AN ANALYSIS OF THE MINORITIES ISSUE IN TURKEY-EUROPEAN UNION RELATIONS

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ABSTRACT

AN ANALYSIS OF MINORITIES ISSUE IN TURKEY-EUROPEAN UNION RELATIONS

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The aim of this thesis is to analyze the minorities issue within the Turkey-European Union relations. In the study, international, European and Turkish perspectives in minority understanding will be explored, respectively. The main argument will read: "Minorities issue is a highly politicized matter upon which neither legal nor academic standards are reached commonly in international, European or Turkish perspectives; thus, it must not constitute one of the focal points in Turkey-EU relations". The analyses of historical development, legal background, political influence as well as a conceptual analysis will be followed for all three perspectives. A textual and descriptive research method will be employed throughout the thesis. The conclusion will be drawn with regards to the controversial position of the minorities issue, overall, and specifically for the membership negotiations between Turkey and European Union. This road of approach would contribute to the perception of those reluctant to the political intervention of the European Union towards candidate states, as well as would help locate Turkey's future position regarding Protection of Minorities and minority rights.

Keywords: Protection of Minorities, Minority Rights, European Union, Turkey, International Law, National Politics.

ÖZ

TÜRKİYE-AVRUPA BİRLİĞİ İLİŞKİLERİNDE AZINLIKLAR MESELESİNİN ANALİZİ

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Bu tezin amacı, azınlıklar meselesini Türkiye-Avrupa Birliği ilişkileri çerçevesinde incelemektir. Çalışmada, uluslararası düzeyde, Avrupa düzeyinde ve Türkiye düzeyinde azınlık anlayışları değerlendirilecektir. Tezin ana argümanı, azınlıklar meselesinin Türkiye-Avrupa Birliği ilişkilerinde temel pazarlık konularından birisi olarak değerlendirilmemesi gerektiği; bunun nedeninin ise henüz ne uluslararası ne Avrupa ne de Türkiye perspektiflerinde, bu konu üzerinde hukusal ya da akademik standartların belirlenmiş olduğudur. Her üç perspektife ait tarihsel gelişim, hukuksal altyapı ve siyasal etki analizleri, kavramsal analizlerle birlikte, tez içerisinde sunulacaktır. Metin üzerinden yapılmış, tanımlayıcı bir araştırma yöntemi kullanılacaktır. Sonuç bölümünde, azınlıklar meselesinin genel anlamdaki tartışmalı pozisyonunu, Türkiye-Avrupa Birliği üyelik süreci içerisinde değerlendiren tartışmalar yapılacaktır. Bu yaklaşım, Avrupa Birliği'nin, aday ülkelere siyasi müdahalesi konusunda çekingen bakış açılarının analizine katkıda bulunacağı gibi, Türkiye'nin Azınlıkların Korunması ve azınlık hakları konusundaki gelecek yaklaşımının belirlenmesine de yardımcı olacaktır.

Anahtar Kelimeler: Azınlıkların Korunması, Azınlık Hakları, Avrupa Birliği, Türkiye, Devletler Hukuku, Ulusal Politikalar.

To the smallest minorities on earth

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I wish to express my gratitude...

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CHAPTER I: INTRODUCTION

"Don't ask the people what the people think
They've got no opinions but they still think we stink
The great British public, the great majority
The safe foundation of our society

But we're the minority and we're OK
We're the minority won't go away
We're the minority and we're OK
We're the minority got something to say

Yeah, we're the minority, the ones with the brains
Putting the country on a nervous strain
They can't stand the truth - the truth never lies
The great British public got bricks in their eyes."[1]

Art has always been one of the closest reflections of the world order. Many artists feed on daily events, social relations, media, science, technology and politics. In music, for instance, a simple 'Google' search might result in thousands of songs about one single subject matter, like corruption, government, war, or peace. When it comes to the term 'minority', the results are unfortunately not that generous. The song presented above is only one of a few songs that turn out to have a direct reference to the 'minorities' topic. Yet, music – or arts in general – does not stand alone. Neither literature, nor academic search seems willing to dive particularly into a 'general framework' of minorities. Mostly, those who belong to certain minority groups use their advantage to *publicize* their 'own' troubles, problems and suggestions of possible solutions instead of approaching to whole minorities problem in general.

This thesis surely takes the necessary *risk* to study such a rarely-discussed issue in an academic framework. By virtue of the characteristics of the subject

[1] The Subhumans (1995) "Minority" in Album: *The Day the Country Died.* UK: Bluurg Music. Track 4.

matter, it must be noted at the beginning that this work will attempt to provide a *textual* and *descriptive* analysis rather than trying to focus on *argumentative* dimension merely. Credulous at best is one's desire to expect that any argument in minorities issue will not be replied with – regrettably – *solid* counter-argument. Hence, the purpose of this thesis is *not* to employ a societal engineering model that would 'ideally' fit into every aspect of the inquiry. The main aim, instead, is to construct a valid background with international, European and Turkish perspectives of minorities issue and, then, to analyze the position of *Protection of Minority* and *minority rights* within the Turkey-European Union (EU) accession strategy. The main argument will read: "Minorities issue is a highly politicized matter upon which neither legal nor academic standards are reached commonly in international, European or Turkish perspectives; thus, it must not constitute one of the focal points in Turkey-EU relations."

In the first part of the analysis (Chapter II), a general background of the international development of today's minority understanding will be given. Being derived from the term 'minor' in Latin, the term 'minority' was concurrently born with the rise of 'nation-state' formation in the 16th century. The study will be focusing on how the *cohesion ideology* of a particular era affects the term's definition with a particular reference to the progression of 'nation-state' system. Next, related documents beginning from the 16th century onwards will be slightly touched upon in order to see the legal development. The role of the Ottoman *millet system* upon the creation of new forms of minority regime is expected to address to the inclusion of Turkish minority understanding, hence to the 'rarely noticed' importance of Turkish position in minorities issue, from the very beginning.

The 20th century will be separated into mainly two parts. Firstly, international understanding of minorities issue will be analyzed between two World Wars, and the era of the League of Nations. Then, secondly, legal and political background of the issue after 1950s - including the era of the United Nations, the Cold War, the collapse of Soviet Bloc and integrationist perspective of International Law - will be examined. Here, a particular reference to the Article 27 of the International Covenant on Civil and Political Rights will be given in order to represent the 'core' of any regional or supra-regional legal understanding. The chapter will conclude with the introduction of the current types of minority rights and references to various relevant

subject matters - including sovereignty of states, territorial integrity and rights of self-determination –.

The main purpose of the 'International Perspective' chapter is to establish a solid background with both legal and political views in order to form a further reference point for European and Turkish studies of minorities, and to provide a useful guidance for the next chapters. In this process, the question of standards - including a 'universal' minority definition, the role of nations upon recognition of minorities, qualities of reservations put by national governments upon international documents, positions of indigenous people and citizenship concerns – will also be elaborated. The search for standards will also bring up the role of 'politics' in the international minority scene. Furthermore, these findings will be re-examined to see whether Protection of Minorities and minority rights have achieved to be perceived individually rather than under the broad umbrella of Human Rights concerns.

Examining the international perspective, Chapter III will be particularly dealing with European position in the minority development. The very first notice will be given to the focal role of the Continent in the realization of current international minority regime. The analysis will then be separated into two main sections with a turning point in 1990s. The selected date will represent the significance of the Cold War in terms of progress in minorities issue. The period before 1990s will witness the inclusion of two critical figures in the European minority scene, the Council of Europe and the – then – Conference on Security and Cooperation in Europe. Related summits, documents and publications will be examined in order to catch a converging point between the legal and the political background of the issue.

The period after 1990s, next, will be presented in the study. In addition to the institutions mentioned above, and the Council of Europe's acute documents - European Charter for Regional and Minority Languages and the Framework Convention for the Protection of National Minorities -, a third actor will be available in the European minority context; i.e., the EU. Due to Turkey's accessing status, the thesis, from that point onwards, will pay special attention to the role of the EU in minority development in Europe. The question of its role either as 'only another actor' of the minorities context or as a part of its strategy to build up both a supranational and transnational restructuring in the Continent will search for an

accurate answer with particular references to theories of *multiculturalism*, *European identity* and *regionalism*. The transformation of 'identity' will be analyzed in the minority context with respect to supposed EU values, including pluralist and participatory democracy, the rule of law, respect for human rights, 'unity in diversity', and new forms of governance. This way, the EU's own perspective regarding minority regime (e.g., whether to include it within the Human Rights section or to evaluate it individually) will also be examined.

Next, the question will be altered into whether the 1990s, as a turning point, has led to a comprehensive and distinguishable 'minority regime' for EU. The analysis will be divided into two parts. Firstly, internal developments of the EU will be elaborated. The realization of a *common* EU policy of minorities (if any?) will, then, be evaluated along with the analyses of positions of Member States (EU-15), and the impact of national politics upon national convergences or divergences in a way towards such a regime. Secondly, an external perspective will enter into the picture. Enlargement and widening processes will be referred while the concepts like 'inconsistency', 'hypocrisy' and 'double standard' are having employed by acceding countries (the 2004 entrants). This examination will open a gate to discuss the EU's ability not only to create an internal regime for minorities but also to reshape or improve previously failed regimes out of its own borders. The success of the Union, further, might give another discussion point whether the EU takes the minorities issue such seriously that it has or has not accepted –then- prospect candidates with disharmonies, failures, and inconsistencies into the club; if it already aims as such. This will also lead another discussion about the general position of the EU, not already representing a 'monolithic' bloc itself, which is willing or not to take a consistent stand in minorities issue. The role of 'national politics' throughout all these discussions will always be under the spotlight by virtue of the nature of minorities issue.

Finally, the so-called Bolzano/Bozen Report for Minorities of Europe will be discussed in order to introduce the deficiencies of EU's (arguably existing) minority regime, presented by scholars and experts from the Union's new members. Yet, several additional problems will also be added to the arguments. A curious table of positions of current EU members' status regarding ratification to the international and European documents related to minorities will be drawn, later. This table will

become useful not only to argue upon the consistency of EU Member States, but also be helpful while Turkey is being discussed. In a nutshell, the analysis will be evolved around the dilemmas of the EU, represented by internal-external, common-national and supranational-governmental dichotomies, and connected discussions will add flavor to the study.

In Chapter IV, Turkey's position in international minority regime will be discussed in focus. As Chapter II indicates, the Turkish position in international minority understanding has been significant since the very beginning of the emergence of the concept. The Treaty of Lausanne (1923), in that sense, will be introduced as the document that sets out the latest position of Turkey – as an international actor - in minorities issue. A quick historical background analysis, including events that led to the signing of the document, Turkish War of Independence, and Turkish nation-building process, will be given in order to pass smoothly to examining of Turkish and Allied Powers' views in the course of the Lausanne Conferences. At that point, European motives in signing a minority-related agreement with Turkey will emerge, and an attempt will be made to see a possible continuation of such motives up until recently. Turkish views in Lausanne, which considered 'only' Non-Muslim nationals as minorities, on the other hand, will be questioned in order to create a discussion platform why, after more than eighty years, Turkey is still persistent upon this separation. The position of the Treaty on its time of signing and on today will be an acute dimension for this discussion.

Demonstrating the legal status of the Treaty of Lausanne will draw the legal borders of minorities issue for Turkey while a particular examination from the EU-law will be carried out, in the case of Turkey's possible membership to the Union. In order to provide a smooth transaction from 1920s (of Lausanne) to 1990s (of EU accession discussions), the period in between will be analyzed. This analysis will bring up the question of Turkish attitude and whether it indicated parallelism with or regression from International minority development at the same period. The role of 'Turkish national politics' in the minorities context, between 1923 until today, will also be elaborated for this particular section.

The Chapter will, next, concentrate vividly upon the role of EU accession of Turkey in the context of minorities issue. The reference points will mainly be the annual Progress Reports provided by the European Commission and the polemical

'2004 Minority Report' of Turkish Human Rights Advisory Board. Under these discussions, which constitute the political ground of Turkish perspective, minimalist and broader interpretations of the related Articles of the Treaty of Lausanne (from Articles 37 to 45) will be indicated with respect to both the definition of minorities in Turkey and the rights granted to them. In a similar vein, the argument of 'conscious' malpractice and under-representation of Lausanne by the Turkish governments hitherto will be observed while the status of Greek Treaty of Lausanne and international guarantors will constitute the main reference points. The role of the EU in this picture will be questioned afterwards, introducing the problematic areas that the Union has pointed out in its Progress Reports for Turkey.

Bearing in mind the Treaty of Lausanne might be read as a legal text as well as a political one, finally, the EU-related concepts of enlargement and conditionality will re-emerge in order to find a proper respond to the main argument of this study that inquires the evaluation of minorities issue in the accession negotiations between Turkey and the EU. Lastly, the ratification status of Turkey in terms of participation to the main international and European document of minority rights will be analyzed to testify the willingness or readiness of the country to take part in either an international or a European minority regime.

In conclusion, a summary of the findings will be given with the help of a table drawn which simply puts the visible differences between the subjects (international, European and Turkish understandings) of three consecutive Chapters. In the discussions, possible reasons of these differences will be questioned in search for a support to the main argument of the thesis. In doing so, not only the perspective of Turkey, but also the position of the EU will constitute the reference points. The role of 'politics' in the context of minorities will pave the way for the latest discussions.

CHAPTER 2: INTERNATIONAL PERSPECTIVE

In this chapter, a general picture will be drawn with regards to the international evolution of the concept of minorities - including, historical development, theoretical perceptions, and attempts for a universally accepted definition -, international legal settings and emergence of several related topics.

II. 1. Historical and Theoretical Background

Technically, minorities concept was born in the Treaty of Westphalia (1648), signed between France and Holy Roman Empire, which acknowledged territorial unity and sovereignty of nation-states – as well as the capability of choosing their 'own' religion - for the first time in history. Since the 16th and 17th centuries (influenced by the Reformation movement) picked up 'religion' as the *cohesion ideology* for the era, the categorization criteria for minorities to be separated from the majority were shaped upon religion-based differences[2]. However, still, religious variances did not 'define' minorities; yet, only let minority groups to be 'differentiated' from the rest of the society. Definition for minorities, in that case, was missing in the literature of this particular era. Supporting this fact, the Westphalia document was significantly inspired by Peace of Augsburg (1555), which granted the *Lutheran* right to designate religion of the population residing under his territory to the Emperor (*ius reformandi*), and Treaties of Münster and Osnbabrück (both signed in 1648), which recognized the legal equality of Protestant and Catholic sects[3].

A different approach to the minorities concept in the similar period came from the Treaty of Oliva, signed among Poland, Sweden and Livonia in 1660, which established the rules about freedom of religion in the case of land handovers[4]. Similar rights had been grounded in 1598 Edict of Nantes, in the particular

[2] For further information, please refer to Ökten, Kaan H. (2000) *Hristiyanlıkta İnancın Yenilenmesi.* İstanbul: Mavi Ada Yayıncılık.
[3] Arsava, A. Füsun (1993) *Azınlık Kavramı ve Azınlık Haklarının Uluslararası Belgeler ve Özellikle Medeni ve Siyasi Haklar Sözleşmesi'nin 27. Maddesi Işığında İncelenmesi.* Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, pg 1-2.
[4] The whole document can be reached through the World Wide Web: http://depts.washington.edu/baltic/papers/duchy.html#livwar

commercial agreement signed between France and Ottoman Empire in 1535[5], and in 1773 Treaty of Warsaw. 'Religion', once again, played its 'differentiating' role in the minority definition for this period, as well. However, it would not be safe to claim that religion stood alone as the main motive behind the 17th century minority development; the concept of 'nation-states' also needed a special attention.

Unwillingly to reduce the significance of other actors, International Relations are traditionally and conventionally defined as relations between 'nation-states'. While identity, which was neglected in the IR studies until recently, is defined with the specific features that separates the self from others; A. D. Smith defines national identity with a list of existing conditions, including "an historic territory, or homeland; common myths and historical memories; a common, mass public culture; common legal rights and duties for all members; a common economy with territorial mobility for members."[6] Bloom, additionally, describes the 'power' of national identity in a phrase of 'national identity dynamic', which grants the ability to national identities to "produce both political integration and national mobilization"[7] at the same time. Nation-state, in that sense, can be defined as a kind of 'polity' including four major determinants, namely *territoriality* – within a demarcated territory - , *sovereignty* – granting the 'arbitrator' status to the state - , *centrality* – centralized authority that does not need intermediaries- and *nationality* – to achieve a 'uniformed society' -. By this definition, further arguments upon citizenship, national symbols, secularism, legal recognition and eventually 'minorities' can be elaborated. In the following pages, those related to this study's subject matter will be examined.

Beginning with the 18th century, as the *cohesion ideology* was altered from religion to nationalism, the recognition of Protection of Minorities witnessed dramatic increase in the international arena. The emergence of nation-states basically proved that non-religious, so maybe 'secular', identification was also possible. The 'language', in this sense, became the dominant determinant in minority 'differentiation'. As Preece puts as such[8], the old phrase "cujus regio ejus religio"[9]

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[5] Hurewitz, J.C. (1958) *Diplomacy in the Near and Middle East, A Documentary Record, 1535-1914, Vol. I.* Canada: D. Van Nostrand Company Inc., pg 1-5.
[6] Smith, A. D. (1991) *National Identity.* UK: Penguin Books, pg. 14.
[7] Bloom, William (1993) *Personal Identity, National Identity and International Relations.* UK: Cambridge University Press, pg. 53.
[8] Preece, J. Jackson (1999) *National Minorities and the European Nation-State System.* UK: Oxford University Press, pg 69.
[9] Latin: "Whose rule, his religion"

was replaced by the new slogan "cujus regio ejus lingua"[10]. This alteration embodied in the Treaties of Dresden (1745), Hubertusburg (1763) and Paris (1763). However, the articles of those treaties were still covering religious rights of the pre-determined minorities, though selected in different criteria.

When it comes to the 19th century, minorities issue gained considerable significance than had it ever before. The major influence in the mentioned period was nationalist tendencies, given birth by French Revolution, 1789. Besides, the Enlightenment era negatively affected the political power of the churches in Europe and the transition from 'motherhood' (of *ümmet*) to nation (of *millet*) was keenly felt.

Van Dyke, carrying a liberal view in political theory, stresses the relation between the individual and the state in the 19th century understanding of minorities. However, unlike the liberal theorists, such as Hobbes, Locke and Rousseau, who accept that citizens must feel themselves to constitute a distinct group - establishing a 'state' through a form of 'social contract' with common language and desire to live together -, he notifies a problem in this liberal orthodox view due to the fact that in today's societies more than one ethnocultural communities cohabit a single state[11]. Moreover, he argues that since liberalism ignores the group dominance in political life, all these liberal theories are blind to the injustices suffered by minorities[12]. His proposal to the solution of this dilemma is to supplement a theory of 'collective rights', where the groups, like individuals, have to act as "right-and-duty-bearing units"[13]. Yet, quoting directly from his conclusion,

> … in principle, too, the grant of status and rights to communities on an intermediate basis should make for peace- on the assumption that justice is one of the conditions of peace. But it is unrealistic to expect the prompt achievement of justice even if just rules are accepted. Struggle is likely to be necessary. Hope for justice might increase violence, as surer and more rapid change is demanded by some and resisted by others. In the long run, however, it seems probable that the interests of peace as well as the interests of justice would be served.[14]

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[10] Latin: "Whose rule, his language"
[11] For actual figures, please refer to Gurr, T. Robert (1993) *Minorities at Risk: A Global View of Ethnopolitical Conflicts.* Chapter I. USA: United States Institute of Peace Press.
[12] Van Dyke, Vernon (1977) "The Individual, the State and Ethnic Communities in Political Theory" in *World Politics,* Vol. 29/3, pg. 343.
[13] ibid. pg. 360.
[14] ibid. pg. 367.

If it is accepted that, according to Van Dyke, the main deficiency of liberalism is linked to its 'individualist' perspective, it will not be difficult to observe a similar pattern followed by the rival theory of the same century, namely Marxist tradition[15]. Nimni, an observer of this pattern, further claims that Marxist theorists have been even more indifferent or hostile to the minority protection or rights due to the theory's commitment to 'internationalism'. For instance, as the Communist Manifesto expresses "[t]he Communists are further reproached with desiring to abolish countries and nationality. The workers have no country. We can not take from them what they have not got"[16]. Quoting from Kymlicka;

> Marx and Engles accepted the right of 'the great national subdivisions of Europe' to independence, and hence supported the unification of France, Italy, Poland, and Germany; and the independence of England, Hungary, Spain and Russia. But they rejected the idea that the smaller 'nationalities' had any such right, such as the Czechs, Croats, Basques, Welsh, Bulgarians, Romanians, and Slovenes. These smaller 'nationalities' were expected to *assimilate* to one of the 'great nations', without the benefit of any minority rights, whether it be language rights or national autonomy.[17]

It is, undoubtedly, no surprise that 19th century political theorists were in common to carry nation-states into the center of the political structure and neglected the rights of any minority groups. Realist perspective, which emphasizes the importance of material power as the determining factor of national interest, in that sense seems to be more advantageous to be examined since the distinction between small groups (or small states) and powerful ones constitutes the subject matter of the particular study. Yet, since there is no clear link between the theory and the concepts of Protection of Minorities or minority rights in the 'Realist literature', a sociological approach, instead, might be usefully addressed.

In the sociological context, each occasion that leads to great amount of population exchanges and border alterations, and any change in political structure,

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[15] Nimni, Ephraim (1989) "Marx, Engels and the National Question" in *Science & Society.* Vol. 53/3, pg. 297-326.
[16] Marx, Karl & Engels, Friedrich (1998) *The Communist Manifesto- reprint version.* USA: Signet Classics, pg 27-28.
[17] Kymlicka, Will (1995) *The Rights of Minority Cultures.* Chapter I-Introduction. UK: Oxford University Press, pg. 5.

brings about the introduction of minorities[18]. Nevertheless, such a definition, as well, does surely lack in elaborating upon a certain criteria to be fulfilled in order to mention 'a protection' for the minorities or simply defining them. Therefore, it will be useful to concentrate this study upon the historical background that has led to current minority perspective, from the 19th century onwards.

II. 2. 19th Century Developments

II. 2. a. 1815 Congress of Vienna – towards 'National Minorities'

Vienna Congress (1815) was taken place right after the Napoleon Wars and could be considered the pioneering example of *multi-national* gatherings of the forthcoming years. The major consequence of the Congress was that European monarchies, for the first time, faced with the rising 'nationalism' in an official ground. International Law, furthermore, took its first steps in Vienna by aiming to restrict the warfare in the Continent. More importantly, with the Vienna Congress, the traditional understanding of *assimilation* towards minorities was broken and replaced by so-called 'egalitarian treatment'[19]. Moreover, unlike all the relevant documents about minorities issues signed up to this point, the first article of the General Agreement granted to the Polish the right to maintain their 'national' institutions, based on *national grounds*, rather than *religious*[20]. Additionally, discussions about the source of sovereignty found a different response in Vienna, by considering 'people' as holders of civil, religious and even some political rights[21].

The Congress of Vienna resulted in some indirect consequences, as well. The most significant of those was to approach to 'Protection of Minorities' as a foreign policy tool for the Imperialist States. The Greek Independence War against Ottoman Empire in 1820s was a striking related instance, which ended up, in 1829, with that Greece gained its independence by the Treaty of Edirne[22]. Overall, Vienna Congress was a breakthrough point in minorities' context which witnessed the convergence (or

[18] Kurubaş, Erol (2004) *Asimilasyondan Tanınmaya: Uluslararası Alanda Azınlık Sorunları ve Avrupa Yaklaşımı.* Ankara: Asil Yayın ve Dağıtım Evi, pg.1.
[19] Macartney, C. (1960) *National States and National Minorities.* UK: London: Oxford University Press, pg. 59-60.
[20] Preece, J. Jackson (1999) ibid. pg. 74-76.
[21] Macartney, C. (1960) ibid, pg. 161.
[22] Clogg, Richard (1992) *A Concise History of Greece.* Cambridge Concise Histories. UK: Cambridge University Press, pg. 26.

alteration) between Protection of Minorities and independence movements of 'people'.

The most considerable impact of the abovementioned convergence was experienced in the lands of the Ottoman Empire. After the Thirty Year Wars, European states began to contemplate upon Christian minorities outside the Continent. The nearest target, then, beyond doubt, became the Ottoman Empire, which would be named after *Question d'Orient* (the Eastern Question) by the second half of the 19th century. From then on, the main arguments about Protection of Minorities left the Ottoman Empire at the center of all questions.

The Ottoman Empire had its own minorities system since 1454, a year after the conquest of Istanbul. The so-called *millet system* had been applied for the first time by Fatih Sultan Mehmet, and remained effective until the beginning of 19th century. The logic behind the Ottoman system was to separate the inhabitants into different communities according to their religion. The word, *millet*, referred to a manner by which Ottoman residents identified themselves on the basis of religion or sect[23]. The *millet* system allowed each religious community to establish a sub-system in which one's own traditions, customs or religious acts set up the legal, administrative, educational, communicative or financial orders to be followed by only those persons belonging to a particular community. Solely taxation, military and defence were organized by the Empire. In other words, *millet* system was arranged in a way that non-Muslims were significantly tolerated in their own patterns of life[24]. This arrangement, however, was interrupted, firstly, by the *infamous* Capitulation Agreements, signed between France and Ottoman Empire during 1535-1740. Though not considered being minority protection agreements, capitulations were arranged to grant some particular privileges, including free commerce in the Ottoman land, to the 'foreigners' on the basis of religion[25]. During the period, 1606 Peace Treaty of Zitvatorok, signed between Ottoman and Austrian Empires, became the very first minorities-related document that the Ottomans had ever been a part of. The Treaty granted Catholics the right to establish their own churches, although the inhabiting Catholics could already decide on establishing a church in Ottoman land with the

[23] Küçük, Cevdet (1985) "Osmanlılarda 'Millet Sistemi' ve Tanzimat" in *Tanzimattan Cumhuriyete Türkiye Ansiklopedisi, Vol. IV.* İstanbul: İletişim Yayınları. pg 1007.
[24] Shaw, Stanford (1985) "Osmanlı İmparatorluğu'nda Azınlıklar Sorunu" in *Osmanlı'dan Cumhuriyete Türkiye Ansiklopedisi, Vol. IV.* İstanbul: İletişim Yayınları, pg. 1002.
[25] Ürer, Levent (2003) *Azınlıklar ve Lozan Tartışmaları.* İstanbul: Derin Yayınları, pg. 126.

help of *millet* system[26]. On the following came 1699 Treaty of Karlowitz, 1718 Treaty of Passarowitz and 1739 Treaty of Belgrade, which all ensured the rights of the Catholics in Ottoman borders. The peak point in the context of minorities, however, was reached at 1774 Treaty of Kuchuk-Kainarji, which also compromised the Orthodox residents in addition to the rights granted to the Catholics. After the Treaty of Paris (1856), not only for the Ottomans but also for the whole international minorities, bilateral agreements were substituted by multilateral ones - by particular virtue of the fact that minority protection through bilateral agreements ended up with the sole dominance of the signor state by means of intervention to internal affairs of the Empire -. To put another way, more than one European state were willing to be involved in the weakened decision-making of the Ottoman Empire; hence, the character of the minority treaties must have been enhanced to multilateral context. In turn, the Ottomans could not benefit from not participating to the Vienna Congress, instead, became supposed to revolutionize almost every piece of legislation regarding its minorities by semi-compulsory Edicts of Tanzimat (1839) and Islahat (1856), which further enhanced the privileges given to the 'foreigners'[27].

II. 2. b. 1878 Congress of Berlin

The final 'blow' to the *millet* system came in the Congress of Berlin (1878), which also affected the whole understanding of the world-wide Protection of Minorities. The independence of Greece triggered the tensions in Balkans and led to the Ottoman-Russian War (1877-78). At the end of the war, the Ottoman Empire was defeated and the Peace Treaty of San Stefano was signed among the counterparts. Accordingly, Serbia, Montenegro, Romania and Bulgaria gained their independence. However, since the results of the Peace Treaty was shaped in accordance with Russian interests, European powers (the Great Britain and Austrian Empire coming

[26] For the whole documents, please refer to the World Wide Web: http://www.kultur.gov.tr/portal/tarih_en.asp?belgeno=8817

[27] Those privileges given by the Edicts of Tanzimat and Islahat were so powerful that even in the Turkish War of Independence, they were named as the crucial reasons of the fight. Please refer to the M. Kemal Atatürk's quote: "… privileged and hegemonic rights of Christian minorities; ban on Ottoman Empire to judge the foreigners residing in its own territory and to ask for taxes from foreigners that the Empire in fact asks from its own people; deprivation of Turkish people to take precautions about the minorities issue corroding its existence; and prohibition on the state to apply to rich and prosperous public works (like building up train ways or even schools) in order to improve itself" from Atatürk, M. Kemal (2004) *Nutuk (Söylev)*, in Çelik, Ö., and Eyuboğlu, İ. Z.(eds). İstanbul: Say Yayınları, pg. 528.

at the top) requested a more comprehensive arrangement for Balkans and called for a multilateral congress in Berlin. The consequences of the Congress drew new borderlines for the Balkan states, denying the independence of Bulgaria and Macedonia and prohibited any course of discrimination based on religion differences.

Taylor regards the Congress of Berlin as the breakthrough point in the minorities development in European history due to its stipulating character that leads to 're-awakening of Southern Slavs' and 'translation of the Italian and German spirit to the Balkan languages'[28]. Furthermore, after the Congress, Protection of Minorities became the *precondition* before recognition of new-born states in the international arena (Article 43)[29]. For instance, as the articles of the Treaty of Berlin displayed, Serbia's sovereignty was tied to the religious rights of Muslim minorities, Romania was bound to confer administrative, civil, political and religious rights to its minorities and Bulgaria could not gain its independence due to the fact that clash of interests of all national groups (including Turkish, Romanian, Greek and Bulgarians) could not be eliminated[30].

Berlin Congress is, indeed, not only an important historical figure but also a useful reflection for today's minority discussions. It must be noted that by this congress, many new-born nation-states came into existence, new borders were drawn and, hence, new minorities appeared. However, more importantly, multilateral agreements *bound* particularly smaller states with *minority rights* and threatened them, in any opposing case, with giving their *sovereignties* away. The similarity between today's arguments of *conditionality* and the character of Berlin Congress needs special attention. Yet, the problem is, as the history demonstrated cruelly, the sequence of 'new nation states-new borders-new minorities', which might well be interpreted as being implemented because of so-called 'humanitarian perspectives', led to two bloodiest wars of human history. The previously mentioned link, between national sovereignty, intervention and minority protection through unequally designed treaties pioneered the way towards such fatal consequences. Below, the environment between two world wars, namely the era of League of Nations and its approach to minority rights will be elaborated.

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[28] Taylor, A. J. P. (1992) *The Struggle for Mastery in Europe, 1848-1918.* UK: London: Penguin Books, pg. 232-233.
[29] Israel, F. L. (1983) *Major Peace Treaties of Modern History Vol. II.* UK: Scribner Publishing, pg. 975.
[30] Preece, J. Jackson (1999) ibid. pg. 80-81.

II. 3. The Era of the League of Nations

After the World War I, the obvious failure of inter-European agreements was interpreted in a close reference to their weak and unjust provisions regarding minority rights. Hence, an international approach to the minority rights regime was called under the leadership of the newly-built League of Nations. However, 'internationality' of the League of Nations' minority regime was restricted to the sanctions (or the international guarantee) to be applied 'only' upon the 'defeated nations' of the World War I. In other words, despite international, the Protection of Minorities was not yet 'universal'[31] in between two world wars. The predominant positions of the triumphant states in minorities issue were basically left untouched.

The peace treaties signed with Germany, Austria, Hungary, Bulgaria, and eventually Turkey, after the World War I, had five common articles, which might be utilized to display the perspective of the League of Nations[32] regarding the minority

[31] Oran, Baskın (2004) ibid. pg. 21.

[32] Those articles are heavily influenced with the 14 Principles of Woodrow Wilson (from the World Wide Web: http://www.lib.byu.edu/~rdh/wwi/1918/14points.html);

"I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

V. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

VII. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

VIII. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

rights. These were about granted civilian rights to the persons belonging to minorities; preservation of the religious and general rights of majority groups; equality and anti-discrimination before law; freedom of minority languages; and public aid granted to those town and cities where different sort of minorities were dominantly populated[33]. Yet, since a universal definition of minorities could not be reached by these provisions and each new treaty led to different differentiation criteria for minorities, it is not healthy to mention a consistent attitude of the League of Nations' documents in terms of minorities issue.

Ensuing these treaties; several different occasions - including abandoned minority groups (e.g. Germans and Hungarians left outside the borders of their home countries), formerly dominant but currently ruled out groups (e.g. Germans under Polish government), the will to integrate into kin-states (e.g. Slovenes of Hungary), and inability to establish a separate sovereign state for some weaker groups (e.g. Rutherians, Vlachs)[34] - led to even more tension in the minorities scene such that it became one of the pioneering motives to the outbreak of the World War II. Preece comments in the very similar vein that the whole League of Nations regime failed due to 'political instability', 'favoring kin-state relations', 'weak international guarantee', 'support to extreme demands' (including, irredentist politics), 'ad hoc nature of the decision-making mechanism', 'inequality of the signing states', 'power-

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IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

X. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development.

XI. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

XII. The Turkish portion of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

XIII. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike."

[33] Ürer, Levent (2003) ibid. pg. 82-84.

[34] Robinson, J. (1943) *Were the Minorities Treaties a Failure?* USA: New York: Institute of Jewish Affairs, pg. 252.

balance maneuvers that limited the implications only within Eastern Europe', 'hypocrisy in implementation', 'misunderstanding of the European nature that forgot the socialist tendencies and rather focused only on liberalism', and 'the unwillingness of the powerful states'[35].

In the course of the failure of the League of Nations system and the consequences of the World War II, minorities issue became realized as a disappointing adventure of the international powers. However, contrary to general expectations, the international scene did not completely relinquish Protection of Minorities but, instead, began to discuss it under the name of Human Rights[36]. In other words, the Protection of Minorities was transformed into the multi-layered international relations within a broader agenda. The reasons lying behind this transformation were basically linked to the very same logic when the minorities issue had become 'bilaterally evaluated' due to the problems; such as, akin relations with kin-states, severity of human rights and minority rights as a part of it, natural linkage between Protection of Minorities and intervention in the internal affairs of a country, willingness of nation-states to protect their nationals living outside their borders, and at the same time their will to benefit from those nationals in terms of irredentist politics and lobbying activities[37]. What was distinctive about the internationalization of minorities issue in the post-war period, in that sense, was the puritanical role of the great powers which eventually failed, not being able to establish a well-designed and well-controlled (with sanctions) universal minority regime and restricted within the prevailing limits of stronger-weaker state relations.

II. 4. The Era of the United Nations

While the League of Nations was altered into the United Nations (UN), the attempts of conceptualization (setting 'strict definitions') in problematic areas seemed increasing. For instance, the understanding of 'nation state', which evolved around the *homogeneity* of a whole nation, was called to be discussed within the limits of 'national state', which did not necessitate such homogeneity but more willingly approached to differences in a sovereign territory. Federalist and

[35] Preece, J. Jackson (1999) ibid. pg. 110-114.
[36] Oran, Baskın (2004) ibid. pg. 22.
[37] Kurubaş, Erol (2004) ibid. pg. 12-14.

supranationalist tendencies, furthermore, became apparent especially with the efforts in the European Continent, such as the emergence of European Community.

The concept of 'minority', however, did not make a major breakthrough. It still was out of a universally accepted definition. Instead, it might be readily claimed that the distinctive feature of the UN era, in terms of minorities, is minorities issue's unbreakable bound to the concept of Human Rights, which even may sometimes surpass the minority discussions and be considered as an 'inclusive' context that does not require any further policies particularly arranged for disadvantaged groups or persons. Yet, various attempts to construct a proper 'minorities' definition has been done, though. Among those scholars who inclined the definition with historical perspectives, Inis L. Claude, for instance, accepts the group of persons who is *persuaded* to form or to be a part of a nation within a state as minorities[38]. Hannum, on the other hand, defines minorities with differences from the majority in terms of ethnicity, race, religion or language[39]. The other characteristic of Hannum's definition is related to the numbers of population, in which minorities must be fewer than other groups, i.e., the majority. Furthermore, Laponce relates the minority definition with *conscious* choices of a certain group of people, though adhering to the criteria of differences by Hannum[40]. The critical point in Laponce's definition is the *fear* of being excluded from the rest of the nation, to which the group is *willingly* attached, or of being assimilated into the rest of the nation, despite or because of their unique characteristics.

Macartney and Allan, moreover, demote the minorities issue into a *national* minorities problem within a nation, since the minority definition constitutes a *differentiation* of a certain group, which can not be at a position of 'governing', from the majority of a certain nation in terms of *national identities*[41]. Similar to these two scholars' position, Modeen identifies minorities with *visible* differences from or *national sensitivities* towards the rest of the nation[42]. According to Ürer, Macartney

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[38] Claude, Inis. L (1995) *National Minorities: An International Problem.* USA: New York: Greenwood Press, pg. 19.
[39] Hannum, Hurst (1990) *Autonomy Sovereignty and Self Determination: The Accomodation of Conflicting Rights.* USA: Philadelphia: Pensylvania University Press, pg. 50.
[40] Laponce, J. A. (1960) *The Protection of Minorities.* USA: University of California Press, pg. 34-35.
[41] Macartney, W. & Allan, J. (1988) *Self Determination in the Commonwealth.* Wales: Aberdeen: Aberdeen University Press, pg. 95.
[42] Modeen, Tore (1969) "The International Protection of National Minorities in Europe" in *Acta Academiae Aboensis, ser. A: Humaniora Vol. 37., Nr. 1.* Abo Academi.

and Modeen converge in the grounds that attach the minority definition with 'damnification' of a certain group[43].

Though not bringing out an exact definition, Halperin, Scheffer and Small, on the other hand, reject the necessity of an historical background for a group to be acknowledged as minorities[44]. In their view, history does not play a role in today's minority definition discussions.

The abovementioned definitions are attempts to form a sociological understanding to the minorities issue. However, as pointed out earlier, minority analyses have more than one dimension; hence, legal definition must also be considered in order to complete the picture. Yet, due to the political side of the issue, a universally accepted legal definition is hard to find. During the League of Nations period, minorities rights developed as a citizens' right[45]. Mello Toscana, for instance, defined minority concept, in a trial case about Upper Slonsk in the International Court of Justice, with 'historical attachment to the land', 'unique culture', 'difference in race, language or religion' and '*permanent members* of a nation'[46].

In the UN era, however, a broader consensus seemed to be reached in the definition of Francesco Capotorti, 1978. The so-called Capotorti-definition was appeared in response to a formal request of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1977. Accordingly, Capotorti defined a minority as:

> A group of *numerically inferior* to the rest of the population of a State, in a *non-dominant* position, whose members- being *nationals* of the State- possess *ethnic*, *religious* or *linguistic* characteristics differing from those of the rest of the population and show, if only *implicitly*, a sense of *solidarity*, directed towards *preserving* their culture, traditions, religion or language.[47]

Jules Deschenes, the Canadian reporter of the same UN Sub-Commission, further suggests in 1985 that a minority is:

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[43] Ürer, Levent (2003) ibid, pg. 19.
[44] Halperin, M.; Scheffer, D. J. & Small, P. L. (1992) *Self-Determination in the New World Order.* USA: Washington: Carnegie Endowment Book, pg. 54.
[45] Thiele, Carmen (1999) "The Criterion of Citizenship for Minorities: The Example of Estonia" in *ECMI Working Papers #5.* ISSN: 1435-9812. Germany: Flensburg. pg. 2
[46] Kurubaş, Erol (2004) ibid. pg. 15.
[47] Capotorti, Francesco (1991) *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities.* UN Document. E/CN.4/Sub.2/384/Rev.1, 1979; UN Publication Sales No. E.91.XIV.2, USA: New York, pg. 96.

> A group of *citizens* of a state constituting a *numerical minority* and in a *non-dominant* position in that State, endowed with *ethnic*, *religious* or *linguistic* characteristics which differ from those of the majority of the population, having a sense of *solidarity* with another, motivated, if only *implicitly*, by a *collective will* to survive and whose aim is to achieve *equality* with the majority in fact and law.[48]

Contrary to these two experts, Tomushcat[49], Nowak[50] and Eide doubt the necessity of citizenship for the criterion of minority definition on the grounds that the new way of Human Rights-triggered understanding of the Protection of Minorities must reject such preconditions that even immigrants, who reside in a State for a considerable time, may benefit from minority rights. Eide, for instance, concludes in his final report to the UN Sub-Commission that:

> For the purpose of this study, a minority is any group of *persons* resident within a sovereign State which constitutes *less than half the population* of the national society and whose members share *common characteristics* of an *ethnic*, *religious* or *linguistic* nature that *distinguish* them from the rest of the population.[51]

As it might be clearly understood from the above discussions, due to several reasons - including the dominance of national politics, unpleasant experience of the League of Nations era and unwillingness of States - it is hard to gather around a universally accepted definition for the minorities. However, it should not imply that International Law does not have any saying over the Protection of Minorities. The reason why the Law is involved in the minorities is basically due to the close relationship between minorities and states, including the consequences of *assimilation* (conscious or unconscious pulverization of minorities into the rest), *integration*, *segregation* (intercultural hierarchy within the same nation), *ethnodevelopment* (leaving indigenous people alone, leading not to meld minorities and the rest) or *genocide* (physical elimination of a certain group). Hence, as long as

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[48] Deschenes, Jules (1985) *Proposal Concerning a definition of the term 'minority'.* UN Document. E/CN.4/Sub.2/1985/31, 14 May., pg. 30.

[49] Tomuschat, Christian (1983) "Protection of Minorities under Article 27 of the ICCPR" in *Völkerrecht als Rechtsordnung. Internationale Gerishtsbarkeit. Menschrenrechte, Festschrift für Hermann Mosler.* Bernhardt, R., Geck, W. K., Günther, J. & Steinberger, H. (eds.) Berlin: Heidelberg: New York: Springer, pg. 949-979.

[50] Nowak, Manfred (1993) *UN Covenant on Civil and Political Rights. CCPR Commentary.* UK: Arlington: N.P. Engel.

[51] Eide, Asbjorn (1993) *Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities.* UN Document. E/CN.4/Sub.2/1993/34, 10 August., pg. 7.

these relations prevail, the inclusion of International Law into the field of minorities issue will be inevitable.

II. 4. a. International Law

The UN is involved in the Protection of Minorities, and generally minorities issues under Human Rights provisions, due to one of its founding purposes, stating "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"[52]. So as to achieve this aim, the UN established the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1947, under the United Nations Commission on Human Rights (UNCHR) and Economic and Social Council (ECOSOC). Then, the UN has taken two further steps by signing Universal Declaration of Human Rights (UDHR) in 1948, which did not contain any minority-related article but did grant several cultural rights, and International Covenant on Civil and Political Rights (ICCPR) in 1966, which came into force after ten years of its signing. Apart from being a purpose of the UN Charter, the UN had to take considerable measures with respect to Protection of Minorities because of the 'unwillingness of States to re-implement the national minority rights of the League of Nations era', 'new borders after the World War II', 'severely distinguished bilateral agreements about population exchanges', 're-birth of the assimilation tendencies', and 'human rights perspective'[53]. These underlined reasons can also be interpreted as the political side of the minorities issue; however, by virtue of the UN's own position, it is healthier not to look for a specified target aimed to permit the dominance of politics over law.

The Article 27 of the ICCPR directly involved measures about international Protection of Minorities. To quote;

> In those States in which *ethnic*, *religious* or *linguistic* minorities exist, persons belonging to such minorities shall not be denied the right, in community

[52] Charter of the United Nations (1945) *Chapter 1., Article 1 (3).* Taken from the World Wide Web: http://www.un.org/aboutun/charter/
[53] Kurubaş, Erol (2004) ibid, pg. 44-46.

with the other members of their group, to enjoy their own *culture*, to profess and practice their own *religion*, or to use their own *language*.[54]

The organic link of the Article 27 is directed towards the Article 26 about the non-discrimination regardless of individual characteristics such that;

> All persons are equal before the law and are entitled *without any discrimination* to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[55]

Under the light of the well-known study of A. Füsun Arsava[56], forthcoming paragraphs will be devoted to this *only-legally-binding-international* instrument regarding minorities issue. Being a multilateral agreement, the ICCPR carries a Human Rights and Fundamental Freedoms dimension to the Article 27. However, the significance of the Article 27 emerges for the Protection of Minorities, where 'minority' concept, coming from the term 'minor', blooms in a 'democratic environment', and represents numerical inferiority; ethnic, religious or linguistic differences from the majority; and implicit solidarity among a group[57]. Moreover, Article 27 considers a minority only when there is a *stable unity* within a group represented by moral values, differentiating characteristics, and non-territorial unity; consciousness of identity, with the willingness to maintain the prevailing differences, group dynamics, and common reaction to external factors and to the threat of assimilation[58]. *Citizenship* is not an explicit prerequisite for the minority definition since the Article uses the term 'persons' instead of 'citizens' in the wording[59]. This interpretation converges with those of Tomuschat, Nowak and Eide; yet, it does not explain *explicitly* whether immigrants, gypsies and temporary workers should be included in the minority lists.

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[54] International Covenant of Civil and Political Rights (1966) *Article 27.* Adopted and opened for the signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 29. Taken from the World Wide Web: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

[55] İbid (1966) *Article 26.*

[56] For the arguments about the Article 27 of ICCPR, this study refers to Arsava, A. Füsun (1993) ibid. pg. 38- 82.

[57] ibid. pg. 41-42.

[58] ibid, pg. 46- 53.

[59] ibid, pg. 53.

Another crucial feature of the Article 27 is about the role of States in defining minorities. As this thesis will also display several problematic cases, whether the States are fully and solely charged on the definition of minorities residing within their territories is a critical dilemma for the minorities issue. In his previously dealt report, Capotorti states that "if the existence of a minority group within a state is objectively demonstrated, non-recognizing of the minority does not disperse the state from the duty to comply with the principles in Article 27"[60]. Arsava also agrees upon that recognition of a minority does not belong to a State under the roof of Article 27 such that if a certain group calls for a trial for its recognition, States can not have a saying upon it[61]. However, it may also be stressed that the recognition of a 'minority' is still in the hands of a State, according to Article 27, as long as there is no violation of rights and freedoms against a certain group or a person belonging to that group[62]. For instance, reservations that are put by the signatory states to ICCPR, such as those of France, Greece and Turkey, lose their legal statuses, if any of those can be entitled with a violation to the rights and freedoms of a group or a person due to its/his/her 'minority-related' character.

Approaching to the issue in a different scale, Arsava pays considerable attention for the States' position in the International Law, as well. She reminds that the fundamental principle of the International Law prohibits any sort of intervention to the internal affairs of sovereign states; hence, Protection of Minorities or minority rights granted by Article 27 cease being effective if the minorities misuse their rights out of the borders of 'loyalty towards the nation' or if a third country (not necessarily a *kin-state*) abuses these granted rights in order to interfere the internal affairs[63]. Furthermore, though unrelated to *defining* minorities, Arsava calls attention to a feature of the Article 27, which leaves severe amount of space to the States for interpreting upon the article[64].

When it comes to the developments in the UN minority context since 1966, frankly, there have been no radical shifts. Article 27 of the ICCPR was repeated in 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18 December 1992), which represents the very

[60] In his own words, from ibid, pg. 66.
[61] ibid, pg. 66.
[62] ibid, pg. 67.
[63] ibid, pg. 37.
[64] ibid, pg. 41.

first international document with the sole reference to minority rights[65], with the emphasis on that "*states shall protect* the national or ethnic, *cultural*, religious and linguistic identity of minorities within their respective territories"[66]. The 2001-revision of this particular text, done by Asbjorn Eide on behalf of the non-binding UN Working Group on Minorities (established in 1995), further, clarifies two important points for the minority studies. First, the revised version of the document does not accept *citizenship* as a criterion for being a minority; second, it demystifies that minority rights are *of purely individual* characteristic while the rights of indigenous people are collective rights[67].

Under the light of the collected information and the interpretation of the ICCPR Article 27, tentative criteria might be drawn for a group to be involved in a minority definition, including;

i) *Difference from the majority:* The difference might be ethnic, religious or linguistic.

ii) *Numerical inferiority:* The distribution of the population does not matter for this criterion.

iii) *Non-dominance:* No minority group can have dominance over the rest of the population. For instance, the white-population of the *Apartheid* (Southern Africa) era can not be counted as minorities due to the mastery they carried over the majority.

iv) *Citizenship:* Though arguable and the only binding international document, Article 27 of the ICCPR, does not mention explicitly; the criterion of citizenship diminishes its value in the international area, in time. Yet, it must be borne in mind that *long-time of residence* is still sought for installation of those rights.

v) *Minority Consciousness:* Having not explicitly mentioned, in order to consider a minority, that person or group must have the consciousness that names him/her as a minority. In other words, among a group of

[65] Alfredsson, G. & de Zayes, A. (1993) "Minority Rights: Protection by the United Nations" in *Human Rights Law Journal Vol.14, No. 1-2.* pg. 1-9.
[66] UN Document (1992) A/RES/47/135, 18 December 1992; reprinted in: HRLJ, 14 (1993) 1-2, pg. 54 ff., Article 1(1).
[67] UN Document (2001) *The Final Text of the Commentary to the UN Declaration on Minorities,* by Mr. Asbjorn Eide, Chairperson-Rapporteur of the UN Working Group on Minorities, Document: E/CN.4/Sub.2/AC.5/2001/2.

persons that feels belonging to minorities, there must be 'solidarity' and 'willingness' to protect their differences and traditions. Otherwise, the term so-called willing assimilation implements itself and there can not be a minority protection anymore[68]. (a subjective criterion)

II. 5. Types of Minority Rights:

Even though, quite arguably, these criteria might establish a proper ground for minority definition, granting minority rights does still have two unanswered questions: 'To Whom?' and 'What?'

Since individuals do not exist in an 'empty space', instead in an interactive and social environment, the International Law has certain collective rights, in general. However, minority rights can not be entitled to a minority 'group'. Rather, *persons belonging to minorities* are subject to those rights. There are two basic reasons behind this condition: first, according to the UN Sub-Commission, individuals are subjects of the International Law while groups are not; and second, under mainly political concerns, the International Law is evolved around protecting and preventing sovereignty of States and, due to past experience, bestowing minority rights to *groups* is restricted in order not to injure the unity of states[69]. Nevertheless, it must be noted that some scholars consider minority rights as individual rights that also carry a collective dimension with themselves, such as using a minority language[70].

As Arsava puts, another problem is to distinguish in writing between the terms *national groups* and *ethnic minorities*[71]. In the documents of, for instance, the International Institute for Ethnic Group Rights and Regionalism (INTEREG) or in the articles of UN Treaty on War Criminals of Austria (1955), these terms are used *interchangeably* although the stronger 'country' emphasis is stressed out in the 'national group'[72]. In other words, there is no absolute or distinctive definition for ethnic minorities or national groups. Due to legal and political reasons, though

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[68] Oran, Baskın (2001) *Küreselleşme ve Azınlıklar.* 4th edition. Ankara: İmaj Yayınevi, pg. 69.
[69] Oran, Baskın (2001) ibid, pg. 84.
[70] Çavuşoğlu, Naz (1995) "Ulusal Azınlıkların Korunmasına İlişkin Çerçeve Sözleşme" in *AÜSBF İnsan Hakları Merkezi Dergisi,* Vol. III., No. 3 (November, 1995), pg. 64.
[71] Arsava, A. F. (1993) ibid, pg. 58-62.
[72] İbid, pg. 60.

national groups are, in today's parlance, regarded as minorities; International Law still utilizes the 'minorities' term in the wording of the documents.

In 1971, the UN requested a particular report from Jose Martinez Cobo regarding the indigenous people[73]. Cobo's report, as well as later-dated Conventions of International Labor Standards (ILO) No. 107 and No. 104, however, solely managed to establish a definition for the indigenous people, under the very similar criteria of Capotorti applied to minority definitions. Today, the Sami in Finland, the Friesian in the Netherlands and Germany, Aborigines in Australia, Inuits in Canada, and many other original people are treated in mixed regulations; some of them are granted minority rights while the others are vested special arrangements. 'Inhabitance before their subsequent to colonization or annexation', 'presence as a cultural group during the formation of a nation-state', 'isolation' or 'linguistic, cultural and social differences from the majority' are mainly specified in referring to original people; yet, briefly concluded, there is no universal position of the indigenous people in the minority rights regime[74].

When it comes to the contents of minority rights, there will be two major discussions. First, scholars and experts considerably diverge in whether the persons belonging to minorities must be given 'negative' or 'positive' rights. In the minorities context, negative rights are represented by *Prevention of Discrimination*, which implies the prohibition for the government to intervene into 'freedoms' of the individuals, by granting equal opportunities and treatment to each individual regardless of any distinguishing characteristic from the majority[75]. Equal treatment before the law, civil and political rights, and freedom of religion, speech, and property might be given as examples. Positive rights, represented by *Protection of Minorities*, on the other hand, can not be applied to every individual, and are granted to certain non-dominant groups that need extra (more than anti-discrimination) rights to protect their own fundamental characteristics.[76] The examples to such rights are the right to establish separate schools, certain economic privileges, or education on own languages.

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[73] UN Document (1983) E/CN.4/Sub. 2/1983/21/Add. 8.
[74] Taken from the World Wide Web: http://www.unhchr.ch/html/racism/01-indigenous.html
[75] Wirsing, Robert (1981) *Dimensions of Minority Protection, Protection of Ethnic Minorities, Comparative Perspectives.* USA: New York: Elsevier Science Ltd., pg. 9.
[76] ibid, pg. 9-10.

The positive-negative rights separation brings about the discussions regarding the concepts of *Positive Discrimination (Affirmative Action)* and *Anti-Discrimination*. To certain scholars, granting positive rights to persons belonging to minorities is righteous since for minorities the only way to cover their disadvantaged positions in the society can be done by positive discrimination[77]. To others, however, granting special rights to minorities leads to disintegration of a State and creates duality in the society[78]; hence, a general anti-discrimination policy covering minority-related differences must be employed instead of granting special rights to certain groups. The legal perspective to this discussion is also implicit. The Article 27 of the ICCPR, being the main reference, accepts positive rights only *in principle,* and accordingly, certain conditions of sovereign states (like, economic power) are determinant in granting those states the right to apply positive rights to their minorities[79].

The last noteworthy argument upon the characteristics of the minority rights is related to the concept of *Self-Determination Right (SDR)*. It is a theoretical principle that gives a certain people the right to determine their own governmental forms and structures. The principle had gained legal and political recognition mainly after 1789 French Revolution. Forming the basis of several thoughts and actions, including anarchism, ethnic nationalism, far-right beliefs –such as Neo-Nazism, racism, and fascism-; SDR, on the other hand, finds increasing acceptance especially after those occasions that leads to border changes, including the end of the World Wars, and of the Cold War. Yet, the European decolonization movements (a process of gaining independence) have displayed the most effective examples of the usage of the concept. The UN Charter in 1945 acknowledges the SDR by stating as a purpose "[t]o develop friendly relations among nations based on respect for the principle of equal rights and *self-determination of peoples*, and to take other appropriate measures to strengthen universal peace"[80]. Additionally, the SDR is also demonstrated in the Article 1 of the ICCPR, stating that "[a]ll peoples have the right

[77] Oran, Baskın (2004) ibid, pg. 33.
[78] From Kurban, Dilek (2003) "Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey's Path to the European Union" in *Columbia Human Rights Law Review.* Vol. 151. No. 35. pg.161.
[79] Arsava, A. F. (1993) ibid, pg. 72.
[80] Charter of the United Nations (1945) *Chapter 1., Article 1 (2).*

of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[81]

Oran separates the SDR concept into three categories[82]. Accordingly, the first SDR occurs 'internally', as it happened in the French Revolution, and represents the rights of the citizens to choose their political, economic, sociological and cultural system. The second SDR carries an 'external' meaning, as in the Wilson Principles of 1914, and regards the right to gain independence. The third SDR is related to the separation of a group from the governing state and is strictly defined by the UN in the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960, aiming to indicate that the SDR only belongs to 'peoples' and after they gain their independence, no separation can be regarded under SDR in the International Law[83]. Besides, as Thornberry further argues, the International Law takes SDR in a considerably limited perspective, by putting reservations on the concepts like 'loyalty', 'democracy', 'non-intervention to the internal affairs', and 'unity'[84]. SDR grants a justified right to 'peoples' to independently determine their own political status, and to freely maintain their own economic, social and cultural progression. In that sense, its relation with minority rights is drawn between the areas of prevention, improvement and protection of minority cultures, history, traditions, language and religion. In a nutshell, though the concept is argued in minority issues, SDR is a term referred strictly to the 'peoples' and is handled quite narrowly and carefully by the related law.

To conclude, universal minority development has been in progression from the assimilationist politics of the 16th century nation-states or repressive ideas of political theorists to the international Protection of Minorities and minority rights. However, it is disappointing to witness that overly discussed arguments lead serious disputes on several topics, regarding the character of the rights to be granted, the addressee of those rights and –though not directly attached- the concept of SDR; that dominance of politics and overwhelming influence of governmental positions narrow

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[81] International Covenant of Civil and Political Rights (1966) *Article 1 (1).*

 Oran, Baskın (2001) ibid, pg. 108-112.

[83] UN Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) Adopted by General Assembly resolution 1514 (XV) of 14 December 1960. Taken from the World Wide Web: http://www.unhchr.ch/html/menu3/b/c_coloni.htm

[84] Thornberry, Patrick (1994) *International Law and the Rights of Minorities.* UK: Oxford: Clarendon Press, pg. 13-21.

down the recognition of the concept; that the lacking points in law in terms of whether or when national (sovereign) states are involved in determining their 'own' minorities, whether minority rights are individually or collectively (or both) utilized, when minority concerns become ahead of territorial or unity-related positions, or whether minority rights are a subject matter included in the Human Rights agenda or a purely separated matter of legal discussion raises doubts; and that there is no universal definition for the title of the discussions limits what can be further done.

In the following chapter, European understanding of minorities issue will be handled. The accumulation obtained in the International analysis will be referred especially in the legal settings and defining concepts. Yet, unlike the previous chapter, a more regional approach will be employed and particularly the EU-related developments will be shed upon in search for a support to the main argument.

CHAPTER III: EUROPEAN PERSPECTIVE

In this chapter, minorities analysis will be carried towards a regional ground. Europe, representing a critical figure in international minority scene, will be examined with respect to its main actors, historical development and on country-basis. Yet, the main emphasis will be devoted particularly to the EU and the Union's minority understanding in order to follow up the thesis' main argument. Previously, the historical background indicated that the whole minority discussions were quite complicated with tremendous numbers of dimensions and influences from several fields, including politics, history, sociology, anthropology, law and international relations. Below, it will be maintained that European context is not much of a difference, if not more complex. Hence, a more detailed analysis will be addressed on the following.

III. 1. 1950s-1990s Developments

Minority studies in Europe virtually have a systematic development within itself. Between the 1950s to the early 1990s, the European scene witnesses two major entities and their several documents, conferences with varying characteristics. The entities are the Council of Europe (CoE) and - formerly known as the Conference on Security and Cooperation in Europe (CSCE) - the Organization for Security and Cooperation in Europe (OSCE). Only after 1990s, another actor, namely the EU, became apparent and to some degree influential in the development of European minority perception. The line drawn at 1990s is basically motivated by the huge impact of the end of the Cold War and the transformation of the EU into three-pillar structure with political and security-related concerns beyond the economic tradition. Hence, this chapter will be organized in accordance with the mentioned separation, devoting major attention to the latter.

III. 1. a. The Council of Europe (CoE)

Being Europe's oldest political organization, CoE was founded on a mission to complement and elaborate upon the UN's UDHR, which did not include any particular reference to 'minority rights' or 'Protection of Minorities' in its text. Therefore, at the outset, minority rights were considered within the field of Human

Rights, following the same trend in the international area. A supporting example for this argument might be found in one of the major accomplishments of the CoE, the European Convention on Human Rights (ECHR), officially known as Convention for the Protection of Human Rights and Fundamental Freedoms with 14 additional protocols and entry into force in 1953. The Article 14 reads:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured *without discrimination* on *any ground* such as sex, race, color, language, religion, political or other opinion, national or social origin, association *with a national minority*, property, birth or other status.[85]

As clarified in the article, ECHR acknowledges the existence of *national minorities*; however, covers their protection under general anti-discrimination policy within Human Rights field[86]. In other words, the ECHR does not provide any particular minority protection on behalf of its devoted Article 14. Further, no other article of the Convention adverts to minority protection or rights on the following. The significance behind the Article 14, however, lies beneath that by courtesy of the mentioned provision, national minorities are not only recognized by the member states of the CoE but also they are protected inside a powerful control mechanism, by virtue of the ban on discrimination on any ground, with the controlling organs as European Commission on Human Rights (EComHR) and European Court of Justice (ECJ)[87]. As Akıllıoğlu puts, this control mechanism has become crucial in the Protection of Minorities and there are many legal cases opened by persons belonging to minorities against CoE members, such as, Spain, Italy, France, the UK and Turkey[88]. However, because of the legal terminology that considers the Article 14 representing an 'accessory norm'[89] and permitting any sanction to only be applied in the field of 'violation of a norm', the ECHR does not constitute a legal ground for imposing sanctions upon the violation of Protection of Minorities.

After the ECHR, several attempts were made to proceed upon and to develop a minority regime in the CoE between especially 1949 and 1961; yet, these attempts,

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[85] Council of Europe Document (1950) *The European Convention on Human Rights.* Article 14; as amended by Protocol No. 11. Rome, 4.XI.1950. Taken from the World Wide Web: http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm

[86] Arsava, A. F. (1993) ibid, pg. 89.

[87] In 1998, these two organs were assembled under European Court of Human Rights (ECtHR).

[88] Akıllıoğlu, Tekin (1995) "Terör ve İnsan Hakları" in *AÜSBF İnsan Hakları Merkezi Dergisi.* Vol. III., No. 3 (November, 1995) pg. 19-28.

[89] ECJ Document (1968) OJ L 175, Issue A., No: 6.; 23.7.1968, pg. 33.

including certain reports, proposals or additional protocol offerings (to the ECHR) were resulted unsuccessfully. On the other hand, motivated by the urge to create a common European culture while maintaining inter-cultural differences among states, further attempts for developing inter-state cooperation on cultural issues, for instance, the European Cultural Convention (ECC) in 1954, helped progress towards Protection of Minorities. In 1978, with the acceptance of Human Rights Convention by the Committee of Ministers of the CoE, the term *cultural rights* began to be discussed within the Human Rights field throughout the Continent[90]. Having rejected by virtue of the instability in Eastern Europe and the Cold War, a proposed 'European Charter for Culture', then, led to a more specific terminology in the agenda of the CoE regarding minority issues that would be the pioneering discussion of the 1990s; namely, *regional* and *minority languages*.

III. 1. b. The Conference on Security and Co-operation in Europe (CSCE)

Until 1994 Budapest Conference, when the CSCE was institutionalized and became the OSCE, several non-binding documents had been released and significant conferences held regarding tremendous amount of issues including Protection of Minorities and minority rights, based upon 'good faith principle'. Hence, though not binding, CSCE played a crucial role in the establishment and development of the current minority regime in Europe. Nevertheless, it must still be noted that, as well as the UN and the CoE, before 1990s, the CSCE had a 'closed' attitude towards minority rights and preferred to maintain the topic under the Human Rights fields, with some exceptions.

1975 Helsinki Final Act covers 'minorities' in three different ways. First, under the seventh principle of the ten guiding relations between participating states, it states that "[t]he participating States on whose territory *national minorities* exist will respect the right of persons belonging to such minorities to *equality before the law*, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their *legitimate interests* in this sphere."[91] Second, as a reminder to the existence of minorities and as a

[90] Üzeltürk, S. T. (2002) "Bölgesel ve Azınlık Dilleri Avrupa Şartı ve Türkiye" in *Ulusal, Ulularüstü ve Uluslararası Hukukta Azınlık Hakları.* İstanbul: İstanbul Barosu Yayınları, pg. 155-156.
[91] CSCE Document (1975) *Final Act Helsinki.* "Questions Relating to Security in Europe 1(a)-VII." No. 102/pg. 98. Taken from the World Wide Web: http://www.hri.org/docs/Helsinki75.html

necessity for special attention to their existence, minorities are included within the sections of 'Fields and Forms of Cooperation' and 'Teaching Methods'. Third, anti-discrimination based on any ground can also be applied to minorities. According to Arsava, Helsinki Act is influenced by the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charta of the UN"[92] and is an important document relating to minorities studies, representing an enhanced version of the Article 27 of the ICCPR towards all European minorities[93]. In detail, Helsinki Act recognizes the enjoyment of cultural, religious and linguistic rights given by the Article 27 to the 'European' ethnic, religious or linguistic minorities.

Until 1989 Concluding Document of the Vienna Meeting, the CSCE had not elaborated upon Protection of Minorities or minority rights, except for the relatively small reference in 1983 Madrid Document. However, the 1989 Document became one of the major implications. It was indicated in Vienna that previously stated provisions regarding minorities (in Helsinki) would be progressively developed and all necessary convenience would be installed by the signatory States, including cross-border transfer of information and persons; and, freedom of religion, thought and movement. With respect to minority standings, a closer cooperation with the CoE, for the first time, was implied in Vienna. Furthermore, as the most important consequence, in order to provide a balance between security and human rights (thus, minority rights), a stronger multi-faceted control and consultation mechanism was agreed upon[94]. This so-called 'balance' between security and human rights might be regarded as the heritage of the two world wars, whose recovery was launched in the previously mentioned UN process. The noteworthy point is that with Vienna Meeting, the CSCE took the leading role in terms of adjustment to the ever-changing conditions in minorities issue, way before the UN or the CoE. Looking from a different perspective, pioneered by the Helsinki Act, the CSCE paved the new way and approach post-war minority context in the international politics; hence, even in the current progress of the EU, the influence of the CSCE is apparent, as will be shown later on.

[92] UN Resolution (1970) No. 2625 (XXV), 24.10.1970.
[93] Arsava, A. F. (1993) ibid, pg. 90-92.
[94] ibid, pg. 92-94.

III. 2. 1990s onwards

When it comes to the 1990s, both the end of the Cold War and increasing changes not only in the borders but also in the polities of the Eastern part of the Europe brought about a brand new actor in the European minorities scene; the EU. Although, the main purpose of this descriptive chapter is to elaborate upon this latest entity, by virtue of the close relation among all actors and significance of some documents, crucial points in the perspectives of the CoE and CSCE/OSCE from the early 1990s to this day will also be examined.

III. 2. a. The Council of Europe (CoE)

With the participation of the Central and Eastern European Countries (CEECs) during 1990s, CoE was naturally bound to develop upon the minorities issue in Europe. Thus, the European Commission for Democracy through Law, better known as the Venice Commission, was established by the CoE as an advisory body on 'constitutional matters' -referring to adoption of the constitutions towards 'democracy', 'human rights' and 'the rule of law'- in 1990. The Venice Commission, in 1991, prepared the Draft European Charter for Protection of Minorities, which became the main reference point in the further documents.

The progress of the CoE in minority scene displays a positive trend in Europe from the human-rights perspective of earlier decades to a more 'aggressive' Protection of Minorities provisions. In that progress, two documents are outstanding.

- 1992 European Charter for Regional and Minority Languages (ECRML)

In 1992, firstly, a generous step was taken by the CoE in order to protect minority identities based on languages and survival. The European Charter for Regional and Minority Languages (ECRML) came into force by ratifications of six States (Croatia, Finland, Hungary, Liechtenstein, Netherlands, Norway) on March 1st, 1998 - by April 2006, twenty countries have ratified the ECRML (yet, only Luxembourg added no reservations nor declarations upon the Charter) while twelve countries have only signed it-[95]. The legally binding Charter, with particular references to the CSCE Helsinki Final Act and Copenhagen Meeting, lists the purposes of its opening to the signature in the Preamble section by stating that "the

[95] The information about the signatory status to the ECRML is obtained from the World Wide Web: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=148&CM=8&DF=4/17/2006&CL=ENG

protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the *maintenance and development of Europe's cultural wealth and traditions*; that the right to use a regional or minority language in private and public life is an *inalienable right* conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms; [s]tressing the value of *interculturalism* and *multilingualism* and considering that the protection and encouragement of regional or minority languages *should not be to the detriment of the official languages* and the need to learn them; [and r]ealising that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of *democracy and cultural diversity* within the framework of *national sovereignty and territorial integrity*."[96] It must be noted that the term *linguistic minorities* do not read in the Charter, noting not to activate or cause an ethnic/linguistic separation within nations[97]. Still, in a nutshell, it might be readily argued that the very first signs of 'multi-culturalist' approach to the minorities issue had their roots in the ECRML.

The Charter defines a regional/minority language in its Article 1(a), as "(i) traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller then the rest of the State's population; and (ii) different from the official languages of that State."[98] The governments, in that sense, are bound to the responsibilities for "(a) the recognition of the regional or minority languages as an expression of cultural wealth; (b) the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question; (c) the need for resolute action to promote regional or minority languages in order to safeguard them; (d) the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life; (e) the maintenance and development of links, in the fields

[96] CoE Document (1992) *European Charter for Regional or Minority Languages.* Strasbourg, 5.XI.1992, Preamble, paragraphs 3,4,6,7. Taken from the World Wide Web: http://conventions.coe.int/treaty/en/Treaties/Html/148.htm
[97] CoE Document (1998) *Explanatory Report, ECRML.* ETS No. 148, paragraph 17.
[98] CoE Document (1992) ibid, Article 1(a).

covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages; (f) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages; (g) the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire; (h) the promotion of study and research on regional or minority languages at universities or equivalent institutions; [and] (i) the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States."[99]

Although the responsibilities of the signatory parties are quite extensive; when it comes to the control mechanism of the Charter, the document has particular hurdles in terms of the inability of individuals or states to serve official complaints about the stated provisions and of the highly political character of the final evaluating body, the Committee of Ministers of the CoE. Nevertheless, the ECRML constitutes the most comprehensive document about the regional and minority languages in the Continent and grants severely significant rights and provisions to the persons belonging to certain minority groups speaking 'rare' languages.

Following up to the Declaration of the Heads of State and Governments of the member States of the Council of Europe adopted in Vienna on 9 October 1993, an Ad Hoc Committee of Experts on Minorities (CAHMIN) was established by the CoE. With respect to their 1994 Draft, the Framework Convention for the Protection of National Minorities (FCPNM) came into force in 1998. By 2006 thirty-eight countries have ratified (though, sixteen of them served either declarations or reservation upon the document) the Framework Convention while three countries (Belgium, Greece and Luxembourg) have only signed it[100].

- 1995 Framework Convention for the Protection of National Minorities (FCPNM)

[99] ibid, Article 7(1).
[100] The information about the signatory status to the FCPNM is obtained from the World Wide Web: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=8&DF=4/17/2006&CL=ENG

The FCPNM is the very first (and still only) multilateral and binding document in terms of protection of *national minorities*. Yet, as its name also addresses, the Convention is a framework, direct implication of which is not yet due; instead, the related government installations or regulations are the sole means for the FCPNM to come into existence. The document borrows the term *national minorities* from the wording of the Article 14 of the ECHR[101]. However, unlike the ECRML document that defines the regional and minority languages, the FCPNM does not involve a proper definition for the term *national minorities,* which has resulted in the fact that several countries declared reservations including *their own* national minority definitions -such as, Austria, Denmark, Germany, Poland, Sweden- whereas Liechtenstein, Luxembourg and Malta declared *no* national minorities residing in their own territories.

The main aim of the document is stated in the preamble that "the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent; a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity; the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society; [and] the realization of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State."[102] Throughout the articles, furthermore, Protection of Minorities are stated as the fundamental part of the human rights and freedoms (Article 1) and the rights granted are both regarded as of "individual" characteristics (Article 3(a)) and enhanced to be exercised "in community with others" (Article 3(b))[103]. Hence, following the UN documents previously analyzed, the European understanding of the minority rights has the status of individual rights with a collectivist dimension.

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[101] CoE Document (1998) *the Framework Convention for the Protection of National Minorities and Explanatory Report H(95)10.*
[102] CoE Document (1995) *Framework Convention for the Protection of National Minorities.* Strasbourg, 1.II.1995. Preamble, paragraphs 6, 7, 8, 9.
[103] ibid, Articles 1, 3(a), 3(b).

From the Article 4 to 18, the FCPNM lists the responsibilities of the States in terms of Protection of National Minorities, all of which are quite similar to the responsibilities named under the ECRML document. Accordingly, not only the protection of languages, religions, traditions, customs and cultures of national minorities are under State responsibility, but States are also charged to develop and encourage all differences belonging to national minorities. What distinguishes the FCPNM is that, with Article 21, the Convention also holds national minorities liable to the States by point out that "[n]othing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States."[104]

There are a few criticized points in the FCPNM related to political rights and control mechanism. First, political and administrative rights of national minorities are blamed to have limited importance in the Convention, only within Article 15[105]. Second, the weakness of the control mechanism adjusted to the FCPNM is very similar to that of the ECRML. However, the FCPNM puts additional Experts Committee (DH-MIN) to the controlling staff as well as already existing Committee of Ministers of the CoE and the States' annual reports to be evaluated. Yet, no individual applications are accepted under the Convention.

III. 2. b. Organization for Security and Co-operation in Europe (OSCE)

As it is pointed out earlier, the CSCE took the leading steps for the changing environment for the European minorities by Vienna Document in 1989. The Conference, moreover, took this lead into further progress and released several important publications and adopted considerably differing control mechanisms to the relevant changes in the early 1990s, specifically regarding minorities issues.

The Copenhagen Document of 1990 became the reconfirmation of the increasing national group rights and Protection of Minorities. The Conference held between 5th and 29th of June, 1990, had three main motivations that emanated from the fall of Communism in the Eastern Europe; fundamental human rights, pluralist democracy and the rule of law[106]. In Chapter IV, Articles 30 to 40, minority issues

[104] ibid, Article 21.
[105] Kurubaş, Erol (2004) ibid, pg. 71.
[106] Arsava, A. F. (1993) ibid, pg. 95.

are examined thoroughly. To summarize, the signatory states agree upon that "the precondition for perpetual peace among states and minorities is democratic government with the rule of law; anti-discrimination is a prerequisite for all minority arrangements; national minorities must be entitled not to be assimilated; governments must create opportunities to create and develop minorities; an arrangement must be done about education of mother-tongue languages; minorities must be entitled to public rights; all minority rights must be along with national unity principle; states are encouraged to participate into both related international agreements and the CoE Conferences; and special rights must be granted to Roma people."[107] As the final point, *transparency* was emphasized in minority regime throughout the Continent.

The CSCE also published the Charter of Paris for a New Europe in 1990. The importance of the Charter is to officially end the discrepancy between two security pacts, NATO and Warsaw Pact. However, the combined memorandum declares the policy of the CSCE to protect the ethnic, linguistic, religious cultures of national minorities with the close cooperation of participatory states and NGOs[108].

The Document of Geneva in 1991 does not go much beyond the Copenhagen Document in terms of minority rights. However, the ground upon the role of states in minority issues reaches its European definition by the third paragraph of the Chapter III, stating that "[i]ssues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do *not* constitute exclusively an internal affair of the respective State."[109] The paragraph indicates the tendency in definition and recognition of minorities throughout the Europe from 19th century's state dominance towards international mastery over minority-related concerns. In other words, Protection of Minorities or minority rights were no longer solely of 'internal affairs of a state' after the CSCE Geneva Document for the participatory states.

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[107] CSCE Document (1990) *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.* 5-29.June.1990. Chapter IV. Articles 30-40. Taken from the World Wide Web: http://www.osce.org/documents/odihr/1990/06/13992_en.pdf

[108] CSCE Document (1990) *Charter of Paris for a New Europe.* November, 1990, Paris. Taken from the World Wide Web: http://www.osce.org/documents/mcs/1990/11/4045_en.pdf

[109] CSCE Document (1991) *Report of the CSCE Meeting of National Minorities.* 1991, Geneva. Chapter III, Par. 3. Taken from the World Wide Web: http://www.minelres.lv/osce/gene91e.htm

After the complementary 1991 Document of Moscow, the CSCE established the High Commissioner on National Minorities by 1992 Helsinki Document. The description of this new set-up is pointed out as "[t]he Council will appoint a High Commissioner on National Minorities. The High Commissioner provides 'early warning' and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into a conflict within the CSCE area, affecting peace, stability, or relations between participating States. The High Commissioner will draw upon the facilities of the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw."[110] As explanatory, the control mechanism of the CSCE was altered from human-dimension of early years to High Commissioner of 1992-onwards[111]. The purpose under this transfer was to establish an early warning mechanism and a mediator status, reporting to the High Council[112].

With the converted status from a conference to an organization, OSCE continues to be involved in Europe wide minority issues with recommendations and guidelines; such as, the 'Hague Recommendations regarding the Education Rights of National Minorities' in 1996, the 'Lund Recommendations on the Effective Participation of National Minorities' in 1999, and the 'Guidelines on the use of Minority Languages in the Broadcast Media' in 2003. Though non-binding, the CSCE/OSCE documents are critical in European understanding towards minorities since, as it will be seen below, there is (or at least should be) a close cooperation among the CSCE/OSCE with the EU and the CoE, and the recommendations are of key importance for the minority development in Europe.

III. 2. c. Other Institutions

The other European institutions working on the Protection of Minorities or minority rights are mainly set up by Non-Governmental Organizations (NGOs) or Inter-Governmental Organizations (IGOs). These are financially supported by the CoE, the EU and European governments. The main duty of these organizations is to report on the current minority issues to the Committee of the CoE, namely the

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[110] CSCE Document (1992) *Helsinki Document 1992- Challenges of Change*. Chapter I, Article 23. Taken from the World Wide Web: http://www.osce.org/documents/mcs/1992/07/4046_en.pdf
[111] Kurubaş, Erol (2004) ibid, pg. 77.
[112] Alpkaya, Gökçen (1996) *AGİK Sürecinden AGİT'e İnsan Hakları.* İstanbul: Kavram Yayınları, pg. 124-132.

Committee on Experts on Issues Relating to the Protection of National Minorities (DH-MIN), and to the Advisory Committee during the investigations upon the FCPNM. Five most efficient examples might be given as;

i) *Federal Union of European Nationalities (FUEN)*: Being the oldest minority institution in Europe (1949), the FUEN aims to protect the identities, history, languages, and cultures of *European ethnic minorities* by peaceful means. The Union also supports the installation of each minority-related law into the States' national regulations[113].

ii) *Minority Rights Group International (MRG)*: With an advisory status to the ECOSOC - UN, the MRG has the purpose to protect ethnic, linguistic, and religious minorities' rights. The Group works on informative basis, by releasing reports, letters and guides and informing regions about international minority standards[114].

iii) *European Center for Minority Issues (ECMI)*: Famous with its immense library, the ECMI engages in consulting, informing, documenting, doing research, organizing international meetings and conferences, and supporting attempts to establish multilateral standards for the European minorities[115].

iv) *European Academy for Ethnic Minorities and Regional Autonomies (EURAC)*: Established by the Bozen/Bolzano Foundation, the Academy is an educational institution, specialized upon the fields such as language and law, bilingualism, autonomy modeling, business management among cultures and regional autonomies. The location of the Academy also worth mentioning since it is the center at convergence of three languages and cultures (German, Italian and Laden), namely the South Tyrol of Italy[116].

v) *Centre of International Ethnic Minorities and Nations (CIEMEN)*: 1975-Catalan initiative has enhanced its perspective and works as a

[113] Taken from the World Wide Web: http://www.fuen.org
[114] Take from the World Wide Web: http://www.minorityrights.org
[115] Taken from the World Wide Web: http://www.ecmi.de
[116] Taken from the World Wide Web: http://www.eurac.edu

platform for European minorities to be recognized in the international arena[117].

Before passing to the third actor, the EU, in the Protection of Minorities and minority rights scene in Europe, a current picture might be drawn in order to see what heritage the EU is transplanted into. As documents and conferences of both the CoE and the CSCE/OSCE demonstrate, the general perspective and attitude in Europe towards minority issues have been drastically changed since the end of the Cold War and the fall of the Communism in the Eastern part. Earlier tendencies of examining minorities solely under the Human Rights field or timid approach to the rights to be granted as well as hesitant definitions have been replaced with audacious attempts to set Europe-wide standards for the minorities. Although the intention is daring, however, the implementation side is still questionable. The ECRML and the FCPNM of the CoE, representing the focal reference points in the minority development of the 1990s, might be considered weak in terms of definitions. The ECRML defines the regional and minority languages but do not cover *linguistic minorities* in the text whereas the FCPNM grant loaded rights to the *national minorities* without a proper definition of them. Moreover, although both documents are of binding-status for their signatories, the means to implement this legality or how to control the implementations, if any, are arguable. Furthermore, very high percent of the signatory states prefer putting reservations or declaring their own definitions for the minorities instead of leaving International Law decide on behalf of them. The CSCE/OSCE documents, though including more precise and open wording, on the other hand, do not carry any legally-binding status due to non-binding character of the entity. Besides, the control mechanism of the CSCE/OSCE documents is vacant to dramatic changes and, by virtue of the legality issue again, might be readily referred as fragile. As a common characteristic, both CoE's and CSCE/OSCE's control mechanisms are under high political influence. This influence might also be seen in a way that despite current universal tendencies rejects its necessity; the European understanding puts *citizenship* as a precondition of a legally protected minority regime[118]. The presently political side of the minorities issue

[117] Taken from the World Wide Web: http://www.ciemen.org
[118] Thiele, Carmen (1999) ibid. pg. 21-22.

aside, the impact of temporary politics on the control mechanism gives serious damage to the whole regime.

It may be epitomized that minorities development in Europe has a satisfactory procedural development though is feeble at the implementing side. A possible reason might be borrowed from the liberal thought. Although the neo-liberal thinking in 1990s is favoring to grant minority rights, as Kymlicka points out, there are two main stipulations in the context; first, the limit of these rights have to be drawn by state politics as far as the persons belonging to minorities remove any of their disadvantages and weaknesses with respect to majority's rights; second, inner limitations that are put by minorities themselves should not damage sub-minorities within minority groups[119]. These limitations, as well as the nation-states' political concerns, create obstacle to full-implementation of the minority rights in the Continent. Moreover, despite current developments, minority rights are still considered as a part or complementary to the Universal Human Rights regime, paradoxically carrying more of a regional approach in installation. Furthermore, since nationalistic principles, such as, sovereignty of states, integrity of the land, immunity of the borders and national security, still play crucial roles in the fate of the minorities; the minority rights represent a *reel-politik*, in which considerable improvements can only be acquired when the interests of states converge.[120] Schermerhorn, in his 1964 article, proves this European tendency of nationalism as a tradition by quoting: "… it seems fair to say that [European] minority problem has been a *nationality* problem."[121]

Europe, in that sense, under the analyses of the CoE and the CSCE/OSCE, represents such a minority regime that stages an increasing attention after the Cold War, ascending linguistic and cultural (though not political) concerns, both individual and collective understanding, re-location of nation-states upon minorities in the international system[122], and terminology changes[123]. The deficiency of the regime, however, turns out to be lying beneath political nature, non-detailed

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[119] Kymlicka, Will (1996) *Multicultural Citizenship: A Liberal Theory of Minority Rights.* Oxford Political Theory Books. UK: Oxford University Press, pg. 234-235.
[120] Kurubaş, Erol (2004) ibid, pg. 87-88.
[121] Schermerhorn, R. A. (1964) "Minorities: European and American" in *Minorities in a Changing World.* Barron, M. L. (ed.). New York: Alfred . Knopf, pg. 8.
[122] Özdek, Yasemin (2000) *Uluslararası Politika ve İnsan Hakları.* Ankara: Öteki Yayınevi, pg. 315-316.
[123] Kurubaş, Erol (2004) ibid, pg. 88-90.

terminology, unwillingness of the States, narrow definitions, incompatibility of the new-born regulations to the prevailing state laws, and implementation process[124].

III. 3. The Era of the European Union (EU)

1990s recognized the entrance of a third actor into the European minority scene. After that, the EU has been regarded as one of the critical entities in the international minorities issue. In search for a support to the main argument, this study will be particularly dealing with the development sustained in the EU's minority perspective until recently. Yet, before the descriptive analysis with practical occurrences, a more analytical approach will be firstly employed to reply why the EU has been interested in minority issues.

The pioneering reason of the EU's interest over minorities converges with the same logic of the increasing trend of minorities matters through the whole Continent, with the CoE and the CSCE/OSCE: the end of the Cold War and the collapse of the Soviet regime. Undoubtedly, the minority problems did not suddenly appear in the Eastern side of Europe right after these great events. As Liebich argues, minority issues were not completely ignored in the Communist era either; yet, with brand new liberal movements for the East, the proper solution would be no longer found in the fields of 'assimilation' or 'suppression'[125]. The redistribution of sovereignty in the CEECs or in the former-USSR did not solve minority problems and by the collapse of Communism, - what Preece called - 'national reawakening' of the CEECs, began spreading even greater troubles over longer distances; such as, ethnic conflicts in Yugoslavia, political disputes between Hungary and Romania or Slovakia, and Russian minority conflicts in Ukraine, Bulgaria and Serbia[126]. The obvious tension next to its recent boundaries made the EU actively participate in an integration process with the former-Communist states. In order to reduce the tension, the EU contributed considerable economic and social help to the territory. In other words, minority issues became one of the focal points in *external* EU relations beginning with 1990s, particularly in the practice of enlargement as the EU foreign policy.

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[124] ibid, pg. 90-92.
[125] Liebich, Andre (2002) "Ethnic Minorities and Lon-Term Implications of EU Enlargement" in *Europe Unbound: Enlarging and Reshaping the boundaries of the EU.* Zielonka, J. (ed.) Routledge Advances in European Politics. UK: Taylor & Francis Group, pg. 121.
[126] Preece, J. Jackson (1998) "National Minorities and the International System" in *Political Studies.*Vol. 18. No. 1. UK: Blackwell Publishers, pg. 20.

The second reason is born out of a mutual necessity. As Czergo and Goldgeier provide, the EU might be the most prominent mean to handle the minority related problems (either ethnic, linguistic, religious, or national) in the CEECs; hence, its provisions did not only cover the minorities issues but set up relevant values, including democracy, human rights and the rule of law, so as to reach out to the farthest and widest points[127]. For the CEECs' perspective, *liberalization* process that those states were going through at that time *per se* necessitated EU's liberal values to be absorbed inside. In other words, the EU both willingly participated in the minority problems of the Eastern Europe, at the same time, was naturally called up into there.

A third reason might be found in the current political conjuncture. One of the practical aims of the EU is to establish a supranational entity with diverse identities of its citizens, -a principle called 'unity in diversity'-[128]. Towards this aim, the EU insists on its mission to bring out its fundamental values, including democracy, human rights, and the rule of law, to each and every citizen of the supranational entity without regards to any identity-based differences. The loyalty of citizens, which was mandatory for a better supranationality, might be achieved with the equal treatment taken by the EU. Hence, respect to and protection of minority rights has been frequently pronounced in the external agenda since the early 1990s. Long-time being planned, 'European citizenship', in that sense, will require closer attention once it is implemented by either the Constitution or another mean. To put it another way, with the granted EU citizenship, the status of both national differences and minority-based differences will undoubtedly be altered, if not diminished at all.

The critical point in the EU's minority analysis is rooted by dichotomies. Looking at the logic lying behind the appearance of the EU in the international arena, a holistic perspective might be bluntly found in which both a supranational and a transnational conversion occur among and within nation states, by the help of established supranational institutions and absorbed values - including democracy, the rule of law, respect for diversity, human rights and so forth -. Such transnational shift, in a sense, also includes a supranational identity and a new way of governance

[127] Csergo, Zsuzsa & Goldgeier, J. M. (2001) "Virtual Nationalism" in *Foreign Policy.* Issue: 125 (Jul/Aug 2001), pg. 76-78.
[128] EU Document (2003) *More Unity and More Diversity: The EU's Biggest Enlargement.* Manuscript completed in November 2003. No. NA-47-02-389-EN-C.

formations, which are subject to reconsideration and an update with each new enlargement. The first dichotomy, then, lies in whether the EU is involved in the minorities issue by virtue of the prolongation of this holistic approach or the Union represents only another international actor in the same vein with the CoE or the CSCE/OSCE. Simply put, what role is played by the EU in today's international minority regime?

In order to find EU's own position in this scale, three theoretical concepts, Multiculturalism, European Identity and Regionalism, shall be evaluated.

III. 3. a. Multiculturalism

Put forth by scholars of previously colonial states, like Canada and New Zealand, which are also exposed to massive migration from all around the world, multiculturalism was born as a counter-attempt to 'nation-states building' upon supposedly homogenous identities of citizens. Though not having a universally accepted definition, the term roughly refers to a policy approach to manage cultural diversity in multi-ethnic, multi-religious, multi-traditional, multi-lingual, and broadly multi-valued societies, based upon mutual respect and tolerance. By the increasing popularity after 1960s, multiculturalism has become a demanded terminology in *globalization* studies. McGovern, for instance, considers the term as the "cultural consequence of multinational capitalism"[129]. Kurubaş, on the other hand, regionalizes McGovern's argument and claims that the European integration raises *de facto* multiculturalism by virtue of the free movement of goods, capital, services and especially people[130]. This de facto multiculturalism in the EU, hence, favors the protection and creation of differences in society, and supports the very first argument that positions EU's interest over minorities within the transforming nature of EU's holistic approach: the more diverse the EU, the better is for the European integration[131]. Therefore, speaking in multicultural terminology, it is quite logical and understandable why the EU is interested in minority issues and why to regulate some provisions upon the subject. Oran, furthermore, argues that multiculturalism brings also about self-government rights, ethnic/religious rights and special

[129] McGovern, Mark (2000) "Irish Republicanism and the Potential Pitfalls of Pluralism" in *Capital & Class*. Issue 71 (Summer, 2000). pg. 133-161.
[130] Kurubaş, Erol (2004) ibid, pg. 177-180.
[131] Crowder, Georger (1994) "Pluralism and Liberalism" in *Political Studies.* No. 42 (1994), pg. 300.

representation rights upon the table, which are critical in minority studies under the perspective of 'democracy' and 'integration', both surely favored by the EU[132].

However, multiculturalism, as a concept, has several deficiencies. The main discussion, for instance, is evolved around whether multi-culturalism is a transnational phenomenon (occurred within states) or a post-national (occurred beyond states) one. If it is to demote this argument into EU terminology, and if it is accepted that EU grasps both supranational and national transformations at the same time (with or without different pace), a 'common' position taken by the EU decision-makers and, at the same time, national arbitrators will be needed since each new enlargement increases the stress upon the wording of 'multi' in multi-culturalism. Though the level of diversity may seem only raised within the boundaries of the EU – while the demographics of the Member States stay the same -; with various 'common policies', like free movement of workers, even in the medium-run, nation states' demographics (hence, the level of diversity) become about to change. Besides, another problem might occur within increasing 'group tendencies' - over reduced 'individualism' – by virtue of multiculturalist politics. These, on the near future, may result in clash of interest between new-born groups, which might damage the whole national and European system seriously. In the European perspective, another weak point also emerges in the context of citizenship. Multiculturalism is basically a public policy for 'citizens'; hence, neither immigrant workers nor the original people, like the Roma, would easily find their proper places in the multicultural EU system. Leaving 'citizenship' decision to nation states is also controversial if a 'common' multi-culturalism is aimed to display. Moreover, accepting fundamentalism as the nemesis of multi-culturalism, any fundamentalist national policies of the member states seem also problematic for the EU side. Overall, it might be underlined that multi-culturalism is only a dimension, though important, for the EU's concern over minorities issue. In other words, it can not be satisfactory to link the EU's interest to only one newly-born theory.

III. 3. b. European Identity

As it was pointed out earlier, the EU is becoming a supranational entity, in which multiple identities, different cultures and variety of traditions cohabit.

[132] Oran, Baskın (2001) ibid, pg. 92.

Whether or not the EU has to weaken the national identities in order to praise its supranational identity, it is expected that the EU will search for loyalty to its supranationality through all citizens. In other words, new *cohesion ideology* of the EU will (or has already) become based on the creation of European Identity[133]. In that sense, minorities gain importance since they might readily be considered as main resources of the sought loyalty within the supranational EU by virtue of their suppressed and excluded nature in society. Moreover, if the EU aims at creating a new form of pluralist community through transnationalism, minorities might also play an assisting role in such a process.

Approaching from minorities' perspective, heterogeneous, pluralist and variety-favoring EU must be the best possible scenario for the survival of their identities, in turn. Hence, there is an unfailing mutual (and natural) relationship between the EU and minorities, regardless of how they are defined. This relationship in the most expeditious terms might be realized under *transnational (*also referred as *multicultural, differentiated* or *post-national) citizenship*. However, the European citizenship is a severely critical issue as it can be noticed in the relevant surveys done by *Eurobarometer*. In the most recent (2000) survey about how Europeans see themselves, the results indicate that Europeans (members of EU-15) are %50 reluctant to admit that all European individuals share a common culture. Furthermore, a considerably little percentage (virtually 3-4%) of the participants identify themselves only with European identity while 45-50% of them identify themselves solely with their own nationalities. More than %50, however, feels for both their own nationalities and Europeanness. Percentage of 'feeling attached to Europe' shows also similar results with the previous[134]. As the consequences readily demonstrate, the EU is expected to come a long way to establish even a proper citizenship policy; thus, the European identity concept is yet only a motive for involvement of the minority issues. This study will shed more light upon the citizenship issue on the following pages.

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[133] Husband, Charles (2000) "Recognizing Diversity and Developing Skills: the proper role of Transcultural Communication" in *European Journal of Social Work*. Vol. 3. Issue 3 (November 2000), pg. 225-234.

[134] The results are obtained by *Standard Eurobarometer (2000)* from the World Wide Web: http://europa.eu.int/comm/publications/booklets/eu_documentation/05/txt_en.pdf

III. 3. c. Regionalism (Europe of Regions)

Another value that the EU has been built upon is the *subsidiarity* principle, as stated in the Maastricht Treaty, "[i]n areas which do not fall within its exclusive competence, the Community shall take action, in accordance with *the principle of subsidiarity*, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community."[135] If subsidiarity principle is evaluated within minorities context, probable arguments of proprietary and regional administrations become also apparent. The arguments are inescapably lowered down to a 'sub-national' level and minorities are entitled to 'decentralized authorities'. Bernard, for instance, argues that the EU with its subsidiarity principle might represent the most significant historical opportunity to provide the necessary balance between central governments and minorities (decentralization)[136]. However, this principle brings out a paradox between the unity and integrity of sovereign states and the separatist aims of, for instance, the Scotch, the Welsh, the Pays Basque or the Catalan nationalists in relevant nation states. Hence, a further balance between the States and minority representatives should be provided at the EU level, as well. EU's position, in that sense, is automatically carried from 'identity-related' policies to 'governance' discussions. Yet, a direct reference to minorities matters can not be explicitly found in the governance context.

Written or implicitly referred in the prior documents of International Law, the primary principle of international agreements is to protect the integrity and sovereignty of the states. Hence, the EU can not, understandably, take a radical step forward to support separatist arguments of any minority groups, or any arguments regarding SDR. However, regionalist tendencies might result in the weakening of centralist nation-state structures; thus, assist to the development of the participatory democracy and social integration; values to which the EU also attaches itself[137]. Therefore, a sound balance between these two options should be maintained by the EU by controlling the method of 'governance' between central government and

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[135] EU Document (1992) *Treaty on European Union- Maastricht.* Provisions amending the Treaty establishing the ECC with a view to establishing the EC. Title II. Article G-B-5; Article 3b. Taken from the World Wide Web: http://europa.eu.int/en/record/mt/title2.html

[136] Bernard, Nicolas (1996) "The Future of European Economic Law in the Light of the Principle of Subsidiarity" in *Commom Market Law Review.* Vol. XXXIII., pg. 635.

[137] Kurubaş, Erol (2004) ibid, pg. 176.

regional authorities. Nevertheless, it must be noted that so far, no particular reference of minorities to the method of any governance technique has been made by the Union.

Analysis of these three concepts brings about an ample answer to the dichotomy question; which lied in to explain whether the Union is involved in the minorities issue as a natural bound to its 'holistic' approach in the conversion of states in both supranational and transnational terms or the involvement is not necessarily motivated by systematic evolution of the EU but instead the EU constitutes only another European actor - by virtue of its economic power mostly – in the European minorities context. All multiculturalism, European identity and regionalism are naturally developed concepts that in certain dimensions fit to the EU progress yet, in other dimensions, do not necessarily comply with EU practices. Hence, it is, at that point, not proper to attach the EU's holistic motives to the context of minorities.

Having examined the attempts to conceptualize the EU's involvement in the Protection of Minorities and minority rights, the study will open up a more practical approach to the very same topic. This will hopefully bring about the second dichotomy analysis regarding the EU's position. As popularly phrased in the agenda of the Union, the EU mostly prefers to establish 'common' policies for its 'internal' legal settings. In other words, for a policy to be *internally* driven by the Union, it has to be absorbed *commonly* by all Member States and, only once it is absorbed, a policy *binds* the States in legal terms. Hence, the question to be examined is whether or not the 1990s constituted a turning point for the EU to establish a *common minority regime* inside. In order to find a proper answer, on the following will demonstrate firstly the internal-legal background of the Union in terms of historical achievements for minority-related issues; then, secondly, the external (especially enlargement) side of that particular story.

III. 3. d. The European Union's Legal Settings

The EU's minority-involvement, as well as the other aforementioned European institutions', reaches to a dramatic cornerstone in 1990s. Hence, it will be meaningful to separate the historical analysis into two parts along the year 1990.

- ***Before 1990s;***

Being the grand root of the EU Treaties, 1951 Treaty of Paris on Coal and Steel Community (ECSC)[138] hardly mentions even human rights by virtue of the economic character of the new European entity without visible political integration tendencies at that time. The following 1957 Treaty of Rome - establishing the European Economic Community (ECC) -, on the other hand, slightly refers to two basic human rights in Europe; first, the freedom of movement for workers and self-employees (Articles 48 to 51), and second, the prohibition of all discrimination on grounds of nationality or gender (Articles 6 and 119)[139]. Yet, neither of the early establishing treaties refers to a minority related subject particularly.

The legal turning point in fundamental rights served and protected by the EU was the European Court of Justice's (ECJ) case-law, indicating that "[i]n safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to Member States… Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law"[140]. The recognition of fundamental rights in the European Community (EC) law led the European Parliament (EP), the Council and the Commission to sign a Joint Declaration in 1977, guaranteeing to respect "… fundamental rights as derived (…) from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms"[141]. After this solid link had been set up between human rights and EC policies, in 1979, a further step was taken by the EC to access to the ECHR in a Memorandum[142].

1987 Single European Act (SEA) became the first legal treaty that clearly and explicitly mentioned the protection of human rights, with references towards the

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[138] EU Document (1951) *Treaty Establishing the European Coal and Steel Community (ECSC),* signed on 18.IV.1951 in Paris, entry into force on 23.VII.1952 and expired on 23.VII.2002. Taken from the World Wide Web: http://europa.eu.int/scadplus/treaties/ecsc_en.htm

[139] EU Document (1957) *Treaty Establishing the European Economic Community (ECC),* signed on 25.III.1957 in Rome, entry into force on 1.I.1958. Taken from the World Wide Web: http://europa.eu.int/scadplus/treaties/eec_en.htm

[140] ECJ Document (1974) Case 4/73, *Nold v. Commission* [1974] ECR 491, paragraph 13.

[141] EU Document (1977) *Joint Declaration by the EP, the Council and the Commission.* O.J. C 103, 27/4/77 (Article 1).

[142] EU Document (1979) *EC, Accession of the Communities to the ECHR and Fundamental Freedoms.* April 1979, EC Bulletin, Supplement 2/79.

Constitutions of Member States, the ECHR and the UN Charter[143]. However, the basic problem about pre-1990s was that there was no explanatory text or the formula for what those rights were and how to protect them. Moreover, there was no particular concern for the minority rights in the EC context, either. The only attempt, though non-binding, was the EP's 1989 Declaration of Fundamental Rights and Freedoms, which included a comprehensive list of fundamental rights with a slight reference to non-discrimination, involving against 'national minorities'[144]. Indeed, in pre-1990s period, the EP represented the sole EC organ that particularly dealt with human and fundamental rights, including minorities, in a broad sense.

- After 1990s;

> The Protection of Minorities is ensured in the first place by the effective establishment of democracy. The European Council recalls the fundamental nature of the principle of non-discrimination. It stresses the need to protect human rights whether or not the persons concerned belonging to minorities. The European Council reiterates the importance of respecting the cultural identity as well as rights enjoyed by members of minorities which such persons should be able to exercise in common with other members of their group. Respect for this principle will favor political, social and economic development.[145]

By the above commitments, stated in the Declaration on Human Rights in 1991 Luxembourg European Council Meeting, the EC clearly began 1990s with the political recognition over minority rights. However, it must not be overlooked that even the wording of such a Declaration incessantly refers to those 'common' values of the formation of the EU, including *democracy*, *non-discrimination* and *human rights*. In other words, the minority rights or the Protection of Minorities can still not avoid being cited within the boundaries of broader concerns, specifically the Human Rights perspective. Additionally, a further determination towards even such a 'light' wording seems to be disappearing in the following documents.

That 1990s are also regarded as the Maastricht or post-Maastricht era exemplifies how significant the Treaty of Maastricht (also known as the Treaty

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[143] EU Document (1987) *Single European Act.* O.J. L 169, 29/6/87, (the Preamble).
[144] EP Document (1989) *Resolution on the Declaration of the Fundamental Rights and Freedoms in 28 Articles.* 12.IV.1989. 16:1, 230-1. Taken from the World Wide Web: http://www.europarl.eu.int/factsheets/2_1_1_en.htm
[145] EU Document (1991) *Declaration on Human Rights (Luxembourg European Council 28 and 29 June).* EC Bulletin: 6-1991. Paragraph 7. Taken from the World Wide Web: http://europa.eu.int/comm/external_relations/human_rights/doc/hr_decl_91.htm

Establishing the European Union- TEU) is for the fundamental rights development in the EU genre.[146] The (new) Article 6 of the TEU directly indicated the founding principles of the EU as "liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law"[147]. Indeed, the TEU did not contain an explicit reference to minorities. Though, some experts interpreted the (ex) Article A's wording that might be extended to minorities, stating "… a new stage in the process of creating an ever closer union among the peoples of Europe (…) in a manner demonstrating consistency and solidarity"[148]. A further minority-based implication was made upon the (new) Article 151 of the EC Treaty, reading as "[t]he Community shall contribute to the flowering of the cultures of the Member States, while respecting their *national and regional diversity* and at the same time bringing the *common cultural heritage* to the fore."[149] In addition to the term 'regional diversity' in the Article, the other TEU articles including anti-discrimination provisions -such as (new) Articles 7, 12, 13 and 49- were also considered 'indirect' implications of Treaty-based minority references.

The Council Regulations 975/1999 and 976/1999 could be encouraging in terms of financing and administrating for promotion of minority rights, yet they became considered under the umbrella of promoting Human Rights, once again[150]. The Article 21 of the EU Charter of Fundamental Rights, officially acknowledged in 2000 Nice Summit, on the other hand, specified the non-discrimination bases, reading "[a]ny discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, languages, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited"[151]. Yet, it was disappointing that the Charter had no binding legal force.

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[146] It should be noted that this study will evaluate the provisions of the TEU with substantial changes and revisions made upon in 1997 Treaty of Amsterdam.
[147] EU Document (1992) ibid, Title I. F. New Article 6(1).
[148] Estebanez, A. M. M. (1995) "The Protection of National or Ethnic, Religious and Linguistic Minorities" in *The EU and Human Rights.* Neuwal N. (ed.) International Studies in Human Rights. UK: Springer, pg. 133.
[149] EU Document (1992) ibid, Title II. G-D-37. Article 128(1). New Article 151.
[150] Pentassuglia, Gaetano (2001) "The EU and the Protection of Minorities: The Case of Eastern Europe" in *EJIC (2001).* Vol. XII. No. 1, pg. 8.
[151] EU Document (2000) *Charter of Fundamental Rights of the EU.* C 364/01. Article 21(1). Taken from the World Wide Web: http://www.europarl.eu.int/charter/default_en.htm

Overall, it might be concluded that the EU, although with an increasing emphasis on human right issues, has not yet prepared a binding legal ground for minority rights by its establishing treaties within its internal policies. There are two exceptions, though. The EP, firstly, constitutes the only actively participating EU institution into minority rights development, by the particular help of Sub-Committees, such as the Committee on Foreign Affairs, Human Rights and Security Policy and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs. As stated earlier, the EP's impact, though non-binding, plays a major role in the policy development in the EU, with the clear example of 1994 EP Resolution on linguistic and cultural minorities that formed the ground for the CoE's ECRML. Second exception for the internal legal ground on EU's approach to minority rights is the Commission's 2000/43 Directive. Being the primary binding text, based upon Articles 6 and 13 of the TEU (as consolidated in Amsterdam), the Directive takes a 'negative' approach towards discrimination in its Article 12, ensuring "... the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services."[152] Then, by the Article 13, the Directive applies its provisions to third country nationals, as well[153]. Along with Directive 2000/78 and 2000-2006 Action Plan to Combat Discrimination, Bell argues that the EU implies a tendency to reconcile freedom of movement for workers and new forms of governance with immigration and ethnic/national minority rights[154]. Yet, it is still difficult to say that even such a comprehensive directive ensures the equal treatment within minority-based differences.

III. 3. e. Minority Regimes in EU-15 Member States

As the above analysis indicates, the EU is severely lacking a comprehensive and complete legal ground for implementing a proper and 'common' minority regime

[152] EU Document (2000) *European Commission Directive 2000/43/EC* of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin., O.J. L 180, 19.VII.2000., pg. 22-26, Article 12.
[153] İbid, Article13.
[154] Bell, Mark (2002) *Anti-Discrimination Law and the EU.* UK: Oxford University Press, pg.81-82.

internally. The primary reason for that might be found in the positions of Member States, which in fact represent the challenging political nature of the whole minorities issue. In order not to confuse with especially critical CEEC enlargement, at that point, the positions of the so-called EU-15 - those countries that became members to the EU by 1995 - shall be explored first.

As might be obviously seen from the chart[155], there is a considerable variety in the signatory statuses of the EU-15 into the minorities-related international documents examined up to this point. The ICCPR usually is provided with ratifications without reservations except for the most reluctant countries, namely France and Greece. The ECHR and FCPNM, on the other hand, possess significant amount of ratifications: only Italy declares no additional arguments upon her ratification while other countries do not give up from reservations or declarations upon at least one of the documents. The status of the ECRML exemplifies –at best – an infamy since only Luxembourg attempts to ratify the Charter fully while all other states attach declarations. It must additionally be noted that all EU-15 countries are signatory parties, though with some reservations, to the CSCE/OSCE documents that are related to minority issues. The main reason lying behind this popular participation might be linked to the fact that those documents do not carry any legally binding power to its participants. The big picture, in a quick summary, displays disheartening conflict and dispute on the legal basis of the EU Members, in terms of minority rights. The consequence, in that sense, might be readily related to the different attributes of the national politics.

The EU-15 shall be divided into two sub-groups of countries, being the enthusiastic states and the reluctant ones in terms of approaching a supranational minority regime. Spain comes firstly, in the enthusiastic group, with the phrase "right to autonomy of the nationalities", taken from the Article 2 of the Spanish Constitution[156]. This right enables all 'people of Spain' to engage in administration within autonomous regions, including Basque, Catalan, Occitan, and Galician. In these regions, different languages are freely used in every aspect of life, as well as the Constitutional mother-tongue *Castilian*. Spanish model might be described as one

[155] For the whole list of the participation of the EU-15 to the related minority rights agreements, please refer to the Appendix-A.
[156] Spanish Constitution, Article 2. Taken from the World Wide Web: http://www.spainemb.org/information/constitucionin.htm

of the leading liberal figures in minority protection studies. Yet, the success of the model is questionable, especially after the recent demonstrations of the Catalan separatist politics, such as the *Terre Lluire* organization, which is recently commemorated with 'threats to internal security'[157]. Italy, secondly, applies a Constitutional recognition and protection towards its 'linguistic minorities' by the Article 6 of its Constitution, stating "[t]he Republic protects linguistic minorities by special laws"[158]. Accordingly, German, Franco-Provencal, Slovene, Friulian and Serbo-Croatian speaking Italians are accepted as minorities with certain privileged rights in terms of language. Yet, conversely, although Italy ratified all the ICCPR, the ECHR and the FCPNM documents without reservations, she has not yet ratified the ECRML, the only international binding document that grants minority rights about language. With a long tradition of ethnic terror, thirdly, the United Kingdom represents a sensitive policy particularly towards human rights and racism. The Irish, the Scotch, the Welsh, the Cornish and several other groups were granted certain rights and autonomies in the administration. However, as the CoE Committee of Ministers also put through in the 2002 Report, the United Kingdom is still invited to put a wider interpretation on minority issues[159]. In 2003, fourthly, the same Committee commented positively on Sweden's progression towards minority rights, with the recognition under both *linguistic* and *national* minorities; including, the indigenous Sámi, the ethnic Finns, the Thornedalls, the Jews and the Roma people[160].

When it comes to the second group of reluctant states of the EU-15, France constitutes the most evident example. The French Constitution Article 1 reads that "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion."[161] Besides, the only official language is accepted as French by the Constitution in the following article. Under these circumstances, the State of France does not recognize any 'minorities' in its country by virtue of the prejudice of

[157] Muro, Diego (2006) "A Basque Peace Opportunity", March 2006, from the World Wide Web: http://www.opendemocracy.net/conflict-terrorism/basque_3385.jsp
[158] Italian Constitution, Article 6. Taken from the World Wide Web: http://www.oefre.unibe.ch/law/icl/it00000_.html
[159] CoE Document (2002) Committee of Ministers, *Resolution ResCMN (2002)9 on the Implementation of the FCPNM by the United Kingdom,* 13 June 2002.
[160] CoE Document (2003) Committee of Ministers, *Resolution ResCMN (2003)12 on the Implementation of the FCPNM by Sweden,* 10 December 2003.
[161] French Constitution Article 1, taken from the World Wide Web: http://www.assemblee-nationale.fr/english/8ab.asp

national sovereignty, territorial integrity and long-living realization of minority rights by a collectivist- separatist- perspective[162]. In years, although the State loosened up some laws and regulations particularly in terms of the usage of different languages, the status of the migrants have been increasingly argued in the country. The recent protests and demonstrations in Paris are regarded being troublesome for the future of strict France policies by several authors[163]. Greece, as the closest follower of France's minority position, does not, either, recognize any ethnic or linguistic minorities in its territory, except for the Muslims in Western Thrace, mostly referred as Turks. The impact of the Treaty of Lausanne (for Greece) still prevails in the Greek approach to minorities, counting only 'religion' as the sole distinguishing factor between minorities and the majority. In his comparative study about the impact of EU policies upon Greece and Turkey, Tsitselikis admits that, due to the lack of EU internal law, Greece is continuing on its 'negative reciprocity' perspective on her minorities and has made only little improvement in mentioned prejudiced status[164]. The Netherlands, in spite of its general image of 'plural modern society', on the other hand, is reluctant about a standard minority regime due to two main reasons; first, during the nation-building process in the territory, large amounts of rights were given towards 'individuals' within different religious sects and these rights are still more comprehensive than many other EU countries', and second, only new migrants or foreign workers constitute 'different groups' in the country with more than religious-based discrepancies[165]. Still, it can be argued that the Netherlands do not *de jure* recognize minorities but give them rights on *de facto* basis[166]. Belgium, lastly, is unwilling to be a part of an international minority regime due to a totally different reason. The State of Belgium is already divided into four regions of three societies, the Wallonians, the Flemish and the German; the system usually referred as 'Consociationalism'. Therefore, the idea of additional differences, with respect to new minority rights, is not favored by the country.

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[162] Kurubaş, Erol (2004) ibid, pg. 261-266.
[163] De Beer, Patrice (2005) "France's Immigration Myths" (November, 2005) in the World Wide Web: http://www.opendemocracy.net/debates/article.jsp?id=6&debateId=28&articleId=3252
[164] Tsitselikis, Konstantinos (2004) "How far have EU policies affected minority issues in Greece and Turkey?" in the Birmingham University Online Press, the World Wide Web: http://www.euborderconf.bham.ac.uk/case/GreeceTurkey/Gr-Ttsitselikis.pdf
[165] Canatan, Kadir (1995) *Avrupa'da Müslüman Azınlıklar.* İstanbul: İnsan Yayınları. pg, 165.
[166] Kurubaş, Erol (2004), ibid. pg. 278.

Luxembourg, Finland, Germany, Austria, Ireland and Portugal, though with some individual differences and problems, usually prefer being a part of the international minority regime. Yet, a change in national politics may time to time alter their perspectives towards the issue, as well. Nonetheless, their positions are not as clear-cut as the abovementioned countries.

In a nutshell, it might be concluded that the EU could not yet manage to set up a *common* minority regime internally (and legally); and the main reason for this pessimist picture is mainly emanated from the varying positions of Member States in terms of minority understanding, hence directly linked to the national political concerns. In other words, national divergences are the main obstacle upon a further progression of the development of minority regime, which also questions the ability of the supranational formations with regards to minority rights or protection, in turn.

III. 3. f. The European Union External Policy- The Impact of Enlargement

Before analyzing the internal aspect of EU's minority concerns, which turned out to be quite problematic and feeble to construct a 'common' minority regime inside, this thesis benefited from a dichotomy that divided minorities issue into internal and external basis. This part will be particularly dealing with the latter.

In an imaginary diagram that represents the EU's so-called 'value-based system' with three dimensions - including Democracy, European identity and Human Rights and Fundamental Principles (Freedoms) -, Protection of Minorities and minority rights should be found in the latest dimension; i.e., the Human Rights part, coming along with *non-discrimination* and *treatment to third-country nationals*. The enlargement process represents a focal point in this diagram since it is evidently the major tool to spread EU's value-driven system over other countries. Brian White, for instance, considers the enlargement tool of the EU to be the best evidence of its role as a 'global actor', which aims to deploy the Union's establishing values that are chosen to maintain the peace in the Continent. However, he also calls attention to the limitations to this 'EU-as-actor approach'; because of, first, the EU's focus on outcomes rather than the process and, second, "persistent assumption that the EU can be appropriately analyzed and evaluated as a single actor" without any

governmental/national influences[167]. Examining the EU's attitude towards the CEECs after 1990 will hopefully bring about the position of this study in these limitations of the EU to constitute a global actor in minority issues in a way White indicated.

The end of the Cold War caught the EU in its transition period from a purely economic union towards a multi-pillar structure with political and security concerns. Hence, the tensions and disputes raised in the neighboring territories were naturally involved within the borders of the new-born Common Foreign and Security Policy (CFSP), after the Maastricht Treaty. As pointed out earlier, internally, the EU avoided establishing a *common* policy or a regime that would have particularly dealt with minorities issue; rather, preferred to handle minority-related cases under the field of Human Rights agenda. In other words, a probable threat to Western security, due to minority-related tensions, fell within a broader understanding of Human Rights, while minority threats to Eastern security were included in a *common* external policy.

Before going into how the EU handled the situation, it would be useful to begin with the brief introduction of the evolution of human rights and minority rights concerns in the post-Communist CEECs. Until the fall of the Berlin Wall in 1989, even the idea of a possible contact between two sides of the Continent kept to a minimum. For instance, 1972 Brezhnev proposal in terms of trade agreements with COMECON was refused by the EC and minimum communication were maintained until the second half of 1980s. Only with the leadership under Gorbachev in the USSR, some improvements appeared to become visible. In 1988, a Joint Declaration set up the official negotiations between the Community and the COMECON. Then, some bilateral contracts were signed with Poland, Bulgaria and Hungary, preambles of which made references to 1975 Helsinki Act in terms of human rights department[168]. Yet, it would be hard to claim that the minority rights - or in a broader sense human rights - references were wide in scope nor constituted a satisfactory basis for further arrangements.

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[167] White, Brian (2001) *Understanding European Foreign Policy.* USA: Palgrave Publications, pg. 28-29.

[168] Helgesen, Jan (1992) "Protecting Minorities in the CSCE Process" in *The Strength of Diversity, Human Rights and Pluralist Democracy.* Rosas, A. & Helgesen, J. (eds.) New York: Martinus Nijhoff Publishers, pg. 168-170.

After 1989, however, with the radical change in the EU's approach to CEECs, a variety of new mechanism and initiatives became apparent in the region. Brussels agenda were filled with arrangements that would lead the injection of so-called 'Westernized' values into the CEECs. The activities ranged from technical or financial assistance to reconstruction projects, or conflict prevention measures to institutional policies. However, all had one common provision that linked continuation of the aid with 'virtual' precondition of the development of human and fundamental rights in the supported countries. Pentassuglia considers this linkage with a remarkable logic: "the more the Eastern Europe resembles the civilized West, the more is offered by the EU."[169] Protection of Minorities or minority rights, yet, was still subject to be handled in a broader (human rights) agenda, rather than dealt within a separate policy.

After a while, these technical, financial and preventive measures, which were mostly provided under European (Trade and Cooperation) Agreements or PHARE-like regional assistance programs, were converted into a more direct approach; i.e., the possibility of the membership for the CEECs into the EU. The Eastward enlargement, in other words, for the first time in EU history, witnessed more of security and value-driven integration instead of purely economic. The proof might be found in the concluding remarks of 1993 European Council meeting in Brussels that related the CFSP to the promotion of peace and stability in the region and called for a Stability Pact to resolve the minorities and borderline problems of Eastern Europe[170]. The Council, on 20 December 1993, approved the call for a pact and arranged a conference to be held in Paris in 1994, reaffirming the close relationship between the enlargement and solution to minority problems[171]. The Pact on Stability in Europe was signed in Paris in 1995, however by the representatives of the OSCE member states. Carrying a non-binding character, the Pact particularly referred to the list of arrangements and declarations to be adopted by the CEECs, especially of those in Hungary and the Czech Republic, in terms of Protection of Minorities. The significance lied behind the Stability Pact was that it was a *de facto* condition for

[169] Pentassuglia, Gaentano (2001) ibid, pg. 11.
[170] EU Document (1993) *European Council in Brussels, 29 October 1993 Presidency Conclusions.* DOC/93/7. I-2(i). Taken from the World Wide Web: http://europa.eu.int/rapid/pressReleasesAction.do?reference=DOC/93/7&format=HTML&aged=1&language=EN&guiLanguage=en
[171] EU Document (1993) *EPC Bulletin Document.* 93/533 (93/728/CFSP).

CEECs' membership to the Union; hence, it was clearly interrelated with *conditionality*.

On the other hand, in 1993, the European Council meeting in Copenhagen constituted a breakthrough point for the EU membership process with the introduction of the so-called Copenhagen Criteria to be fulfilled by the candidate states in the accession period. The criteria were divided into 3 main parts, including economic, institutional (acquis communautaire-related) and political criteria. In the latter, the EU listed the political preconditions of membership, requiring that "… the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for Protection of Minorities"[172]. The Copenhagen Criteria established a connection between enlargement process and minority rights and thus brought the *conditionality* aspect of minority rights, as pointed out by Pentassuglia earlier, a step further. Thus, initially, the minority concerns in the EU experienced its start-up as a political matter to create or maintain the peace and stability through the whole Continent. However, it must be underlined that Protection of Minorities or minority rights did not have any binding impact upon prevailing members, as also demonstrated in the internal law analysis. The criteria regarding minorities were arranged by the concerns of 'supranational polity of the EU' only for the candidate countries[173]. Moreover, these criteria did not work for 1995 accessions (of Austria, Finland and Sweden) and somehow were implied solely upon the forthcoming CEEC-accessions.

The evidence to the final comment might be found in the documents publicized between 1993 and 2000. While the negotiations carried out with 1995-accessor states, minorities issue was only slightly touched upon within the limits of Copenhagen Criteria. For example, the Commission revealed the Agenda 2000 in 1997, which reached to three main conclusions so as to determine the 'suitability' of the candidate states. These conditions were not differing entirely from the 1993 Copenhagen Criteria, including *democracy and the rule of law*, *functioning market economy*, and *the acquis communautaire*[174]. David Allen criticizes this particular document since it does not bring about anything 'new' to the table, and claims the

[172] Dinan, Desmond (1999) *Ever Closer Union.* UK: MacMillan, pg. 191.
[173] Baun, M. J. (2000) *A Wider Europe: The Process and Politics of EU Enlargement.* UK: Oxford: Rowmand Littlefield Publishers, pg. 10.
[174] EU Document (1997) *Commission Agenda 2000: For a Stronger and Wider Europe.* Brussels, July 16, 1997. Comm(97)2000 Final.

document "itself promise(s) to provoke fierce political battles between Member States about which and how many applicants should begin accession talks."[175] Allen's argument is also valid in terms of minorities issue. The text of the Agenda 2000 did not read a direct reference to the issue, mainly focused on the implication of the acquis[176] and left all minority-related discussion to separately released opinions for each candidate state. In those official publications (Opinions); Bulgaria, Latvia, Romania and Slovakia were severely criticized in terms of problematic records about minority rights whereas Hungary, the Czech Republic and Estonia were praised for their improvements within certain periods of time[177]. Then, the Regular Reports of Progress towards Accession of 1998 and 1999 revealed similar concerns renewed regarding the importance of the minorities issue in the fulfillment of the Copenhagen Criteria[178]. The 1997 Council Conclusions, on the other hand, officially declared that the EU *conditioned* trade preferences, economic cooperation and financial assistance on the fulfillment of the Copenhagen Criteria, hence respect for and Protection of Minorities[179]. In the meantime, several national laws were passed by the CEECs' governments by virtue of the accession negotiations. In that sense, 'the Act on Expatriate Slovaks and changing and complementing some laws' [No. 70 of 14 February 1997 Slovakia], the 'Law regarding the support granted to the Romanian communities from all over the world' [15 July 1998 Romania], the 'Law for the Bulgarians living outside the Republic of Bulgaria' [11 April 2000 Bulgaria], the 'Act on Hungarians living in neighboring countries' [19 June 2001 -to enter into force on 1 January 2002- Hungary] and the 'Resolution of the Slovenian Parliament on the status and situation of the Slovenian minorities living in neighboring countries and the duties of the Slovenian State and other bodies in this respect' [27 June 1996

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[175] Allen, David (1998) "Who Speaks for Europe?" in *A Common Foreign Policy for Europe?: Competing Visions of the CFSP.* Peterson, J. & Sjursen, H. (eds.). UK: London: Routledge.
[176] Smith, Hazel (2002) *European Union Foreign Policy: What it is and What it does.* UK: London: Pluto Press. Pg. 253.
[177] EU Document (1997) *Commission Opinion COM (1997) 2008 Final- not published in the Official Journal.* Taken from the World Wide Web: http://www.eu.int/comm/enlargement/intro/ag2000_opinions.htm
[178] EU Document (2000) *European Commission Overview Progress Report.* November, 2000. Taken from the World Wide Web: http://europe.eu.int/comm/enlargement/report_11_00/index.htm
[179] EU Document (1997) *European Council Conclusions Mediterrenean and Middle East.* Bulletin of the EU: 4/1997, point 2.2.1. Taken from the World Wide Web: http://europa.eu.int/abc/doc/off/bull/en/9704/p104074.htm

Slovakia] are noteworthy instances[180]. Yet, the EU's attitude towards these national re-arrangements did not either possess enough credits or reflect consistency. For instance, the fairly comprehensive Status Law of Hungary regarding the minorities both living inside and outside of the State was not given solid back up while the Union kept mum when Latvia and Estonia refused to grant even 'citizenship' to their Russian-speaking minorities. To put it in a different direction, while the EU's *conditioning* with regards to Protection of Minorities prevailed in the *wording* of the Accession Partnership documents, the *enforcement* of the conditionality principle was a discouraging failure of the Union.

In the year of 2000, eight of the CEECs –except for Bulgaria and Romania to be members in 2007- were given the status of future members of the EU by May, 2004. Whether or not the political side of the Copenhagen Criteria was completely fulfilled, especially in terms of minority rights and protection, the EU decided to accept those states to become members of the Union. What has to be questioned then is the link between EU membership and the fulfillment of minority-related criterion of the Copenhagen document.

It can readily be argued that, the EU did not draw a definitive path for the candidate countries to follow in terms of minority standards. Broadly, the EU was involved neither in the standard-setting nor in the implementation sides of the minority regime towards the CEECs. Preece puts that "… international organizations charged with the task of formulating minority rights were comprised of states and not sub-state groups. National minorities themselves did not participate in these debates. The *Realpolitik* of minority rights in 1990-1995 period was therefore one of differing state interests utilizing different rhetorics appealing to different propositions of international law. Those states that possessed significant national minority populations – and would therefore be subject to international minority guarantees – appealed to sovereign equality and non-intervention in order to forestall or limit the international recognition of autonomy for sub-state groups"[181]. This argument might undoubtedly be applied to the EU, as well, for the same period and even beyond. Up to this point, it has been indicated that the EU perceived the minorities issue broadly within the field of Human Rights and the values of which the Union was established

[180] The laws and resolution were copied from the World Wide Web: http://www.venice.coe.int/docs/2001/CDL-INF(2001)019-e.asp
[181] Preece, J. J. (1998) ibid, pg. 22.

upon, avoided the inclusion of any binding reference in its internal legal setting, pushed solely the CEECs by the economically-driven documents and sanctions in order to have them constituted such minority regimes that were designed not to become threatening mainly to the Western part of the Continent rather than a *common* ground for the whole region, failed to describe an enforcement guide, hence led to the perseverance of significantly differing nature of national political formations in minority regimes of each candidate country. Moreover, the Union did not at all support further developments in some exceptional cases (like, Hungary), thus represented a confused organizational will in terms of minorities issue.

When it comes to the EU's unfortunate status in Protection of Minorities and minority rights and the link to between this status and enlargement process, first the minorities status in the CEECs must be displayed. After that, Brian White's previously-stated arguments – stressing the outcomes rather than processes and becoming a non-monolithic bloc - about the limitations of the EU to become a full-fledged global actor must be revisited.

III. 3. g. Minority Regimes in 2004 Accessing Countries

In this part, general condition of minorities in each 2004-accessing state shall be demonstrated. Beginning with a similar legal background analysis[182], it might readily be seen that the general participation of currently acceded EU members to the minority related international documents are even weaker than the participation of the EU-15. More than half of the countries put reservations or declarations upon the Article 27 of the UN's ICCPR, the CoE's ECHR and FCPNM. Moreover, none of the countries have yet ratified the ECRML without putting a reservation or declaration upon, while presently six of them never ratified the Charter. Yet, the participation of those states to the CSCE/OSCE documents is also complete, bearing in mind that those documents do not carry any binding legal status. Therefore, it is not only certain that the already members of the EU are not willing to take part in the major international minority agreements, but also that participating into these documents have not yet become a precondition of the membership. Nevertheless, it

[182] For the whole list of the participation of the 2004-members and currently acceding states to the related minority rights agreements, please refer to the Appendix-B.

can still be argued that the encouragement of the Commission reports towards the ratification of the documents for the CEECs proved to be stimulating to some degree.

However, having been the cradle of the European minority tension, the Eastern European states still have considerable discrepancies about the implementation of the granted rights and they display a similar sub-division as the EU-15 with one group of enthusiastic states and another with reluctant ones. For the earlier group, Hungary comes at first. Having ratified all minority documents, Hungary is also known and praised for its comprehensive 2001 Status Law, giving special privileges for the indigenous Roma, German, Slovakian, Croatian and Romanian minorities recognized in its own territory[183]. The main reason of her interest over minorities can be linked to the high percentage of Hungarian minorities living in the neighboring states, including Romania, Slovakia, Slovenia and the Czech Republic. Slovakia, secondly, is another enthusiastic CEEC in terms of minority issues, though not as much as Hungary. With virtually 600,000 Hungarian, 250,000 Roma, 50,000 Czech and 60,000 other national minorities[184], Slovakia adopted several reforms in its country and also ratified the ECRML, though with reservations. (Southern-Greek) Cyprus, thirdly, is a non-CEE country that might also be considered in this sub-division of the ambitious with the similar ratification status as Hungary. However, being a completely different discussion topic, the country is associated with territorial problems between Greek and Turkish sides. Malta, fourthly, has officially reported no minorities within its territory and thus possesses an impartial position.

The remaining CEECs, on the other hand, indicate difficulties and disputes in either granting or installing minority rights. The most complicated minority problems come from those states with a large numbers of Russian-speaking minorities, namely Estonia and Latvia. Going through a serious 'neutralization' process after the collapse of the Soviet Union, these states regard granting even citizenship to the Russian-speakers as a privilege. Therefore, the problem of minorities in Estonia and Latvia drives into a different (and even more problematic) direction, becoming an

[183] Steward, Michael (2004) "The Hungarian Status Law: A New European Form of Transnational Politics?" in *The Hungarian Status Law : Nation Building and/or Minority Protection.* Kantor, Z.; Majtenyi, B.; Iead, O.; Vizi, B. & Halasz, I. (eds.) Chapter 5. Hungary: Slavic Research Center, pg. 120-151.

[184] CoE Document (1999) *Reported Submitted by Slovakia Pursuant to Article 25 Paragraph 1 of the FCPNM* (received on 24 June 1999)

issue of 'statelessness' or 'non-citizenship'[185]. Slovenian, Czech, Lithuanian and Polish perspectives on the minorities issue are quite analogous. The 'minority status' has been given to those groups, mostly mentioned in the annual Commission Reports. Yet, they are still having considerable difficulty implementing the granted rights due particularly to the general weaknesses experienced in human rights and democracy fields[186].

In the final comments, it is obviously seen that the impact of the imposed politics of the EU towards the CEECs about minority rights and protection have had (to an extent) positive consequences upon the acceded states. However, there are still several problems resulted especially from the nationalist politics of the governments, which might exclusively be hinted within general non-ratification over international minority agreements.

Going back to Brian White's argument about the frailty of using enlargement as a tool by the EU to become a global-actor, the picture drawn so far about minorities might be utilized. For instance, White criticized the main focus of the EU upon the outcomes rather than process. On this end, severely differing minority regimes established by the candidate countries and the Union's frankly impartial approach to this conclusion adhere to that criticism and further raise questions about the 'sincerity' of EU's involvement to the minorities issue. The second limitation that White regarded with the difficulty of the EU being introduced as a single/supranational global actor by virtue of its fractured decision-making heavily and severely affected by national/governmental politics, is relatively easier to find support since both the analysis upon the minority regimes of the EU-15 and the 2004 accessing countries bolstered up the dominance of the national decision-makers in the minorities issue. Combining these two arguments, it does now make more sense to question the involvement of the EU in the minority concerns as only another international actor or as a prolongation of its value-driven character. Whether or not the 'intension' of the Union was either of these, the outcome strictly suggests that, at least for this moment, the EU evidently represents only 'another international actor' in the minorities scene. This study, from this point on, will try to focus on finding the

[185] Galbreath, David (2003) "The Politics of European Integration and Minority Rights in Estonia and Latvia" in *Perspectives on European Politics & Society.* Vol IV. Issue 1 (May, 2003), pg. 35-54.
[186] Vermeersch, Peter (2004) "Minority Policy in Central Europe: Exploring the Impact of the EU's Enlargement Strategy" in *The Global Review of Ethnopolitics.* Vol III. No. 2 (January, 2004) pg. 3-19.

reasons to this dilemma of the EU by borrowing ideas from respectful academicians and experts[187] in European minority studies. However, before that, quoting from Karen Smith will help clarify how difficult it would be to cover up its dilemma for the EU and how complex its attempts are to link a possible minority regime (internal or external) with the enlargement process; "[i]n defining human rights,…, the EU's primary reference is international or European standards – whether accepted by all the member states or not, whether still evolving or not, whether universally accepted as general international law or not. This provides the EU's policy with *some* legitimacy (though greater conformity with those standards by all EU member states is still desirable), needed especially because its internal human-rights regime is not well developed."[188] It must be borne in mind that these arguments of Smith are described for 'human rights' in particular; yet, it is still possible (if not easier) to interpret them for the minorities issue.

III. 4. Rising Problems and Questions of the European Union related to Minorities Issue

III. 4. a. Discussions from Academicians and Experts

The main question regarding the EU's having a minority protection regime is about whether the Union should have one. In order to find an answer, Toggenburg[189] employs three categories prevailing in a general minority protection structure- the provision of minority rights, the definition of the legal term 'minority', and the identification of minorities. The first category might apply to the EU since international entities, including the CoE and the UN, already grant certain rights and provisions to minorities, as pointed out before. However, neither of the other international organizations' provisions have a 'direct impact' upon the national laws of their members unlike the EU-law. Thus, the role and willingness of the national administrations will undoubtedly be more interruptive to the provision-making

[187] The discussions related to the problems in the EU's minorities approach will be borrowed from the comprehensive study of the EURAC, being the only particular reference book in terms of minority protection and the enlarged EU, EURAC Document (2004) *Minority Protection and the Enlarged EU: The Way Forward.* Toggenburg, G. N. (ed.) OSI. Hungary: Createch Ltd.
[188] Smith, E. K. (2003) *European Union Foreign Policy in a Changing World.* UK: Polity Press, pg. 110.
[189] Toggenburg, G. N. (2004) "Minority Protection in a Supranational Context: Limits and Oppurtunities" in EURAC Document (2004) *ibid,* pg. 1-36.

mechanism of the EU in terms of minority issues, which have a considerable possibility to turn into a clash between supra-level and national-level interests.

Yet, more significantly, EU's particular role in Toggenburg's second category is highly arguable. As stated earlier, International Law, with Article 27 of the ICCPR, clarified that minority definitions were no longer only at the hands of the States; but at the same time, there is still no particular international/legal organ that is responsible for minority definition, either. Also applying to the third (identification) category of minorities, in that sense, whether the EU should deal with definition and identification is doubtful since the EU does not even refer to any EU majority or a full-fledged citizenship law at that moment[190]. Furthermore, even though the EU decides to engage in such activity, the lack of political consensus among the Member States would lead to several other problems, ranging from the disruption of the balance of power between supranational and national levels, hazard upon national legitimacy and loyalty, the harm on the principle of unity in diversity[191], and possible inconsistency in the applied standards among Member States.

The other problem that Toggenburg introduces is the possible link between the EU and the CoE's FCPNM. Yet, he regards this accession severely problematic since "the Framework Convention focuses on areas such as culture, media, research, and education where the Union has only weak competencies and where new obligations of the Union in a transversal area such as the Protection of Minorities might easily lead to tensions between the European and national level."[192] A supporting argument to Toggenburg's question comes from Hofmann and Friberg, who do not see any legal problem with the EU's accession to the FCPNM or its having a seat in the Committee of Ministers as the control mechanism for the Convention. However, they see it likely that "the measure of formal accession of the [EU] to the [FCPNM] currently would draw political resistance from some capitals."[193] They exemplify their comment with the proposal of Hungary, regarding

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[190] Marko, J. (1998) "Citizenship Beyond the National State? The Transnational Citizenship of the EU" in *European Citizenship: An Institutional Challange.* La Torre, M. (ed.) The Hague: Kluwer, pg. 369.
[191] De Witte, Bruno (1993) "The European Communities and its Minorities" in *Peoples and Minorities in International Law.* Brölmann, C. (ed.) The Hague: Kluwer, pg. 167.
[192] Toggenburg, G. N. (2004) ibid, pg. 16.
[193] Hofmann, R. & Friberg, E. (2004) "The Enlarged EU and the CoE: Transfer of Standards and the Quest for Future Cooperation in Minority Protection" in *Minority Protection and the Enlarged EU: The Way Forward.* Toggenburg, G. N. (ed.) OSI & EURAC. Hungary: Createch Ltd., pg. 137-138.

the possible accession of the EU to the FCPNM, during the drafting of the EU Constitution, which did not gain any support and was left untouched[194]. Therefore, only after certain re-arrangement within the Union's policies, the EU is advised to take initiative upon establishing 'interdependence' between the Commission, Member States and regions, where *subsidiarity* principle should be implemented in advance. After that, the role of the EU in terms of minority protection must be limited to look alike a "center of control of the basic framework rules"[195], as Palermo and Woelk suggest. In other words, the EU, due to several problems demonstrated, must stabilize its position in the European minority rights regime on the back-seats, instead of taking a pioneering role. This, however, - though risky - does not reduce the importance of its involvement, at all.

Another major criticism towards EU's minority regime is regarding the *double standard* it has created between existing Member States and candidate countries. As the evolution of minority development in the EU indicates, the concern over minorities began as an external policy of the EU, within the CFSP manner. The Copenhagen Criteria in 1993 lied down the political concerns of the Commission over the CEECs, which then became precondition of the membership for those countries. 1997 Amsterdam Treaty –to consolidate upon the TEU of 1993- made these political criteria internally observed in the Union with its Article 6(1), as reads: "The Union if founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States"[196]. Article 6(1), in a legal sense, converted the EU's external policies regarding the membership into the observance of internal law. What was missing in the listed values in the Article, was the principle regarding 'respect for and Protection of Minorities', in comparison with the Copenhagen Criteria.

Bruno de Witte criticizes this missing approach of the EU, by making particular references to the World War I, stating that the Minority Protection's "… imposition on other countries may seem rather *inconsistent* or even somewhat

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[194] For the original text of the proposal, please refer to the World Wide Web: http://www.htmh.hu/en/?menuid=08&news020_id=1146

[195] Palermo, F. & Woelk, J. (2004) "Evolution of Minority Rights : From Minority Protection to a Law of Diversity?" in *European Yearbook on Minority Issues 3.* Martinus Nijhoff Publishers.

[196] EU Document (1997) *The Treaty of Amsterdam, Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts.* 2.X.1997, Amsterdam. Article 6(1). Taken from the World Wide Web: http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/pdf/12002M_EN.pdf

hypocritical, and the distinctive treatment meted out to them is strangely reminiscent of the infamous post World War I minority protection regime, which collapsed, in part, because it was perceived as a set of unilateral obligations on the newly created states of Central and Eastern Europe by the Western victors of that war"[197]. Although it would be unfair to imply that the approach to minorities issue was ignored in the EU context, de Witte's attention upon noteworthy difference between external and internal policies finds supporting arguments from a wide range of scholars.

Gwendolyn Sasse, for instance, relates the EU's role in Minority Protection with the famous term, *conditionality*. Making a reference to Smith's and Zielonka's definition, Sasse defines conditionality as "a primary means of democracy promotion"[198] in the CEECs. Although favoring the promotion of democracy in the post-Communist territory, she lists the current problems of the EU with respect to the minority issues –including, non-existence of EU law or benchmark, no internal EU policy, no clear definition of even national minorities, the unavailability of the implementing organ and no compliance between Member States-, which in turn will most probably *not* cause a so-called *reversed conditionality* upon the earlier 15 Member States or will cause more *inaction* that will create a larger gap in terms of minority regime between the two parts of the EU[199]. Each item in the Sasse's list of EU's minority-related problems has been discussed in the previous sections of this study. Yet, it can still be noted that the imbalances between the dichotomies of 'supranational and transnational', 'common and national' and 'internal and external' approaches of the EU to the minority issues hindered a solid internal or external EU regime of minorities and mainly relinquished the discussions within the limits of Human Rights concerns.

Frank Hoffmeister, who shapes his argument indirectly upon de Witte's and Sasse's aforementioned discussions, establishes a linkage between the external-internal gap of the EU's minority regime and the problems of monitoring. Although, firstly, he defends the necessity of the EU's involvement in the minority protection in

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[197] De Witte, Bruno (2002) "Politics vs Law in the EU's Approach to Minorities" in *Europe Unbound: Enlarging and Reshaping the Boundaries of the EU*. Zielonka, J. (ed.) Chapter 8. Routledge Advances on European Politics. UK: Taylor & Francis Group, pg. 140.
[198] Sasse, Gwendolyn (2004) "Minority Rights and EU Enlargement: Normative Overstretch or Effective Conditionality" in *Minority Protection and the Enlarged EU: The Way Forward.* Toggenburg, G. N. (ed.) OSI & EURAC. Hungary: Createch Ltd., pg. 64.
[199] ibid, pg. 79.

the CEECs, with successful examples taken from Latvian and Estonian reduction in their 'naturalization standards' applied upon Russian speaking minorities and comprehensive Hungarian Status Law in 2001, he stresses out another necessity of an improved monitoring mechanism for future arrangements in the CEECs' unevenly developed minority regimes[200]. The current monitoring mechanism is formed mainly by the annual EP reports and the projects of the EU Network of Independent Experts on Fundamental Rights. Both, however, are lacking legal grounds and, more significantly, political weight. The reason, here, is attached to the absence of the internal EU law regarding minority rights. Besides, the problems with Member States' monitoring systems are undoubtedly wider as the internal legal ground has been lacking since the very beginning and the fate of minorities have been largely left to the national policy-makers' hands.

Rachel Guiglielmo, upon the same issue, draws attention to two substantial examples for the differing approaches in the minority issues in the EU Member States. Accordingly, not only the troublesome position of the Roma people in Spain -being not considered neither minorities nor peoples of Spain- and Germany –being involved in the involuntary DNA collection and removal of the children from their parents-, but also the non-discriminatory perspective granted to the Muslim population of France, Italy and the UK –being not considered under a minority generalization, though totally different needs for holidays, education, practicing language, media and politics, and particularly raising tensions after September 11, 2001 incident- constitute and bring out the common problems in the European development towards minorities. The problems are clinched to the weak data and statistics due to privacy concerns, national political priorities that leave minority issues significantly political, angry government reactions (e.g. Denmark's reaction in 2003) to monitoring reports of the European Monitoring Center on Racism and Xenophobia (EUMC), and the abovementioned paradox between the Member States and the candidate countries[201]. Possible solutions to these problems are also stuck into the EU's exiguous monitoring process. Hence, she calls for a responsible non-

[200] Hoffmeister, Frank (2004) "Monitoring Minority Rights in the Enlarged European Union" in *Minority Protection and the Enlarged EU: The Way Forward.* Toggenburg, G. N. (ed.) OSI & EURAC. Hungary: Createch Ltd., pg. 83-104.
[201] Guglielmo, Rachel (2004) "Human Rights in the Accession Process: Roma and Muslims in an Enlarging EU" in *Minority Protection and the Enlarged EU: The Way Forward.* Toggenburg, G. N. (ed.) OSI & EURAC. Hungary: Createch Ltd., pg. 54-55.

political institution that will gather records from domestic (national level) and international monitoring and take necessary measures upon the lacking points. Civil society involvement also has a crucial part in her recovery model. Yet, despite the realization of such an entity, Hoffmeister's recall upon the weak legal ground for the further monitoring in the CEECs still seems unsolved.

Although the prospect of Minority Protection to be involved as a part of internal EU law appeared to be 'unrealistic' to some experts[202], contrary hopes were awakened during the drafting of the EU Constitution. As pointed out many times earlier, the legal basis for the EU for the Protection of Minorities does not exist. In other words, there is no reference to the words 'minority' or 'minority protection' anywhere in the EU or earlier EC treaties. Similarly, the Draft Constitution of the EU presented in 2003 did not mention neither of the words notwithstanding that, earlier, several NGOs and private enterprises, even supported by the Commission, -like European Bureau for Lesser-Used Languages (EBLUL) and Sub-Committees of the EP, had made repeated attempts in the early meetings for the inclusion of a reference to the 'minorities'. Yet, a surprising development occurred in the following Intergovernmental Conference and Hungary's strong insistence upon the inclusion of minority rights, at least, in the preamble or the introduction parts yielded an agreement to amend Article 2 of the Draft Constitution, listing the fundamental values of the EU, so that the Constitution would include a provision explicitly about persons belonging to minorities. The amended text of the Article 2 reads: "The Union is founded on the values pf respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, *including the rights of persons belonging to minority groups.* These values are common to the Member States in a society *in which pluralism, non-discrimination,* tolerance, justice, solidarity and the principle of equality between women and men prevail."[203] This 'ambiguous' wording – by virtue of the non-defined terminology - of the Draft Constitution surely attracted a lot of favoring and opposing comments from all over the EU. While the national parliaments of the States, which already established clear references to minority problems –like Hungary, Germany, Spain and Sweden- supported this new wording,

[202] Phillips, Alan (2003) *The FCPNM: A Policy Analysis.* UK: London: Minority Rights Group, pg. 4.
[203] EU Document (2003) *Treaty Establishing a Constitution for Europe.* Doc. CIG 60/03 ADD 1, of December 9, 2003, Article 2. Taken from the World Wide Web: http://europa.eu.int/constitution/en/ptoc2_en.htm#a3

Slovakian, Latvian, Dutch, French and Greek politicians officially declared their refusals to the Treaty. Scholars, including Schwellnus, Toggenburg and de Witte, on the other hand, made prominent interpretations over the new wording. Quoting from de Witte; "[p]resently, the [EU] has no role, and should not have a role in the future, in detailed standard-setting as regards minority rights. What has not been defined by other organizations (mainly the [CoE]) should be left to the States. However, there is scope for building on the dynamic created by pre-accession monitoring and on the increased political prominence of minority issues that may well result from enlargement. In doing so, the [EU] can start from existing EU policies and competencies and develop them in minority-friendly directions."[204] The exhausting discussions seem currently ceased since the Draft Constitution has so far been rejected by referenda taken place in France and the Netherlands in 2005.

De Witte makes a list of the lacking areas where the EU should approach with broader and 'minority-friendly' directions. Accession negotiations and external relations, general Human Rights Monitoring and Protection, prohibition of discrimination on grounds of ethnic origin, establishment of cultural diversity policy and its general mainstreaming can be read within his list[205]. These items, in a nutshell, can be strikingly connected to the previous arguments of Toggenburg, which imply the 'risk' of the involvement of the EU into the minority discussions. The EU is still redundant to establish a guidance for candidate states to follow in their approach to minorities; it is still unclear whether 'minority rights' are included in the umbrella of Human Rights or whether the situation changes when the subject matter ('already members vs. candidates') is differing; and there is still no clear definition of minorities in the EU agenda, which should probably be the starting point in the redistribution of power in the decision making upon minorities; i.e., whether the EU or the states themselves define their own minorities. Any approach must consider political sensitivity of the minorities issue; therefore, ought to be holistic – must cover both member states and the candidates - , coherent – must not change from deepening or widening processes - and transparent – open to discussions from all member states' and candidate states' authorities -.

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[204] De Witte, Bruno (2004) "The Constitutional Resources for an EU Minority Protection Policy" in *Minority Protection and the Enlarged EU: The Way Forward.* Toggenburg, G. N. (ed.) OSI & EURAC. Hungary: Createch Ltd., pg. 111.
[205] İbid, pg. 112-122.

Another accurate issue that the EU has to take care of with regards to the minorities approach is stated to be about migrants and temporary workers, coming from both the Member States and third countries. In fact, the status of long-term resident third-country nationals was demystified by 2003 Council Directive that required equal protection for those persons while permitting the Member States to impose 'integration requirements' on immigrants where they considered necessary[206]. Yet, whereas the directive applied to 'all lawful residents of a member state', 'persons who are seeking for refugee status, temporary protection or subsidiary protection', 'students', and 'temporary residents with permissions' (Article 3, par 2.), it certainly did not expressly state a 'minority status' to those persons with obvious differences from the rest of the population, including ethnicity, language, culture, and religion. The reason is mostly connected to the non-citizenship of those covered in the Directive and the supposed definition of minorities which solely applies to citizens of the states, although such a definition does not explicitly prevail.

Steve Peers draws attention to another characteristic of the Long-Term Residents' Directive in his 2004 article. Accordingly, there is an obvious overlap between this particular document and the Race Discrimination Directive of the European Council. He quotes that "while the Long-Term Residents' Directive bans discrimination based on nationality between long-term residents and nationals of the host member state, the Race Discrimination Directive states expressly that it 'does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of the member states, and to any treatment which arises from the legal status of the third country nationals and stateless persons concerned.'"[207] The importance of this overlap lies in that the Long-Term Residents' Directive only applies to non-citizens while the Race Discrimination Directive also applies to all third country nationals and EU citizens. Therefore, even in the internal law of the Union, there is a significant hurdle about the citizenship issue. The impact on this overlap, further, as suggested by Peers,

[206] EU Document (2003) *The Council of European Union Directive.* OJ 2004 L 16/44.
[207] Peers, Steve (2004) "New Minorities: What Status for Third Country Nationals in the EU System?" in *Minority Protection and the Enlarged EU: The Way Forward.* Toggenburg, G. N. (ed.) OSI & EURAC. Hungary: Createch Ltd., pg. 158.

appears "between the substantive rights in the [Long-Term Residents'] Directive and in the international measures. Put simply, the [CoE] measures and Article 27 of the ICCPR require state to preserve *difference* while the directive permits (but does not require) member states to insist on *assimilation*"[208] upon residing non-citizens. Such a significant problem reaffirms the necessity of the EU to undertake its policies, especially the ones about free movement of workers, with 'minority-friendly' dimensions attached.

III. 4. b. Bolzano/Bozen Declaration on the Protection of Minorities

In addition to above arguments, the 'Bolzano/Bozen Declaration on the Protection of Minorities in the Enlarged EU' must also be stressed. The Declaration was an attempt in search for a proper answer to the condition of minority rights and protection especially after the accession of the CEECs into the EU. In January 30-31, 2004, the EURAC in Bolzano/Bozen/Bulsan, Italy, hosted a conference, organized and sponsored by Local Government and Public Service Reform Initiative (LGI), the Open Society Institute (OSI) and the European Commission, titled "Minority Protection and the EU: The Way Forward". In the eleven-paged declaration, the aim is stated to raise a policy consensus that the EU has to play a critical role in the Protection of European Minorities within the broader limits of the current political framework, constituted by the principle of subsidiarity, the special –supranational-structure of the EU, the danger of possible duplications and the existing diversity of approaches regarding minorities[209].

The preamble of the Declaration sheds light upon that, by 2004, the numbers of minority groups within the EU would be more than doubled, which led to considerable increase in ethnic, cultural and linguistic diversity in the Union[210]. The question then should be whether the current social, legal or political structure of the EU would be satisfactory to handle this increase. The main argument of the Report recognizes a gap between the EU's existing political discourse - legal provisions -

[208] Ibid, pg. 160.
[209] EURAC Document (2004) *The Bolzano/Bozen Declaration on the Protection of Minorities in the Enlarged European Union.* May 1, 2004. Supported by LGI, OSI, European Commission, pg. 1.
[210] ibid, pg.2.

and the CEECs' recently developed and seemingly far advanced policies regarding the minorities. In order to avoid this gap, the Declaration provides five proposals[211].

i) *Improve Monitoring of Candidate States:* The Declaration stresses out the importance of the further balance that must be caught when currently accessing states, including Bulgaria, Romania, and Turkey, are joined to the EU. A possible solution might be full compliance of these States to the FCPNM, favoring improved dialogue with the CoE. Moreover, transparency of the monitoring upon the improvements of the candidate countries' records over minority issues must be increased, by the introduction of new and more powerful devices for all international, national, regional and local level monitoring.

ii) *Integrate Minority Protection into EU Monitoring of Human Rights within Member States:* The EU is suggested to establish a human rights agency or monitoring mechanism that submits annual reports about the human rights performances of member states. Further, the Commission is advised to extend a proposal in alliance with the EUMC that will be benefited as a prerequisite for minority protection. Lastly, the EP is recommended to set up a subheading on minority rights in its regular human rights reports.

iii) *Strengthen the EU as a Community of Values:* By this proposal, the political criterion of 1993 Copenhagen Council with respect to Protection of Minorities and minority rights is suggested to be included in the Draft Constitution with a special reference made to the minority definition of the CoE. In other words, the lack of definition over minorities must be eliminated in accordance with the CoE definition, particularly of the FCPNM.

iv) *Improve EU-CoE-OSCE Cooperation:* The fourth proposal calls for an institutionalized dialogue between European Commission's Directorate General for Justice and Home Affairs, and its Directorate General for Culture, as well as the EP's Committees for Human Rights and Culture on the one hand, and the CoE's

[211] ibid, pg. 3-11.

FCPNM and ECRML, on the other. By this way, a joint planning and action might be reached easily. Besides, the OSCE's HCNM must assist these institutions in developing approaches towards third countries. The exchange of information among three significant European institutions is considered critical for the development of the minority regime in the Continent.

v) *Bring to Life the New Constitutional Motto "United in Diversity":* The last proposal suggests a so-called 'Diversity Impact Report' to be delivered to national parliaments about EU's secondary legislation upon linguistic diversity, specific national and regional features, and the cultural heritage of member states and regions under EU policy. The Commission must propose multi-year programs to develop and support linguistic diversity. Moreover, areas 'beyond gender discrimination' must be highlighted in the Constitutional Treaty while the Treaty's diversity definition must not only cover national level but also sub-national level differences languages.

Bolzano/Bozen Declaration might be regarded as a significant attempt to establish a solid 'diversity acquis' for the EU. However, even if it is assumed that the five proposals are without any deficiencies, there is still one considerable deficiency in the Declaration: 'the political unwillingness'. As stated throughout the whole study, minority issues are of highly political concern that touches upon critical terminology, such as territorial unity, national sovereignty, or integrity. Therefore, the general tendency of the states in their approach to minorities issue indicates unwillingness towards possible reformation. For instance, it is undoubtful that conditioning upon the FCPNM for the currently accessing states' accession is highly arguable for all three countries (Bulgaria, Romania and Turkey) not only because of their historical minority problems but also of highly anticipated 'double standard' appeal coming from their publics, pointing out to the non-existence of such a condition for pre-accessing states. Further, acquiring an acceptance of, say, France (or any other reluctant EU member) for preparation of a regular report over the country's human rights record seems more than troublesome if not beyond imaginable. Moreover, adverting to FCPNM in terms of finding a proper minority

definition is quite arguable since the Convention itself does not read any definition for national minorities. For the fourth proposal, on the other hand, though exchange of information over human right concerns seems desirable, possible willingness of the Member States to be involved in such an exchange is again controversial. Finally, based on a related argument, delivering 'Diversity Impact Reports' to the national parliaments will definitely have no legally binding-power, hence will become a futile attempt in the most optimistic case, even if it is assumed that those parliaments accept to be delivered those reports. In a final comment, it might recap that, though useful in theory, Bolzano/Bozen Declaration does not have any practical impact for that moment, and it does not seem likely to change its fate for the near future, either. The same problems with the documents of the UN, the CoE, and the CSCE/OSCE continue to prevail for the EU in terms of minority issues. To list the outstanding ones: the excessive impact of the 'national politics', unwillingness of the States, and non-existence of proper universally accepted standards for the issue.

Recognition and granted individual rights are important for the minorities within the CEECs; however, the future of minority issues is questionable due to the lack of internal legal ground of the EU, which the CEECs began to be counted upon after May 2004. Those states are no longer under the duties of EU's external policy; therefore, the fate of Eastern European minorities, from 2004 onwards, will accompany the fate of their Western fellows. Approaching to the situation from a different angle, it can further be argued that both CEECs' early accession, which might well be argued to occur without a full-completion of what must have been completed in terms of harmonization and rapprochement of the policies, and the lack of internal ground for the already members of the EU have resulted in an *enlargement spill-back*, particularly within the Member States' policies against third-country nationals. Such an argument might be supported with the popularly increasing phenomenon of 'citizenship tests' that are carried out by Germany, the Netherlands and the UK for the immigrants to gain a citizenship status in those countries[212]. Although a direct link between two concepts is hard to find yet, coming along with previously mentioned Catalan marches and demonstrations in France, it would not be unfair to search for an explanation in the relationship of CEECs

[212] Corbett, Deanne (2006) "Testing the Limits of Tolerance" in *Deutche Welle.* Article published in 16.3.2006. Taken from the World Wide Web: http://www.dw-world.de/dw/article/0,2144,1935900,00.html

enlargement and minorities issue about a rising wave of majority-minority clash in Europe today.

Before specifying the analysis upon Turkey particularly, a quick summary might be utilized. The analysis of European minority perspective is roughly divided into two periods with respect to the fall of Soviet Union and the beginning of the era for the CEECs to transform their national structure in 1990. The CoE and the CSCE/OSCE played significant roles in both periods; yet, after 1990s another actor, namely, the EU joined to the scene. The questions regarding EU's involvement into the minorities issue are full of dichotomies. The first dichotomy examines whether the involvement is rooted due to the EU's 'holistic' motives of supranational and, at the same time, transnational formation – with values like democracy, human rights and the rule of law – or the EU is just another 'international' actor as the CoE and the CSCE/OSCE, whose concerns are evolved mainly around a Human Rights perspective. Three concepts, Multiculturalism, European Identity and Regionalism, are analyzed in order to find a proper answer to this dilemma. Yet, a more precise respond comes from an examination of another dichotomy that distinguishes internal and external – enlargement related – aspects of the EU regarding to construct a *common* or solely *external* minority regime within itself. The analyses result in favor of the highly political character of the minorities issue and the dominance of the national/governmental decision-makers of the Member States and even those of the candidates'. Therefore, EU constitutes free of its 'value-driven' character in minorities issue and basically represents any other international actor, whose external policies provide some stimuli for development in candidate states, without a consistent internal role model. The link to the enlargement in that sense is restricted within the perception of Human Rights umbrella and 'enforcement-free' wordings of related documents. The outstanding example then emerges out of the inconsistency and dissimilarity of the minority regimes born in the CEECs while the EU-15 already stabilized considerably different positions regarding 'their own' minority problems. A parallelism between international and European perspectives, furthermore, becomes visible when it comes to the fact that both can not agree upon a 'universally' nor 'European' definition of the 'minorities' as well as the perspective of Human Rights, including non-discriminatory treatment on any ground, whose presence before minority discussions seems avoidable. In a final comment, the

analysis up to this point comes into a conclusion where supranational or international entities play a triggering (towards positive end) but limited role in States' attitudes with respect to minority rights and Protection of Minorities, which are mainly of national concerns of the participant countries.

In the following chapter, the latest element in thesis' main argument will come into the table. The Turkish perspective in minorities issue, in that sense, will be analyzed with regards to its historical evolution, legal development with related documents and provisions, recent discussions and the role of minorities issue within the context of Turkey-EU relations.

CHAPTER IV: TURKISH PERSPECTIVE

'Where does Turkey stand for in this big picture of minorities issue?' This chapter will be dealing with that particular question on the following. Before going into a more detailed analysis, a possible - though rough - answer has indeed been readily present up to this point. Not only its Ottoman heritage but also the fact that Turkey is one of the leading nations searching for an EU membership put the country into the very front of the Europe-wide minorities discussions. The problem, however, is that the Turkish public is mostly unaware of the nation's historical and present importance in this development and progression. This argument can provocatively be supported with the relatively scarce academic and/or literature resources. This part of the study is, therefore, designed to construct a reference point for further analyses, as well.

IV. 1. 1923 Treaty of Lausanne and Historical Background

Mentioning the minority rights and protection in Turkey, the main reference has to be given to the Treaty of Lausanne, signed between the British Empire (on behalf of Great Britain, Ireland, the British dominions beyond the seas, and India-represented by Sir Horace George Montague Rumbold), the French Republic (represented by General Maurice Pelle), Italy (represented by Marquis Camillo Garroni and M. Giulio Cesare Montagna), Japan (represented by Mr. Kentaro Otchiai, Jusammi), Greece (represented by M. Eleftherios K. Veniselos and M. Demetrios Caclamanos), Romania (represented by M. Constantine I. Diamandyand and M. Constantine Contzesco), the Serb-Croat-Slovene State (represented by Dr. Miloutine Yovanovitch) - in one part -, and Turkey (not yet Turkish Republic-represented by İsmet İnönü, Dr. Rıza Nur, and Hasan Saka)[213] - in the other -, in July 24, 1923. In the Preamble section of the Treaty, it is implied that these states have gathered to "... re-establish the relations of friendship and commerce which are essential to the mutual well-being of their respective peoples", "considering that these relations must be based on respect for the independence and sovereignty."[214]

[213] The names of the nations' representatives taken from the World Wide Web: http://www.hri.org/docs/lausanne.html

[214] Bilsel, Cemal (1998) *Lozan I-II Cilt*. 2nd edition. İstanbul: Sosyal Yayınlar, pg. 584.

Turkey was invited to Lausanne Peace Conference by the Entente Powers in October 28, 1922, almost three months after the Battle for the Commander-in-Chief in August 30, 1922. However, the powers were asking for both Istanbul (Ottoman) and Ankara (Turkish) governments to participate into the conference. Therefore, on November 1, 1922, the Grand National Assembly announced that "the Sultanate and the Caliphate were parted and the Sultanate was rescinded"[215]. After that, the last Ottoman Sultan Vahdettin evaded from the country and took shelter to the United Kingdom. This resulted in the break-up of Ottoman government and Turkey was represented in the Conference only by Ankara government.

The Treaty of Lausanne is not a document solely and strictly related to the minorities issue in Turkey. With a much broader perspective, the agreement represents the very first international recognition of the new-born Turkish state. "All political and legal attitudes of Turkish representatives during and after the nation's War of Independence find their justification (legal ground) in the Treaty of Lausanne."[216] Hence, it brings several topics to a conclusion, including about the borders of the country, military clauses, economic issues, the control over İstanbul and Çanakkale Straits, and so forth. For the purpose of this study, however, only those articles related with minority issues will be examined.

The break-up of Ottoman *millet* system was initially caused by the trend of 'nationalism' in Balkans, mostly due to imperialist instigations, and at the end it left several independent states behind. The reaction was embodied in Tanzimat and Islahat Acts, seen little after the Balkan commotion, in the Ottoman State; yet, they could not cure the bleeding wound, either. Nonetheless, until the end of the World War I, the very limited provisions of Tanzimat and Islahat Acts (mainly about Capitulations and commerce) remained as the only sources for minority matters. The breakthrough point in the minorities' involvement for the Ottoman side occurred in the Peace Treaty of Sevres, signed after the World War I, in August 10, 1920. Unlike bilateral documents or internal revolution attempts, Sevres was unique due to its multilateral characteristic. The signatories, - the British Empire, France, Italy, Japan, Armenia, Belgium, Greece, the Hedjaz, Poland, Portugal, Romania, the Serb-Croat-

[215] Lewis, Bernard (1984) *Modern Türkiye'nin Doğuşu.* Turkish Translation: Kıratlı, M. Ankara: Türk Tarih Kurumu Basımevi, pg. 258-259.
[216] Tarhanlı, Turgut (1994) "Kendi Kaderini Tayin Hakkı ya da Öteki'nin İradesi" in *Türk Dış Politikasının Analizi.* Sönmezoğlu, F. (ed.). İstanbul: Der Yayınları, pg. 505.

Slovene State and Czechoslovakia on one part, and the Ottoman Empire[217] on the other -, dedicated a separate part (Part IV-from the Articles 140 to 151) to the minorities issue under the name of *Protection of Minorities* in the course of the Treaty.

The Part IV of the Treaty of Sevres involves twelve articles[218]. Article 140 accepts the following articles 141, 145 and 147 as the fundamental laws, which can not be surpassed by any law, regulation, 'Imperial Iradeh' nor official action. Article 141 has Turkey undertaken to guarantee the protection of life and liberty of all inhabitants of the country regardless of place of birth, nationality, language, race or religion. Article 142 accepts the era after November 1, 1914 as a 'terrorist regime', hence guarantees the right to reconvert their *unwillingly chosen religion*, as Islam, to any other previous religion. Article 143 and 144 offer the establishment of a commission that will be in charge of the voluntary emigration of the Greek, Bulgarian and Turkish population, including the *persons belonging to racial minorities*, and draw the necessary regulations. Article 145 calls out for the equality right before the law of all Turkish nationals in terms of civil and political rights, regardless of their *religion*, *creed*, confession, and used *language*. Article 146 deals with the validity of diplomas taken from recognized foreign universities. While Article 147 guarantees the same treatment and security in law for all Turkish nationals belonging to *racial, religious* and *linguistic* minorities, Article 148 grants the equitable share in the enjoyment and application of all public services in towns and districts where those minorities has a considerable population ratio. Article 149 has Turkey undertaken the full assurance of the *ecclesiastical* and *scholastic* autonomy of all *racial* minorities. Article 150 provides recognition of Turkish Government about *Christian* and *Jewish* Turkish nationals' security against any kind of violation based on faith or religious observations. Finally, Article 151 entitles the guarantee of the execution of this part's provisions to the *Principal Allied Powers* and the Council of the *League of Nations*.

The –then- Foreign Minister of the United States of America (USA), Charles E. Hughes, quotes that "the provisions of the Peace Treaty of Sevres were much

[217] For the representatives of the participatory states, please visit the World Wide Web: http://www.hri.org/docs/sevres/part1.html

[218] Pehlivanoğlu, A. Öner (2005) *Sevr, Lozan Antlaşmaları ve Avrupa Birliği.* İstanbul: Kastaş Yayınevi, pg. 209-214.

severe than were the provisions of any other peace treaty signed among European nations. By these requirements, the Turks did not only lose huge amount of land but were also getting under deeper foreign control that they had in the past."[219] Even the opposition wing of the Treaty of Lausanne in the Grand National Assembly never denied that the provisions of Sevres had been harder for Turkey[220]. In terms of minority definition, the 1920 Treaty utilized a relatively broader one. The Treaty, as the *italics* suggested, contained religion, language, race, creed, sect and nationality criteria in order to define the Turkish nationals who belong to minorities category.

Getting into the impact of Sevres in Anatolia, one point has to be clarified first. One of the latest and most popular discussion topics in minority studies in Turkey emerges from what is known as 'Sevres syndrome'. Vamik D. Volkan regards this phenomenon as the "chosen trauma"[221] of recent Turkish discussions in minorities issue. In fact, this so-called syndrome is so critical in Turkish literature that defendants of different minority standpoints blame with and accuse each other of 'exploiting' Sevres either by calling out 'paranoid conservative nationalists' to those who claim that Sevres must be borne in mind since it is the historical projection of prolonged malign purposes of imperialist powers over the Turkish sovereignty, or by referring 'devil's advocates' to those who believe that, in the current (new) world order, what happened in the past can not be traced to the future. The Treaty of Sevres takes part in this study only to fulfill the historical gap in research and neither of these positions will be tracked down in the following.

Sevres provisions would certainly be countervailed by Turkish Independence Movement. As much as Greek attacks to the 'Asia Minor' expedited warfare, the stimulator/ accelerator of the movement, then, had to be connected to the signing of the Treaty of Sevres[222]. Even the 'rumors'[223] of the forthcoming 'Peace' Treaty to be

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[219] Hughes, E. Charles (1924) "New Phases of American Dipomacy" in *Current History*. Pg. 1059.
[220] Taşyürek, Muzaffer (1995) *Mustafa Kemal Paşa'nın Muhalifleri Lozan'a Hayır Diyenler.* İstanbul: İhtar Yayıncılık, pg. 10-11.
[221] Volkan, D. Vamik & Itzkowitz, Norman (1994) *Turks and Greeks: Neighbors in Conflict.* UK: Cambridge: Eothen Press, pg. 7.
[222] Ürer, Levent (2003) ibid., pg. 198.
[223] Around the second half of the 1919, there were more of 'expectations', instead of 'rumors', towards an unpleasant Peace Settlement, as in January 18, 1919, Paris Conference had opened and led to signature of Treaty of Versailles with Germany (June 28), of St. Germain with Austrian Republic (September 10), and of Neuilly with Bulgaria (November 24). After June 14, 1920, when Treaty of Trianon was signed with Hungary, only the Ottoman monarchy was left unsigned with among the defeated nations. For further information, please refer to Roberts, J. M. (1997) *The Penguin History of Europe.* UK: Penguin Books, pg. 521-523.

imposed by Allied Powers led Anatolian movement begin to organize local congresses in several places, such as Amasya, Balıkesir, Havza, Erzurum and Sivas[224]. What makes Erzurum and Sivas Congresses separated from others, on the other hand, is that for the very first time during these meetings, Turkish nation officially 'declared' its determination and anxiety to keep its 'unconditional sovereignty' against the invading states. In other words, with this declaration, the War of Independence was officially launched. Erzurum Congress, which lasted in fourteen days from July 23, 1919 onwards, firstly, ended up with the following decisions:

> The nation will oppose every kind of foreign occupation and interference; an interim government will be formed in the event of the failure of the Ottoman Government to safeguard the independence of the country; the nation's willpower is supreme; Christians cannot be given any concessions which could disturb political order; mandates or protectorates can not be accepted; a national assembly should immediately be formed.[225]

Sivas Congress, which took place between September 4 to September 11, 1919, secondly, had three outstanding impacts in the decision-making of the war: first, the decisions of Erzurum Congress were re-examined and remained stable; second, the national societies from all over the country was united under the name of Society for the Defence of the Rights of Anatolia and Thrace (*Anadolu ve Rumeli Müdafaa-i Hukuk Cemiyeti*), and it was decided that the Ottoman Parliament would gather in İstanbul under the majority of the Society for the Defence of the Rights. This latest decision became visible on January 28, 1920 in which the Ottoman Parliament made it public that National Pact (Misak-ı Milli) was confirmed with respect to the decisions taken in Sivas Congress[226]. The Pact had the following decisions:

- *Article 1:* The future of the territories inhabited by an Arab majority at the time of the signing of the Montrose Treaty will be determined by a referendum. On the other hand, the territories which were not occupied at that time and inhabited by a Turkish-Muslim majority are the homeland of the Turkish nation.

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[224] Tanör, Bülent (1992) *Türkiye'de Yerel Kongre İktidarları (1918-1920).* İstanbul, pg. 11.
[225] Atatürk, M.Kemal (2004) ibid., pg. 71-72. (The quote in English is taken from the World Wide Web: http://www.turkishembassy.org/countryprofile/history.htm)
[226] Bilsel, Cemil. ibid. Pg. 364.

- *Article 2:* The status of Kars, Ardahan and Artvin may be determined by a referendum.
- *Article 3:* The status of Western Thrace will be determined by the votes of its inhabitants.
- *Article 4:* The security of Istanbul and Marmara should be provided for. Transport and free-trade on the Straits of the Istanbul and Çanakkale will be determined by Turkey and other concerned countries.
- *Article 5:* The rights of minorities will be issued on condition that the rights of the Muslim minorities in neighboring countries are protected.
- *Article 6:* In order to develop in every field, the country should be independent and free; all restrictions on political, judicial and financial development will be removed.[227]

Mustafa Kemal Atatürk, after the proclamation of the Republic, made the connection between the whole program of the Grand National Assembly and two basic principles that are 'unconditional sovereignty' and 'sovereignty that unconditionally belongs to the people', and declared that "the first principle lies under National Pact"[228]. The National Pact was such a steady factor in the philosophy of *Kemalism* that he announced the mission of his National Assembly Group (called, 'Group for the Defence of the Rights of Anatolia and Thrace'), of which he was the president, was "fed upon the principles of National Pact"[229]. These quotations are significant in at least two ways. First, the National Pact became both the guide and the reason of the independence war a year after its signing. Second, because of the National Pact, the Treaty of Sevres was considered completely unacceptable and sought for its predator, which would later be embodied in the Treaty of Lausanne.

Although the negotiations in Lausanne, Switzerland, had begun in November 21, 1922, they were canceled in February 4, 1923; then, re-launched in April 23, 1923 and finally the Treaty was signed in July 24, 1923. In his Great Speech, Mustafa Kemal assesses the reason of such a cancellation and delays with respect to Treaty of Lausanne's character as "reckoning of hundreds of years"[230]. In detail,

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[227] The quote in English is taken from the World Wide Web: http://www.turkishembassy.org/countryprofile/history.htm
[228] Borak, Sadi (2004) *Atatürk, Gençlik ve Hürriyet.* İstanbul: Kırmızı-Beyaz Yayınları, pg. 84.
[229] Atatürk, M. Kemal. ibid. pg 454.
[230] İbid. Pg 527.

disputes in especially about the Straits, the Ottoman debt and capitulations were the main points in the cancellation. From the very beginning of the Conference, the two parties had different attitudes in negotiations. The Allied Powers were insisting on the continuation of the judicial capitulations; on the maintenance of the institutions of the 'ancient regime', i.e., foundations, schools and churches; and more importantly on the multilateral course – i.e., being held in the participation of more than two countries in the negotiations process - of the Conference. The Turkish Committee, on the other hand, persisted that Turkey participated in the Conference as triumphant of the War of Independence, hence always were to pursue the 'equality' principle in the Conference, which were better based on bilateral negotiations[231] - in which subject matters were solved in negotiations between only two countries interested -. Further to these general principles, the Turkish side had already acquired a list of 'acting order'[232], including fourteen articles, given by the Ankara government before the Conference. Importantly, the ninth article of the list presupposed a minorities provision in Lausanne based the condition of Muslim population in neighboring countries, hence sought for an 'exchange of population' between Greece and Turkey.

Turkish delegation, following the perception of the National Pact and the Acting Order, never seem willing to pronounce minority rights or protection during the Conference. Yet, on the other hand, the motivations of the Allied Powers differed significantly from the Turkish committee[233]. The British view, which was mostly essential in the course of the Conference[234], for instance, defended that the exchange of population would be unsatisfactory for the conditions of 'religious', 'racial' and 'linguistic' minorities of the Turkish nation, an Armenian land must be established in the Eastern part of Anatolia[235], and Christian Turkish nationals must be in all means

[231] Ateş, Toktamış (1991) "Ulusal Kurtuluş Savaşı'nda Türk Dış Politikası" in *Türk Dış Politikasında Sorunlar.* Çam, E. (ed.). İstanbul: Der Yayınları, pg. 20.
[232] Şimşir, Bilal (1990) *Lozan Telgrafları I (1922-1923).* Ankara: Türk Tarih Kurumu Basımevi, pg. xiv.
[233] Meray, L. Seha (1969) *Lozan Barış Konferansı, Tutanaklar, Belgeler,* Set I, Vol. I, Book. I. Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi Basımevi, pg. 122.
[234] Brown, P. Marshall (1923) "The Lausanne Conference" in *The American Journal of International Law.* Vol. 17, No. 2 (April, 1923), pg. 292-295.
[235] For the purposes of this study, the issues about the Armenian land will not be discussed. For detailed information, please refer to Meray, L. Seha (1969) (trans.) *Lozan Barış Konferansı Tutanaklar Belgeler.* Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları., Çaycı, Abdurrahman (1992) "Türk Ermeni İlişkilerinde Gerçekler" in *Tarihi Gelişmeler İçinde Türkiye'nin*

equal before the law with Muslim Turks. The French view was designated around special treatment to Armenians and Assyrians residing in the Turkish land while insisting on the removal of the military duty for Non-Muslims and the necessity of amnesty. The French delegation mainly aimed the continuation of the Capitulations instead of minorities issue. Given the fact that France is still posing reluctance in providing 'advantaged' status to any kind of minorities in her own legislation and is the pioneer of the 'nationalist' thought, it is understandable why French delegation did not pursue further interest in the minorities in newborn Turkey. The Italian view did not differ much from the French, either; except for, the pronunciation of the Turkish nationals belonging to 'Greek', 'Armenian' and 'Muslim' minorities as separate parts of the society. The Serb-Croat-Slovene state approached the issue from a different point of view, defending that the Patriarchate in İstanbul must keep its presence and that Turkish government must amend minority-related laws according to the League of Nations, in general. Eleftherios Venizelos, representing the Greek standpoint, 'confusingly' supported that the Article fifth of the Turkish National Pact was satisfactory to solve minorities problem. He declared that the conditions of the exchange of Turkish and Greek populations must have been designed by an 'exchange committee', to be established in Greece, and the Western Thrace must have been left to the sovereignty of Greek authorities. The presence of the Greek side in the Conference might gain even more significance if the Treaty of Lausanne is to be read as a 'political text', aiming to formulate a 'balance of powers' between Turkey and Greece, as well as between Turkey and the Allied Powers. The USA, finally, was only an observer in the Conference (due to the 'isolation politics' applied over Europe after Woodrow Wilson lost the election in 1919), yet sent an *aide-memoire* (memorandum) to the Lausanne participators, in which such topics are mentioned in favor as Armenian land in the East, an proper exchange of populations between Greece and Turkey and "an equal and impartial treatment"[236] of the participating states towards minorities issue.

The positions of Allied Powers demonstrate also a historical trend analysis, which compromises the alteration of opinions of those states towards Turkish

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Sorunları Sempozyumu (Dün-Bugün-Yarın), March 8-9, 1990. Ankara: Türk Tarih Kurumu Basımevi, pg. 106-107.

[236] Evans, Laurence (1965) *United States Policy and the Participation of Turkey, 1914-1924*. Johns Hopkins University Studies in Historical and Political Sciences. UK: Johns Hopkins University Press, pg. 415.

minority issues from *millet system* to Tanzimat and Islahat Acts, and eventually to the Treaty of Lausanne. As pointed out in the Chapter II, the Congress of Vienna was the turning point in Ottoman minority position with the inclusion of 'European nation-states' into the *millet system*, and it led to the release of two comprehensive documents, Tanzimat and Islahat Acts, that were designed to provide certain privileges (mainly *capitulations*) to the Europeans in terms of free-commerce in the Ottoman land, establishment of Non-Muslim populations' religious and authoritative institutions and 'positive rights' to Non-Muslims, including non-obligatory military duty and certain tax arrangements. Although the consequences of those Acts resulted in minority-related provisions and sacrifice in the Turkish view, the significance of the *capitulations* and the willingness to intervene in Ottoman internal affairs – which, in broader understanding would become the core aspect of 19th century minority developments - still could not be denied as the main driving forces for European states to impose such provisions.

When it comes to the period between the Acts and the Treaty of Lausanne, the main motive, though might be enhanced, did not change considerably from *Capitulations* to particular *minority concerns*. While British view insisted on granting more rights to certain groups, especially to Armenians, not only did this strong position weed out approaching to the end of the Conferences but also it was not adequately supported by the representatives of the other nations. The further fact that the US politics did not become one of the determining factors in the Articles of the Treaty might also be interpreted as another reason why national positions could not avoid having come to a sort of 'standstill' and did not much alter from capitulations to purely minority-related concerns.

Turkish views, on the other hand, evolved around the will to only slightly touch upon the minorities issue with a mere reference to the exchange of populations of the Greek and Turkish sides, and never to participate in the discussions over a 'protection regime' for minorities. In other words, Turkish side tended to have such a minorities coverage that would never threaten 'the unity of Turkish nation' and would always be compatible with the conditions granted to the Muslim population in other member states of the League of Nations. The Turkish attitude, called for "sympathy and respect" by Phillip Marshall Brown, was motivated by "re-awakened national determination at all costs to maintain what it believes to be the sovereign

rights of the Turkish people". Turks could not permit alien elements to enjoy their rights privileged before 1914 mainly due to the "nationalistic aims of the Greeks and Armenians, and the danger of European intervention in their behalf"[237]. However, the central point in the Turkish minority approach was the fact that in the possible case of a proposed regime for Protection of Minorities in Turkey, those persons must have solely belonged to *religious* minorities. The 'nation-building' process of new-born Turkey at that time urged this separation mostly.

In the course of Lausanne Conference, three separate commissions were established for easing the schedule. Among them, the second, presented by Marquis Garroni from Italian committee, dealt particularly with minority-related issues[238]. In addition, some sub-commissions would be in charge of minority discussions, as well. The first meeting by the second commission took place in the Ouchy Palace, at 4 p.m., on December 12, 1922, with the participation of the whole Turkish delegation and presidency of British representative, Lord Curzon[239]. The minorities-related meetings, which lasted until the very last day of the signing of the Treaty, witnessed considerably harsh disputes, especially about the establishment of Armenian land in Eastern Anatolia, the exemption of Non-Muslim Turkish nationals from military duty, the presence of Patriarch in İstanbul and the exchange of Greek and Turkish populations. Yet, once again, the core of the disputes connected to the definition of minorities of Turkish nation. Religion, race, language, sect, nationality and many other concepts were examined during the meetings. However, Turkish attitude towards accepting only religious minorities had never shifted to any directions and on December 23, 1922, after three challenging meetings, the Allied Powers began to pronounce 'Non-Muslim minorities' in their defining statements[240]. The additional protocol number 9, for the first time, included the term 'Non-Muslim minorities' in the Lausanne Conference. This reference was, later, reflected on the wording of the Protection of Minorities section of the Treaty of Lausanne, as well.

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[237] Brown, P. M. (1923). ibid. Pg. 291.
[238] Ürer, Levent. ibid. Pg. 233.
[239] Aydemir, Ş. Süreyya (1984) *İkinci Adam 1884-1938 Vol. I.* 6th edition. İstanbul: Remzi Kitabevi, pg. 228.
[240] Meray, L. Seha. ibid. Pg. 201-202.

IV. 2. Turkey's Minority Understanding

Why did Turkey so much insist on accepting only 'Non-Muslim' nationals as minorities? According to Baskın Oran, there are three reasons; being historical, political and ideological[241]. The, first, historical reason arises out of the argument that Turkey is the prolongation of Ottoman Empire. Therefore, since Ottoman *millet system* was based on religious (even sectarianist) roots, Turkish perception takes religious minorities distinction for granted. The, second, political reason calls for the tradition of 'foreign involvement in the internal affairs' mainly caused by Ottoman religious minorities in the nationalism era of 19th century. The unpleasant experience of Turkish people, coming from Ottoman roots again, leads to skepticism for the minorities definition. The ideological, final, reason emerges out of the 'trauma' which was created due to the shrinkage in the coverage of Turkish-ruling lands from three continents to only small Anatolia. This trauma, according to Oran, was connected to impatience against any other cultural identities but themselves by Muslim Turkish nation. Hence, starting from Erzurum and Sivas Congresses, no Non-Muslim Turkish national took part in the governance of the Independence War, and thus, they were the only ones to be referred as minorities in Lausanne. One of the Turkish representatives in the Lausanne Conference, famous with his Turkic thoughts, Rıza Nur, explains the reason, similarly with Oran, and claims that "there can not be a Muslim minority in a Muslim country"[242] due to historical traditions, moral thoughts, common customs and common participation to the governance.

Whether or not these changed after the Caliphate had been rescinded on March 3, 1924, what can not be altered is the fact that, as Toynbee points out, the Lausanne Conference, which had started with great prejudice and negative thoughts over Turkish attitude towards minorities, ended up quite successful for the Turkish side, which had the counter party accepted its own definition of 'Non-Muslim' minorities[243]. National and religious references aside, the wording of the Part I, Section III (titled *Protection of Minorities*) of the Treaty of Lausanne is in the same

[241] Oran, Baskın (2004) ibid., pg. 48-49.
[242] Meray, L. S. (1969). (trans) ibid. Pg. 175.
[243] Toynbee, J. Arnold (2000) *Bir Devletin Yeniden Doğuşu, Türkiye II.* Vol. II. Turkish Translation: Yargıcı, K. İstanbul: Cumhuriyet, Yeni Gün Ajansı Basın ve Yayıncılık, pg. 57.

vein with the Minorities Agreement of Poland (Articles 7 to 12[244]). This, in a sense, evidences the up-to-date character of Lausanne at its signing, as well.

Protection of Minorities section of the Treaty of Lausanne covers the Articles from 37 to 45. Article 37 accepts the following articles as the fundamental laws, which can not be surpassed by any law, regulation or official action by Turkish governments. Article 38 assures full protection of life and liberty of *all inhabitants* of Turkey regardless of place of birth, nationality, language, race or religion. Further, it allows *Non-Muslim minorities* to "enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order". Article 39 provides for Turkish nationals belonging to *non-Muslim minorities* utilize the same civil and political rights as other nationals. It, also, prohibits religion to be a distinctive element before the law. Moreover, *all Turkish nationals* are free to use any language they want in their private lives while adequate facilities must also be available to "*Turkish nationals of non-Turkish speech* for the oral use of their own language before the Courts". Article 40 guarantees the same treatment and security in law towards *non-Muslim minorities* as other Turkish nationals as well as the right to establish, manage and control all religious, social institutions, schools by using their own languages or exercising their own religious practices. Article 41 covers the application in those towns and districts where 'a considerable proportion of *non-Muslim nationals* are resident'. The government, then, is obliged to grant adequate facilities towards primary schools in which apart from Turkish-as the official language- their own language can also be thought. Those persons should also enjoy an equitable share in public funds to be used in educational, religious, or charitable purposes. By the Article 42, "the Turkish Government undertakes to take, as regards *non-Muslim minorities*, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities". Furthermore, full protection to the religious establishments of the *non-Muslim minorities* is also undertaken by the Turkish government. Article 43, additionally, guarantees, in case of any violation against *non-Muslim minorities*' faith or religious observances, the right to attend Courts of Law or not to perform any

[244] Thornberry, Patrick (1994) ibid., pg. 299-403.

legal business activity on their weekly day of rest. Article 44 has Turkey agreed that "in so far as the preceding Articles of this Section affect non-Muslim nationals of Turkey, these provisions constitute obligations of *international concern* and shall be placed under the guarantee of the League of Nations [and] they shall not be modified without the assent of the majority of the Council of the League of Nations." Finally, Article 45 imposes the same rights given by these provisions to non-Muslim minorities of Turkey upon Greece on the Muslim minority in her territory[245].

Lately, discussions over minorities in Turkey are evolved around the different interpretations of these highlighted articles of the Treaty of Lausanne such that they even led to publication of an official report in October 22, 2004, "released under the auspices of the Human Rights Advisory Board – a state body which reports to the Office of the Prime Minister - questioned the policy on minorities and communities, highlighting in particular the restrictive interpretation of the 1923 Treaty of Lausanne and encouraging Turkey to align its policy with international standards. The report also called for a review of the Turkish Constitution and all related laws to give them a liberal, pluralistic and democratic content with a view to guaranteeing the rights of people with different identities and cultures to protect and develop these based on equal citizenship."[246] In the following, arguments borrowed from that particular report will be explored. However, before that, the historical gap between 1923 and 2004 must be fulfilled.

Although the study of 21st century minority developments with respect to 1923 Lausanne document might surely seem anachronistic, the truth is (legal or political) positions of Turkish governments hitherto did not much change since Lausanne. There are two reasons for this standstill. One of them is mainly related to the international scene while the second one emerges in a Turkish national basis. As also pointed out in the Chapter II, the outbreak of the World War II and the haunting presence of the Cold War, respectively, did not allow international organizations to obtain further progress in minority developments including comprehensive texts until mid-1990s. The UN, for instance, was reluctant even to pronounce 'minorities' in its UDHR and maintained its position to interpret the minority rights under the broader fields of Human Rights. The only particular document that made a significant impact

[245] All quotations of this particular paragraph are taken from Pehlivanoğlu, A. Öner. ibid. Pg. 276-279.
[246] European Commission (2005) *Turkey 2005 Progress Report.* Brussels. 9.11.2005. SEC (2005) 1426. Pg. 35.

in the minorities area of International Law became the Article 27 of the ICCPR; however, with even EU members that have not yet signed it. Only after 1990s, international organizations became interested in dealing with 'minorities' topic and released aforementioned documents, such as the ECRML and the FCPNM. Turkey, during this period, remained loyal to the Article 44 of the Treaty of Lausanne and did sign, though reservations, these international documents eventually.

The problem of the Turkish side, on the other hand, might be interpreted with a main reference to the country's internal turmoil, which witnessed three *military coups* and serious alterations upon the Constitution. The political contentions between right and left oriented citizens, the severe intervention of the military to the daily politics and the creation of strongly restricting laws and regulations upon almost all walks of life constituted the main consequences of the period especially between the mid-1950s to the early 1990s. More importantly, 1980 Constitution and its 'demolishing' impact upon the 'libertarian' character of the 1961 Constitution[247] are still seriously discussed not only within the country but also by the Regular Reports of the European Commission upon the progression of Turkey towards the EU membership. Severe Human Rights violations, capitol punishments, limitations upon fundamental rights and freedom of thought and speech, strictly drawn political parties regulations, and restricted social and economic rights might be listed as the major turn-outs of the 1980 military coup and the Constitution[248]. As it might be clearly seen, instead of a 'minority discussions', Turkey had suffered an acute problem of human rights for almost forty years of time and, in a way, did not have any priority or time to give to minorities issue.

Given the weaknesses of both international and Turkish perspectives until 1990s, expecting Turkey to establish a comprehensive and open minorities regime would probably be a naïve observation. However, during the 1990s, in a rapidly changing international scene with post-Communist actors and the remarkable impact of globalization, Turkey also made attempts to be 'recovered' from the ashes of early events, being led by the frequent interactions between the country and the EU. Enlargement to the Union, in that sense, might be considered as a tool for Turkey to create a recognition upon Protection of Minorities and minority rights. Yet, it must

[247] Çavdar, Tevfik (2004) *Türkiye'nin Demokrasi Tarihi (1950'den Günümüze).* 3rd edition. Ankara: İmge Kitabevi, pg. 100.
[248] ibid, pg. 263-171.

be borne in mind before going into any further discussion that Turkey was not the only actor which sought help from the EU; and, not only the CEECs also forced the Union to 'recover' themselves but also the ability of the EU to handle such serious pressure was not yet testified. In other words, EU's enlargement tool is still arguable to take the front rank with respect to the Turkey's broken inaction towards minorities issue.

Passing through to the impact of the EU upon Turkey's minority understanding and the current position of Turkey regarding minorities, two last points have to be clarified in terms of the Treaty of Lausanne. First, what is the legal meaning of the Treaty of Lausanne? Second, how can be the Articles 37-45 interpreted in terms of international documents? A combined answer can be given.

IV. 3. The Treaty of Lausanne's Legal Position

Treaty of Lausanne is basically an international agreement. Thus, the general status of international agreements in Turkish law must be followed through Article 90 Turkish Constitution (as amended on May 22, 2004):

> The ratification of treaties concluded with foreign states and international organizations on behalf of the Republic of Turkey shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.
>
> Agreements regulating economic, commercial and technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the state, and provided they do not infringe upon the status of individuals or upon the property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation.
>
> Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on the authorization as stated in the law shall not require approval of the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and affecting economic or commercial relations and the private rights of individuals shall not be put into effect unless promulgated.
>
> Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph.

> International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In case of contradiction between international agreements regarding basic rights and freedoms approved through proper procedure and domestic laws, due to different provisions on the same issue, the provisions of international agreements shall be considered.[249]

Possessing the character of all economic, administrative, technical and commercial agreements- including basic rights and freedoms-, the Treaty of Lausanne was ratified *properly* by Turkish Grand National Assembly in August 24, 1923, one month after it had been signed. The ratification was 'proper' since it was in accordance with the procedures settled in "Article 65 of the Constitution 1961 and Article 90 of the Constitution 1982 of Turkish Republic"[250].

Pazarcı demonstrates that to reach upon a legitimate decision, Turkish Constitutional Court applies either to bilateral or multilateral international agreements, among which the Treaty of Lausanne stands for, that Turkish Republic has signed or to Universal Declaration of Human Rights (UDHM) or European Convention of Human Rights (ECHR) both of which Turkey is a signor[251]. The nature of the decisions to be made determines which one to apply. For instance, a decision made by Turkish Constitutional Court manifests the relation between Turkish legal system and the UDHM by stating that "when it comes to the Universal Declaration of Human Rights: The rights and freedoms that mentioned international document comprises are covered by our Constitution."[252]

Particularly about the Lausanne document and the minorities, the same Turkish Court is absolute and strict about the status of minorities and decisions to be made about them. The Constitutional Court notifies that "no international document existing shall be discussed to be examined about minorities rather than the Treaty of Lausanne to which the Republic of Turkey is a part"[253]

A further question might be asked about whether the status of Treaty of Lausanne will be converted if Turkey joins the EU. The question falls into the

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[249] Turkish Constitution, Article 90. The quote in English taken from the World Wide Web: http://www.tbmm.gov.tr/english/constitution.htm

[250] Pazarcı, Hüseyin (1985) *Uluslararası Hukuk Dersleri Vol. I.* Ankara: Ankara Üniversitesi Siyasal Bilgiler Yayınları, pg. 28.

[251] Ibid. pg. 27.

[252] Anayasa Mahkemesi Kararları Dergisi (1980) *8.5.1980 tarihli 1979/1, K. 1980/1;* Vol. 18; p.31.

[253] Ibid. pg. 31.

category of 'agreements made between the new members and third countries or international organizations before the membership to the EU'. Article 234 of the Rome Treaty states that:

> (1)The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty. (2)To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude. (3)In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.[254]

Since the 'law' of the EU (regulations, case law, certain addressed directives, and addressed decisions) becomes a part of Turkish domestic law when Turkey joins the Union, article stated above has a solid legal meaning. However, as the Article 234 of the Rome Treaty explicitly states, there are *no 'obligatory'* provisions that necessitate Turkish side to eliminate or modify a presently valid legal document, such as the Protection of Minorities section of the Treaty of Lausanne. In other words, any *reservations* (referring to a particular treaty) to the future agreements between Turkey and the EU are applicable in the EU's own internal law.

IV. 4. 2004 Minority Report, Critiques & Turkey-EU Relations under Minorities' Perspective

Up to this point, it is stated that the Treaty of Lausanne constitutes both political and legal background behind the minorities-related discussions and perspective in Turkey. However, this tendency has been recently interrogated by a part of the academia and especially by the Human Rights Advisory Board's so-called Minority Report. Since the consequences of and the reactions towards this particular report are highly lively and provoked remarkable debates, it will not be gibberish to

[254] *Treaty of Rome, Article 234* taken from the World Wide Web: http://europa.eu.int/abc/obj/treaties/en/entr6g.htm#Article_234

select it as a guide to discuss current trends in the minorities discussions in Turkey. In addition to examination, the EU's Progress Reports will also be referred in order to see whether the Minority Report and the EU converge in the points that are considered lacking in Turkish understanding of minorities.

Although the Advisory Board was established under the regulation number 4643, on April 12, 2001, and hence it bears a legal status[255], the Minority Report was not written over a request coming from neither the government nor any other administrative committee. The Board, instead, decided by themselves to publish such a report and had any right to act as such. In other words, being not written on a governmental request, the Report still carries a legal status due to the Board's own legality. Thus, it can not be undervalued by 'not being legal' in any means.

Minority Report begins with the introduction of some definitions, concepts and a brief historical development about the minorities issue worldwide. Then, it mentions Turkey's perspective by making references to the Ottoman heritage, the Treaty of Lausanne and 1982 Turkish Constitution. This perspective, however, is criticized in two main headings: first, Turkey's attitude, which is claimed to run counter to international tendencies in minorities issue and second, Turkey's 'conscious decision' not to apply even the standards of the Treaty of Lausanne. Below, these two headings will be discussed under the information accumulated up to this point.

In the previous two chapters, the international understanding of the minorities issue is discussed, giving particular attention to the European case. Even a quick summary of those chapters will distinctly display that there are considerable differences between Turkish and international attitude towards minorities. However, what should also be remembered is that there is no *universal standard* applied to this particular problem, either. For instance, even the members of one international entity, the EU, differ dramatically in both theory and practice. In order to avoid repetition, these differences will not be elaborated once more. Instead, some crucial points in reference to the European Commission's Progress Reports for Turkey will be demonstrated so as to find the converged and diverged points between two different views.

[255] Oran, Baskın (2004). ibid. pg. 164.

The emergence point of minorities issue within the EU-Turkey relations; i.e., within the enlargement and the accession process, began in a 1997 offer of 'European Conference-series', initiated in the Luxembourg Summit, by the European Commission, that urged Turkey to accept 1993 Stability Pact, which had already been signed with the CEECs with the main motives of 'conflict prevention diplomacy' and 'multi-lateral governance' to be established in those post-Communist countries. Turkey, however, did not accept to participate in those conferences, due particularly not to be given an 'accession country' status and to the tensions related with the talks over (Southern Greek) Cyprus' membership[256]. The rejecting position of Turkey, then, resulted in the fact that as the accession criteria, the EU imposed solely 1993 Copenhagen conditions before the country.

In the Helsinki European Council Meeting in December 1999, it was concluded that

> Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States [Copenhagen Criteria]. Building on the existing European Strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms.[257]

Under this conclusion, as a part of pre-accession strategy, European Council asked for the Commission reports about the progress made by Turkey in preparing for membership. Hence, Turkey has been reported to the European Council since 1998. Then, in 2002, the Copenhagen European Council, first recalled and then encouraged Turkey that:

[18]... according to the *political criteria* decided in Copenhagen in 1993, membership requires that a candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and Protection of Minorities... [19] to pursue energetically its reform process. If the European Council in December 2004, on the basis of a report and a recommendation from the Commission,

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[256] Oğuzlu, H. T. (2003) "An Analysis of Turkey's Prospective Membership in the European Union from a 'Security' Perspective" in *Security Dialogue.* Vol. 34. No. 3.: 285-299, ISSN 0967-0106. September, 2003. SAGE Publications, pg. 294.

[257] EU Document (1999) *Presidency Conclusions, Helsinki, 10-11 December 1999, Article 12* taken from the World Wide Web: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/ACFA4C.htm (Nov. 1, 2005)

decides that Turkey fulfils the *Copenhagen political criteria*, the European Union will open accession negotiations with Turkey without delay.[258]

The Commission's Progress Reports are designed in accordance with the Copenhagen Criteria (of 1993) and, the candidate states (in this case, Turkey) are annually evaluated in terms of their progression towards the accomplishment of the certain criteria. The striking point is that, as also clarified earlier, the Copenhagen Criteria became into force for the *internal law* of the EU (by the Amsterdam Treaty), except for the fact that 'respect for and Protection of Minorities' were not explicitly pronounced. This exclusion can also be seen from the Table of Contents of the Progress Reports, by labeling 'Protection of Minorities' along with the heading of 'human rights' section[259].

In order to focus particularly on the recent developments, the 2005 Progress Report will be taken as the primary reference point in this analysis. However, for this part of the study, a combined analysis of the 2005 Progress Report and Minority Report will be carried out in search for parallelism that might be noticed in certain points between these two documents. From the very first paragraph, the Progress Report agrees with the Advisory Board's Minority Report, stating that "[a]ccording to the Turkish authorities, under the 1923 Treaty of Lausanne, minorities in Turkey consist exclusively of non-Muslim communities. The minorities usually associated by the authorities with the Treaty of Lausanne are Jews, Armenians and Greeks. However, there are other communities in Turkey which, in the light of the relevant international and European standards, could qualify as minorities."[260]

More severe discussions arise in the context of the reservations Turkey declares upon the ICCPR[261] and the UN Covenant on Economic, Social and Cultural

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[258] EU Document (2002) *Presidency Conclusions, Copenhagen, 12-13 December, 2002, Articles 18-19* taken from the World Wide Web:
http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/73842.pdf (Nov. 1, 2005)
[259] The naming is borrowed by the European Commission (2005). ibid. pg. 2.
[260] European Commission (2005) ibid. pg. 35.
[261] Extract of reservation to ICCPR: "The Republic of Turkey reserves the right to interpret and apply the
provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the
related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July
1923 and its Appendixes." – mainly about the rights of minorities.

Rights (ICESCR)[262]. According to 2005 Report, these reservations "prevent further progress on the protection of minority rights"[263]. Turkey is also criticized about having not yet signed the CoE's FCPNM and ECRML. Moreover, the non-ratification of Additional Protocol No 12 to the ECHR is seen primarily important since it is claimed that "minorities are often subject to *de facto* discrimination, and encounter difficulties in acceding to administrative and military positions"[264]. The Advisory Board, as well, makes partial references to these reservations or non-ratifications while their report also reminds the general tendency that after the ICCPR Article 27 national governments are not recognized to have defined their own minorities. Instead, it is reminded that *groups* with ethnic, linguistic and religious *differences*, with a strong cultural *consciousness* of these particular differences, may well be considered as minorities of a nation[265]. Although this argument has valid grounds in particular, it also has some deficiency related to its wording. As Arsava puts clearly, in International Law *persons,* instead of *groups,* are considered as minorities[266]. Any minority right, in that sense, is given to persons belonging to minorities. The collective use of these 'individual rights' is also granted by Law for some circumstances, yet not under the term 'group rights'. The missing of such a clear-cut difference is questionable especially when it is regarded how wording can be utilized in order to expose different interpretations, as it will be seen in the interpretation of the articles of the Treaty of Lausanne by the Minority Report committee.

The second highlighted problem by Human Rights Advisory Board is related to the malpractice or even non-application of the Articles in Lausanne document. In detail, establishment of Non-Muslim minorities' foundations, administrations of these institutions, inheritance-related issues, broadcasting and publishing rights for these persons and rights to maintain and create new religious institutions are proved

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[262] Extract of reservation to ICESCR: "The Republic of Turkey reserves the right to interpret and apply the
provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural
Rights in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of the Republic of
Turkey."- mainly about the right to education.
[263] ibid. pg 36.
[264] ibid. pg. 36
[265] Oran, Baskın (2004). ibid. pg 154.
[266] Arsava, Füsun. ibid. 53-55.

to be severely violated by the relevant Turkish governments hitherto. Besides, although Lausanne covers all non-Muslim minorities in Turkish land; only *Greeks*, *Jews* and *Armenians* were (mistakenly) given minorities rights. However, there are other non-Muslims resident in Turkey, such as Syriacs[267], and they have to be also given the exact same rights with other minorities.

The Advisory Board, furthermore, opens up a brand new dimension to the Turkish minority discussions by claiming that the Protection of Minorities section of the Treaty of Lausanne is not only bound to non-Muslim minorities. This assertion was already published in earlier works of Oran, before the Minority Report. Quoting:

> According to Lausanne, only the non-Muslims are considered as minorities, yet certain rights are given to 4 main groups there, including non-Muslim minorities...These can be listed as such:
>
> a. Non-Muslim Turkish nationals (Articles 38 (3), 39 (1), 40, 41, 42, 43, and 44)
> b. All Turkish nationals (Article 39 (3) and (4))
> c. Non-Turkish speakers of Turkish nationals (Article 39 (5))
> d. All Turkish inhabitants (Articles 38 (1) and (2), 39 (2))[268]

This classification is significant, according to Oran, since those Turkish nationals who are Muslims but speaking languages other than Turkish are also given certain rights and provisions, and it, thus, also covers 'Kurds'. Furthermore, the text reads that "The Section III [Protection of Minorities] undertakes international guarantee for only non-Muslim minorities; the other three groups mentioned above are not under such a guarantee."[269] In other words, it is 'misunderstood' that Lausanne only gives minorities status to non-Muslims; instead, non-Muslims are the only nationals whose 'minority rights' are under international guarantee. Hence, certain rights, such as broadcasting and publishing in their own languages, must be also given to those Turkish nationals, speaking languages other than Turkish.

This study has three advanced comments to these critiques pointed out by the Turkish Minority Report. Firstly, a serious divergence emerges between Lausanne notes and the Report's claim, when the telegram records that helped communication between Turkish Committee in Lausanne and the Grand National Assembly in

[267] Oran, Baskın (2004). ibid., pg 155.
[268] Oran, Baskın (2001) ibid.., pg 156 and footnote: 81.
[269] ibid. pg 159.

Ankara, during the Lausanne Conference were analyzed. The Turkish delegation benefited from these telegrams after each new discussion taken place in the Conference in order both to inform and to be directed by Ankara government[270]. As these telegrams clearly put, Turkish Committee was particularly sensitive in having the wording non-Muslims as minorities accepted to the Allied Powers[271]. Indeed, they strongly imply that the definition of minorities had more importance than what would be given as minority rights for the Turkish delegation. The Conference speeches made both by İnönü and Nur evolved around the non-Muslim minorities definition[272] and this strict attitude paid off in favor of Turkish delegation. Even foreign academicians of 1920s agreed upon that being non-Muslim was the only exact criteria that all participants converged in minorities issue[273]. In that sense, where definition is perhaps the most critical issue undertaken in Lausanne negotiations, the claim of the Advisory Board drawing attention to a *hidden* meaning under related articles seems to be historically hollow.

Secondly, referring to only a certain group ('Kurds' in the context), the Minority Report falls into the same mistake it previously targeted by claiming not only Armenians, Jews or Greeks are non-Muslim nationals of Turkish land. The Zaza, the Lazi, the Circassian, immigrants of Balkan Muslims (Bosnians), and the Roma might also be perfectly regarded as 'Turkish Muslim Nationals speaking non-Turkish language'. Demoting a problem only into one group (again, to a 'group', which also contradicts with the 'persons-based' understanding of international minorities issue) not only raises questions over the data reliability of a *legal* institution; i.e., the Human Rights Advisory Board, but also appears as a double standard in 'wording analysis' in the same page of the same report. Apart from the wording, even the linguistic understanding of the report can not respond to several questions. Even though it is accepted that Article 39 of the Treaty of Lausanne gives a right to *non-Turkish speaking Muslim nationals* to use their own language by quoting "no restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in

[270] Ürer, Levent. ibid. pg 221.
[271] Meray, L. Seha. ibid. 307.
[272] For the texts of those speeches, please refer to Nur, Rıza (1999) *Lozan Hatıraları.* İstanbul: Boğaziçi Yayınları.
[273] Turlington, Edgar (1924) "The Settlement of Lausanne" in *The American Journal of International Law.* Vol. 18, No. 4. (October, 1924), pg. 700.

publications of any kind or at public meetings"[274], then it will mean that, for instance, the Treaty of Lausanne fails to solve these *groups'* educational rights, since Article 40, which particularly deals with educational rights of minorities in Turkey, does only refer to non-Muslim Turkish nationals. In other words, the only 'minority right' given by Lausanne document to non-Turkish speakers is to use their own language in their private lives or self-financed publications/press. Their educational[275], administrative or political rights are (then) left unsolved or even untouched. Moreover, this will lead to a comment that the Treaty of Lausanne has an inconsistency in its context. In order to avoid this inconsistency, the Article 39 might be read in such a way that one considers *Armenian*, *Jewish* and *Greek* (or any other language spoken by non-Muslim nationals) as 'languages', as well.

In the third, and the most essential, interpretation, this thesis finds it 'unfair' to reduce the misapplication of the Treaty of Lausanne only to the hands of Turkish governments hitherto. As already mentioned, the Treaty of Lausanne is not only a legal document; it might well be read as a political text including the willingness of a new-born nation to be accepted by and equally represented in front of the most powerful states of –then – world order. The 'politics of balance' between Turkey and Greece, which was established after the Treaty of Lausanne, as well as Turkey and the Allied Powers, might also support this argument. Therefore, especially when it is considered that Greece is also entitled to the very same articles of the Lausanne in terms of Protection of Minorities and minority rights, that the sanction-mechanism must play a critical role for implementation of the document and installation of the articles. Such a mechanism was already transferred (both legally and politically) from the failed League of Nations to the UN as soon as the latter was set up. However, the protection of Lausanne Agreement was, instead, almost entirely left to the 'nations', and violations of any articles or provisions did not take any international recognition; which ended up application of "negative reciprocity to the detriment of the minorities, regarding mainly religious institutions and education" in

[274] Pehlivanoğlu, A. Öner. ibid. Pg. 277.
[275] There are many studies in Turkish literature that consider the Treaty of Lausanne lacking in both lingusitic and educational rights of persons belonging to minorities; in order to see why these two concepts are not separated please refer to, Aksamaz, A. İhsan (2004) "Anadil Öğretimi ve Anadilde Öğretim Üzerine" in *Anadilde Eğitim ve Azınlık Hakları.* Aksamaz, A. İ, Saltuk, T., Güvenç, Ş., Demir, E. & Kök, K. (eds.). İstanbul: Sorun Yayınları, pg. 13-43.

Greece and Turkey[276]. In other words, because of the lack of strict international monitoring over the Treaty of Lausanne, minorities issues in both countries became the playground and 'reciprocal retaliatory' arena of those States[277], especially after worsening of the relationship between Turkey and Greece beginning from the 1950s (particularly over the island of Cyprus). Although this surely does not reduce the guilt belonging to each individual nation by any means, they still can not be executed alone. Furthermore, it might also be claimed that the 'unclear position' of the EU in this control-mechanism scene ('would the EU replace the UN in terms of guaranteeing the protection of Greek and Turkish minorities if -or even if not- the Treaty of Lausanne was abrogated?') make the situation even more complicated. Although arguable as a consequence, enlargement and conditionality might, in that sense, play a destructive role (instead of constructive) to the balance between Turkey and Greece relations that were set up by the Lausanne 'moderately' in 1923, as well. Briefly, the role of international organizations should not simply be left behind if the arguments move towards national weaknesses in implementing the Treaty of Lausanne; as it happened in 2004 Minority Report.

The Turkish Minority Report, though with such serious problems, serves a useful guide for minorities studies by also touching upon the Turkish legislation, consolidation, case law and High Court decisions related to the minorities issue, including closure cases of political parties[278] and binding decisions of Supreme Court of Appeals and State Council[279]. Besides, the report also draws the reasons of this insufficient picture of minorities (protection or rights) in the country. Accordingly, there are two basic reasons, one being theoretical and another being historical, that have led Turkey 'to be held up to eighty-years old Lausanne; to confuse the *definition of minorities* with *giving minority rights*; to perceive *inner*-self-determination, which indeed means 'democracy', and *outer*-self-determination, which brings about 'disintegration', as the same concepts; to allow 'oneness' (*teklik*) to devastate 'unity' (*birlik*) in Turkish nation; and to overlook about the 'fact' that

[276] Tsitselikis, Konstantinos (2004) ibid, pg. 6.
[277] The events taken place in Istanbul in September 6-7, 1955, especially towards Greek minorities might constitute a notorious example of this retaliation between two countries. For a comprehensive source, Tarih Vakfı (2005) *6-7 Eylül Olayları Fotoğraflar-Belgeler: fahri Çoker Arşivi.* 2nd edition. İstanbul: Tarih Vakfı Yurt Yayınları.
[278] Oran, Baskın (2004) ibid. pg. 157-158.
[279] ibid. pg. 158-159.

the word *Turk* does not only refer to *Turkish people as a nation*, but also connotes an *ethnic* group'[280].

The theoretical reason is linked to Ottoman heritage, which inherited all 'lower identities' of the Empire to newly born Turkish Republic. The difference however lies in that in the Empire-era, the 'upper identity' was represented as 'Ottoman' while today's upper identity is represented by the name under one 'ethnic group'; i.e., 'Turkish', that had been one of the lower-identities in the Ottoman-era. Therefore, giving a priority to one of the early lower-identity in front of others establishes the roots of minority-conflicts in Turkey. The 'wording', once again, is highlighted by the Report, to which itself can not easily be accepted very sensitive. First, the given 'names' of nations are determined by the 'others' of an identity, instead of those nations themselves. For instance, in the Treaty of Sevres, which was signed with Ottoman Empire, the Turkish-residence was referred as 'Turkey'[281], in 1920, three years before the foundation of Turkish Republic. In other words, none of the signors of the Treaty of Lausanne, or the triumphant of the Turkish War of Independence gave the name of 'Turkey' to the newly born republic. Second, the Turkish delegation of Lausanne, for instance, can not be assumed to represent or to defend their 'ethnic' roots, by any means. If this had been the case, the President of the delegation, later the President of the Republic, İsmet İnönü would have spoken for the rights of 'Kurdish' people, rather than Turkey, due to his natural cognation[282], or the Kurdish deputies in Turkish Grand National Assembly[283] would have demanded special rights concerning their ethnic roots. Under the light of these, instead of looking at the given name of Turkey as a product of the nationalistic-minds of Turkish Independence, historical evolution of the name must rather be analyzed. Further, demoting all minorities problems into a single conceptual matter still seems too naïve for an attempt to a solution.

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[280] ibid. pg. 159.
[281] In the Part IV, Protection of Minorities, Article 140 reads "*Turkey* undertakes that the stipulations contained in Articles 141, 145 and 147 shall be recognised as fundamental laws, and that no civil or military law or regulation, no Imperial Iradeh nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, Imperial Iradeh nor official action prevail over them." Taken from the World Wide Web: http://www.hri.org/docs/sevres/part4.html
[282] Zürcher, Erik (1994) *Turkey: A Modern History.* UK: London: I. B. Tauris, pg. 168.
[283] Çoker, Fahri (1995) *Türk Parlamento Tarihi.* Vol. II (First Period). Ankara: TBMM Yayınevi, pg. 337-342.

The Report makes a connection between the historical reasons of the Turkish minorities problem with the so-called *Sevres trauma*. In order to avoid repetition, only one instance will be benefited so as to display a possible deficiency of the argument. Muzaffer İlhan Erdost, one of the leading figures in the protests over Advisory Board's Report, draws serious attention to one detail that can be easily eluded in the importance and the necessity of the Treaty of Sevres in minority-related discussions, by stating "the Covenant of the League of Nations is a product/ a part of Sevres Treaty"[284]. Hence, bearing in mind the character of Sevres that was arranged over 'disintegration' of Ottoman Empire, and the character of the Treaty of Lausanne, as a response to the Treaty of Sevres, with the crucial impact of the League of Nations in the minorities issue-development, a natural bond between the Sevres Treaty and Turkish minority understanding shall not need a further elaboration.

Finally, at the outcome of the Minority Report, what is *legally* advised is basically to replace the term 'Turkish' (*Türk)* with the term 'of/from Turkey' (*Türkiyeli*)[285]. Only by this wording alteration, Turkish Republic will, suggested, be able to achieve 'the successful re-writing of the related Constitutional articles or regulations, the legal protection of different cultures and identities under the same roof of 'equal citizenship', democratization of central and local administration, and the harmonization with international agreements without the need of reservations or excuses'[286]. Reliability and accountability of this latest argument might be regarded, to this study's view, highly controversial if not too naive.

Although not included in the Minority Report, there are some other criticisms/ comments coming from the academia regarding the minorities issue in Turkey. Erol Kurubaş, firstly, criticizes Lausanne document with its supposed characteristic that sidelines 'Kurds' from international politics[287]. Opposing to this argument, Hasan Yıldız argues that 'Kurds' were automatically excluded from the discussions of the Lausanne Conference due to the Allied Powers' (led by Lord Curzon) attitude that highlighted 'Christian rights' explicitly, thus, reducing the

[284] Erdost, M. İlhan (2005) *Azınlıklar Sorunu.* Ankara: Onur Yayınları, pg. 59.
[285] The Turkish translation is done by this study's author.
[286] Oran, Baskın (2004) ibid. pg. 161-162.
[287] Kurubaş, Erol (1999) *Başlangıçtan 1960'a Değin Kürt Sorununun Uluslararası Boyutu.* Ankara: Ümit Yayıncılık, pg. 142.

minorities issue solely into religion platform[288]. Hence, the Allied Powers, in a way, agreed with that the Muslim Turkish nationals could not be considered as minorities in Turkey[289]. Approaching from more of an 'ethnic' perspective, Önder claims that Turkish Republic can not constitute an *ethnic mosaic*[290]. In his popular study of Turkish ethnic background, Önder also draws many crucial conclusions that attempt to explain controversial points, including the roots of many Muslim ethnicities, what constitutes to be 'ethnic', and the relationship between the concept of ethnicity and democracy, multiculturalism, or human/minority rights.

IV. 5. 2005 Progress Report and International Documents

To create a comparative environment, the 'Minority Rights' section of the Progress Reports for some CEECs (from 1998 to 2004) might be exemplified, as well[291]. For Czech Republic, firstly, the people of Roma, and their participation in the ministerial system, education and unemployment, became the specific target of the Regular Reports. Yet, the *tone* of the Reports might be concluded as 'positive' for the Czechs due to clear progress made by the country since 1990s. Hungary, secondly, was praised due to its (even over-)improvement and advanced institutional framework about the minorities issue and its Status Law. Yet, the condition of Roma people was still one of those areas where a further improvement was addressed. Slovakia, thirdly, was – though in a lesser degree – praised in a similar vein with Hungarian position; yet, the Roma people remained to be problematic in this country, as well. Latvia, fourthly, was one of the severely criticized CEECs by virtue of their already mentioned citizenship regulations for Russian-speaking persons, their language proficiency test and 'naturalization' process imposed upon minorities. Introduction of 'bilingual language' in schools constituted one of those rare appraisals throughout the Reports. Estonia, on the other hand, was criticized in quite similar topics with Latvia, yet with a stronger emphasis upon less-improved language policies. Lithuania and Poland were those countries whose neither progression nor reluctance was criticized since both countries did not seriously seem problematic in

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[288] Yıldız, Hasan (1992) *Fransız Belgeleriyle Sevr-Lozan-Musul Üçgeninde Kürdistan.* 3rd edition. İstanbul: Koral Yayınevi, pg. 132.
[289] Göldaş, İsmail (1999) *Lozan, Biz Türkler ve Kürtler.* İstanbul: Avesta Yayınları, pg. 58.
[290] Önder, A. Tayyar (2006) *Türkiye'nin Etnik Yapısı: Halkımızın Kökenleri ve Gerçekler.* 7th edition. Ankara: Fark Yayınları, pg. 17-33.
[291] All documents are obtained from the World Wide Web: http://ec.europa.eu/comm/enlargement/report_11_98/#report

the minorities area. Only the situation of Roma people was pointed out for those countries. Slovenia was another country that had its main minority-related trouble in the condition of Roma people; yet, more serious attention was sought for upon the linguistic and educational as well as administrative rights.

Bulgaria and Romania must be evaluated in a different manner, since both countries could not accede into the Union in 2004 and both are expected by 2007. In the Bulgarian Progress Reports, the Roma and Turkish ethnic origin are still specifically pronounced and further arrangements are addressed upon these two groups. While both are said to suffer economically; employment-related, educational and administrative improvements are strongly emphasized for the Roma. Romania, on the other hand, represents a more complicated case for minorities by virtue of enhanced problems of Roma community and Hungarian minorities. Romanian government is lately praised to have progressed from accusations of discrimination against these groups towards improved treatment to minorities; yet, quite inadequate socio-economic rights are still addressed by the Commission.

Turkey, on the other hand, reflects an even more complicated case for minorities issue when the wordings of the texts are compared. Roma people, due to the lesser population, are slightly touched upon while dialogue with international organizations is mostly favored. More significantly, Turkey is called to remove the reservations put upon international documents earlier while there was no such a warning in CEECs' reports - and those countries also had put several reservations -. These subjects are still and will surely be essential in the accession negotiations between Turkey and the EU.

The Regular Report demonstrates a special attention paid by the EU over "improvement of the dialogue with OSCE High Commissioner on National Minorities (HCNM); removal of the [already mentioned] reservations on international agreements; the contents of the schoolbooks that [in the abstract] lead to discrimination over non-Muslim minorities; the dual presidency in non-Muslim schools; Greek minorities' difficulties regarding teaching at schools, inheriting property and land registry; Roma people's cultural rights; teaching of, specifically, Kurdish language and the courses opened; Article 42 of the Turkish Constitution[292]

[292] Article 42 of the Turkish Constitution reads: "...No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be

regarding teaching in no other language than those having 'mother tongue' status; continued violence and general security in the Southeast; the judiciary's mixed role in guaranteeing the right of the usage of Kurdish language both in broadcasting and in political parties' regulations; the uncertainty in 'the law on compensation of losses resulting from terrorist acts'; the situation of 'internally displaced persons'; and the problem of village guards in the Southeast."[293]

Chapter II dedicated a thorough analysis about the involvement of the EU into the minorities issue by the help of its external policy tool 'enlargement'. It was implied that although the EU could (or did) not establish an internal-legal-binding policy for the minorities of its Member States, the CEECs enlargement indicated the Union's triggering impact upon the minority regimes of the candidate states. However, as pointed out, there are considerable limitations in its capabilities in terms of structuring a 'standard' regime in each country, creating a standard definition for 'minorities', imposing certain arrangements without applying severe 'economic' sanctions, monitoring the implementations after accession and more importantly having 'not' influenced 'heavily' by national politics of States' governments. When it comes to the particular situation of Turkey's accession, the EU's – already questionable – role in minorities issue is becoming more complicated due to the presence of the Treaty of Lausanne, with a solid legal status over the Constitution; to the balance of power between Turkey and Greece, which also shares the identical document in terms of minority problems and is at the same time an already-member; and to Turkey's unique position emerging out of complex political history, problematic Constitution and powerful 'nationalist' background with certain emphases on the concepts of 'unity', 'nationality', 'territorial integrity', and 'national sovereignty'.

Finally, Turkey's position in the major international minority agreements shall also represent the reluctant nature of Turkey over the minority concerns[294]. Due to the national legal position of Treaty of Lausanne, which is 'binding' in Turkish

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taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved." Taken from the World Wide Web: http://www.tbmm.gov.tr/english/constitution.htm

[293] European Commission (2005) ibid. pg. 35-40.

[294] For the whole list of Turkey's participatory status to the international minority-related documents, please refer to the Appendix-C.

Law, Turkey pays considerable attention in signing/ratifying any minority-related article with –already mentioned- reservations, declarations and communications. In the UN's ICCPR, first, Turkey puts a reservation with a direct reference to the precedence of the Treaty of Lausanne over any legal document, whose signature and ratification already came considerably late in 2003. Second, the CoE's ECHR was signed relatively earlier by Turkey, yet since then, the communication made upon has been severely criticized by several Human Rights institutions all over the Europe, as it almost links the whole convention to the Turkish national position[295]. Third, Turkey completely rejects the signature of the CoE's other minority-related documents FCPNM and ECRML by virtue of these documents semi-defining character of minorities, in spite of the serious pressure imposed by Commission's Annual Reports. Fourth, the ratification of the CSCE/OSCE documents does not change the big picture, without possessing any legally binding power. Evidently, the impact of the Treaty of Lausanne is still predominant in Turkish position on national minority regime. Therefore, it might be summed up that Turkey is neither ready nor willing to take part in a standardized (if at all?) international minority regime in the current picture.

In the next, concluding chapter, all discussions throughout the study will be summarized in a way that is aimed to constitute an argumentative platform for the main argument of the thesis. Upon these conclusions, certain discussions will be elaborated with some future projections.

[295] Extract of reservation to ECHR, Reservation made at the time of deposit of the instrument of ratification, on 18 May 1954 - Or. Fr.: "Having seen and examined the Convention and the Protocol (First), we have approved the same with the reservation set out in respect of Article 2 of the Protocol by reason of the provisions of Law No. 6366 voted by the National Grand Assembly of Turkey dated 10 March 1954. Article 3 of the said Law No. 6366 reads: Article 2 of the Protocol shall not affect the provisions of Law No. 430 of 3 March 1924 relating to the unification of education." Taken from the World Wide Web:
http://sim.law.uu.nl/SIM/Library/RATIF.nsf/c69ac2c770f9cdffc12568b700449344/8891cbe221ae8aa141256c0000304f04?OpenDocument

CHAPTER V: CONCLUSIONS

"The smallest minority on earth is the individual. Those who deny individual rights can not claim to be defenders of minorities."[296]

The concluding chapter of the thesis is organized in a way that it, first, summarizes the analysis and its findings up to this point, then, brings about a few related discussion arguments. The discussions will be evolved mainly around context of international minorities and Turkey-EU relations.

The minorities issue came into the agenda of international relations in the revolutionary atmosphere of the 16th century Europe, which *not* coincidentally converges with the emergence of 'nation-states'. Until the 19th century, however, assimilationist and repressive politics towards minorities of different types – dependent on the *cohesion ideology* of the time -, maintained their dominance. Ottoman Empire and its *millet* system constituted one of the significant actors in the development of minorities in this era, with similar (and also dissimilar) applications in comparison to the European counterparts. The fall of the *millet* system at the end of the 19th century, due mainly to the nationalist ideologies and imperialist pressures from the West, resulted in a breakthrough point in this context. With the additional catalyzing force of the Industrial Revolution, the fate of minorities, especially in the ex-Ottoman lands, was no longer an issue of bilateral agreements; instead, covered in multilateral conferences and treaties. However, none of these newly formed documents 'succeeded' in maintaining peace in the Continent and led to the eruption of the World War I.

The League of Nations, at the very beginning of the 20th century, constituted the main figure in international minority scene. Yet, by virtue of its non-universal character, which adjudged only about the defeated nations of the Great War and their minorities while leaving all the mastery to the winning States, the era of the League of Nations did not last long and was ended by the vengeful belligerence of the defeated nations, followed by the outbreak of the World War II. The only exception to this triumphant-defeated relationship was notified in 1923 Treaty of Lausanne signed among new-born Turkey and the Allied Powers, which resulted mainly in

[296] Quote from Ayn Rand, taken from the World Wide Web: http://www.arches.uga.edu/~jpetrie/ayn_rand.html

favor of the defeated side of the World War I due to the subsequent Turkish War of Independence between 1918 and 1922.

After the heavy loss of the World War II and the bipolarization of the world scene between the USA and the Union of Soviet Socialist Republics (USSR) leadership, the international arena paid much less attention to the minorities issue until 1990s. Carefully selected wordings, limited expression of rights and hesitant interest of the international actors and, most essentially, reducing the minorities issue into the broader Human Rights perspective, were commonly witnessed in this time period. 1948 UDHR, for instance, did not contribute any 'minority' references within the text. However, in 1966, among the twin-UN documents concerning political and civil rights, the Article 27 emerged as the sole universally and legally binding statement, concerning the minority rights and protection. Yet, even such a crucial article could not escape from the timid atmosphere and not elaborate upon drawing a minority definition or putting International Law in front of the other arguments. 'Human Rights' perspective, in other words, prevailed in the international scene for a long time, restricting the necessary scope over minorities.

Meanwhile, in a more definite territory, two pioneering European institutions, the CoE and the CSCE/OSCE, displayed concern for minority issues. The CoE, for instance, had already put 'national minority' reference in its 1953 ECHR and addressed the importance of the issue in its forthcoming summits and conferences. The CSCE/OSCE, though without a binding status, on the other hand, made a further progress in the minorities context with 1975 Helsinki Act and 1989 Vienna Document, both of which insisted on advanced cooperation between states and 'national minorities'.

1990s witnessed the acute event of the end of the Cold War as well as the subsequent fall of Communism in the Eastern Europe; hence, the whole minority understanding around the Continent was exposed to a serious change after 50 years of silence. The liberalization process of the CEECs necessitated the help of the Western Europe, which utilized its economic power as an opportunity in the vein of development with respect to human and minority rights in those countries. The CoE released two major documents, the ECRML and the FCPNM, regarding national and linguistic rights of persons belonging to minorities while the institutionalized OSCE facilitated a specific control mechanism, a High Commissioner, working in close

relation with the CoE. However, neither of the institutions, though undeniably useful, possessed the necessary stimulus for the CEECs, embodied in 'economy'. At that particular point, the EU came on the stage, with its technical and financial aid instruments, and involved in the international minority scene aiming to bring about the humanitarian and minority-related development in the Eastern side. The key term, here, was *integration* towards the EU, a proposal which none of the CEECs would be able to reject at that time. The involvement of the EU into the minorities issue particularly through its *enlargement* tool raised a dichotomy whether this inclusion was based upon the supranational and transnational restructuring role of the Union around the Continent or it led to the entrance of only 'another European actor' with similar position of the CoE and the OSCE. Conceptualization of the EU's involvement was replied by three main theories, *multiculturalism*, *European identity* and *regionalism*. In 1993, the famous Copenhagen Criteria put 'respect for and Protection of Minorities' as a precondition of the EU membership and one of the cornerstones of its external policy.

Another dichotomy between EU's role of creating a *common* internal policy towards minorities and setting up an *external* dimension outside its border raised serious questions about 'inconsistency', 'hypocrisy' and 'double standardization' due to the fact that EU Member States did not converge in their national minority policies, which resulted in a lack of legal and common background for the Union as a whole. A support to this argument was found in the ratification table of the EU members (old and new) towards the international and European documents related to minorities issue.

Notwithstanding that the probable danger of transfer of CEECs' minority problem inside the EU relatively ended with the accession of eight countries in 2004, several severe problems emerged in the European minority context, anyway. The lack of internal legal ground for minority protection in the EU and the unwillingness of the Member States to cover up this lack; undetermined monitoring mechanism towards new members' further developments; non-definition of minorities in the European context; prolongation of the minorities issue to the indigenous people (especially Roma) and to the immigrant workers; and highly differing status of ratification over related international or European documents appear to be leading troubles for the current minority structure in the Continent. The dichotomies of the

EU; between supranational and transnational formation, internal (common) and external (enlargement) policy differences, and supranational and governmental decision-making mechanism, detained a further development in minorities issue from being considered within Human Rights agenda. The EU, therefore, is being stuck into representing only another 'international' actor, in the same vein with the CoE or the OSCE, with 'pretentious' wording in its documents that are limited in terms of enforcement capabilities. The so-called enlargement strategy, in a wider perspective, created a 'spill-back' over a possible *common* minority regime inside the EU Member States and further resulted in an image of the Union commemorated with 'inconsistency', 'double standard' and 'hypocrisy' in the minorities context. Dominance of national politics, finally, evidenced the very limited position of supranational entities with regards to enforced sanctions over the Protection of Minorities and minority rights.

When it comes to Turkey's position in the issue of minorities, history indicates that beginning from the Ottoman era, the country has been one of the core locations in the world order. However, since 1923, the signing of the Treaty of Lausanne, the Turkish law has explicitly attached any related subject to the Articles 38 to 45 of the Treaty and put a condition of confirmation of any additional article to the related articles of Lausanne, as the main reference points. Accordingly, Turkey grants certain privileges, including usage of language, broadcasting, education, press, and establishing foundations, only to *non-Muslim Turkish citizens* and respects for other international agreements in terms of minority rights and protection, upon which the State puts reservations or declarations expressing the Turkish perseverance on defining minorities solely within religious differences. Yet, the number of discussions regarding minority position of the country has been increasingly multiplied among Turkish public and media, especially after the close relations with the EU beginning and late 1990s. An analysis of Turkish minority context for the period from 1923 to the end of 1990s seems absurd since the country went through serious challenges of democracy - including several military coups, severe violations of fundamental human rights and freedoms, and detrimental Constitutional problems -; hence, could (or did) not make noteworthy attempts to improve the conditions of the Turkish minorities.

Under the pre-accession negotiations with the EU, the Copenhagen Criteria was represented as the main guide for the Republic to reshape its laws, regulations and eventually treatment against minorities. Nevertheless, the impact of EU's own inconsistency over minorities issue, also, reflected into the Turkey's relatively slow and nationally-motivated approach. The discussions, however, took another dimension with the publication of 'Minority Report' by the Turkish Advisory Board of Human Rights. For the first time in Turkey, the issue of minorities – and, in particular the context of the Treaty of Lausanne – was opened up *officially* for counter-arguments. The EU also supported the idea of discussion over Turkish context of minorities and praised the publication of the Minority Report in the Commission's 2005 Regular Report, evaluating the progress of the country towards a possible membership. The underlined problems of both documents insisted upon that Turkey had to adapt to the 'international standards' of the minorities issue, to put 'a wider interpretation on Lausanne', to show sincere concern for 'implementing' the altered laws and regulations through EU adjustment process and to be more open to grant minority rights as a prolongation of the EU values, including 'pluralist and participatory democracy', 'the rule of law', 'unity in diversity' and 'respect for and protection of human and minority rights'. Although more radical suggestions could also be found in the text of Turkish Minority Report, after this thorough analysis, the general position of Turkey signaled an unwillingness and not-readiness for the participation in (if at all?) an international or European minority regime.

Under the light of these reminding statements, in order to provide a formulating guidance in this analysis, a simple table might be usefully drawn before the discussions:

	Reference Resources	**Binding Status**	**Standard Definition**	**Types of Minorities**	**Types of Rights**	**Citizenship Condition**
International	ICCPR, Article 27	Yes	No	Ethnic, Linguistic, Religious	Individual and Collective	No
European	ECHR	Yes	No	National	Individual and Collective	Yes
	ECRML	Yes		Not Specified		Yes
	FCPNM	Yes		National		Yes
	CSCE/OSCE Documents	No				
Turkish	Treaty of Lausanne	Yes	Yes	Religious	Individual and Collective	Yes

As the table demonstrates, even in a rough glance, it might be concluded that international, European and Turkish perspectives differ significantly in various aspects/ discussions of minorities issue. Apart from the different documents with changing legally-binding statuses, international and European resources do not introduce a standard definition for the concept of 'minorities' while Turkish side is secure to grant minority rights only to non-Muslim citizens; hence, only refers to 'religion' as the basis of distinction. The ICCPR, on the other hand, covers all ethnic, linguistic and religious difference as the necessary factors of granted minority rights. European understanding, furthermore, does not even possess a stable wording in its own documents and roughly refers to 'national' minorities, having a strong interchangeable usage with 'ethnic groups'. Putting the term under a broad umbrella of 'nationality' gives birth to two additional problems for the European side. Firstly, it brings out the question whether or not the states decide solely to whom they refer as minorities and; secondly, the dispute over citizenship. As pointed out in the Chapter II, Article 27 of the ICCPR destroys the understanding that only the States define 'their' minorities, but also International Law has a legal saying upon that definition. Therefore, the first problem might find its answer internationally. However, for the second argument about citizenship, universal and European tendencies indicate a resolution point when the universal regime refers to 'persons' in its wordings whereas the European regime continues to refer to 'citizens'. Thus, no general understanding might be drawn in terms of minorities and this leads to critical questions over both indigenous people and immigrant workers. Turkey, in that sense, also follows the European way ever since the Treaty of Lausanne was signed. With respect to the types of granted rights, there are also disputes among this three-dimensional artifice. Both European and international perspectives consider using the granted rights in both individual and collective terms. Turkey, on this particular topic, is a follower to this genre as well since the right of 'establishing foundations', for instance, might be explained under a collective viewpoint.

What this table does not explicitly indicate, on the other hand, is basically the reason why a common standard could not be elaborated regarding minority issues. This thesis finds the proper respond to this inquiry within the context of 'national politics'. It is undoubtful that beginning with 1990s, Protection of Minorities have become a critical argument in the international arena, which not anymore was hidden

behind 'anti-discrimination' or 'prevention of discrimination' concepts. Moreover, this transformation has carried with so-called 'affirmative action', including more negative rights for the individuals than minorities. In some instances, furthermore, even non-citizens have begun to be entitled to several minority rights[297] and several NGOs or IGOs have participated in the minority discussions all over the world. In other words, it is simply undeniable that minority issues have been involved in a serious alternation from the assimilationist politics of 16th century onwards nations into a more integrationist or protectionist politics of supranational institutions. However, this alternation does not completely eliminate the dominance of the national politics from the minority agenda due mainly to the fact that particularly the decision-making and control mechanism of supranational institutions, as well, are verily formed by the representatives of nation states; for instance, the Council of the EU or its Commission[298]. National politics are still reluctant to grant privileged rights to minorities; regardless of how they are defined, by virtue of the longstanding viewpoint that deciphers minorities as a threat to territorial integrity, sovereignty and unity of the nations. Throughout the thesis, several related instances are represented; yet, the significantly differing standpoints of even the Members States of the EU towards the international or European agreements regarding minorities should be remembered. The fact that there is still no universal definition for the term 'minority' in neither political nor sociological or legal literature after more than 500 years- the beginning of minority discussions- surely acknowledges the lack or reluctance of national politics over this troublesome issue.

In that sense, the second discussion might be opened up in terms of Turkey-EU relations and the position of minorities in that particular relation. Despite 'respect for and Protection of Minorities' was included as a precondition of membership to the EU in 1993 Copenhagen Criteria, 2004 accession of the CEECs clearly demonstrated that signature or ratification of European documents (and/or ICCPR) was not a binding condition; i.e., an adjustment to European minority regime (if at all?) was not sought by the EU to provide membership. As the ratification chart for recently acceded countries indicates, there is a considerable disaccord among the eight Eastern European countries with respect to the status of major international

[297] Çavuşoğlu, Naz (2001) *Uluslararası İnsan Hakları Hukukunda Azınlık Hakları.* 2nd edition. İstanbul: Su Yayınları, pg. 41-52.
[298] Warleigh, Alex (2001) *Understanding EU Institutions.* UK: Routledge, pg. 12-18.

documents in their national law. Moreover, a similar variance also prevails for the EU-15 countries' ratification statuses. Therefore, in practice, no party shall assemble a direct linkage between membership and the ratification of major conventions, charters or agreements. Furthermore, due to highly varying and serious numbers of reservations, declarations or communications put upon those documents by remarkable number of mentioned states, it can be argued that there is no restriction upon EU membership about reserving statements to be extracted by candidate states. Most essentially, as a supranational institution, the inquiry of the EU whether it aims to represent a monolithic bloc for minorities issue is highly doubtful. The questionable 'success' as an external policy or huge 'disappointment' of an uncommon internal policy within the borders as well mistrust the EU position for establishing a minority regime.

Having mentioned in the Chapter III, in a further argument, the Draft Constitution might be an exciting outset for the EU to internalize its external regime of minorities; hence, to give a world-wide signal of its determined concern over Protection of Minorities. Unfortunately, after the referenda were carried out in France and the Netherlands in 2005, it became clear that the EU has to postpone its Constitutional dreams to a controversial future. Moreover, the pace of external policies regarding minorities has considerably slowed down since the end of 1990s[299]. In other words, in a naïve future projection, it might be argued that both external and internal structure of the EU will most probably remain similar with respect to rights and Protection of Minorities unless a major event changes the course of current time. Therefore, instead of a mutual link between the candidate states and the Union, the so-called 'double standard' will prevail in European minority understanding.

The augmentation of the latest argument for Turkey, with the delivered status of a party of the accession negotiations with the EU since October 3, 2005, is rather challenging, though. Unlike the CEECs, Turkey is also a party of an international document, several signors of which are today's EU member states, that binds a legal definition of minorities within religious differences; namely the Treaty of Lausanne. As pointed out in the Chapter IV, further, the current EU law does not (and can not) force Turkey to make alternations upon the Treaty, either (the *Article 234* of Treaty

[299] EURAC Document (2004) *The Bolzano/Bozen Declaration...* ibid., pg. 2.

of Rome). Therefore, in solely *legal* terms, Turkey has its own right to choose its position over minorities issue. Yet, it can not be denied that the accession to the EU is beyond 'law' (instead, highly *political*), supported by the fact that since 1980s plenty of laws, regulations or even the articles of the Turkish Constitution have been adopted accordingly to the EU law. Hence, further arrangements in Turkish understanding of minority rights or protection might be perfectly considered open to re-evaluation, regardless of whether they are forcefully imposed by the EU or any other international institution.

What must not be forgotten is that minorities issue is a part of human rights concerns. It has always had and will always have a humanitarian perspective, where states are usually representatives of their governments as persons belonging to minorities are neither tentative nor temporary figures of international relations. Under the heavy burden of the degrading meaning of the term 'minority' in several languages[300]; with a dark history of rebellions, separations, assimilations, prejudice, abuse (both by majority and imperialists) and sidelined hatred of majority, one must bear in mind that persons belonging to minorities constitute a severely disadvantaged part of the society. Thus, in order to fulfill the gap between these persons and rest of the society, both states and international organizations have to take initiatives. Nevertheless, the contents of any initiative must also be analyzed and controlled significantly so as not to fall into the mistakes of 19th or 20th century arrangements, including installations only upon weaker states and misuse to intervene in the internal affairs of others. In other words, despite highly politicized characteristic of the issue, minorities must be considered under non-politics without extreme measures that would broaden the already exposed gap between minorities and the society.

In terms of EU-Turkey relations, therefore, there are duties of both sides. The EU, firstly, must learn from its past mistakes that created a double standard between EU members and candidate states, which in turn, ended up weak monitoring, serious descent in the level of implementations and even a spill-back towards the Member States' citizenship policies or treatment to third-country nationals. It must be understood that only after the installation of a comprehensive internal legal ground for minorities, the external related politics might accomplish what is expected.

[300] Giddens, Anthony (1997) *Sociology.* 3rd edition. UK: Polity Press, pg. 211-2.

Turkey, on the other hand, has to make a critical and solid choice between 'making devotions' and 'making concessions' in the EU accession negotiations. Re-interpretation of the Treaty of Lausanne should not threat any of the integrity, sovereignty or unity of the nation only if it is done within pure humanitarian grounds. Last 83 years, since 1923, undoubtedly has changed both international and national environment and the Treaty of Lausanne might be opened to *certain updates* upon some general provisions. Such a proposal might also be very well initiated by the EU, as a supranational institution with human rights concerns over not only its members but also the third countries, as long as the EU displays a similar concern over all of its target audience. However, a more down-to-earth suggestion might also be found in terms of *fully* applying the minority standards set by the Treaty of Lausanne towards Non-Muslim citizens. Since there have been severe violations of the Articles 37-45, a full-implementation of these articles might represent a good starting point for further adaptations and recovery of past mistakes. Yet, most essentially, such a consideration of Lausanne will surely prove helpful getting rid of prejudice and preconceived thoughts upon general minority understanding in Turkey.

Meanwhile, the recent developments in Turkey suggest a closer debate upon the very topic in the near future. Especially with the release of so-titled Minority Report of 2004, a part of the public began to discuss such topic that had never become an issue on the table before. The terms like Turkish vs. 'of/from Turkey', 'blood-related vs. territory-related citizenship' lower-upper identities, inner-outer SDR, or 'Sevres syndrome' have been added to the Turkish discussion agenda, including politicians, media and press. This thesis, at this point, finds these debates 'overdrawn' and 'artificial'. Under the light of the arguments carried up to this point, Turkey has rather simpler choices in front standing also as duties. Dividing the reactions into two groups; for those who support seriously updating/eliminating the Treaty of Lausanne or to use the term 'of/from Turkey' instead of Turkish; it should be reminded that none of these or alike actions were applied by any ex-candidate states of the EU nor forced by any international institution to a sovereign country. In other words, if the reason lying under the transformation of Turkish understanding of minorities is the probable or evident pressure of the EU, it simply does not need to go to such extremes. For the second group of those who regard this attempt, imposed by the EU, as a threat to Turkish Republic's integrity, unity or sovereignty; it, on the

other hand, should be borne in mind that such radical measures have not yet neither been applied nor been encouraged/proposed by any EU documents or reports. Further, International Law always prevails with strong and solid penal sanctions in the case of any mentioned event.

In a combination of the two latest paragraphs, this thesis suggests a different approach in which minorities issue is not one of the core matters of Turkey-EU relations, but instead with the political help and financial aid of the EU, Turkey is encouraged to develop its position over minority rights and protection as well as to improve its human rights implementations. Regardless of how minorities are defined, all persons belonging to either minorities or majority will thus have the chance to enjoy same equal and humane rights in a democratic, multi-cultural and pluralist environment. Going back (or in a way forward) to *full* and *complete* implementation of the Articles of Lausanne should be a critical datum point for future arrangements, as well.

As an upshot, this thesis begins to find supporting statements to its main argument that states "minorities issue is a highly politicized matter upon which neither legal nor academic standards are reached commonly in international, European or Turkish perspectives; thus, it must not constitute one of the focal points in EU-Turkish relations". After three comprehensive chapters devoted to respective perspectives, the concluding chapter opens two wide discussions regarding the dominance of national politics over protection and rights of minorities and the distinguishing deficiencies of the Union and Turkey that do not allow to converge on a common ground with respect to minorities. Under the light of these discussions, it might be concluded that the main argument is academically supported and relevant suggestions are made upon.

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http://europa.eu.int (European Union)

http://ec.europa.eu (European Commission)

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http://www.coe.int (Council of Europe)

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http://www.minorityrights.org (Minority Rights Group International)

http://www.ecmi.de (European Center for Minority Issues)

http://www.eurac.edu (European Academy for Ethnic Minorities and Regional Autonomies)

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http://www.spainemb.org (Spanish Embassy- Washington)

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APPENDICES

APPENDIX A

*** The Status of Important Documents about Protection of Minorities in EU-15.

	UN-ICCPR[301]	CoE[302]-ECHR	CoE-FCPNM	CoE-ECRML
Austria	Rat.	Res.	Dec.	Dec.
Belgium	Rat.	Rat.	Res.	Not signed
Denmark	Rat.	Rat.	Dec.	Dec.+Comm.
Finland	Rat.	Res.	Rat.	Dec.
France	Res.	Res.+Dec.+TA	Not signed	Not ratified
Germany	Rat.	Res.+ TA	Dec.	Dec.
Greece	Res.	TA	Not ratified	Not signed
Ireland	Rat.	Res.	Rat.	Not signed
Italy	Rat.	Rat.	Rat.	Not ratified
Luxembourg	Rat.	Rat.	Not ratified	Rat.
Netherlands	Rat.	TA	Dec.+TA	Dec.+TA
Portugal	Rat.	Res.	Rat.	Not signed
Spain	Rat.	Res. + Dec.	Rat.	Dec.
Sweden	Rat.	Rat.	Dec.	Dec.
UK	Rat.	TA. + Comm.	Rat.	Dec.+TA

Abbreviations: (Comm. – Communications; Dec. – Declarations; Rat. – Ratified; Res. – Reservations; TA – Territorial Application)

[301] UN documents taken from World Wide Web: http://www.unhchr.ch/pdf/report.pdf (for April 2006)
[302] CoE documents taken from World Wide Web: http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG (for April 2006)

APPENDIX B

*** The Status of Important Documents about Protection of Minorities in 2004 Accessed Countries (+ 3 Candidate States).

	UN[303]-ICCPR	CoE[304]-ECHR	CoE-FCPNM	CoE-ECRML
S. Cyprus	Rat.	Rat.	Rat.	Dec.
Czech Rep.	Res.	Res.	Rat.	Not ratified
Estonia	Res.	Res.	Dec.	Not signed
Hungary	Rat.	Rat.	Rat.	Dec.
Latvia	Res.	Rat.	Dec.	Not signed
Lithuania	Res.	Res.	Rat.	Not signed
Malta	Res.	Res.+ Dec.	Res.+ Dec.	Not ratified
Poland	Rat.	Rat.	Dec.	Not ratified
Slovakia	Res.	Res.	Rat.	Dec.
Slovenia	Res.	Rat.	Dec.	Dec.
Accessing Countries				
Bulgaria	Rat.	Res.	Dec.	Not signed
Romania	Rat.	Res.	Rat.	Not ratified
Turkey	Res.	Comm.	Not signed	Not signed

Abbreviations: (Comm. – Communications; Dec. – Declarations; Rat. – Ratified; Res. – Reservations)

[303] UN documents taken from World Wide Web: http://www.unhchr.ch/pdf/report.pdf (for April 2006)
[304] CoE documents taken from World Wide Web: http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG (for April 2006)

APPENDIX C

*** The Status of Important Documents about Protection of Minorities for Turkey.

Adherence to following conventions and protocols[305]	Turkey
ECHR	Comm.
Protocol 1 (Right of Property)	Res.
Protocol 4 (Freedom of Movement et al.)	Dec.
Protocol 6 (Death Penalty)	Rat.
Protocol 7 (neb is in idem)	Not ratified
Protocol 12 (discrimination by public authorities)	Not ratified
Protocol 14 (control system)	Not ratified
European Convention for the Prevention of Torture	Rat.
European Social Charter	Dec.
Revised European Social Charter	Not ratified
FCPNM	Not signed
ECRML	Not signed
ICCPR	Res.
Optional Protocol to ICCPR (individual communication)	Not ratified
Second Optional Protocol to ICCPR (death penalty)	Not signed
ICESCR	Res.
Convention Against Torture (CAT)	Rat.
Convention on the Elimination of all forms of Racial Discrimination (CERD)	Rat.
Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)	Rat.
Optional Protocol to CEDAW	Not signed
Convention on the Rights of the Child	Rat.

Abbreviations: (Comm. – Communications; Dec. – Declarations; Rat. – Ratified; Res. – Reservations)

[305] Information taken from EU Document (2005) Regular Report on Turkey; from the World Wide Web: http://www.unhchr.ch/pdf/report.pdf (for April 2006); from the World Wide Web: http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG (for April 2006)