

Emerging Voices of Critical International Law in the Hellenic World

Achilles C. Emilianides: The Complete Legal Works [Αχιλλέως Κ. Αιμιλιανίδη: Άπαντα τα Νομικά]

ACHILLES C. EMILIANIDES
Nicosia: Hippasus, 2021
pp. XLIX + 523
ISBN: 978-9963-676-18-7

Dr Petros Papapolyviou recently provided an exhaustive account of Achilles C. Emilianides' life and work.⁵⁰ The celebrated historian painted a multilayered portrait of the jurist, the man of letters, the true patriot, and the exemplary citizen that Achilles C. Emilianides was. However, this is an international lawyer's account of Emilianides and as such it will focus on his legacy as a member of the 'invisible college'⁵¹, while trying to be as descriptive as possible.⁵² Emilianides belonged to the Hellenic School of international legal thought.⁵³ Much like his mentors, Stelio Sfériadès and Nicolas Politis,⁵⁴ he was a staunch supporter of the concept of international morality. Emilianides advocated for the strict but dynamic construction of international norms and usually espoused a historical-sociological analysis of jural relations. Moreover, as a *maître* of the Hellenic School, he also devoted much of his work and energy to the re-discovery of the individual as the true subject of international law.

⁵⁰ Petros Papapolyviou, 'The Jurist and Belletrist Achilles C. Emilianides (1903-1978)' [‘Ο Νομικός και Λογοτέχνης Αχιλλεύς Κ. Αιμιλιανίδης (1903-1978)'] in Achilles C. Emilianides, *The Complete Legal Works* (Nicosia: Hippasus Publishing, 2021) xix-xlix.

⁵¹ Oscar Schachter, 'The Invisible College of International Lawyers' (1977) 72(2) *Northwestern University Law Review* 217.

⁵² Anne Orford, 'In Praise of Description' (2012) 25(3) *Leiden Journal of International Law* 609.

⁵³ Miltiadis Sarigiannidis, 'The "Hellenic School" of International Law' [‘Η «Ελληνική Σχολή» του Διεθνούς Δικαίου'] in Costas Chatzikonstantinou, Charalambos Apostolides, Miltiadis Sarigiannidis, *Fundamental Concepts in International Public Law* [Θεμελιώδεις Έννοιες στο Διεθνές Δημόσιο Δίκαιο] (Athens/Thessaloniki: Sakkoulas, 2014) 112-115.

⁵⁴ See indicatively Stelio Sfériadès, *The Future of Public International Law* [Το Μέλλον του Δημοσίου Διεθνούς Δικαίου] (Athens: Blazoudakis Brothers' Publishing, 1920); Nicolas Politis, *La morale internationale* (New York: Brentano's, 1944). On international morality and the language of progress in the Hellenic School, see Thomas Skouteris, *The Notion of Progress in International Law Discourse* (The Hague: TMC Asser, 2009) Chap. 2.

Achilles C. Emilianides was a prolific writer. In the recently published *compendium* of his extant legal works, we can find an erudite analysis of the law of prize courts,⁵⁵ a foundational work on the place of the individual and the State in the post-war international legal order,⁵⁶ alluding to the intellectual tradition of *droit international de l'avenir*,⁵⁷ a concise analysis of the legal regime of capitulations and extra-territorial privileges in Cyprus,⁵⁸ an interesting study on the law of mixed marriages,⁵⁹ which reveals the historical and comparative methodology of the author, and a brief discussion of the legal regime of Cypriot citizenship under the British rule.⁶⁰ All these introductory works prepare us for the next part of the book, where Emilianides engaged into a thorough discussion of the normative and historical underpinnings of several topical questions of international and comparative law.

What is clear from the volume is that Emilianides extensively studied the legal consequences of international treaties. In an epoch when the study of the history of international law was nascent, he devoted a monograph to the historic treaty adopted on 7 September 1450 CE between the French King of Cyprus John II and the Emir of the region of Candelor,⁶¹ which –as Emilianides informs us– was probably located near the ancient Hellenic city of Side in Pamphylia (Asia Minor).⁶² This monograph offers an interesting, if not innovative –given the time of its authorship (1940)– analysis. Emilianides used the medieval *pactum* as his point of departure to offer insightful comments about his contemporary treaties, including the Balkan Pact, conventions of friendship, commerce, and navigation, and compromissory clauses submitting disputes to international arbitration.

In another treaty-related study, Emilianides addressed the legal challenges posed by the Zurich/London Agreements.⁶³ Underneath his calm and neutral analysis, we can already understand that, as an international lawyer, Emilianides had his doubts about the viability, wisdom, and flexibility of the dense treaty regime, which the framers of the Zurich/London formula prepared for the nascent State. The concluding re-

⁵⁵ Emilianides (n. 1) 1-66.

⁵⁶ *Ibid.* 69-109

⁵⁷ See indicatively Jan de Louter, 'L'avenir du droit international public' (1912) 19 *Revue générale de droit international public* 281; Alejandro Alvarez, *Le droit international de l'avenir* (Washington DC, 1916).

⁵⁸ Emilianides (n. 1) 111-161.

⁵⁹ *Ibid.* 163-197.

⁶⁰ *Ibid.* 199-215.

⁶¹ *Ibid.* 217-250.

⁶² *Ibid.* 220-221.

⁶³ *Ibid.* 335-347.

marks⁶⁴ of his study allow us to glimpse an emerging critical international lawyer. Although Emilianides as a proponent of the Hellenic School was a cosmopolitan statist, his commentary on the Agreements proves that he was also able to employ the idiom of post-coloniality. By using the concept of State sovereignty, sovereign equality, and independence as enshrined in the United Nations Charter, he stigmatised the inherent deficiencies of the conventional regime, which gave rise to the right of Cyprus to exist as a primary subject of international law. Despite his careful use of international legal concepts, much like the proponents of the TWAIL School of international law,⁶⁵ Emilianides both framed the Agreements as half-hearted concessions of the three Powers falling short of complete independence, and used the admission of Cyprus to the United Nations as a juridical point of no return. As he argued, heralding one of the basic tenets of TWAIL, Cyprus' participation in the system of the United Nations rendered the State fully sovereign and thus able to administer its domestic affairs free from foreign intervention, but always within the limits prescribed by international law.

However, no account of Emilianides' international legal scholarship can be complete without addressing his fundamental contributions to the development of the discipline's *Dogmatik*.⁶⁶ Emilianides advocated for a republican construction of international law, where both the individual and the State acquired not only rights but also responsibilities. In his foundational study on the trusteeship of the State and the protection of the human person, we can discern his republican and Stoic influences and how they shaped his legal arguments. Instead of demonising the State, Emilianides sought to re-articulate the basic concepts of State sovereignty and ground it, not on some Hobbesian formula, but on the notion of humanity. To Emilianides, the State owes to the individual a duty of protection, which justifies State supremacy and permeates all manifestations of State sovereignty. At the same time, like his mentors, Emilianides saw a gradual diminishment of the *domaine réservé*. He understood the specialised systems of the League of Nations (minorities, mandates, refugees) as an early sign of the transformation of the international order. As he opined, ultimately

⁶⁴ *Ibid.* 344-347.

⁶⁵ Third World Approaches to International Law; Anthony Anghie, 'TWAIL: Past and Future' (2008) 10 *International Community Law Review* 479; see also James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3(1) *Trade, Law & Development* 26; Makau Mutua, 'What is TWAIL?' (2000) 94 *Proceedings of the American Society of International Law Annual Meeting* 31.

⁶⁶ Emilianides (n. 1) 69-109.

the protection of the human person will be entrusted to the collective tutelage of the international community.

Achilles C. Emilianides also contributed to the development of international criminal law. In 1950 he authored a comprehensive study⁶⁷ on the Convention on the Prevention and Punishment of the Crime of Genocide,⁶⁸ which was presented during the London Conference of the International Bar Association (19-26 July 1950).⁶⁹ Strikingly Emilianides started with a brief history of the concept of genocide since the ancient times. Even though we can be almost certain that he was not aware of Raphael Lemkin's lifetime project on the history and sociology of genocide, which remained incomplete and was published in fragments posthumously,⁷⁰ Emilianides' study can be read parallel to Lemkin's own historical account. He traced genocide back to the history of the Persians, the Israelites, the Romans, and the Babylonians. Like Lemkin, he saw religious persecutions during the Middle Ages as part of the history of genocide. Furthermore, he explicitly addressed the practice of *devşirme* (blood tax, *paidomazoma*) as a prelude to genocide, while he directly framed the annihilation of Indigenous Peoples in the Americas as genocidal. The next part of this study closely follows the gradual emergence of the concept of genocide. Emilianides discussed the shortcomings of the minorities treaties under the League of Nations and the rupture of the international order through the Holocaust. Most notably, he explicitly addressed the extermination of the Russians, the Poles, and the Greeks (Great Famine, 1941-1942) during the Second World War as instances of biological genocide.

Emilianides also analysed the question of the Greek children, who were evacuated from Macedonia during the civil war. In his reasoning, Emilianides espoused the arguments of the Greek government that the affair constituted proof of a plan to commit genocide against the Greeks *qua* national group. Moreover, he posited that the persecutions of the Jews and the Greeks in the Soviet Union and the mass expulsion of Greeks from Romania constituted genocide as well. Emilianides' analysis was influenced by the politics of the Cold War, the arguments of the Greek government, and

⁶⁷ *Ibid.* 253-278.

⁶⁸ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 *United Nations Treaty Series* 277.

⁶⁹ See International Bar Association, *Third International Conference of the Legal Profession, London, July 19-26, 1950: Summary of Proceedings and Resolutions Adopted by the Conference* (The Hague: Martinus Nijhoff, 1952) 57.

⁷⁰ Steven Leonard Jacobs (ed.), *Lemkin on Genocide* (Lanham MD: Lexington Books 2012).

the emerging practice of using genocide to castigate politically motivated atrocities.⁷¹ The final part, which includes Emilianides' remarks on the Genocide Convention, is the most significant contribution of this study. It is evident that he remained critical of the negative penal protection granted by the Convention, despite the enunciation of the collective right of certain human communities to exist. Furthermore, he deplored the exclusion of political, linguistic, professional, and economic groups from the remit of the Convention. It is worth noting that he was one of the first theorists to suggest that the prohibition of genocide covers not only minorities but also majoritarian groups, including peoples under colonial rule.

Emilianides diagnosed several of the problems of the Convention that have vexed international lawyers until our days. First, he considered the specific *mens rea* of genocide and, like many of his contemporaries, opined that the mental element of the crime incorporated the question of motives into the penal norm. Furthermore, he explicitly addressed the possibility of commission by omission, a point, which still attracts much debate in international criminal law. In another insightful take, he pointed out the confusion that has been (and still is) caused by the use of the terms 'national' and 'ethnic' to define the protected groups. Finally, Emilianides raised interesting questions regarding both the prevention of genocide, an obligation established under Article I of the Convention, and the issue of State responsibility as alluded in its Article IX (the compromissory clause). Suffice it to say, that the inconsistencies noted by Emilianides in 1950 were only addressed by the International Court of Justice through dynamic interpretation in the 2007 *Bosnian Genocide Case*.⁷²

The rest of the book covers a wide range of topics, including the collective statelessness of Cypriots in Egypt, created due to the inadequacy of the British administration and its inability to comprehensively address the issue after the collapse of the Ottoman Empire,⁷³ the Hellenic Laws of pre-independence Cyprus,⁷⁴ questions of marriage and nationality,⁷⁵ the legal regime of interethnic and interreligious relations in Cyprus,⁷⁶ issues of regional administration,⁷⁷ the role of the United Nations

⁷¹ Anton Weiss-Wendt, *A Rhetorical Crime: Genocide in the Geopolitical Discourse of the Cold War* (New Brunswick NJ: Rutgers University Press, 2018).

⁷² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v Serbia & Montenegro)*, Judgment (Merits) of 26 February 2007 [2007] ICJ Rep 43.

⁷³ Emilianides (n. 1) 281-292.

⁷⁴ *Ibid.* 295-311.

⁷⁵ *Ibid.* 303-311

⁷⁶ *Ibid.* 313-333.

⁷⁷ *Ibid.* 349-360.

peacekeeping forces in international conflicts and situations of civil strife,⁷⁸ a project for a truly international law of tourism,⁷⁹ private international law in Cyprus,⁸⁰ sovereignty in the air and the outer space (a cutting-edge study which reveals Emilianides' sociological thinking),⁸¹ the right to unionise,⁸² and the institutions of polyarchy in medieval Cyprus.⁸³

Overall, the *Complete Legal Works* of Achilles C. Emilianides is an extremely useful contribution, which can assist contemporary international lawyers and guide them while engaging with complex issues pertaining to the histories, legacies, and politics of international law. It epitomises the basic principles of the Hellenic School, offers an early critical view adumbrating the rise of TWAIL after the 1960s, and contextualises several forgotten debates in international law, including the question of motives in the application of Article II of the Genocide Convention. The legal works of Achilles C. Emilianides introduce us to an international lawyer who was not eager to accept the *Zeitgeist* of his era, who consciously tried to develop international law, and who – despite his cosmopolitanism – was well-versed in the idiom of anti-colonialism. Much like his colleagues in the 1960s, Emilianides considered that international law could address the colonial problem, but only through radical transformation. In his own words:

[...] Article 73 [of the United Nations Charter] needs a more radical revision and especially the part referring to the interests of the inhabitants of the Dependent Territories. [...] In the minds of these peoples the Charter is devoid of any practical value to them, and despite the noble words it only means the perpetuation of the present system of Colonial domination by other powers. [...] The Colonial problem is one of the major issues of the twentieth century and unless it is approached in a spirit of international cooperation and on a basis of mutual understanding it will divide the world into two opposing and enemy sections to the detriment of the prestige of the United Nations.⁸⁴

Dimitrios A. Kourtis

⁷⁸ *Ibid.* 363-385.

⁷⁹ *Ibid.* 387-394 (in French).

⁸⁰ *Ibid.* 397-452.

⁸¹ *Ibid.* 455-487.

⁸² *Ibid.* 489-503.

⁸³ *Ibid.* 505-523.

⁸⁴ 'Review of the United Nations Charter' (Tuesday, 10 August 1954, at 9.30 am and 2.00 pm) (1954) 46 *International Law Association Reports of Conferences* 37, 88.