Addressing the Imperial Promise of Protection in the 19th Century International Law: The case of the Kandyan Kingdom in Sri Lanka

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This Article seeks to examine the idea of ‘protection’ which was developed in 19th century positivist legal thought in the attempt to expand the imperial interests of European nations during the colonial period. In particular, this Article unfolds how the notion of protectorate was subtly implemented by British rule with the aim to subjugate the Kingdom of Kandy in Sri Lanka in 1815. The British Empire took advantage of the internal disputes existing between the Sinhalese Kandyan aristocrats and the King (originally from South India) for imperial reasons.

As a result of the tensions, the British made use of the 19th century emerging ideal of ‘protection’ to allegedly safeguard the indigenous Kandyan people from the oppressive rule of their foreign despot. Eventually they persuaded the Kandyan aristocracy to subdue the sovereignty of the Kingdom and transfer it to the British Empire.
This Article discusses the dubious application of the 19th century idea of ‘protection’ from the perspective of international law.

Section I: Introduction

As the 19th century was a time when imperialists sought to legitimise colonial expansion, the entire notion of ‘protection’ in 19th century international law has been a topic of interest for scholars wanting to explore the historiography of modern international law from an apologetic point of view. Contextually, the view of universality of international law, as developed by the pioneers of the School of Salamanca in the 16th century who reformulated the natural law doctrine, was eclipsed by the theory of positivism that pervaded the entire domain of 19th century international law. In particular, positivists brought forth the idea that people outside a national ‘geographical’ boundary may acquire sovereignty over it by taking possession of said territory. However, this belief revered by European jurists was based on the Westphalian notion of State and served particularly well to justify protectorates during European colonial enterprises. Over the years, the evolving trajectory 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 vulnerable groups such as orphans, widows, and travellers. In the 16th century, the

Spanish Empire began to expand rapidly whilst making use of the principle of ‘protection’.

The principle was notably applied during the Spanish colonial campaign in America, wherein the logic of protecting vulnerable subjects was manipulated to remove Indians from the jurisdiction of the Inquisition. To an extent, the early assertion of the concept of protectorate in international law owed its foundational development to the juridical thinking of some European jurists. Bolstering the Spanish claim to protect their right to travel and commerce in America, Francisco de Vitoria provided a plausible cause for the Spanish to justify colonial expansion. However, having rejected de Vitoria’s claim of the construction of ‘protection’ in the history of international law, Anthony Anghie pointed out how evasively de Vitoria disregarded Indian tribes waging war against the Spanish, regardless of his initial claim on the universality of natural reason. Yet, the lack of an explicit definition of sovereignty in compliance with European standards resulted in the inevitable subjugation of the native Indian tribes to the Spanish. That said, the early understanding of ‘protection’ evolved with European imperial expansion over foreign territories, which envisaged different legal cultures. Examining how the 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 under

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the cover of 19th century international law. In *A Rage for Order*, a greatly astute account on the issue of ‘protection’, 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.5

Tracing the concept of protectorate and its applicability is akin to navigating the history of imperialism. As a matter of fact, any endeavour of locating the origins of the idea of protectorate in international law shall make clear how the notion of protectorate was a result of imperialism. Notably, since the publication of *Orientalism* by Edward Said, scholars’ interest in exploring traces of imperialism has increased drastically. In his work, Said illuminatingly recalled the extent of imperialism’s influence:

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

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internal constraints upon writers and thinkers were productive, not unilaterally inhibiting.\textsuperscript{6}

In this Article, the Author seeks to explore the acquisition of the Kandyan Kingdom of Ceylon (Sri Lanka) in 1815 through a convention which resulted in the forced demise of the last native sovereign state of the island. This transformation took place via the legal doctrine of ‘protection’, an early development of 19th century international law that was subtly used to justify imperialism. The subjugation of the Kandyan Kingdom was a significant moment in British imperial history, since for the first time the British Empire directly provided protection for a weaker power. At the end of the 18th century, the English \textit{East India Company} had consolidated much power through both military victories and political chicanery in the Indian subcontinent. In particular, the ‘doctrine of lapse’ adopted by the Company found application in its policy of annexing princely states to India after they had signed treaties declaring to subordinate their external affairs with the promise of ‘protection’.\textsuperscript{7} Hence, during the 19th century British imperial expansion, the usage of ‘protection’ in the Kandyan Kingdom exposed the emergence of the new doctrine of protectorate. Providing defence for a weaker subject, the British Empire had the unique position of an imperial polity with legitimacy to intervene out of necessity. Benton and Ford describe protection as follows:

\begin{quote}
Discourses of protection could blend with calls to defend the status quo. More often, as the nineteenth century progressed, \end{quote}

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.  

Thus, the Kandyan Convention signed between the British and the local elites unfolded the early developments of ‘protection’ at a moment when the affinity between intervention and jurisdiction was not directly part of international law, as it is now incorporated into the notion of the ‘Responsibility to Protect’.

**Section II: The Kingdom of Kandy at Bay**

European interest in Sri Lanka dates back to the 16th century when the Portuguese were the first European imperial power to hold the Maritime Provinces of Sri Lanka under their dominion. But with the arrival of the Dutch in the territory, Portuguese power gradually declined until it was supplemented in 1658. Yet, the occupation of the island’s coastal provinces by the two European powers did not threaten the independence of the Kandyan Kingdom, as Portuguese and Dutch efforts to subdue the last sovereign polity of the island were strongly opposed by the Kandyan military resistance. On one hand, the Kandyans took advantage of the terrain’s ideal topographical characteristics

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8 Benton and Ford (n 5) 90.
which resulted in a graveyard for the European invaders despite their desire to conquer it. On the other hand, having realized their technological inferiority, the rulers of the Kandyan Kingdom plotted to set the two powers against each other by offering assistance to the Dutch. In particular, the European imperialists aimed to annex the Kandyan Kingdom not only to gain full control of the island, but also to widen their expansion in South Asia. Therefore, the position of the Trinco Harbour was considered strategic to establish naval control of the region by various European actors including the Dutch, British, and French.

In 1766, the Dutch defeated the Kandyan King during an invasion of the coastal provinces and, following retaliation, sacked Kandy. Later in the same year, the two signed an unequal treaty which compelled the King to acknowledge the Dutch occupation of the Maritime Provinces including the Trinco Harbour. The treaty also explicitly prevented the King from having relations with other European powers. Thus, when the British took over the Maritime Provinces of Sri Lanka in 1796, the Kandyan Kingdom, situated in the central highland, was oddly surrounded by British governed

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territories. However, when the Dutch ceded the Sri Lankan Maritime Provinces to the British East India Company, the danger of a French invasion made the British especially vigilant. In fact, the political events that took place between Britain and post-revolutionary France intensified the British expansion in the Indian ocean. The British occupation of Ceylon was legitimised by Article V of the 1802 Amiens Treaty,¹⁴ which officially ended the rule of the Dutch East India Company in the coastal provinces of Sri Lanka and in the same year, the Maritime Provinces of Ceylon became a Crown colony of the British Empire. During this period, the political stability of the Kandyan Kingdom was weakened by internal political chaos, mainly due to the discontent among Kandyan aristocrats towards King Sri Wickrama Rajasinghe.

In 1802, the first British Governor of Sri Lanka, Sir Fredrick North, in accordance with established British colonial practice, attempted to convince the King of Kandy to sign a treaty which granted the imperial protection to the King in exchange for the fullest trade authority in the whole island.¹⁵ The treaty also established that the King should not form any diplomatic relations with other European nations or Malay traders. Moreover, the treaty mainly stipulated that, ‘[the] King should sponsor and allow one British regiment to stay in the Kandyan Kingdom for the better fulfilment of His Britannic Majesty’s Engagement to protect the Person and authority of the King of

¹⁴ Treaty of Amiens (adopted 25 March 1802, entered into force 27 March 1802) Article V.
Kandy.\textsuperscript{16} By no means was it a bilateral treaty signed between European powers. Rather, the conditions laid down by North were more favourable to British interests while subtly infringing the very idea of Kandyan sovereignty. Over the years, the Kandyan King gradually turned into an autocrat, creating even more discontent among the Sinhalese ministers around him and further jeopardising internal political stability. Driven by indignation towards the King’s autocracy, some Kandyan ministers sought the ‘protection’ of the British. \textsuperscript{17} In particular the First Adigar Pilimatalawe, the Kandyan equivalent to a prime minister, seized the opportunity of ‘protection’ to impugn the legitimacy of the King’s rule on the grounds of his foreign ancestry. As the King’s rule was not a palpable threat to the British interests in the island, North was initially hesitant to follow through the aristocrats’ plea to wage war against the Kingdom.\textsuperscript{18}

Yet, in 1803 the Governor took advantage of the uncertainty between the Kingdom and British rule in the Maritime Provinces to launch a military campaign against the Kingdom of Kandy in order to further cement the gains that were codified in the unequal treaty.\textsuperscript{19} The opportunity presented itself in the early quarter of 1803, when some officers of the

\begin{itemize}
\item \textsuperscript{16} Kingsley Muthumuni de Silva, \textit{A History of Sri Lanka} (Penguin 2005) 202.
\item \textsuperscript{17} Wickremeratne (n 15).
\end{itemize}
Kandyan Kingdom confiscated the goods carried by merchants from the Maritime Provinces, which was considered by North as an act of provocation. Thus, when North’s demands for compensation, by virtue of his legitimate right as the representative of the British Crown on the island, were rejected by the King, he led British troops under Major Daves to capture Kandy. As the Governor claimed that, ‘the protection which I owe to the people subject to my Government,’ would require him to go to war against Kandy should the King not settle the claim, it is evident that the British idea of ‘protection’ was once more used to justify the military campaign. But after North’s tireless and inconclusive efforts to compel the King to subordination, the tensions between the King and the British led to the First Kandyan War. However, regardless of the Governor’s high expectations, the military campaign did not bring the results he had hoped for. Supported by a great geographical advantage, the following month the Kandyans retreated their forces, allowing the British troops to step into the city of Kandy, where they were slaughtered.

As a result of the military debacle, Sir Fredrick North was caught in the thorny dilemma of whether or not to maintain the British legal order on the island while an independent sovereign polity was still present. His successor, Sir Thomas Maitland, envisaged a rather more certain and definitive solution. As a professional soldier and military strategist, Maitland predicted that keeping another sovereign on the island would pose a threat to the British legal and political order in the territory. Therefore, in one of his letters to the

20 Wickremeratne (n 15) 37.
21 ibid.
22 ibid 35.
colonial secretary, the new Governor wrote that ‘a narrow Stripe of Land on the Sea Coast all-round the Island occupied by a people, we must ever consider our constant and natural Enemies here, on whom no Treaty is binding’.\(^{23}\) Considering it a weakening factor for the consolidation of the British authority, Maitland distrusted the entire autochthonous bureaucratic machinery, particularly critiquing the administrative powers bestowed to the local mudiyars by the Dutch. Additionally, the 1810 legal Charter that he implemented in Sri Lanka, which restored the Dutch courts (landrad) in some districts and increased the powers of the Supreme Court, established by North, undesirably backfired on him.\(^{24}\) To his great dismay, by increasing the power of the chief justice, the Charter paved the way for a conflict between the Governor and the Judiciary, which delayed Maitland’s plan of launching another campaign against the Kandyan Kingdom.\(^{25}\) At the same time, the colonial secretary in London urged the recognition of Kandy’s autonomy and promoted a pacific vision that would lead to the construction of a road across the island, which would not necessarily require a permanent diplomatic presence.\(^{26}\) As such, the military stalemate of Maitland’s years seemed to suggest the possibility of a lasting balance of power on the island. Yet, the resistance

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23 Benton and Ford (n 5) 103.
of the Kandyan Kingdom made Maitland and his successor weary.

Trying to address the power imbalance, Maitland reformed the legal ethnography of the Maritime Provinces in a way that would underpin the expansion of the British colonial rule in the territory; he also planned to compile the customary laws of the island prior to his departure from Ceylon.\(^\text{27}\) The project found completion under Maitland’s successor Robert Brownrigg, who believed it was necessary to capture Kandy.\(^\text{28}\) Moreover, the task of observing the internal instability of the region was handed to a Cambridge educated classicist, John D’Oyly.\(^\text{29}\) Supported by Brownrigg’s complete trust, D’Oyly’s mission to absorb the Kingdom of Kandy into the British Empire as a protectorate was a rather interesting process and filled with intrigues. As a British civil servant showing a genuine grasp of the Kandyan customs and Buddhist values, he was able to build strong relationships with the Kandyan chieftains, enabling the British to fathom the politics of the Kingdom of Kandy.\(^\text{30}\) D’Oyly made use of the promise of ‘protection’ to entice the interest of the Sinhalese aristocrats driven by discontent towards the King, who had deprived them of some of their privileges. Moreover, the draconian criminal justice system of the Kingdom oppressed the Kandyans and was often relied upon by the King as his own ultimate justice, which favoured D’Oyly’s aspiration to

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\(^{27}\) ibid 240.
\(^{29}\) Benton and Ford (n 5) 97.
\(^{30}\) Dewaraja (n 28).
undermine the stability of the Kingdom.\textsuperscript{31} Having persuaded the Kandyan chieftains of the justness of the British legal system, D’Oyly was able to convince them to accept the British protectorate in exchange for their support to end the tyranny of the foreign King. However, the illustration of oriental despotism and lack of understanding of Afro-Asiatic societies, or rather their reluctance to appreciate cultural differences, were important factors for the British contempt for the African and Asian justice systems. Not accustomed to the different methods of adjudication outside of the European legal space, the British appointed themselves as protectors of the indigenous population from despots and their oppressive rules.\textsuperscript{32} Leading international lawyer and proponent of civilizational discourse in international law, Professor 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.\textsuperscript{33}

\begin{thebibliography}{9}
\bibitem{31} ibid 128.
\bibitem{32} Benton and Ford (n 5) 98.
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The events occurring in the last phase of the Kandyan Kingdom recalled the civilisational rhetoric promoted by 19th century international lawyers. Specifically, D’Oyly pointed out to the Kandyan chieftains the British determination to respond to their grievances, which allowed for manipulating them against the King. The nobility’s resentment towards the King seemed to have risen from rooted political and cultural factors dating back to the time of the King’s coronation in 1814, when the King ruthlessly massacred the whole family of the First Adigar Ahalepola Dissawa, which led to the remaining Kandyans being persuaded to accept British protection.  

However, examining the events preluding the 1815 British invasion of the Kandyan Kingdom, it is clear that the British did little to dispel the increasing controversy around the executions. Indeed, the well-established notion of the King’s savagery and D’Oyly’s well-crafted image of the British Justice were used as strategies by Governor Brownrigg to wage war against the independent sovereign, so that British historians later promoted the protectorate as a means of humanitarian intervention to defend the Kandyans from a tyrant. For example, in 1858 Emerson Tennent wrote that, ‘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’.

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34 Kulasekera (n 19).
35 Godden and Casinader (n 26).
Section III: The Promise of Protection

The new expansionist Governor, Sir Robert Brownrigg, saw the loyalty shown by the Kandyan chieftains as an opportunity to expand British power on the island. Firstly, in a letter to the colonial secretary in London, Brownrigg asked for a ‘well-considered system of policy’ in the attempt to change the position of neutrality of the British in the Kingdom of Kandy.37 However, as a result of the British evasive strategy of taking into account the consent of the natives, the Governor chose to not interfere with the affairs of the Kingdom and suggested that an intervention in the sovereign Kingdom would be legitimate only upon genuine Kandyan interest in receiving British protection.38

Therefore, as Brownrigg’s voice in the Kandyan territory, D’Oyly convinced the chieftains to formally request the protection of the British Empire, pointing out that it would not assist subjects of a sovereign Kingdom unless, ‘it saw a distinct and unequivocal proof of the general wishes of the Kandyan people’.39 He further explained that, ‘It was impossible 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’.40 Consequently, when in January 1815 the tension between the King and the chieftains reached its peak, Brownrigg formally declared by proclamation, ‘The unavoidable necessity of resolving to carry

38 Kulasekera (n 19).
39 Benton and Ford (n 5) 98.
40 ibid.
His Majesty’s Arms in the Kandyan country’. While the Proclamation granted an ample cover for war, Brownrigg mentioned two pretexts in his document to justify the military campaign in February 1815: the provocation of a series of minor border incursions and the British duty to aid the Kandyans who had, ‘implored the protection of the British government,’ from the ‘tyranny and oppression of their ruler.’ These two factors finally gave grounds for the Second Kandyan War. More importantly, the Proclamation declared the Kandyan Kingdom to be a nation rather than a non-sovereign territory that could easily be considered terra nullius, a doctrine often used by Europeans to justify colonial expansion in Africa, America, and Australia during the 19th century. Indeed, the British military intervention in the Kingdom of Kandy took a completely different direction from that of the previous European invaders. For instance, when the Portuguese invaded the Kingdom in 1594, they aimed at putting their preferred candidate, Queen Dona Catherina, on the throne of Kandy as their puppet ruler. This reason, as well as the 16th century ideals that they derived from Pope Nicholas’ conquests and conversions of heathen lands to Christianity, compelled the Portuguese to not recognise the Kandyan Kingdom as an independent sovereign State.

Two centuries later, Brownrigg was aptly able to hide the real British imperial motives under the guise of ‘protection’, which was welcomed by the oppressed inhabitants of the Kingdom

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41 Sivasundaram (n 10) 927.
42 Godden and Casinader (n 26) 192.
43 Benton and Ford (n 5) 98.
of Kandy. Recalling the doctrine of natural rights which was imbued in 16th century international law, the Proclamation referred to the right of the Kandyans to shield themselves from the brutal rule of the tyrant and endorsed their inherent natural right to seek British assistance by stating that, ‘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’.  

Considering Brownrigg’s alacrity providing British ‘protection’ to the Kandyan Kingdom, it is evident that the Governor did not want to lose the chance to subdue the remaining sovereign polity of the island to the British Empire. Correspondence exchanged between Brownrigg and colonial secretary Lord Bathurst unveiled the genuine motive behind the capture of Kandy.  

Also, British fears of other European nations’ intervention in the affairs of Ceylon led to the inclusion of a provision in the Proclamation specifying, ‘Against all the foreign and domestic enemies’. In addition, the legality of the Proclamation was embellished by providing a humanitarian look for the whole military conquest. In particular, British troops were advised to gently deal with the indigenous Kandyan people, reassuring them that the motive behind the British campaign was to protect them from the ‘foreign born’ merciless King. Meanwhile, the troops were ordered to treat with sensible dignity the Moors and the Malabars residing in Kandy as they were promised safe passage back to India. In fact, defining the legal status of the foreign prisoners of war, the Proclamation stated that ‘The Malabars and Moors could

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45 Ceylon Gazzete, 1799.01.5, (Colombo, State Archives, Sri Lanka).
46 Benton and Ford (n 5) 98.
47 Godden and Casinader (n 26).
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 labelled ‘not only as enemies, but as traitors’.48

Section IV: The 1815 Kandyan Convention

Emboldened by the support of the Kandyan chieftains, who instructed the King’s army to pledge loyalty to the British invaders and not to oppose resistance at the frontier, in February 1815, Brownrigg launched a military campaign.49 The Governor’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 Adikar (Chief Officer of State), who was supporting the British and was the source of much intelligence, according to John D’Oyly.50 Having heard of the British advance, the Kandyan King fled and was then captured on the 18th of February 1815. Soon after the capture of the King and the occupation of the Kingdom’s capital, D’Oyly was involved in drafting a convention which was meant to formally transfer powers to the British Empire as a result of his accords with the Kandyan chieftains.51 Thus, the British finally provoked the end of the independent Kandyan Kingdom. The Convention was signed between the British and the Kandyan chieftains in Kandy on the 2nd of March 1815, formally absorbing the Kandyan

48 ibid 186.
49 Sivasundaram, (n 10) 925-965.
50 Dewaraja (n 28).
51 Godden and Casinader (n 26) 196.
Kingdom into the British Empire as a protectorate. Nevertheless, the structure of the Convention was drafted to document the transformation of the sovereign State to another sovereign State. In addition, the content of the Convention resonated with the assumption that '(the) Empire, actual or potential was ... supported by an ideology that claimed universal authority over all peoples'. Yet, a legitimate question remains unanswered, which is whether the sovereignty of the Kingdom was actually transferred due to the language barrier separating the Kandyan chieftains and the British. While the Convention was officially drafted in English, the Kandyan chieftains signed a translation in Sinhala, leaving the substantial question of their understanding of its content as still disputed.

The overarching structure of the Convention appeared to be that of a formal legal document signed between two parties formalising the transition of power which legitimised the British occupation of the territory as a consequence of the oppressed Kandyans’ plea. Similar to all other contemporary colonial treaties and conventions, the preamble of the 1815 Kandyan Convention described the role of Robert Brownrigg as the Governor of the island, whilst other provisions described the legal status of the Maritime Provinces that the British took from the Dutch East Company in 1796. Besides

referring to the legal status of British colonial rule in the island, the Convention described common colonial practices and the internal officialdom existing in the Kandyan Kingdom prior to the British campaign. Nevertheless, the first four Articles of the Convention rigorously emphasised the rationale of the British intervention as a protector to expel the ‘tyrannical King’. The 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’. Thus, reiterating the cruel and arbitrary rule of the King, while mentioning his foreign origins, the document once more pointed to the British as entitled protectors of the Kandyan people. While condemning the former King Sri Wickramasinghe Rajasinghe’s inhuman cruelties, the tone of the first four Articles of the Convention was a reflection of contemporary British attitude towards liberty of the person, inspired by European enlightenment ideals of the 18th century. Indeed, references to the King’s draconian rule as well as to Kandyan customs based on physical torture reminded the European opinion of that ‘Oriental Despotism’ which created a bleak picture of the East as a place devoid of justice. Godden and Casinader argue that (even though it has not been demonstrated), it is quite plausible that D’Oyly played a pivotal role in applying the liberal narratives he had learned at Cambridge to the early 19th century Ceylon. Moreover, D’Oyly realised the practical necessity of nullifying Malabar claims to the throne of Kandy by law to secure the incontestable position of the British.

55 Godden and Casinader (n 26) 196.
56 Kandyan Convention (n 52) Article I.
57 Godden and Casinader (n 63) 197.
Therefore, not only did D'Oyly portray British intervention in the Convention as a necessity to protect the lives of the inhabitants of Kandy, but he also went on to include a specific Article which legally abolished the Malabar Nayakar dynasty in the Kandyan Kingdom. As such, Article III of the Convention codified the expulsion of the King and of ‘all male persons of the Malabar cast’. 58 Another crucial feature of the Convention was its special emphasis on Buddhism in Article V. 59 The drafting of the Article was attributed to John D'Oyly who was aware of the decisive importance of keeping a connection with the Buddhist priests of the Kingdom for the preservation of the British rule. In his diary D'Oyly records ‘I beg the Priests will rest assured that they will receive under the British government full Protection and Security’. 60 Similarly, examining the imperial history of the British Empire, one can ascertain that colonial policies were not completely detached from the influence of the Anglican Church. 61 Even though the Anglican Church was not as powerful as the Catholic Church in the Spanish and Portuguese Empires, Anglican priests were considerably influential in the British Empire. Thus, besides securing their main political interests, the British became involved in the mission of civilising the East. Considering the missionary activities and attempts to convert the population to Christianity, the special privilege given to Buddhism under Article V of the Kandyan Convention was rather unique. As per Article V, ‘The religion of Boodhoo professed by the Chiefs

58 Kandyan Convention (n 52) Article III.
59 ibid Article V.
60 Kulasekera (n 19) 82.
and Inhabitants of these provinces is declared inviolable, and its rites, ministers, and places of worship are to be maintained and protected’. 62 Analysing the correspondence between Governor Brownrigg and the Secretary of State for War and the Colonies, it became evident that British authorities in London were upset by the special privileges assigned to a non-Christian oriental religion under His Majesty’s law. Shortly after the Convention was signed, Brownrigg wrote to Lord Bathurst:

The 5th [Article] confirms the superstition of Boodhoo in a manner more empathic 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 uneasiness) respecting it by an article of guarantee couched in the most unqualified terms.63

The clarification of the role of the British Governor affirmed the relevance of Article V in upholding the position of the British Empire as protector, legitimising the British control over the island. Yet, the approach to setting up new rule in the Kandyan Kingdom soon after the promulgation of the Convention was rather different. As the Convention was signed between two sovereigns, the status of the Kandyan Kingdom as a protectorate appeared to be that of a conquered territory within another conquered territory. Hence Brownrigg challenged the Kandyan Supreme Court’s authority where, considering the sui generis nature of the

62 Dewaraja (n 28).
63 Kulasekera (n 19) 92.
Kingdom as a protectorate, he vehemently opposed the application of the British judicial order enforced in the Maritime Provinces. 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’. However, Brownrigg’s position was likely more advanced than the one of the British administration judges. Having challenged the colonial judiciary by refusing to apply the laws in force in the Maritime Provinces to the newly acquired Kandyan territory, Brownrigg placed the comity between the British power and the Kingdom of Kandy under the international framework. While the position of Kandy was that of a protectorate of the British Empire, Brownrigg assumed that the legal order of the whole island should be placed under an imperial constitutional framework wherein multiple legal structures could co-exist.

In this context, John D’Oyly was given the task of inquiring about the basic customary laws of the Kandyan Kingdom without altering them substantially. Later installed as British Resident of the Kandyan Kingdom, D’Oyly spent considerable time codifying the customary laws of the territory, which were later published posthumously in *A Sketch of the Constitution of the Kandyan Kingdom, A Detailed Account of the Legal Order in Kandy*. Absorbing the Kandyan Kingdom under the British Empire as a protectorate was a new practice in the early years of the colonial expansion. Therefore, as the legal merger that the British experimented with in the Kingdom of Kandy was

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64 Benton and Ford (n 5) 100.  
65 Dewaraja (n 28).  
66 Benton and Ford (n 5) 101.
the first direct treaty of the Crown in South Asia, the Convention stood as an example of formal treaty engagement between two sovereigns. Comparing this situation with the dubious East India Company’s expansion in the Indian subcontinent, we can observe that the Company’s rule in India was a military based dominion which led to unequal treaties and annexations until India became a Crown Colony with the promulgation of the Government of India Act in 1858.67 With regards to the unique nature of Kandy as a protectorate, Benton and Ford state that:

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.68

However, the British experiment of moulding the Kandyan Kingdom into a protectorate was short-lived because of the discontent and anxieties of the same chieftains who had welcomed the British as protectors. Cajoled by the hope of re-establishing their own dynasty in the Kingdom, the chieftains realized that the British had subtly consolidated their hegemony through the Convention.69 Such tensions and the

68 Benton and Ford (n 5) 86.
69 Sujit Sivasundaram, ‘Cosmopolitanism and Indigeneity in Four Violent Years: The Fall of the Kingdom of Kandy and Great Rebellion Revisited’ in Zoltan Biedermann and Alan Strathern (eds), Sri Lanka at the Crossroads of History (UCL Press 2018) 194-215.
compunction of losing their power to the British paved the way for a rebellion in the Kandyan provinces within three years after the Convention entered into force.

Section V: Conclusion

The idea of ‘protection’ in 19th century British legal thought was a complex notion stirred by multiple motives. On one side, it compelled indigenous people to ask for British justice under imperial jurisdiction, but on the other side, ‘protection’ was deployed as a strategy to expand the influence of the Empire to sovereign polities. The robust policies implemented under the guise of ‘protection’ often resulted in the end of the remaining sovereignties of those territories. The 19th century British protectorate of the Kandyan Kingdom is the finest example of early British colonial engagement providing protection to the indigenous people of the territory while safeguarding imperial interests. The promise of ‘protection’ given by the Empire to the Kandyan people shares similarities with the 1840 Treaty of Waitangi which established the British sovereign order in New Zealand, allegedly to protect the interests of the Maori. 70 However, when the peaceful co-existence between the British and the Kandyan chieftains came to an end because of their dissatisfaction with British rule, the chieftains openly joined a rebellion in breach of the Convention. In retaliation, the British clung to the very essence of the 1815 Kandyan Convention, a binding legal document enforced with the voluntary consent of the Kandyan people. Therefore when the rebellion broke out in 1817 in the Uva province of Sri Lanka, where some chieftains and other Kandyans rallied around a Malabar pretender who had claims

70 Treaty of Waitangi (drafted 4-5 February 1840, entered into force 6 February 1840).
to the throne, the British dismissed the people’s right to resist on the ground of treason under the Kandyan Convention, which was taken as a purely legal document signed between two sovereignties. By contrast, the British brought up the civilisational rhetoric claiming that the Kandyans should not abandon the benefits deriving from British civilisation. 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’. In a fervid claim made by the British over their legitimate rights in the Kingdom, they clearly affirmed that as the chieftains and the people relinquished their independence to obtain the protection of the British justice, the Kandyans were devoid of their right to resist the British rule or its protection. Thus, as a result of the 1817 rebellion the British were able to consolidate further their power in the Kandyan Kingdom. Later in the same year, they revoked by proclamation the former status of the Kingdom of Kandy as a protectorate, followed by the cessation of sovereignty. Nevertheless, the whole 19th century international law mechanism of ‘protection’ was twisted by the British to legitimise colonial expansion. The practice started by the East India Company in the early 19th century during their initial expansion in the Indian subcontinent, where States were compelled to sign treaties to legitimise the Company’s

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72 Anghie, Imperialism (n 1) 43.
protection, finally became an experimental strategy of the British imperial mission. As discussed in this Article, the case of the Kandyan Kingdom was unique in British legal history, as the British not only adhered to the principle of ‘protection’ for the first time, but more importantly, the Kandyan Convention was signed between two sovereign states.

Even though the events followed by the Kandyan Convention were disastrous, the British gained decisively from their experience as protectors in the Kandyan Kingdom. In particular, the idea of ‘protection’ began to wane when the British intensified their colonial expansion at the dawn of the Victorian era in the mid-19th century. In addition, the sheer positivistic notion of sovereignty engulfed European international law, excluding non-European spaces. As the late 19th century understanding of international law favoured ‘civilisation’ during the British, German, French, and Belgian colonial enterprises in African territories, there was considerably less concern for signing treaties with the natives to ensure external protection. In this context, the colonised nations and/or newly acquired territories in Africa were devoid of the so-called civility and of their sovereignty in accordance with the positivist ideals prevailing in the 19th century. The apogee of international legal positivism was The Berlin Conference in 1884-1885 when Western Africa was divided between European powers and the legal personalities of many African tribal Kingdoms were discarded. Importantly, the idea of protectorate and the way with which it was experimented in the Kandyan Kingdom in early 19th

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73 Berlin Conference (Nov 15, 1884 – Feb 26, 1885).
century Sri Lanka embodied a crucial message, for the Kandyan Convention stood as a formal power transformation between the imperial power and sovereign polity located within a partially colonised island. As contemporary academia has longed for a critical deconstruction of the colonial international law framework used by legal historians, certainly the case of the Kandyan Kingdom will always remain a moot point to evaluate the usage of protection in early 19th century international law, before it became completely straddled with positivism. This Article has demonstrated that the astute legal arguments of the scholarly colonisers who claimed to be orientalists and of those who were saddled with the knowledge of the local customs and traditions served for the appropriation of the Kandyan Kingdom’s sovereignty. This led to a notion of ‘protection’ quite different from the swift and clinically fast subjugations that both the British and the Dutch managed to achieve in South Asia. The doctrine of ‘protection’ has reverberating echoes in today’s highly debated principles of international humanitarian law and ‘Responsibility to Protect’. It can thus be stated that 21st century neo-liberal and geo-political realities of humanitarian intervention find their ontological embryo in the distant colonial years, long forgotten in history.
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