

Making Sense of the Anomalies in Turkish-European Union Relations

Berdal Aral*

Abstract. This paper endeavours to shed light on Turkey's historical partnership with the European Union (EU) from a critical perspective. This study asserts that, all along, Turkey conceived the EU from a predominantly political, ideological and civilisational perspective. This parochial outlook, the paper argues, has served to undermine Turkey's negotiation position vis-à-vis the EU. The Ankara Agreement (1963), the Additional Protocol (1970) and the Customs Union arrangement (1995) which have regulated the three stages of Turkey's official links with the EU pending eventual membership, have mostly operated to the detriment of Turkish interests and aspirations. This lack of balance has been visible in Turkey's ever-mounting trade deficit with member states of the EU and in the determined resistance of the EU to implement freedom of movement for Turkish workers in the EU countries.

JEL Code: Z00.

Keywords: Association agreement, customs union, final stage, accession negotiations, European Union, Turkey.

1. Introduction

Turkey has been an associate member of the EU¹ since the signing of the Ankara Agreement in 1963.² Besides laying down a programmatic

* Assistant Professor, Department of International Relations, Fatih University.

¹ Before the Maastricht Treaty of 1992 (Treaty on European Union), this organisation was entitled the 'European Economic Community' and was sometimes referred to as the 'European Community'. This distinction will be reflected in this study. The word 'Community' does not only denote the EEC, but also to the European Coal and Steel Community (1951) and EURATOM (1957). While the latter two regulate the particular sectors of the economy, the EEC has wider functions in that it covers all those economic activities which are not covered by the other two Communities. Legally speaking, then, 'the Community' is comprised of three Communities. However a Merger Treaty, officially known as the 'Treaty Establishing a Single Council and a Single Commission of the European Communities', was signed on 8 April 1965 and entered into force on 1 July 1967.

framework for future economic integration between the parties, as its final objective, the Ankara Agreement foresaw Turkey's accession to the EEC as a full member (as distinct from 'associate member'). The agreement was to proceed in three distinct stages: **preparatory**, **transitional**, and **final** stages. During the first stage, although Turkey would enjoy financial advantages and tariff concessions for its exports, it had no corresponding obligations.

The transitional stage, regulated by the Additional Protocol³ of 1970, was based on reciprocal obligations between Turkey and the EEC. This protocol foresaw the creation of a customs union between the signatories. While Turkey's Community partners undertook to dismantle customs duties and quantitative restrictions for Turkish industrial exports, with the exception of textiles, immediately, Turkish obligations regarding the EEC exports of industrial products spanned over a period of twenty two years. It was during this stage that the seeds of disagreements, misunderstandings and conflicts were first sown. Throughout the 1970s and 80s, Turkey repeatedly complained that it was granted few advantages on its exports to the Community and that even these advantages had been eroded as a result of preferential treatment which the EEC had accorded to the export products of many developing countries. Meanwhile, due to its dependence on Western Europe for intermediary products and hi-tech equipment, Turkey's trade deficit rose sharply as it began to relax its customs tariffs on the products originating in the EEC member countries. Likewise, the EEC likewise had its own reasons for complaint. According to the EEC, Turkey's unilateral suspension of the reduction of the customs tariffs on the EEC exports in 1977 was an infringement of the terms of the Additional Protocol (Birand, 1987: 312-387).

This treaty did not merge the three Communities themselves, but fused the High Authority of the ECSC and the two Commissions of the EEC and EURATOM to create a single Commission and merged the three Councils to create a single Council. The former is officially entitled the 'Commission of the European Communities' and the latter, the 'Council of the European Communities'. Due to the existence of a single institutional and political entity for the three Communities, we can aptly call them 'the European Community'. Although Turkey is associated to the EEC, it will also become part of the ECSC and EURATOM in case of membership. Meanwhile, in this study, the term 'EEC' will be used to denote the period preceding the signing of the Maastricht Treaty on February 7, 1992, while the term 'EU' will be used for the post-Maastricht period.

² Association Agreement between Turkey-EEC, 12 September 1963, OJ EC No. C 113/2, 24.12.1973.

³ Additional Protocol to the Association Agreement, 23 November 1970, OJ EC No. C 113/17, 24.12.1973.

The economic disputes which bedevilled much of the transitional stage were further complicated by political problems. In the 1980s, the Community unilaterally froze its relations with Turkey when the army seized power in September 1980. Soon after the normalisation of their relations in 1986, Turkey applied for full membership of the EEC in April 1987. Submitting its response in Autumn 1989, the Council of the EEC rejected the Turkish application on economic and political grounds. However this rejection, as the Council decision stated, did not preclude the possibility of Turkish accession at a future date.⁴ Perhaps the two single most historic steps which extended the scope and depth of Turkey-EU relations were the introduction of customs union as of January 1, 1996 and the Helsinki European Council decision of December 1999 which declared Turkey as a candidate state for membership. The well-known liberalisation of the Turkish economy and the adoption of an export-oriented growth strategy in the 1980s eventually resulted in the Council of Association decision of 6 March 1995 which established a customs union between Turkey and the EU. The Helsinki European Council summit meeting of 10-11 December 1999 officially conferred on Turkey the status of a 'candidate state', which surely represented an important milestone in Turkish-EU relations. According to the summit decision, which Turkey had consented to, the Turkish government would embark on a wide range of economic and political reforms and pursue a more conciliatory approach towards problems with Greece. The Brussels European Council summit meeting of 16-17 December 2004 presented a precise timetable for the start of accessions negotiations with Turkey, which would be 3 October 2005. These major developments in Turkish-EU relations will be elaborated in the rest of this study.

This paper argues that Turkey's links with the EU mirror many of the problematic areas which challenge the Turkish politics and foreign policy into action. The first of these problematic areas relates to the Turkey's official view of Europe as somehow representing the inner core of 'contemporary civilisation'. I will argue that the Turkish political establishment, bureaucrats, business circles and intellectuals have mostly perceived the Association Agreement simply as a seal of approval for Turkey's 'European identity'. Although it is commonly agreed in Turkey that the Association Agreement has not so far operated to the advantage of Turkey since the early 1970s, concrete economic and social issues have mostly been overlooked, while the political and ideological context and

⁴ 'Commission Opinion on Turkey's Request for Accession to the Community', Brussels, 20 December 1989, SEC(89) 2290 final/2.

implications of the official ties have been emphasized. This study attempts to take up this challenge.

This study asserts that Turkey's policies towards the EU has all along been formulated by a political and bureaucratic clique which has until recently monopolised the discourse on the EU. This has naturally precluded mechanisms of consultation at the grassroots level. Perhaps not surprisingly, although nearly forty years have now passed since the establishment of an Association Agreement between Turkey and the EU, their mutual doubts and suspicions have survived into the 21st century. The EU's obstinate rejection of the full implementation of the freedom of movement for Turkish migrant workers contrary to its treaty commitments testifies to the extent of divergence between the parties. The qualified rejection of Turkish application for full membership is similarly a case in point. With the evolving pattern of a 'new Europe', which emerged out of the demise of 'communist' regimes in Central and Eastern Europe, Turkey's feeling of isolation undeniably intensified. Now, the existence of a world of five 'Turkic republics' in Caucasia and Central Asia in this post-Soviet era, did not diminish the vigour of Euro-centric thinking in Turkey. Despite the diversification of its potential allies, Turkey's single-minded quest for ever-deepening relations with the EU has continued unabated.

This paper focuses on the "final stage" of Turkey's official links with the EU. As envisaged by the Ankara Agreement of 1963, this stage is founded on customs union between the parties. The pros and cons of the customs union established between Turkey and the EU in 1995 will accordingly be discussed. Following this, a variety of issues and factors, which are relevant for an assessment of the likelihood of Turkey's membership of the EU, will be examined.

2. Customs Union

Article 5 of the Ankara Agreement states that "the final stage shall be based on the customs union and shall entail closer coordination of the economic policies of the Contracting Parties." On its 6 March 1995 meeting, the Council of Association decided to initiate the final stage of Turkey-EU relations by establishing a customs union. The process of customs reduction in their respective exports into each other's territory, which had been under way since 1973, thus came to a final conclusion in 1995 and entered into

force on January 1, 1996.⁵ The customs union between Turkey and the EU is by far the closest economic tie established between the EU and any non-member state.

As a result of the customs union, Turkey has completely abolished all duties and equivalent charges on imports of industrial goods and processed agricultural products from the EU member states. (The EU member states had already abolished their customs duties for Turkish industrial exports under the terms of the Additional Protocol) Turkey has also joined the common customs tariff as set by the EU for imports from non-EU states. What is more, Turkey has undertaken to implement special economic arrangements signed by the EU with innumerable states around the globe within five years. Similarly, in respect of a number of 'sensitive' products, Turkey was permitted to maintain its own customs rates for imports originating in the third countries for a period of five years. This means that Turkey is presently (2001) implementing the above-mentioned special economic agreements, while its 'sensitive' products no more enjoy special protective measures. As a result of the customs union, imports of industrial goods from the EU and EFTA countries⁶ face no customs duties or equivalent charges in Turkey. The average Turkish customs duties for non-EU imports, meanwhile, fell from roughly 11 percent to 6 percent. This rate has dropped even further on account of the EU's commitment to greater liberalisation of world trade as propounded during the Uruguay Round.

The two areas in which Turkey may be assumed to be competitive are left out of the scope of the customs union: agricultural and textile sectors. With regard to agricultural products, the March 1995 decision simply requires the parties to "improve...the preferential arrangements, which they grant to each other for their trade in agricultural field." In the area of textile exports, the decision talks of ending the quotas on Turkish textile, only if Turkey passes and effectively enforces new laws and regulations to comply fully with the high standards of competition law, government subsidies, patent rights and a long list of other rules as applied in the EU. This

⁵ Decision No. 1/95, EC-Turkey Association Council Decision of 6 March 1995 on implementing the Final Phase of the Customs Union.

⁶ States belonging to the European Free Trade Area have signed free trade agreements with the EU. It should be noted that Austria, Finland and Sweden, former EFTA members, have become members of the EU. Switzerland, another EFTA member, rejected the free trade agreement with the EU when a referendum held in 1992 revealed that the majority of the Swiss people were opposed to the agreement.

effectively rules out the possibility of free trade in textiles in the short or medium term. The terms, which govern the status of textiles, appear as vague commitments to increase the quotas enjoyed by Turkish textile products in the EU markets.

Perhaps not surprisingly, the customs union has proved to be extremely harmful to Turkey's balance of trade. It was after all bound to be the net loser, given that it was mostly Turkey which undertook the additional duties envisaged by the customs union. The statistics have shown that Turkey's trade gap with the EU has plummeted as a result of the customs union. The figures show that this trade gap increased from 1,963 billion ECU in 1990 to 5,514 billion EURO (same as ECU) in 1999.⁷ This gap has only widened since then, with a 10 billion dollar deficit for the year 2004.⁸ That the implementation of the customs union has so far benefited Turkey's European partners is also admitted by the Turkish Ministry of Foreign Affairs which has always championed greater ties with the Community:

“Turkey is already the country with which the Community has the largest trade surplus. After the completion of the Customs Union this trend is expected to gain strength. In other words, Community firms are expected to increase their sales and thus their market share in Turkey which will have a positive impact on employment in the Community.”⁹

The worsening of Turkey's balance with the EU as well as the expansive obligations which Turkey undertook in the field of trades between Turkey-EU, common external tariffs, preferential and free trade agreements with third states, legal approximation in countless areas, the jurisdiction of the Court (European Court of Justice) in areas covered by Decision 1/95, have led many critics to call for the abrogation of the customs union. One of such critics, Erol Manisalı, has for some years been advocating the signing of a ‘free trade agreement’¹⁰ to replace the custom union. This, in his view, will relieve Turkey from extensive obligations which have left little scope

⁷ EUROSTAT, DG TRADE A2/CG/RQ, Brussels, 27 November 2000.

⁸ <http://www.dtm.gov.tr/ab/rakamlar/genel25.xls>

⁹ Web site for the Turkish Ministry of Foreign Affairs, EU-Turkey Customs Union-Questions and Answers, <http://www.mfa.gov.tr/grupa/ad/adc/gumruk.htm>.

¹⁰ Free trade agreements only cover the respective trades of the signatory states. Accordingly, customs duties and quantitative restrictions for particular goods (generally industrial goods) which the parties export to one another's territory are dismantled. Such agreements, in principle, have no implications for third parties.

for independent action, particularly in Turkey's external economic relations (Manisalı, 1995: 57-63).

Although, through customs union, Turkey has committed itself to deeper integration with the EU, the Turkish legal system has not faced up to the challenges posed by the requirements of the EU law. Under the Turkish Constitution of 1982, the sovereignty unconditionally belongs to the nation and is exercised through the National Assembly on the nation's behalf. This absolutist notion of sovereignty appears rather archaic in the light of the ever-deepening integration in the EU and Turkey's official commitment to this process. In many areas of public function, in the economic sphere in particular, the EU law supersedes the national laws of the EU member states. Therefore, as part of its preparations for prospective membership, Turkey has no choice but to accept the transfer of part of its sovereignty to the EU and change its constitution and relevant legal statutes accordingly. The delegation of part of its sovereignty will also have significant repercussions in the use of executive and judicial functions. According to the Treaty of Rome, the Court is entrusted with the task of establishing whether a particular piece of national legislation is in conformity with the EU law. The Court then suggests measures to remedy the situation. The state concerned is under the obligation to comply with the ruling of the Court. However, under the Turkish Constitution, the authority to review national legislation solely belongs to the (Turkish) Constitutional Court (Arsava, 1988). The extensive human rights reforms which Turkey has carried out since the Helsinki Summit of 1999, as we shall see later, have not done much to do away with Turkey's rigid conception of sovereignty.

The EU legal system is referred to as being '**supranational**' in character. A number of peculiar features lie beyond this appellation. First, the institutions of the EU enjoy some measure of autonomy, to the extent that sometimes unanimity among member states is not required. Second, the EU law is binding not only on states, but in many cases, on individuals too. Third, the Community law has supremacy over national laws of member states. Indeed the doctrine of *direct effect*, initially propounded by the Court in 1963 in the *Van Gend en Loos* case¹¹, extended the Community jurisdiction by establishing the principle that national courts must apply Community law as part of domestic law (Hartley, 1988: 46-47). Therefore, considering the principle of supranationality which characterises a major

¹¹ *Van Gend en Loos v. Nederlandse*, Case 26/62, *European Court Reports*, 1963, 1-30.

aspect of the EU law, substantial changes will have to be made in the Turkish Constitution before Turkey can be accepted as a member of the EU.

This means that, as part of the process of legal approximation, Turkey will have to incorporate into its domestic legal system all of the EU rules and legislation adopted since the founding of the EU in 1957 -the *acquis communautaire* which comprise primary legislation such as the treaties of Rome, Maastricht and Amsterdam, and secondary legislation adopted on the basis of such founding treaties. Although Turkey has agreed to establish the structures and mechanisms to establish legal harmony between its domestic law and the EU law¹², not much has so far been achieved in this area of legal approximation.

3. The Question of Turkish Membership

Under the terms of Article 237, the Treaty of Rome draws no distinction between countries which are associates and those which are not, when it comes to membership. This also holds true for Turkey whose association agreement anticipates its eventual membership of the Community. Aware of this, when submitting its membership application in April 1987, Turkey chose to rely on Article 237 of the Treaty of Rome which permits any European country to launch such an application. Having received the application, the Council of Ministers of the EEC immediately passed it to the Commission to prepare a report. Before discussing the outcome of this application, it may be useful to discuss the rationale behind this application which was apparently launched at a time when Turkey-EEC relations were still at a low point.

To begin with, from the time the Additional Protocol took effect in the early 1970s, Turkey began to feel uneasy about the fact of complying with the requirements of customs union without also enjoying the fruits of Community membership. Unlike Greece, Spain and Portugal all of which had been granted a adjustment period of seven years following their entry to the Community before committing themselves to implementing customs union, Turkey had been left to its own devices. Weary of the hardships which the respective governments had been facing for many years, the Özal government decided that the only route forward was for Turkey to apply for membership. The 'Greek factor' was also a major consideration behind Turkey's untimely application. As is well known, the Community had

¹² IP/00/649, Brussels, 22 June 2000.

promised that the Greek membership would not in any way affect Turkey's relationship with the EEC. Turkey had also been assured that the Community would not become a party to a number of outstanding Greco-Turkish disputes. These commitments had been made by the Commission and the Council of the EEC, as well as by individual member states.¹³ However soon after its membership, Greece began to bring the Cyprus dispute periodically into the Community agenda. Therefore, perhaps not surprisingly, the Commission report, delivered on December 18, 1989, included the Greco-Turkish disputes among its justifications for the refusal of Turkish application for EEC membership. Paradoxically, Turkey hoped to counter the Greek factor by taking its seat alongside Greece in the Community. In addition to the Greek factor, Turkey was convinced that membership was the only way to guarantee the implementation of the principle of freedom of movement for workers.¹⁴

To make sense of Turkey's rather hurried application, the anticipated developments within the EEC on the Internal Market and the Single European Act, which resulted in the deepening of the extent of integration between member states, should also be considered. In the Turkish view, the likelihood of its membership would recede once these programmes began to be implemented. The prospect of a 'Fortress Europe' could, according to the government circles in Turkey, thus be avoided through an early accession request (Töre, 1990: 9-10).

The Opinion of the Commission of the EEC¹⁵, completed in 1989 and endorsed by the Council in February 1990, was a severe blow to the Turkish aspirations. Although the opinion was 'in no way questioning Turkey's eligibility to become a member', it recounted a variety of obstacles which had to be surmounted before Turkey could stand any chance of membership. One of the Commission considerations was precisely that which Turkey had wished to avoid: the deepening of the economic and social integration at the Community level which, in the Commission's view, precluded the possibility of enlargement in the short term. In the political and social front, the Commission deemed that the standing of individual human rights, social rights of workers, and minority rights in Turkey fell short of the EEC norms. Economically, the massive rural population in

¹³ See for instance, *COM(78) 120 final*, 'General Considerations on the Problems of Enlargement', Commission Communication to the Council, pp.13-14.

¹⁴ *Keesing's Contemporary Archives*, May 1987, p.35137.

¹⁵ 'The Commission Opinion on Turkey's request for Accession to the Community', Brussels, 20 December 1989, *SEC(89) 2290 final/2*.

Turkey would overburden EEC resources, while industrial protectionism and the high inflation rate in Turkey presented serious problems of integration with the Community. Finally, the report alluded to the inflexible posture adopted by Turkey towards its long-standing disputes with Greece, such as the one over Cyprus, which the Community had found unacceptable.

According to the Commission Opinion, duly endorsed by the Council, a number of outstanding economic and political problems had to be resolved before the Turkish membership could even be *considered*. While turning down the Turkish application for full membership by a qualified 'no', the Community was agreed to the re-negotiation of the association agreement and Turkey was offered more favourable terms in the sphere of financial aid and trade. Although impartial observers generally considered that this was a clear rebuff to the Turkish aspirations, the Turkish government tried to put a brave face by describing the EEC response as 'encouraging'. The opposition politicians, however, privately admitted that, as a result of the Opinion, Turkey was unlikely to ever gain full admission to the EEC (Robins, 1991:13).

EEC's qualified rejection of the Turkish application was in fact not surprising. It was known that the Community members were generally opposed to the timing of the Turkish application. It was believed that the Community needed time to absorb Spain and Portugal, both of which had acceded on January 1, 1986.¹⁶ It was no secret that the Greek objections to the Turkish membership merely served to conceal similar misgivings on the part of the rest of the Community. All the members were of the opinion that it would be immensely difficult to absorb a highly populated country with a relatively backward economy. Turkey's estimated per capita income was roughly 1600 dollars in 1987, 2900 dollars in 1999, and, as a result of February 2001 devaluation, 2500 dollars in 2001, all of which have been far below the average living standards in the Community.¹⁷ The Community feared that Turkey's huge farming community could seriously undermine the EEC's Common Agricultural Policy. Freedom of movement for the Turkish workers was similarly expected to cause immense economic and social hardships. There were important political and religious objections too. The Western liberals were deeply resentful of human rights abuses in Turkey,

¹⁶ *Keesing's Contemporary Archives*, May 1987, p.35137.

¹⁷ These figures have been obtained from a combination of the following two sources: <http://www.turkey.org/statistics/percapi.htm>, and, <http://www.belgenet.com/eko/kuculme1.html>.

while the conservatives frequently drew on the religious and cultural gulf between the 'Muslim' Turks and the 'Christian' Europe.

The requirements for membership of the EU have become even stricter in the 1990s. This is partly due to the Union's response to the challenges of further enlargement precipitated by the hurried applications by the formerly 'communist' states in Central and Eastern Europe. According to the Copenhagen criteria, which the European Council accepted during the **Copenhagen Summit** in 1993, membership requires that the applicant state

- "has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities,
- [has] a functioning market economy as well as the capacity to cope with competitive pressures and market forces within the Union, and
- [has] the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union."¹⁸

The EU underwent another wave of enlargement in the 1990s with the accession of Austria, Finland and Sweden in 1995 to become a union of fifteen states. These countries had no difficulty in facing up to the challenge of the Copenhagen criteria. For their part, central and eastern European countries have shown apparent willingness to adopt and enforce the Copenhagen criteria. Accordingly, on the basis of the EU summit decision adopted in the **Luxembourg Summit**¹⁹ in December 1997, accession negotiations were initiated in 1998 with five formerly communist states in central Europe, namely the Czech Republic, Estonia, Hungary, Poland and Slovenia) and with Cyprus (*in effect* only representing the Greek Cypriots). All those countries aspiring to become members were under the duty to accept existing primary and secondary legislation of the EU *in their entirety*.

¹⁸Copenhagen Summit, 21-22 June 1993,
<http://europa.eu.int/comm/enlargement/pas/phare/wip/copenhagen.htm>.

¹⁹ Luxembourg Summit, 14 December 1997,
<http://www.ibb.be/newsletters/december/lux.html>.

In part, to overcome the Turkish disappointment with the Luxembourg Summit, in the **Helsinki Summit**²⁰ of December 1999, the European Council agreed that Turkey should be included among the list of thirteen candidate states whose accession process would proceed ‘on an equal footing’. They were all expected to ‘share the values and objectives of the European Union.’ Prominent among these values were the protection of human rights and the establishment of a democratic system. Beside the Copenhagen criteria, some new issues were brought to bear on the potential members:

“...the European Council stresses the principle of peaceful settlement of disputes in accordance with the United Nations Charter and urges candidate States to make every effort to resolve any outstanding border disputes and other related issues. Failing this they should within a reasonable time bring the dispute to the International Court of Justice.”

The outstanding disputes, which include the problems associated with the delimitation of the Aegean Continental Shelf between Turkey and Greece, are expected to be resolved “at the latest by the end of 2004.” The summit conclusion specifically enjoined Turkey to show active efforts to ensure a negotiated settlement in Cyprus:

“The European Council underlines that a political settlement will facilitate the accession of Cyprus to the European Union. If no settlement has been reached by the completion of accession negotiations, the Council’s decision on accession will be made without the above being a precondition. In this the Council will take account of all relevant factors.”

Furthermore, the obstacles which constituted formidable barriers against the possibility of the Turkish membership in the 1980s survived well into the 21st century. For example, human rights violations were still a common occurrence in this period. Likewise, the multiparty politics were held captive to the encroachments of the army even more visibly since the National Security Council (consisting of the heads of the armed forces on the one hand, and the president, prime minister and some members of the

²⁰ Helsinki European Council Presidency Conclusions, Helsinki 10 - 11 December 1999.

cabinet on the other. Its agenda was mostly set by members of the army) decision of February 28, 1997. This ‘post-modern coup’, as used in common parlance, paved the way for further militarization of the regime and suppression of democratic rights and freedoms. For its part, the Kurdish problem further deteriorated from the mid-1990s only to subside after the capture of the leader of the PKK, Abdullah Öcalan, that had been fighting for independence or at least autonomy for south-east Turkey. This problem was and is symptomatic of a deeper malaise in Turkish politics. The former coalition government headed by Bülent Ecevit failed to address the Kurdish problem in any serious way. His government refused to see the problem specifically as a *minority* problem. The government instead drew on classical civil and political rights as the cure of the Kurdish grievances. A governmental statement issued in response to the "Turkish Accession Partnership", prepared by the EU Commission in June 2000, containing political, economic, legal and social reforms which Turkey had to undertake before accession negotiations could be considered, read as follows: ²¹

“...our Government will continue the comprehensive reforms initiated in the political, economic and social spheres to that end. Turkey is fulfilling its obligations within the framework of international agreements related to human rights. In that respect, **the essential is the principle of non-discrimination among citizens**. Fundamental rights and freedoms of citizens in Turkey are guaranteed by the Constitution and laws.” (emphasis mine)

“Turkey, within the framework of the territorial integrity of the country and the **fundamental principles of the Republic**, is determined to deploy the efforts required to reach its goal of full membership to the EU as swiftly as possible.” (emphasis mine)

A report prepared by the Commission in October 1999 expressed the EU’s discontent with the plight of democracy and human rights in Turkey in the following words:

“The Commission continues to consider that Turkey does not meet the political criteria for membership...There has

²¹ Statement by the Government of the Republic of Turkey on the "Turkish Accession Partnership" Prepared by the EU Commission (Unofficial Translation)-09 November 2000.

been little evolution of the situation in Turkey with regard to human rights and minority problems.”²²

Turkey hardly improved its performance in these two crucial areas from 1999 up to 2002. The National Programme issued by the Turkish government on March 19, 2001 was a far cry from the requirements of the Commission’s Turkish Accession Partnership of June 2000.²³ The language of this 1000-page document was toned down to such an extent that it pleased neither the pro-European circles nor those who opposed the Turkish membership on nationalistic and secularist prejudices. Leaving aside its deficiencies in the realm of economic reforms, the National Programme declined to represent a radical breakthrough from the authoritarian and state-centric underpinnings of the political and legal system in Turkey. The document did not in any way question the centrality of the role played by the National Security Council in the Turkish political system, still considered Turkey a unitary state which suggested an aversion to multiculturalism, permitted the free use of indigenous languages other than Turkish, such as Kurdish, only in private, failed to address the Kurdish problem, *inter alia*, as a specifically *minority* issue, maintained innumerable obstacles, mostly the offshoots of an ideological state, which hindered the effective enjoyment of the freedom of expression in Turkey and etc. Therefore, in spite of a promise of wide-ranging political, legal and economic reforms, the National Programme dashed the hopes of those who had anticipated that perhaps Turkey had been heading towards democracy with due respect to human rights.

The deepening economic crisis during the same period also raised doubts about Turkey’s capacity to conform to the EU standards. The Commission’s progress report, announced in October 2000, did not fail to draw on this point:

“Turkey has many of the characteristics of a functioning market economy but needs to continue to focus on achieving macroeconomic stability by reducing inflationary pressures, public deficits and by continuing structural reform.”²⁴

²² Regular Report from the Commission on Progress towards accession by each of the candidate countries. IP/99/751, October 13, 1999.

²³ <http://www.haberline.com/avrupa/ulusalprogram.htm>

²⁴ IP/99/751, *op.cit.*

The dual crisis, which the Turkish economy suffered in November 2000 and in February 2001, plunged the economy into a deeper crisis with the oncoming prospect of stagflation (a shrinking economy with high rates of inflation).²⁵

The October 2002 progress report²⁶ of the EU, expressed contentment about the constitutional reform of October 2001 which sought to provide firmer guarantees for the protection of human rights in Turkey. The reform laws of February, March and August 2002 were likewise noted with approval. According to the reform laws, the state of emergency was lifted in two more provinces in South East Turkey, while death penalty was abolished in peacetime. The August reforms permitted the retrial of persons guilty of violating the European Convention of Human Rights. Likewise, Articles 159 and 312 of Turkish Penal Code were reformulated so as to provide greater freedom of expression. More liberal laws were adopted for the press, political parties, associations and the media, while the longstanding ban on broadcasting and education in languages other than Turkish (e.g. Kurdish) was lifted. Although the scale and depth of these changes were truly impressive, in the consideration of the Commission, they still fell short of the required standards of the European Union for a number of reasons: “the prosecution of writers, journalists and publishers has continued”; “allegations of torture and ill-treatment”; “continued reports that the judiciary does not always act in an independent and consistent manner”; the domineering role of the National Security Council. The scale of corruption in Turkey, the deadlock in Cyprus negotiations and certain economic factors were also mentioned in the Progress Report as major obstacles hindering progress in Turkey-EU relations. The Progress Report concluded that the Council of Ministers should wait to see the implementation of the reforms “in practice by executive and judicial bodies at different levels throughout the country”. The Progress Report of the Commission, adopted in October 2002, singled out Turkey as the only “candidate” state for which no calendar should be offered for accession negotiations.

A new government took office as a result of 3 November 2002 elections in Turkey. The government formed by the Justice and

²⁵ As of June 2004, the per capita income in Turkey was still floating around 3000 US dollars which was far lower than the EU average.

²⁶ Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries, Commission of the European Communities, Brussels, 9 October 2002, COM(2002) 700 final.

Development Party as well as its solid parliamentary majority showed a strong predisposition towards greater democratisation in Turkey right from the outset. For this purpose, through legislation in the national parliament, the government has passed a series of human rights reforms. It has also displayed a determination to seek a negotiated settlement with regard to Turkey's long-standing disputes with Greece, first and foremost, over Cyprus. The political and legal reforms of November-December 2002, 2003 and 2004, whose scale and implications have been unprecedented in modern Turkish history, *inter alia*, comprised the following: death penalty was abolished even in wartime; remaining restrictive provisions on freedom of expression and freedom of the press have been lifted; heavy penalties were brought for torturers; broadcasting and education in non-Turkish languages were permitted; non-Muslim foundations in Turkey were allowed to obtain property; liberal provisions for the activities of foreign foundations in Turkey were introduced; State Security Courts were disbanded; the National Security Council representation in the High-Education Board (YÖK) and High Audio-Visual Boards (RTÜK) was terminated; greater scrutiny was envisaged for defence spending; the priority of international treaties on human rights over conflicting domestic law was set.

In spite of these sweeping political reforms, the bureaucracy and judiciary have failed to implement such legislation in the manner envisioned by the Turkish parliament. As observed by the EU Commission Report for Turkey in 2003, those who are responsible for implementation "have considerably narrowed the scope of these reforms by establishing very strict conditions."²⁷ The result is only a limited success in improving the standard of democracy and human rights in Turkey. The claims of torture and maltreatment still persist, the prosecution of writers and journalists continue unabated, heavy fines are at times imposed on newspapers and journals designed apparently to strangle them. In spite of the duality between legal reforms and the failure to materialize them, different circles in Turkey, including the government, believe that Turkey deserves to be a member of the EU. The long history of Turkish-EU relations, the existence of a customs union between them, Turkey's unabated commitment to pro-Western foreign policy, its rapidly expanding market, its strategic location at the crossroads between the Middle East, Balkans and Caucasia are all perceived, by most decision-makers in Turkey and Europe, as Turkey's impeccable assets. Large section of the Turkish population and ruling elite are convinced that, Turkey's ill treatment at the hands of the EU is mostly the product of anti-Turkish and anti-Islamic sentiments that still endure in Europe. As *The*

²⁷ "2003 Regular Report on Turkey's progress towards accession", p.18.

Economist put it, “how else, Turks ask, could all the other candidate countries, some of which have little to recommend them, have jumped the queue to end up ahead of their own?”²⁸

The Brussels Summit of the European Council on 16-17 December 2004 devoted a very significant part of its Conclusions²⁹ to Turkey. The most crucial statement in the document, from the perspective of Turkey, was the one that laid out a timetable for the opening of negotiations with Turkey, i.e. October 3, 2005. Although it is said that “the shared objective of the negotiations is accession”, the Conclusion incorporates too many restrictions, derogations, exceptions and conditions which suggest that Turkey is not going to be treated equally during negotiations in comparison to previous accession negotiations:

- unanimous agreement of EU member states will be required both for the opening and closing of individual chapters (35 in all). This means that negotiations may stall as a result of the veto of any state at any stage;
- present members of the EU will, during accession negotiations and for some time after membership, be permitted to impose restrictions and take safeguard measures at least in the areas of free movement of persons, structural policies, and agriculture. This is another way of saying that Turkish migrant workers will not be allowed to move across the EU member states even after Turkey’s membership for many years to come, and Turkey will not be allowed to get a fair share of EU funds to alleviate regional inequalities, boost fragile sectors, and modernize its agricultural so as, *inter alia*, to facilitate the process of adjustment to the EU’s Common Agricultural Policy;
- accession negotiations cannot be concluded before 2014;
- if the standards of democracy and human rights in Turkey become the subject of “serious and persistent breach”, the EU Council of Ministers will decide to suspend negotiations by qualified majority.

The way in which the Brussels Summit Conclusions concerning Turkey’s candidacy is formulated, the tone of its language, and the degree of fear and hesitancy which they translate into words embody the problematical aspects

²⁸ *Economist.com*, June 8, 2000.

²⁹ Brussels European Council, Presidency Conclusions, Brussels, 17 December 2004, 16238/04.

of the historical ties between Turkey and the EU: Turkey is treated as the 'unequal' partner; the terms of the text are dictated by Turkey's European partners; lack of clarity in the EU obligations towards Turkey runs through the wording and the spirit of the text. The margin of negotiations was so narrow that the Turkish government was acclaimed by most observers in Turkey for getting a date for the start of negotiations whose objective was Turkey's "accession".

As stipulated in the December 17 conclusions, Turkey made an official declaration on July 29, 2005 in the form of a protocol to adapt the Ankara Agreement and the decision on the customs union to the ten new member states of the EU, including the Greek Cypriots.³⁰ It is stated out in the protocol that this declaration does not tantamount to an implied recognition of Greek Cypriots as the representative of Cyprus. Although Turkey was given assurances by the European Commission and some representatives of EU member states during the 16-17 December Summit advocating this Turkish position, some EU members like France and Austria have now been suggesting that Turkey should recognize Greek Cypriot administration as the rightful representative of the entire island of Cyprus. This wrangling over Cyprus indeed presages things to come once negotiations begin.

4. CONCLUSION

The history of Turkish-EU relations is a testimony not only to the fragility of this capricious association, but also to the acute role which the issue of Turkey's European venture plays in the ideological struggle of rival political forces in Turkey. Those who want to anchor Turkey to the Western world for political, geo-strategic and security reasons, often draw on the need to shore up Turkey's secular state structure from the threats posed by 'Islamic fundamentalists' (Eralp, 1990: 250). It is feared, by EU circles and Turkey's pro-Western ruling elite alike, that Turkey's exclusion from the process of European integration could drag it towards the 'unruly' Muslim world. A large section of the Turkish establishment have also been convinced, at least since the mid-1980s, that 'the Turkish trip into Europe...may help reduce the likelihood of non-democratic options as a means of coping with societal

³⁰ 29 July 2005, "1963 Ankara Anlaşması'nı Tüm AB Üyelerine Genişleten Uyum Protokolü". The content of this protocol can be found in the website of the Turkish Ministry of Foreign Affairs:

http://www.mfa.gov.tr/MFA_tr/AnaSayfaAltKisim/NO123_29Temmuz2005.htm

change and the tensions it creates' (Turan, 1989: 56). However since Turkey's Islamists, leftists and advocates of Kurdish rights have by and large been gradually 'won' to the cause of European integration since the 1980s on account of the EU's perceived strong human rights and democratic standards, the conventional defenders of state ideology have lost their enthusiasm for Turkey being a part of Europe. The public opinion polls conducted in recent years have manifested a consistent pattern of a solid support for the EU project in Turkey. This suggests that the 'rejectionist bloc' among the traditionally ardent partisans of Turkey's westernisation represents only a small segment of Turkish society. This is not to deny however that, if Turkey is not treated fairly during membership negotiations, anti-European feelings may be fuelled further, which may in turn, *inter alia*, strengthen the hands of political groups who are hostile to democracy.

The case of Turkish-EU relations also demonstrates that, beneath the rhetoric of a 'mutually beneficial' agreement lies *in fact* a hidden power structure which has to day distorted the purported objectives of the Association agreement in favour of the EU. In spite of the huge economic disparities between the parties, this treaty theoretically and practically reflects a disproportionate and inequitable contractual arrangement to the advantage of the EU member states. Turkey-EU association has all the hallmarks of a hegemonic relationship, as it defies the rule that legal contracts are fixed and immutable. The supremacy of power over law has always been implicit in the complex web of rights and obligations due to the parties. Compared to the strict timetable surrounding Turkish obligations, the obligations of the EEC arising out of the Additional Protocol were astonishingly flexible. This meant that the Community has been able to tailor them in accordance with its economic and social priorities. Some sectors of industry, such as textiles and clothing, which were of crucial significance for Turkey's export capacity, were precluded from the free movement arrangement. Likewise, agriculture was an area in which no definitive list of products to enjoy unhindered free trade was established. Finally, the principle of free movement for workers has virtually been written out of existence through a mix of political, economic and legal pretexts. We must not forget however that three deficiencies emanating from Turkey strengthened the EU's hand against Turkey during negotiations: Turkey failed to demonstrate its firm commitment to the European integration until recently; those who formulated and executed the Turkish policies vis-à-vis the EU conceived the European integration from an ideological perspective; finally, the failure of the governing elites to lay the foundations of a workable civilian democracy, meant that the succeeding governments and

parliaments have failed to act as 'tough negotiators' if they conceived the European political support as indispensable for maintaining power.

Only time will tell if Turkey has learned its lessons.

References

- Additional Protocol to the Association Agreement, 23 November 1970, OJ EC No. C 113/17, 24.12.1973.
- Arsava, Fusun (1988), "AET Üyeliğinde, Topluluk Hukuk Düzeni İlişki ve Etkileşimleri", *Türkiye Barolar Birliği Dergisi*, No.2, 184-196, pp.190-191.
- Association Agreement between Turkey-EEC, 12 September 1963, OJ EC No. C 113/2, 24.12.1973.
- Birand, Mehmet Ali (1987). *Türkiye'nin Ortak Pazar Macerası: 1959-1985*, third edition, İstanbul, Milliyet Yayınları, pp.312-387.
- Brussels European Council, Presidency Conclusions, Brussels, 17 December 2004, 16238/04.
- Commission Opinion on Turkey's Request for Accession to the Community, Brussels, 20 December 1989, SEC(89) 2290 final/2.
- Decision No. 1/95, EC-Turkey Association Council Decision of 6 March 1995 on implementing the Final Phase of the Customs Union.
- Eralp, Atilla (1990), "The Politics of Turkish Development Strategies" in Andrew Finkel & Nükhet Sirman (eds.), *Turkish State, Turkish Society*, (London & New York, Routledge, 219-258, p.250.
- Hartley, T.C. (1988), *The Foundations of European Community Law*, second edition, Oxford, Clarendon Press, pp.6-7; pp.46-47.
- Keesing's Contemporary Archives, May 1987, p.35137.
- Manisalı, Erol (1995), *Gümrük Birliği'nin Siyasal ve Ekonomik Bedeli*, (The Political and Economic Price of the Customs Union), İstanbul, Bağlam Yayınları, , pp.57-63.
- Regular Report from the Commission on Progress towards accession by each of the candidate countries. IP/99/751, October 13, 1999.
- Robins, Philip (1991), *Turkey and the Middle East*, (London, Royal Institute of International Affairs, p.13.

Statement by the Government of the Republic Of Turkey on the "Turkish Accession Partnership" Prepared By the EU Commission (Unofficial Translation)-09 November 2000.

Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries, Commission of the European Communities, Brussels, 9 October 2002, COM(2002) 700 final.

The Commission Opinion on Turkey's request for Accession to the Community, Brussels, 20 December 1989, SEC(89) 2290 final/2.

Töre, Nahit (1990), "Relations between the European Community and Turkey", *European Access*, No.3, 8-11, pp.9-10.

Turan, İlder (1989), "Turkey and the EC in the Year 2000", in *Turkey in the Year 2000*, Ankara, Turkish Political Science Association, 35-56, p.56.

Van Gend en Loos v. Nederlandse (1963), Case 26/62, *European Court Reports*, 1-30.