included, however, the protection of the latter within a general protection provided equally to all religious cults. Article II of the Act reads as follows:

Il ne sera rien innové aux Articles de [la Constitution établie en Hollande] qui assurent à tous les Cultes une protection et une faveur égales, et garantissent l'admission de tous les Citoyens, quelle que soit leur croyance religieuse, aux emplois et offices publics.

[There shall be no change in those articles of the [Dutch Constitution] that assure to all religious cults equal protection and privileges and guarantee the admissibility of all citizens, whatever be their religious creed, to public offices and employments].

See *British and Foreign State Papers*, 1814-1815, vol. II, 136, 141.

(2) *The Congress of Vienna signed on 9 June 1815* by Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, and Sweden. Article LXXVII states as follows:

The inhabitants of the Bishopric of Basle, and those of Bienne, united to the Cantons of Berne and Basle, shall enjoy, in every respect, without any distinction of Religion... the same political and civil rights which are enjoyed, or may be enjoyed, by the inhabitants of the ancient parts of the said cantons.

...

See *British and Foreign State Papers*, *id.* at 7.

(3) *The Treaty of Berlin of July 13, 1878*, cited *supra* note 15. Articles 5 and 44 states as follows:

The difference of religions, creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions and honors, or the exclusion of the various professions and industries in any locality whatsoever.

First World War, to three types:

(1) Rights given to all individuals without any distinction made as to religion; as, for example, civil and political rights granted under Article 2 of the Treaty of Vienna of May 31, 1815; Article 1 of the Final Act of the Congress of Vienna of June 9, 1815; Article 9 of the Treaty of Paris of March 30, 1856, and Articles 5 and 44 of the Treaty of Berlin of July 13, 1878.

(2) Rights given solely to individuals belonging to religious minorities; as, for example, the right to personal autonomy granted under Article VIII of the International Convention of Constantinople of May 24, 1881, and Article XI of the Convention of Athens of November 1/14, 1913; and

(3) Rights given to religious minorities *simpliciter*; as, for example, the right to territorial autonomy granted under Article LXVI of the Convention of Paris of August 19, 1858.

21. The three types of rights may also be found in the Peace Treaties concluded after the First World War. But, while they were conferred in exceptional cases upon racial¹⁷ and linguistic¹⁸ minorities before the First World War, they were granted in principle to all types of minorities after the First World War.

22. Presently, the three types of rights are distinguished in more general terms: The first type of rights falls within the

¹⁷ *The Treaty of Paris of March 30, 1856*, cited *supra* note 10, refers in its Article IX to a legislation the Turkish Sultan had introduced to grant equal treatment to all his subjects without any distinction made as to religion or race.

¹⁸ *The Final Act of the Congress of Vienna of June 9 1815*, concluded between Austria, France, Great Britain, Portugal, Prussia, Russia and Sweden, “granted to Poles in Poznań the right to use Polish for official business, jointly with German.” See Capotorti, *supra* note 11, para. 15.

concept of “non-discrimination” or “equality in law;” the second and third types of rights fall within the concept of “protection of minorities” or “equality in fact.” Non-discrimination and protection of minorities would be the two main principles that would guide every question of rights given to minorities, and of minorities given rights.

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**BOOK REVIEW: TÓTH, GYÖRGZ, A CONCISE HISTORY OF
HUNGARY, BUDAPEST, CORVINA/OSIRIS, 2005, 695
PAGES, ISBN 963-13-523-5**

by LOUIS-PHILIPPE F. ROUILLARD

In the history of the world, great nations rise and fall, some survive and some thrive. In the known history, historians accord precedence to country that have marked their periods of greatness and set aside the less glamorous parts. In fact, despite their claims of objectivity, most historians still have a bias of nationalism entrenched in their writing.

In such a setting, the very recent book *A Concise History of Hungary* presents a novel approach as it clearly and deliberately tries to deal with those less glamorous part of Hungarian history, all the while presenting a factual and – as much as possible – objective perception of the more than 1000 years of the *Magyars'* recorded history.

Of course, like almost all history book of academic standing, the chronological approach to explaining history is used, but not in an absolutely linear pattern. Some coming and going, and repetition, present more of an intrinsic pattern of mutually influencing factors than typical affirmations of one fact being the cause of an effect.

As well, this is not the work of one author, but a collection of texts by experts of Hungarian history, each writings on a period of predilection. This has the definite advantage of given clear and precise knowledge. Furthermore, it does present arguments and hypothesis in the light of known and unknown facts, specifying the latter when they occur. The use of sentences such as “as far as research has shown”, “as much as we know from surviving sources and documents” or “we can deduce, although not with

absolute certainty”, gives a true historical sciences’ approach to this book which usually sadly lacks in typical work of the sort when written by one author.

Perhaps the most important element to celebrate from this book is the address of responsibility of Hungarian acts through its history. Like all nations, it as committed acts of greatness and other more reprehensible.

As such, the tackling of the problem of anti-Semitism, the collaboration with the Nazi regime and the final solution or the period of the Communist regime is not presented in an apologetic manner nor are the hard facts avoided. For example, the fate of the Jewish population of Budapest is addressed with the conclusion of the final responsibility resting in part with Hungarian authorities and in part with the German occupiers.

This makes it a very special book for persons truly interested in the factual history of Hungary.

However, it is not a book without failings. The most extraordinary of these is the absolute lack of footnotes, citations or references. We are told by the editor that this represent researches of very recent interest and with sources only very recently discovered but none are mentioned and therefore makes it very hard to judge the true historical value of some statements.

Also, despite the attempts at objectivism, there are still some authors’ past and perception that more than filter through this work: from socialist perspective of history to sampling of nationalism, there remains a certain subjective flavor to some parts of the book – mainly those dealing with the inter-war period.

Still, a reader alerted to this will nonetheless make this book a major source of knowledge of Hungarian history and will not

regret the hours spend reading its 695 pages.

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