

ADDRESSING THE IMPERIAL PROMISE OF PROTECTION IN THE 19TH CENTURY INTERNATIONAL LAW: THE CASE OF KANDYAN KINGDOM IN CEYLON

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Introduction

The whole notion of “protection” in 19th-century international law has been an interesting topic for the scholars those who want to explore the historiography of modern international law from an apologetic point of view as 19th century was known as an epoch for imperialists for legitimizing the colonial expansion. The universality of international law was eclipsed by positivism that pervaded in the whole domain of 19th-century international law. (Anghie, 2005) The idea of universality in international law propounded by the pioneers of Salamanca School in the 16th century by reformulating the importance of natural law doctrine was scorned and reversed by the 19th-century positivists. Thus, positivists ensured the idea that people outside a national boundary may acquire sovereignty by possessing it. However, the idea revered by European jurists based on the Westphalian notion of nationality was a peculiar form for the non-European nation paving the path for European colonial enterprises to justify the idea of a protectorate from European projection of sovereignty. The evolving trajectory of the idea of “Protection” in international law was filled with jurisdictional politics and religious claims within the European political order. The 16th century Spanish and Portuguese empires clung to the Catholic Church’s special claim to protect the categories of vulnerable groups such as

orphans, widows and travelers. (Koskenniemi,2011)The necessity of the principle of protection reached an important stage when the Spanish empire began to sore its growth rapidly in the 16th century. Especially, this principle was applied during Spanish colonial expansion in America, wherein the logic of protecting the vulnerable subjects was formed to remove Indians from the jurisdiction of the inquisition.

To some degree, the early assertion of protectorate concept in international law owed its foundational development to the juridical thinking of some European jurists. In bolstering the Spanish claim to protect its interests in America, Francisco de Vitoria’s contention on the protection of the right to travel and commerce for Spanish people in America provided a plausible cause for Spanish to justify their colonial expansion. In refuting the claim made by Vittoria on the construction of protection in the history of international law, Anthony Anghie points out how evasively Vitoria excluded the Indian tribes from waging war against the Spanish regardless of Vittoria’s initial claim on the universality of natural reason, which he applied for Indian tribes in America.(Anghie,2006) Yet, the lack of explicit sovereignty in compliance with European projection staved off Indians from protecting themselves, which resulted in their

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inevitable subjugation before Spanish. However, the dubious growth of European imperial interests in non-European spaces envisaged different legal cultures, which accelerated and improvised the early understanding of 'protection'. In examining how British Empire encompassed the newly acquired territories and remaining sovereignties under the guise of protection, the whole mechanism appears to be little more than a prelude to fortify their colonial ambitions excused by the 19th-century international law. In writing their most astute account on the issue of protection in "A Rage for Order", Lauren Benton and Lisa Ford state

"British officials self-consciously described schemes to overhaul judicial administration in newly acquired imperial territories as projects to shore up the property rights and privileges of vulnerable people and/or British traders. Men, sometimes with scant legal training, found themselves charged with overhauling complex colonial legal orders to consolidate imperial power and with commenting on phenomena with an international character" (Benton & Ford, 2016; 86)

The tracing the concept of protectorate and applicability are akin to the history of imperialism. As a matter of fact, the any endeavor of tracing the idea of protectorates in international law will envisage how imperialism had carved the antecedent events that paved the path for notion of protectorate. Since the publication of *Orientalism* by Edward Said, the interests of exploring the traces of imperialism in many subjects have been drastically increased and said illuminatingly reminded the importance of retrospection of imperialism when he wrote

"To believe that politics in the form of imperialism bears upon the production of literature, scholarship, social theory, and history writing is by no means equivalent to

saying that culture is therefore a demeaned or denigrated thing. Quite the contrary: my whole point is to say that we can better understand the persistence and the durability of saturating hegemonic systems like culture when we realize that their internal constraints upon writers and thinkers were productive, not unilaterally inhibiting". (Said, 1978; 46)

In this paper we seek to explore the acquisition of Kandyan kingdom of Ceylon in 1815 through a convention resulting the end of last remaining native sovereignty in the island from the perspective of how early development of 19th century international law subtly used the legality of protection for imperial interests. The encounters arrayed in the Kandyan kingdom as a declining power before a dominant European power was a major illustration in British imperial history as it was the first moment that British Empire directly involved in providing a protection for weaker power. The English East Company had been able to consolidate much of power by both military victories and political chicanery in Indian subcontinent at the end of 18th century. In particular, the doctrine of lapse adopted by the Company showed the policy of annexing the princely states in India after those states signed treaties with the company by subordinating their external affairs with the promise of protection. (Iyer, 2010; 23) However, the usage of protection in Kandyan kingdom exposes the emergence of new doctrine of protectorate in 19th century British imperial expansion. Moreover, slogan of protection under the guise of providing adequate defense for the weaker subject positioned British Empire in a unique position as an imperial polity with the legitimacy to intervene when the necessity was required to do so. Benton and Ford state

"Discourses of protection could blend with calls to defend the status quo. More often, as

the nineteenth century progressed, they connoted something more... advocacy of colonial legal reform, the reordering of the rights and privileges of plantation owners or squatters, imperial expansion, or the exercise of new jurisdiction over foreign policies. For British officials, promises of protection did not rest on the universal rights of those whom British power claimed to protect: they served to reinforce the legitimacy of British imperial jurisdiction.” (Benton& Ford, 2016; 56)

Thus, the examining the Kandyan convention signed between the British and the local elites unfolds the early developments of “protection” in the gamut of imperial expansion in an era where the affinity between intervention and jurisdiction was not a direct part of international law as it has been now depicted under Responsibility to Protect.

Kingdom of Kandy at Bay

European interest in Ceylon dates back to the 16th century and the Portuguese happened to be the first European imperial power to hold the maritime provinces of Ceylon under their dominion, then their power began to decline by the arrival of the Dutch and finally Portuguese were supplemented by the Dutch in 1658. However, the occupation of the whole coastal provinces of the island under two European powers made no detrimental threat to the independent existence of the Kandyan Kingdom and the efforts made by both Portuguese and the Dutch to subdue this last sovereign polity in the central highland of the island got nipped in the bud by the strong resistance of the Kandyan military. Bolstered by the ideal landscape of nature, the terrain of Kandyan kingdom appeared to be a graveyard for European invaders regardless of their predilection of conquering it. (Sivasundaram, 2007; 30) On the other hand, having realized their own technological inferiority to meddle

with European invaders, rulers of Kandyan kingdom adopted a stratagem of playing a new European power against the existing one, offering assistance in exchange for the newcomer removing the incumbent colonial power. For European powers, the importance of the annexation of the Kandyan kingdom was not only confined to gain the full control of the island, but also to widen their imperial expansion in South Asia. In accomplishing this task, the whole position of Trincomalee harbor was seen by both Dutch and British and even French as a crucial factor in establishing naval control in the region. (Mendis, 1971)

In 1766 the Dutch were partially successful in subduing Kandyan kingdom when the king of Kandy was failed in an invasion to the coastal provinces, followed by Dutch retaliation which resulted in the sacking of Kandy by the Dutch forces. In the same year, a treaty was signed between the Dutch and King of Kandy which can be regarded as an ideal unequal treaty that compelled the king of Kandy to acknowledge the Dutch occupation of the maritime provinces of the island including the Trincomalee harbour, also the treaty explicitly impeded the king from making relations with other European powers.

When British acquired the power of the Maritime Provinces in Ceylon from Dutch in 1796, the geo political map of the island took a rather odd shape with the existence of Kandyan kingdom in the central highland surrounded by the British governed Maritime Provinces. When Dutch ceded the Maritime Provinces in Ceylon to the British East India Company, the danger of French invasion became a pivotal factor and the British were rather vigilant to uphold their power in the Maritime Provinces. The political events that took place in Europe between Britain and post-revolutionary France intensified the British expansion in Indian Ocean. The British

position in Ceylon was legitimized by the Article V of the Amiens treaty of 1802 which officially ended the rule of Dutch East India Company in the coastal provinces of Ceylon and in the same year the Maritime Provinces in Ceylon became a crown colony to British Empire. In this period the stability of Kandyan kingdom had been in the doldrums as a result of its internal political chaos, mainly the discontent among the Kandyan aristocrats towards the king *Sri WickramaRajasinghe* was a notable factor that weakened the internal political stability of the Kandyan kingdom.

The First British Governor of Ceylon, Sir Fredrick North firstly attempted to convince the king of Kandy for a treaty and this was the most common method that British were known for in their colonial expansion. The treaty suggested by North in 1802 to the king of Kandyan kingdom referred to the promise of British imperial protection and in return North expected to gain the fullest trade authority of whole island, also the treaty connoted that king should abstain from forming any relation with other European nations or Malay traders. Moreover, this treaty mainly stipulated that “King should sponsor and allow one British regiment to stay in the Kandyan kingdom for the “for the better fulfillment of His Britannic Majesty’s Engagement to protect the Person and authority of the King of Candy.” (De Silva, 2005) It was by no means an equal treaty signed between the European powers of 19th century and the conditions invoked by North were much favorable to the British interests. Meanwhile, the internal stability of the Kandyan kingdom had reached a chaotic status as king was gradually transforming himself to an autocrat, which displeased native Sinhalese ministers around him in the court. Driven by the indignation towards King’s autocracy, some of the ministers in Kandyan kingdom sought the protection from the British. Especially the First Adigar the Kandyan

equivalent to Prime Minister *Pilimatalawe* seized the opportunity of Protection to impugn the legitimacy of King’s rule in Kingdom of Kandy and his claim was based on king’s foreign ancestry to the throne of Kandyan kingdom. North was convinced by the plea of Kandyan aristocrats to overthrow the King in Kandy, yet he was hesitant to wage a war against Kandyan kingdom as there was no palpable threat appeared to be. Given the context of such an uncertainty between the king and British rule in the Maritime Provinces in Ceylon, in the year of 1803 North saw an ideal opportunity to launch a military campaign against the kingdom of Kandy. In that year the officers of Kandyan king confiscated the goods carried by the merchants came from the Maritime Provinces and this act was seen by North as an act of provocation. Initially North demanded a compensation for the losses from the King of Kandy indicating his legitimate right as the representative of the British crown in the island. When North demand was not reciprocated by the Kandyan King, North led the British troops under Major Daves to capture Kandy in the early quarter of 1803. Again, the British idea of protection to its subjects played an interesting role as a justification in this military campaign as North exclaimed “the protection which I owe to the people subject to my Government” would require him to go to war against Kandy if the king did not settle the claim. (Mendis, 1971) North made a tireless effort to compel the king for subordination, but to no avail. This tense situation between the king of Kandy and British finally made the path for the First Kandyan War. However, the military campaign brought no satisfactory results for British troops contrary to the high expectations of North. Driven by the great advantage of the geographic terrain, Kandyans retreated their forces by allowing the British troops to step into the city and began to slaughter British troops in following month.

After the military debacle of 1803, Sir Fredrick North was caught in a great dilemma of maintaining the British legal order in island with an independent sovereign polity in the center of the island. After his departure from the island his successor Sir Thomas Maitland envisaged rather an ambivalent position in holding the British power in the island. Maitland being a professional soldier and a military strategist foresaw the grave danger of keeping another sovereignty in a crown colony as it would be a detrimental threat to secure the British legal and political order in the island. In one of his letters to the colonial secretary, Maitland stated “a narrow strip of land on the sea coast all-round the island” with the center “occupied by a people, we must ever consider our constant and natural enemies here, on whom no Treaty is binding”. (Benton & Ford, 2016; 103)

Maitland distrusted the entire native bureaucratic machinery around him, particularly he vehemently critiqued the administrative powers vested upon the class of local mudilyars by the Dutch as weakening factor to consolidate British authority. Also, his own legal charter he implemented in Ceylon in 1810 by restoring the Dutch courts: ‘landrad’ in some districts and increasing the supreme court of the colony established by North in 1802 boomeranged upon him. (Mendis, 1971; 81) To his biggest dismay, this charter increased the power of the chief justice, which paved the path to a conflict. This deteriorated states between Maitland and the local judiciary prolonged his plan of launching another military campaign to Kandyan kingdom and on the other hand colonial secretary in London urged recognition of Kandy’s autonomy and promoted a vision of pacifying the interior enough to build a road across it, with or without a permanent diplomatic presence. The military stalemate of Maitland’s years seemed to suggest the

possibility of a lasting balance of power on the island.

The resistance upheld by the kingdom of Kandy made Governor Maitland and his successor weary. In facing this imbalance of power, Maitland relied on reforming the legal ethnography of the Maritime Provinces in Ceylon that would underpin the expansion of British colonial rule around the island and also before his departure from Ceylon, he initiated a project to gather the customary laws of the island. (Benton & Ford, 2016) This project was culminated under Maitland’s successor Robert Brownrigg, who saw the necessity of capturing Kandy and the task of observing the internal instability of Kandyan kingdom was bestowed upon a Cambridge educated classist named John O Doyle. Doyle’s role in acquiring Kandyan kingdom as a protectorate for British Empire was rather an interesting mission filled with intrigues and Brownrigg completely believed in D’Oyly’s acumen. As a British civil servant showing a genuine knack on Kandyan customs and Buddhist values, he could make strong affinity with Kandyan chieftains paving the path for British to fathom how politics functions in the kingdom of Kandy. D’Oyly carefully carved the promise of protection for the anxious Kandyan aristocrats driven by the antipathy against the king who had deprived the rights of many Sinhalese aristocrats. Moreover, the draconian system of criminal justice in Kandyan kingdom oppressed its inhabitants and the manner how king relied on it as his ultimate justice intensified the clandestine campaign of the D’Oyly in undermining the stability of Kandyan kingdom. The portrayal depicted by D’Oyly on British justice to the Kandyan chieftains convinced them the justness of British legal system, which enabled the Kandyan chiefs to accept British as protectors who would harbor them to end the tyranny of a foreign king.

The illustration of oriental despotism and lack of understanding of Afro Asiatic societies or rather reluctance to appreciate the cultural difference played pivotal causes for British to contempt on the systems of justice in African and Asian sovereignties. Since they were not accustomed to different methods of adjudication outside the European legal space, British embraced themselves to play a role of protectors for the inhabitants from despots and their oppressive rules. One of leading international lawyer's and a proponent of civilizational discourse in international law Prof. John Westlake states in "Government in the test of Civilization".

"When people of European race come into contact with American or African tribes, the prime necessity is a government under the protection of which the former may carry on the complex life to which they have become accustomed in their homes, which may prevent that life from being disturbed by contests between different European powers for supremacy on the same soil, and which may protect the natives in the enjoyment of a security and wellbeing at least not less than they had enjoyed before the arrival of the strangers. Can the natives furnish such a government, or can it be looked for from the Europeans alone? In the answer to that question lies, for international law, the difference between civilization and the want of it" (Westlake, 1894:141)

The trajectories that were looming before the last stage of Kandyan kingdom recall the civilizational rhetoric aggrandized by 19th century international lawyers. D'Oyly was ahead of the curve in manipulating Kandyan chieftains against King and also listened to the grievances of Sinhalese aristocrats zealously indicating the determination of the British to assist Kandyan nobles. The nobility's

resentment towards the king seems to have risen from rooted political causes filled with political and cultural factors since the day the king was coronated in Kandy. The eleventh hour of the Kandyan kingdom reached, when King ruthlessly massacred the whole family of the First Adigar (Chief Minister) *Ahalepola Dissawa* in 1814 that finally set the cause for remaining Kandyan chieftains and masses to look for British as saviors. However, in examining the prelude before British invaded Kandyan kingdom in 1815 that we can ascertain the British did little to dispel the building dissension around the executions. (Godden&Casinader, 2017) Indeed, the well-established notion on Kandyan king's savagery and Doyle's well-crafted idea on the British justice became a strategy for governor Brownrigg to wage war against an independent sovereign. British historians later fantasized the British protection for the natives in Kandyan kingdom as a humanitarian intervention that saved them from a tyrant. As an example, Emerson Tennent wrote in 1858

"During this interval, the career of the Kandyan king presents a picture of tyrannous atrocity unsurpassed, if it be even paralleled, in its savage excesses, by any recorded example of human depravity" (Tennent, 1858: 86,92)

The promise of protection

North's successor, Sir Robert Brownrigg was an expansionist who awaited an opportunity to expand the British power in the island and the loyalty showed by Kandyan chieftains to the British gave him a cause to proceed his expansionist policy. He wrote a letter to colonial secretary in London to change British neutrality to the kingdom of Kandy by asking some "well-considered system of policy". (Benton & Mulich, 2015; 162) Following the evasive British strategy of protecting the consent of the natives, Brownrigg did not make

a quick decision to meddle with the internal affairs of the kingdom and connoted that Kandyans should show a genuine interest in receiving the British protection, which would legitimize their intervention in another sovereign kingdom. D'Oyly being the voice of Brownrigg in the Kandyan territory convinced the chieftains to formally ask British protection indicating that British government would not come to aid subjects of a sovereign kingdom unless it saw an "it saw a distinct and unequivocal proof of the general wishes of the Kandyan people. "It was impossible, he explained, "to commence a war . . . without a distinct and manifest proof that the whole Kandyan people are determined to withdraw their allegiance from the present ruler, and take refuge under the protection of the British government". (Somasundarem, 2008; 100)

When the tension between the king and his chieftains reached its apex in January 1815, Brownrigg formally made a proclamation that stated "The unavoidable necessity of resolving to carry His Majesty's Arms in the Kandyan country". (Brownrigg, 1815) The proclamation granted ample cover for war, yet Brownrigg made two pretexts in his document before launching the military campaign in February 1815. The two main causes were mentioned in the proclamation justifying the military campaign: the provocation of a series of minor border incursions and the duty to aid Kandyans who had "implored the protection of the British government" from the "tyranny and oppression of their ruler." The juxtaposition of those two factors became the justification for the Second Kandyan war and more importantly, the proclamation affirmed Kandyan kingdom as a nation rather than a mere territory without the sovereignty that could be easily assimilated under *terra nullius* doctrine which was often used by European nations in their colonial expansion in Africa, America and Australia during the 19th

century. (Benton & Mulich, 2015:165) Indeed, the British military intervention in the kingdom of Kandy took a complete different direction from the previous two European invaders. For instance, when Portuguese invaded Kandyan kingdom in 1594, their motive was focused on putting their preferred candidate Queen Dona Katherina in the throne of Kandy as their puppet ruler. Thus, Portuguese rejected to accept Kandyan kingdom as an independent sovereignty. Moreover, the 16th century temporal authority that Portuguese inherited from Pope Nicolas in conquering the heathen lands to convert them into Christianity was another solid reason that compelled Portuguese to reject Kandyan kingdom as a nation in their doomed military expedition in the 16th century. After two centuries Brownrigg aptly hid the real imperial cause under the guise of protection which was welcomed by the oppressed inhabitants in the kingdom of Kandy. The depiction of the proclamation was placed as a kind response to a petition. It states

"His Excellency the Governor and Commander in Chief of the British Settlements in the Island of Ceylon, could not hear with indifference the prayers of the Inhabitants of Five Extensive Provinces who, with one unanimous voice raised against the tyranny and oppression of their Ruler, taking up Arms in defense of their lives, or flying from his power, implored the Protection of the British Government.

Neither could His Excellency contemplate, without the liveliest emotions of indignation and resentment, the atrocious barbarity recently perpetrated in Kandy upon Ten innocent subjects of the British Government. (Brownrigg, 1815)

Reminding of the natural rights doctrine, which was imbued in the 16th century

international law, the proclamation referred to the rights of the Kandyan people to shield themselves from the brutal rule of the tyrannical king and the right seek assistance was legitimized by the proclamation as the inherent natural right of the inhabitants in Kandyan kingdom. It stated, “His Excellency proclaims Hostility against that Tyrannical Power alone who has deluged the land with the blood of his subjects, and by the violation of every religious and moral law become an object of abhorrence to mankind”. (Brownrigg, 1815)

Considering the alacrity shown by Brownrigg in assisting the resistance of Kandyan kingdom by providing British protection, it becomes an evident factor that governor Brownrigg did not want to lose this chance to subdue the last remaining sovereign polity of the island to British Empire. The correspondences exchanged between Brownrigg and Lord Bathurst, colonial secretary gives the clear picture of the sheer motive of capturing Kandy. (Mendis, 1971) Especially, British fear of other European intervention in the affairs of Ceylon had not been waned even in 1815 that led to include a provision in the proclamation by stating that “Against all the foreign and domestic enemies”. In addition to that, the legality of the proclamation was embellished by providing a humanitarian look for the whole military conquest. In particular, British troops were advised to deal with inhabitants of Kandyan kingdom gently, convincing them that the motive of the British campaign was to protect them from a “foreign born” merciless king. At the same time troops were told to treat Moors and *Malabars* residing in Kandy with sense dignity as they were promised to give a safe passage to India. Defining the legal status of the foreign prisoners of war, the proclamation stated “The *Malabars* and *Moors* could be promised safe passage back to South India and should be “exhorted to keep in mind”

that they were “by their birth and parentage the natural subjects of His Britannic Majesty.” If they opposed British force, they would be labeled “not only as enemies, but as traitors.” (Benton, 2016; 96)

The 1815 Convention

Emboldened by the given support of the Kandyan chieftains, Brownrigg launched a military campaign in 1815 February and this campaign envisaged no severe resistance from the king’s army at the frontier as they were instructed by the chieftains to pledge the loyalty to British invaders. (Somasundaram, 2008) Brownrigg’s orders to invade the Kingdom and occupy the capital were only given when it was assured that the King would be captured and that no harm would come to the Adigar (Chief Officer of State), who was supporting the British and was the source of much intelligence for John D’Oyly. Upon hearing of the British advance, the Kandyan King fled and was later captured on 18 February 1815.

Soon after the capture of king and the capital of Kandyan kingdom, D’Oyly was involved himself drafting the convention which would legitimately transfer the power to British Empire and under his affinity with the Kandyan chieftains, British could finally see an end of an independent sovereignty. The convention was signed on the 2nd of March in 1815 between the British and Kandyan chieftains in Kandy which resulted in the formal subordination of the Kandyan kingdom as a protectorate to the British Empire. Nevertheless, the stricture of convention was crafted illustrating the transformation of a sovereign state to another sovereign state. Also, the content of the convention resonates with the assumption that ‘Empire, actual or potential was ... supported by an ideology that claimed universal authority over all peoples”.

(Henkin, 1993; 54) Yet, a legitimate question remains still unanswered is that the idea of transferring the sovereignty of Kandyan kingdom was rather ambiguous from Kandyan chieftain's side due the context of the language. The convention was officially drafted in English and the Kandyan chieftains signed the Sinhalese translation which has left a true question of their understating of the substance of the convention.

The overarching structure of the convention appeared to be a formal legal document signed between two parties elucidating a formal power transition, which has given a legitimacy for British occupation in the Kandyan kingdom as an offshoot of a plea came from the oppressed people in the kingdom of Kandy. Like all the other contemporary colonial treaties and conventions, the preamble of 1815 Kandyan convention has illustrated the status of Robert Brownrigg as the agent of the British crown in the island whilst the other provisions have reflected the legal status of British authority in the maritime that they inherited from Dutch East Company in the year of 1796. Besides referring to the legal status of British colonial rulers in the island the convention has described the British common colonial practices and the internal officialdom existed in the Kandyan kingdom prior to British campaign. Nevertheless, the first four articles in the convention have emphasized rigorously on the rationale of British intervention as a protector to expel the tyrannical king. The very first article of the convention states

“That the Cruelties and oppressions of the Malabar Ruler in the arbitrary and unjust in fiction of bodily tortures and pains of Death without Trial ... have become arrogant, enormous and intolerable ... entirely devoid of that Justice which should secure the safety of his subjects” (Ceylon Government Gazette Extraordinary, n(2), 1815)

The reiteration of the cruelty, arbitrary rule of the previous ruler while mentioning his foreign pedigree indicates way British persisted in justifying their role as protectors of the people in the kingdom of Kandy. The analogy illuminated in the first four articles by abhorring the inhuman cruelty of the regal justice prevailed in Kandyan kingdom under former king *Sri Wickramasinghe Rajasinghe* had not risen out of the blue as it showed the contemporary British attitude towards the liberty of persons inspired by the 18th century age of enlightenment in Europe. Indeed, the reference to king's draconian rule and Kandyan customs based on bodily tortures was a reminder of “Oriental Despotism” “pervaded in European psyche which created a bleak picture of the East as a place devoid of justice. In the article titled “Kandyan Convention 1815: Consolidating the British Empire in Colonial Ceylon” Goddenn and Casinader argue that even though there is no direct evidence, it is likely that D'Oyly played a pivotal role in incorporating the liberal thoughts he learnt at Cambridge in early 19th century Ceylon. (Goddenn&Casinader, 2017:37) Moreover, D'Oyly realized the practical necessity of obliterating Malabar clan's claim to the throne in Kandy by the law was inevitable to secure the position of the British in Kandy. While depicting the intervention of the British to protect the lives of the inhabitants in Kandy, D'Oyly went on to include a specific article which legally abolished the *Malabar Nayakkar* dynasty in Kandyan kingdom. Article III of the convention enforced the expulsion of the King and ‘all-male persons of the Malabar cast.

The next paramount important feature of the convention was its special emphasis on Buddhism by the Article V. The creation of the article was completely attributed to John D'Oyly as he was aware of the crucial importance of keeping a rapport with Buddhist

priests in the kingdom of Kandy for the preservation of the British rule. D'Oyly's diary records the sentiment: 'I beg the Priests will rest assured that they will receive under the British government full Protection and Security. In examining the imperial history of the British Empire, one can ascertain that British colonial policies were not completely detached from the influence of the Anglican Church. (Koke, 2015) Even though the gamut of the church influence was not as strong as how the Catholic Church controlled Spanish and Portuguese empires, the Anglican priests in the British Empire were in a position to influence. Besides securing the main interests related to political powers, British alluded themselves to involvement in a civilizing mission in the East. (Pomeranz, 2005:45) Given a context of such a situation prone to missionary activities and converting natives to Christianity; the special privilege to Buddhism under Article V of the Kandyan Convention was rather a unique factor. It states "The religion of *Boddhoo* professed by the Chiefs and Inhabitants of these provinces is declared inviolable, and its rites, ministers, and places of worship are to be maintained and protected".

In analyzing the correspondences between Governor Brownrigg and Secretary of State for War and the Colonies, it becomes evident that British authorities in London were gutted by the inclusion of special privilege for non-Christian oriental religion under His Majesty's law. Shortly after the convention was signed, Brownrigg wrote to Lord Bathurst by stating

"The 5th [Article] confirms the superstition of *Boddhoo* in a manner more emphatically than would have been my choice. But as the Reverence felt towards it at present by all of the classes of inhabitants is unbounded and mixed with a strong shade of Jealousy and doubt about its future protection and that in

truth our secure possession of the country hinged upon this point, I found it necessary to quiet all unceasing respecting it by an article of guarantee couched in the most unqualified terms". (Brownrigg to Bathurst, 1815)

This explanation of British governor has affirmed the relevance Article V in upholding the direct position of Kandyan kingdom as protectors and that would later legitimize their control over the whole island.

The setting up the new rule in Kandyan kingdom in the transitory period after 1815 convention took rather a different approach. From a vantage point, the protectorate status of the Kandyan kingdom appeared to a conquered territory within a conquered territory as the convention was signed between two sovereign governments. Hence, Brownrigg sought to thwart the Supreme Court's authority in the Kandyan territory. Considering the sui generis nature of Kandy as a protectorate, he showed his vehement opposition of applying the British judicial order existed in Maritime Provinces in the territory of Kandy. Brownrigg wrote "I will not conceal from your Lordship my opinion, that a very considerable period must lapse before His Majesty's new Territory will safely admit the exercise of any Authority political civil or juridical, which does not in a direct and ostensible manner emanate from the Executive Government". (Brownrigg, 1818)

Brownrigg's position on Kandyan kingdom was akin to more advanced one than what colonial judges of the British administration expected to implement under their purview. By rejecting the entry of colonial judiciary and the laws existed in the Maritime Provinces to newly acquired Kandyan territory, Brownrigg persuaded to place the comity between British power and Kandy under the international framework. (Benton & Ford, 2016) Locating the position of Kandy as a protectorate of the

British Empire, Brownrigg may have assumed that legal order of the whole island should place under an imperial constitutional structure where plural legal structures can co-exist. The task of inquiring the basic customary laws in the Kandyan kingdom without altering them substantially was bestowed upon John D'Oyly. Having been appointed as the British resident of Kandyan kingdom, D'Oyly spent considerable time in codifying the customary laws of Kandyan kingdom which was later published posthumously as "*A Sketch of the Constitution of the Kandyan Kingdom*, a detailed account of the legal order in Kandy. The reception of Kandyan territory before British imperial order had created a unique juncture in 19th-century imperial history. By placing the Kandyan kingdom under the protectorate of the empire British made an experiment in their early years of colonial expansion. It is an indispensable factor that legal encounter that British experimented in the kingdom of Kandy was the first direct treaty for the British crown in South Asia because Ceylon was placed as a crown colony since 1802 by removing the influence of English East India Company. Hence, the convention stood as a pure form of example for a formal treaty engagement between two sovereignties. (Benton & Ford ,2016) In comparing this situation with the dubious strategies embraced by East India Company in expanding their power in Indian sub-continent we can ascertain that company's rule in India projected itself on more militarily based expansion which led to unequal treaties and annexations till India became a crown colony under British empire by Government of India Act in 1858. Regarding the unique nature of Kandy as a protectorate, Benton and Ford state

"In representing the Kandyan Convention both as a treaty and as the foundation of a new plural legal order in Kandy, the British used the ambiguous discourse of protection to conjure

an unbounded constitutional framework. Kandy served as a site of constitutional experiment in semi-authorized legal reform by gubernatorial autocracy". (Benton & Ford, 2016:96)

However, the British experiment of molding Kandyan kingdom as a protectorate was short-lived with the discontents and the anxieties showed by the Chieftains those who welcomed British as protectors. Cajoled by their hopes on reestablishing their own dynasty in Kandyan kingdom, chieftains realized that British had softly taken them for a ride through a convention and spreading influence. This tense situation and the compunction of losing their sovereignty to British paved the path for a rebellion in Kandyan provinces within three years after the Kandyan convention.

Conclusion

The idea of protection in 19th century British legal thought was a complex notion stirred up by multiple motives. From one side it sought to bound indigenous people, those who asked British justice within the imperial jurisdiction. But from the other side, the "protection" was meant to be an evasive strategy in expanding the imperial influence to tricky sovereign polities. The robust policies implemented under the guise of protections often resulted in obliterating the remaining sovereignties of those territories. The example that we discussed on Kandyan kingdom as a British protectorate was developed as the finest example of the early colonial engagement of British Empire in the 19th century which was interwoven with Intra imperial protection for its people and also it safeguarded the position of the British as well. The promise of protection given by British to the people in Kandyan kingdom has some similar characteristics of the Treaty of Waitangi in 1840 that established the British sovereign

order in New Zealand by protecting the interests of Maori people. However, when the peaceful co-existence between the British and Kandyan chieftains came to its end as an offshoot of the dissatisfaction of the chieftains towards the British rule, the convention was contravened and chieftains openly joined the rebellion against British rule. In retaliation, British clung to the very essence of the Kandyan convention which they signed with the chieftains in 1815 as a binding legal document as it was enforced by the voluntary consent of the Kandyan people. When the rebellion broke out in 1817 in *Uva* province of Ceylon, where some chieftains and people rallied around a Malabar pretender who claimed to the throne; British dismissed the people rights to resist on the ground of treason as the Kandyan Convention was taken as a purely legal document signed between two sovereignties. By contrast, the British brought the civilizational rhetoric claiming that people in Kandy should not abandon the benefits of British civilizational values upon them. It was proclaimed that the people in Kandy “would have been so sensible of the benefits and security which they enjoy in the Religion, Persons and Property that there would have been no Kandyan wicked and base enough to plunge His Country into all the horrors of War, in a feeble attempt to set up a Pretender to the Crown “. (Ceylon Government Gazette, 1817) In a fervid claim made by the British over their legitimate rights in the Kandyan kingdom, they clearly affirmed that it was the Kandyan chieftains and the people who relinquished the independence to obtain the protection of the British justice. Thus, Chieftains or Kandyan people were devoid of their right to resist the British rule or its protection. The main result emerged from the rebellion of 1818 was that British consolidated their power in Kandyan kingdom than ever. In 1818 they made a proclamation which revoked the former status of Kandyan kingdom as a protectorate and this

was followed by the cession of the sovereignty. (Casinader, 2013)

Nevertheless, the whole process of utilizing the phase “Protection” in the 19th century British notion of international law was conceived under pure colonial settings, where Britain’s ambition was to legitimize its colonial expansion albeit such a mechanism of protection formed certain multiple legal orders. The practice started by East India Company in the early 18th century during their initial power expansion in Indian subcontinent as they compelled the states to sign the treaties for company’s protection finally became a strategy experiment by Britain in its imperial mission. As we discussed though out this paper the case of Kandyan kingdom was a unique scenario in British legal history as it happened to be the maiden event that British adhered to the principle of protection in their imperial order and more importantly the Kandyan convention was signed between two sovereignties. Even though the events followed by the Kandyan convention saw an unmitigated disaster, British gained decisive impacts from their experiment as protectors in Kandyan kingdom. Especially, the idea of appearing to be protectors began to wane when British intensified their process of colonialism by dawn of Victorian era in mid-19th century and the sheer positivistic notion of sovereignty engulfed the European international law, which excluded the non-European spaces. In the colonial enterprises that British, Germans, French and Belgians involved themselves with much gusto in Africa during late 19th century had less concern for crating treaties with the natives under the preview of ensuring the external protection for them as the late 19th century understanding of international law dwelled in the concept of civilization.(Anghie,2005:123) In this process, the colonized nations or newly acquired territories in Africa were devoid of the so-

called civility and sovereignty in accordance with the positivist thoughts prevailed in the 19th century. This Berlin conference of 1884-1885 was the apogee of the positivist international law which unequivocally divided Western Africa between the European powers and it simply discarded the legal personality of the many African tribal kingdoms.

All in all, the idea of protectorate and way it experimented in Kandyan kingdom in early 19th century Ceylon embodied a crucial message as Kandyan convention stood as a formal power transformation between imperial power and a sovereign polity located within a partially colonized island. In today's academia, there has been longing for deconstructing the colonial construction of international law from a critical point of view among the legal historians and by all means, the case of Kandyan kingdom will always remain a moot point to evaluate the usage of protection in early 19th century international before it got completely straddled with positivism.

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MANURAWA 2020