

TURKEY AND THE EUROPEAN UNION: AN ASSOCIATION IN THE MAKING

Yelena E. Archiyan¹

INTRODUCTION	117
I. THE BASICS OF THE EUROPEAN UNION	119
A. Background.....	119
B. Accession.....	121
II. TURKEY'S NON-CONSTITUTIONAL ISSUES IMPEDING ACCESSION.....	122
A. Geography.....	122
B. The Cyprus Dispute	123
C. Aegean Sea Dispute	125
1. <i>Conclusions on Turkey's Disputes with Greece over Cyprus and the Aegean Sea</i>	126
D. Denial of Armenian Genocide	128
E. Satisfying the Copenhagen Economic Criteria	129
F. Acquis Communautaire	133
III. LEGAL IMPEDIMENTS	136
A. Constitutional Provisions	137
B. Other Laws and Their Use Against the Kurds	140
1. <i>Conclusion</i>	143
IV. A COMPARISON WITH OTHER RECENTLY JOINED EU MEMBERS: BULGARIA AND ROMANIA.....	144
CONCLUSION.....	147

INTRODUCTION

What began as a six country regional governmental organization has become, since 1951, a dominant coalition, representing twenty-seven nations across almost all of Europe.² A candidate since 1987, Turkey has had a long history with, and played a large role in, Europe through its membership in various European organizations since the late 1940s.³ Examples of such organizations include the Organization for Economic Co-

1. Michigan State University College of Law, J.D. expected 2012; Aquinas College, B.S. in International Business 2008.

2. See *The History of the European Union: Animated Map*, EUROPA, http://europa.eu/abc/history/animated_map/index_en.htm (last visited Nov. 17, 2011).

3. See *European Commission: Enlargement, EU-Turkey Relations*, EUROPA, http://ec.europa.eu/enlargement/candidate-countries/turkey/eu_turkey_relations_en.htm (last visited Nov. 17, 2011) [hereinafter *EU-Turkey Relations*].

operation and Development (OECD), Council of Europe, Western European Union, and most notably, the North Atlantic Treaty Organization (NATO).⁴ Turkey and the EU formed a partnership in 1963 upon the signing of the Ankara Agreement,⁵ which formally allowed for the commencement of negotiations for full membership.⁶ Although accession negotiations began in October of 2005,⁷ the EU has been reluctant to admit Turkey, citing the need for, among other things, fulfilling the requirements of the Copenhagen criteria,⁸ enhancing human rights, resolving border disputes, recognizing the Armenian Genocide, and improving its citizens' political freedoms.⁹

Negotiations began six years ago, and the EU has yet to admit Turkey.¹⁰ While there are many barriers standing in Turkey's way, this article will primarily focus on the major ones. It will argue that while Turkey has made substantial progress in its domestic affairs, economic policies, and some progress in improving relations with its neighbors, Turkey requires additional reforms. The first part of this paper will provide background information on the EU, including its history and the accession process. The second part will address major obstacles relating to Turkey's geography, international disputes, and human rights issues. The third part will analyze the government's constitutional provisions in the context of its modern internal affairs, and demonstrate that while certain rights are explicitly enumerated in Turkey's latest Constitution, they do not extend beyond the text of that Constitution. In practice, few such rights exist, and in application, few are effective. The final part will compare and contrast

4. See *Members and Partners*, OECD,

http://www.oecd.org/pages/0,3417,en_36734052_36761800_1_1_1_1_1,00.html (last visited Nov. 17, 2011); *47 Countries, One Europe*, COUNCIL OF EUROPE, <http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en> (last visited Oct. 12, 2011); *List of 28 Delegations*, WESTERN EUROPEAN UNION, <http://weu.int/> (last visited Nov. 17, 2011); *NATO Member Countries*, NATO, http://www.nato.int/cps/en/SID-BAFED586-DD86353C/natolive/nato_countries.htm (last visited Nov. 17, 2011).

5. *EU-Turkey Relations*, *supra* note 3.

6. These types of association agreements are not uncommon. They prepare a candidate country for full membership and approximate the EU legislation. "[T]hey are agreements with extended trade liberalization between the EU and the country associated." They "entail stronger economic and political ties between the two parties." Email from Europe Direct to Yelena Archiyan (Mar. 24, 2011, 7:13:59 EST) (on file with author).

7. *EU-Turkey Relations*, *supra* note 3; *Europe in 12 Lessons, Enlargement and Neighbourhood Policy*, EUROPA, http://europa.eu/abc/12lessons/lesson_3/index_en.htm (last visited Nov. 17, 2011) [hereinafter *Enlargement and Neighbourhood Policy*].

8. *Syntheses de la legislation, Glossary: Accession Criteria (Copenhagen Criteria)*, EUROPA, http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm (last visited Nov. 17, 2011) [hereinafter *Accession Criteria*].

9. See EC, *Turkey 2010 Progress Report Accompanying the Communication from the Commission to the European Parliament and the Council*, at 35, COM (2010) 660 (Nov. 9, 2010), available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package_tr_report_2010_en.pdf [hereinafter *2010 Progress Report*].

10. *EU-Turkey Relations*, *supra* note 3.

Turkey's negotiation process with the processes of EU's two newest members: Bulgaria and Romania.

I. THE BASICS OF THE EUROPEAN UNION

A. Background

Kofi Annan once said, "No nation needs to face or fight alone the threats which this organization was established to diffuse."¹¹ Even though he was referring to the United Nations, the European Union has a similar purpose; it merely accomplishes this goal on a regional level. States with similar characteristics integrate to form regional coalitions so they can "better address world problems."¹² In 1951, six European nations integrated to form the European Coal and Steel Community whose purpose was to reduce nationalism and promote peace.¹³ The European Coal and Steel Community became the European Economic Community.¹⁴ The purpose of this transformation and expansion was to integrate economically and politically.¹⁵ Having a united Europe with similar goals also prevents any one European country from becoming a regional hegemon, as was the case before the 1950s. Of course, the key success of the EU has been its ability to keep peace in Europe.¹⁶ The European Economic Community became the "European Union" in 1992 upon the signing of the Treaty of Maastricht.¹⁷

It was not until 1973 that other European countries began joining the EU, and accession continues to this day. While theoretically all members of the EU are equal, in reality the most populous member-nations have the most power. This is so because they have the most votes in the Council of the EU, which is responsible for "defin[ing] [EU's] general political direction

11. JOHN ROURKE, INTERNATIONAL POLITICS ON THE WORLD STAGE 190 (10th ed. 2005).

12. *Id.* at 191.

13. See *The History of the European Union*, EUROPA, http://europa.eu/abc/history/1945-1959/index_en.htm (last visited Nov. 17, 2011).

14. *Id.*

15. *Id.*

16. Not only has there been no outbreak of war in Europe since the EU's creation, but for the first time in European history, there has been a transfer of sovereignty from individual nation-states to a collective organization. The creation of the EU is significant for another reason—no longer is the modern nation-state a complete model of political organization. The EU's other accomplishments, and why they reflect Turkey's desire to join, include Europe's economic strength, the opportunity to enter new markets, the potential for adopting the euro, and being part of a "functioning institutional framework." Hans N. Weiler, *The EU at a Crossroads: The Tension Between Expansion and Integration* 5-6 (2004) (transcribed lecture notes), available at http://www.stanford.edu/~weiler/ERT1_manuscript.pdf.

17. *History of the European Union*, *supra* note 13.

and priorities.”¹⁸ Today, France, Germany, the United Kingdom, and Italy are the most influential in policy-making because they have the most votes.¹⁹

Most recently, Bulgaria and Romania were admitted as members. Whereas they applied for admission in 1995, Turkey has been aspiring to join since 1987, and only in 1999 did the Helsinki European Council decide to upgrade Turkey to “candidate country status.”²⁰ A country is granted this status when the EU Council officially accepts its application for membership.²¹ Official talks began at the Copenhagen Summit in 1993, at which time the European Commission said that the EU could conclude negotiations with Turkey only after 2014.²²

The EU’s most current Progress Report²³ revealed the enlargement strategies and main challenges facing Turkey’s membership for the 2010-11 year. The Commission stated that Turkey sufficiently satisfies the political criteria,²⁴ but much work still remains with respect to human rights,²⁵ freedom of the press,²⁶ and the Kurdish question.²⁷ With respect to democracy and the rule of law, the Commission noted that “Turkey still needs to align its legislation as regards procedure and grounds for closures of political parties with European standards.”²⁸ With respect to Turkey’s regional issues and international obligations, the Cyprus and Greek questions still need work. On a positive note, the Commission noted that Turkey is successfully meeting the EU’s economic criteria, even though the nation suffered a series of financial crises beginning shortly after the turn of the century.²⁹

18. *The European Council—An Official Institution of the EU*, EUROPEAN COUNCIL, <http://www.european-council.europa.eu/the-institution.aspx?lang=en> (last visited Dec. 1, 2011).

19. *See Council of the European Union, Voting Calculator*, CONSILIUM, <http://www.consilium.europa.eu/council/voting-calculator.aspx> (last visited Oct. 21, 2011).

20. PASCAL FONTAINE, *EUROPE IN 12 LESSONS 13* (2004), available at http://ec.europa.eu/publications/booklets/eu_glance/22/en.pdf [hereinafter Fontaine]; see also *Enlargement and Neighbourhood Policy*, *supra* note 7.

21. *European Commission Enlargement, Glossary, Candidate Countries*, EUROPA, http://ec.europa.eu/enlargement/glossary/terms/candidate-countries_en.htm (last visited Nov. 17, 2011).

22. *Turkey’s Quest for EU Membership*, EU CTR. OF N.C., EU BRIEFINGS, Mar. 2008, at 2, 5, available at, http://www.unc.edu/depts/europe/business_media/mediabriefs/Brief4_Turkey%27s_quest_web.pdf.

23. *See generally 2010 Progress Report*, *supra* note 9.

24. *See id.* at 6-16.

25. *Id.* at 17.

26. *Id.* at 21.

27. *See id.* at 35.

28. *Id.* at 7.

29. *See generally 2010 Progress Report*, *supra* note 9.

B. Accession

Article forty-nine of the Treaty on European Union defines the process of accession.³⁰ A nation is eligible for accession if it complies with the EU's principles, which are enumerated in Article Two.³¹ Article forty-nine further provides that the candidate nation must submit an "application to the Council, which must act unanimously."³² Before the Council takes a vote, it consults with the Commission and the Parliament, "which shall act by a majority of its component members."³³ Finally, "[t]he conditions of admission and the adjustments to the Treaties on which the Union is founded . . . shall be the subject of an agreement between the Member States and the applicant State."³⁴ The contracting states must ratify this agreement "in accordance with their respective constitutional requirements."³⁵

An aspiring country must meet three qualifications known as the Copenhagen Criteria: first, the country must be democratic, which means that there must be a presence of human rights and freedoms, respect for the nation's minority population(s), and the rule of law; second, the country must meet the economic requirement (it must have a free market system); finally, the aspiring nation must be able to adhere to the entire EU law (*acquis communautaire*)³⁶ which consists of over 80,000 pages of legislation.³⁷ The *acquis communautaire* includes: (1) "the content, principles and political objectives of the treaties"; (2) "legislation adopted pursuant to the Treaties and the case law of the Court of Justice"; (3) "declarations and resolutions adopted by the Union"; (4) "instruments under the Common Foreign and Security Policy"; (5) "instruments under Justice and Home Affairs"; and (6) "international agreements concluded by the Community and those entered into by the Member States among themselves within the sphere of the Union's activities."³⁸

Notwithstanding the above requirements, not one EU member-state that joined "had complied fully with the *acquis* at the time of . . . entry."³⁹ All entering countries were provided a transitional period.⁴⁰ The EU cautions

30. See Consolidated Version of the Treaty on European Union art. 49, Mar. 10, 2010 O.J. (C 83) 43 [hereinafter TEU].

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. See *Accession Criteria*, *supra* note 8.

37. FONTAINE, *supra* note 20, at 12.

38. *European Commission Enlargement, Glossary, Acquis*, EUROPA, http://ec.europa.eu/enlargement/glossary/terms/acquis_en.htm (last visited Nov. 17, 2011).

39. HARUN ARIKAN, *TURKEY AND THE EU: AN AWKWARD CANDIDATE FOR EU MEMBERSHIP* 34 (2003).

40. *Id.*

nations that avoidance of compliance “cannot go against the nature and spirit of the *acquis*”; “it can only be put in place in order to guarantee that the ultimate principle of full applicability of the *acquis communautaire* to the new outermost regions stemming from Article 299(1) EC is respected.”⁴¹ While it was made clear that the enlargement of 2007 would require applicants to accept the *acquis communautaire* before accession, it is even clearer that was not the case. Consider, for example, Bulgaria: upon its accession, the EU believed that Bulgaria had made efforts to adjust its legislation and administration to make them conform to the laws and rules of the EU. Nevertheless, the EU said that “[s]ustained support from the European Union will be available for addressing the remaining issues.”⁴² This suggests that, in theory, Turkey need not satisfy all chapters of the *acquis* before it will be offered membership. But the question of whether the EU will require Turkey to satisfy all chapters so as to delay admission for as long as possible, which is what it seems to have been doing since 2005, remains to be seen.

II. TURKEY’S NON-CONSTITUTIONAL ISSUES IMPEDING ACCESSION

A. Geography

As its name suggests, the European Union is located in Europe. According to the Treaty on European Union, only “European States” may apply for membership.⁴³ Although the Treaty does not define what a “European State” is, currently all but one EU member are located on the European continent.⁴⁴ According to the current physical structure of the EU, it became evident that “the line in the South was drawn to the Mediterranean” when the EU rejected Morocco’s application in 1987 on the grounds that the country is not in Europe even though it is Spain’s neighbor to the south.⁴⁵ The defining border to the west is naturally the Atlantic

41. Dimitry Kochenov, *Substantive and Procedural Issues in the Application of European Law in the Overseas Possessions of the European Union Member States*, 17 MICH. ST. J. INT’L L. 195, 280 (2009).

42. *European Commission Enlargement, Bulgaria—EU-Bulgaria Relations*, EUROPA, http://ec.europa.eu/enlargement/archives/bulgaria/eu_bulgaria_relations_en.htm (last visited Nov. 17, 2011).

43. TEU art. 49.

44. Cyprus is officially located in the Middle East. CIA, *Cyprus*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/cy.html> (last visited Nov. 17, 2011). Malta, while situated in the Mediterranean Sea, is officially located in Southern Europe. CIA, *Malta*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/mt.html> (last visited Nov. 17, 2011).

45. EUR. COMM’N, GOOD TO KNOW ABOUT EU ENLARGEMENT 10 (2009), available at http://ec.europa.eu/enlargement/pdf/publication/screen_mythfacts_a5_en.pdf.

Ocean.⁴⁶ To the north, the EU's border is between Finland and Norway.⁴⁷ The problem is stretching to the east. While the Black Sea is a natural border to the east, Bulgaria and Romania, both of which border the Black Sea, are already members. In theory, the EU could stretch to the Caucasus,⁴⁸ but it was explicit that to go as far as Russia "would create unacceptable imbalances."⁴⁹

Officially, Turkey is located in Southeastern Europe and Southwestern Asia. Only the minuscule portion of Turkey that lies to the West of the Bosphorus is located in Europe. The capital of Turkey, Ankara, is located in Asia, and a great majority of Turkey's population lives on the Asian continent.⁵⁰ Its neighbor to the northwest is Bulgaria and to the south is Cyprus, both of which are EU members.⁵¹

The implications associated with admitting Turkey, a mostly non-European nation, into the EU would be significant. What precedent will be set if Turkey becomes a member? Will Syria, Lebanon, and Israel want to join, making the argument that they too border the Mediterranean Sea? The end result is this: however far the EU decides to expand, its expansion endeavors must be cautious to maintain effective and democratic functionality.⁵²

B. The Cyprus Dispute

In its latest Progress Report on Turkey, the EU Commission noted that Turkey needs to improve its bilateral relations with Cyprus.⁵³ In fact, in 2006 the EU put a hold on the opening of negotiations of eight chapters of the *acquis* because of Turkey's restriction on the "free movement of goods carried by vessels and aircraft registered in Cyprus or whose last port of call was in Cyprus."⁵⁴ This means that in the nearly impossible event that Turkey meets the other chapters before it lifts its restrictions, it will be

46. Press Release, Europe's Next Frontiers, Mr. Olli Rehn's Lecture at the Finnish Institute of International Affairs (Oct. 27, 2006), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/654&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited Mar. 22, 2011) [hereinafter Europe's Next Frontiers].

47. *Id.*

48. See *Enlargement and Neighbourhood Policy*, *supra* note 7.

49. *Id.*

50. *Turkey Entry 'Would Destroy EU,'* BBC NEWS (Nov. 8, 2002), <http://news.bbc.co.uk/2/hi/europe/2420697.stm> (noting former French President Valéry Giscard d'Estaing's statement that ninety-five percent of Turkey's population lives outside of Europe).

51. Dan Bilefsky, *Romania and Bulgaria Join European Union*, N.Y. TIMES, Jan. 1, 2007, <http://www.nytimes.com/2007/01/01/world/europe/01cnd-union.html?ex=1325307600&en=6b90297ac208df26&ei=5088>.

52. *Enlargement and Neighbourhood Policy*, *supra* note 7.

53. *2010 Progress Report*, *supra* note 9, at 36.

54. *Id.* at 47; see also *EU-Turkey Relations*, *supra* note 3.

unable to open negotiations with the EU on these eight chapters until the hold is removed.

The dispute between Turkey and Greece over the Island of Cyprus began shortly after Cyprus gained its independence from Great Britain in 1960.⁵⁵ Guerilla warfare broke out on the island when Turks responded to the Greek movement called *enosis* (unification of Cyprus and Greece) through a process called *takism* (division of Cyprus between Greece and Turkey).⁵⁶ At the end of this revolutionary movement, Turkey came to control 38% of Cyprus's territory.⁵⁷ The Cypriot Government claims that what provoked Turkey's reaction was the Cypriot government's attempt to make changes to the Constitution, which was "unworkable."⁵⁸

Cyprus is divided into two parts. The parts are disconnected by the "Green Line," which "separates the government-controlled areas from the rest of the island."⁵⁹ The portion that is occupied by Turkey is called the Turkish Republic of Northern Cyprus (TRNC) and is highly dependent upon Turkey for its agriculture, tourism, and aid.⁶⁰ Turkey's occupation is viewed as illegal and is unrecognized internationally.⁶¹ Greece and its counterpart in Cyprus (Republic of Cyprus), and Turkey and its counterpart (TRNC) each have mutual defense agreements.

Although the entire island of Cyprus was admitted into the European Union in 2004, only the free portion of the island adheres to the *acquis communautaire* of the European Union.⁶² In 2002, the United Nations took the initiative to reunite the people of Cyprus through the Annan Plan.⁶³ The Annan Plan consisted of three stages: (1) "negotiations were to be held

55. A settlement was reached in 1959, but the London-Zurich agreements were signed in 1960 by Great Britain, Greece, and Turkey. Patricia Carley, *U.S. Foreign Policy and the Future of Greek-Turkish Relations*, in GREEK-TURKISH RELATIONS AND U.S. FOREIGN POLICY: CYPRUS, THE AEGEAN, AND REGIONAL STABILITY 1, 2 (1997), available at <http://www.usip.org/files/resources/pwks17.pdf>.

56. Ali Kazancigil, *The Cypriot Question*, in TURKEY TODAY: A EUROPEAN COUNTRY? 173, 175 (Olivier Roy ed., 2004); see also COMM'N ON CYPRUS' PROGRESS TOWARDS ACCESSION, REGULAR REPORT FROM THE COMMISSION ON CYPRUS' PROGRESS TOWARDS ACCESSION 11 (1998), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/cyprus_en.pdf.

57. Kazancigil, *supra* note 56, at 176.

58. *Government Web Portal*, CYPRUS, http://www.cyprus.gov.cy/portal/portal.nsf/dmlgovernment_en/dmlgovernment_en?OpenDocument (last visited Nov. 17, 2011).

59. *European Commission Enlargement, Turkish Cypriot Community*, EUROPA, http://ec.europa.eu/enlargement/turkish_cypriot_community/index_en.htm (last visited Nov. 17, 2011).

60. WILLIAM MALLINSON, PARTITION THROUGH FOREIGN AGGRESSION: THE CASE OF TURKEY IN CYPRUS 8 (2010).

61. *Id.* at 1.

62. *Id.* at 3.

63. Muzaffer Ercan Yilmaz, *The Cyprus Conflict and the Annan Plan: Why One More Failure?*, 5 EGE ACAD. REV. 29, 35 (2005), available at <http://eab.ege.edu.tr/pdf/5/C5-S1-2-M4.pdf> (Turk.). See generally *The Comprehensive Settlement of the Cyprus Problem* (Mar. 31, 2004), available at http://www.hri.org/docs/annan/Annan_Plan_April2004.pdf.

between the two Cypriot communities under UN auspices”; (2) “a conference was to be organized in which the Greek and Turkish Cypriots, and Greece and Turkey were to take part”; and (3) “a referendum [was to have been] held on the plan in both communities.”⁶⁴ The Annan Plan did not make it past stage three because Greek Cypriots voted 75.8% against it in the referendum.⁶⁵ Although both sides were historically resistant to any peaceful resolution, Turkish Cypriots surprisingly voted 64.9% in favor of reunification in the referendum.⁶⁶ Perhaps the reason the referendum was not approved by the Greek Cypriots is because all of their claims in the European Court of Human Rights would have to be withdrawn.⁶⁷ In effect, the Plan would have denied Greek Cypriots their legal rights.⁶⁸

Cyprus’s accession on May 1, 2004 symbolized a serious impediment for Turkey. Cyprus’s former President Tasos Papadopoulos⁶⁹ “made it very clear that Cyprus as an EU member state would block any decision regarding Turkey’s EU membership[] until a solution for Cyprus had been reached on better terms for the Greek Cypriots than the Annan Plan.”⁷⁰ Under Article 49 of the Treaty on European Union, all member states must ratify the accession agreement before a country may be admitted into the EU.⁷¹ The chances of Cyprus ratifying Turkey’s admission are slim and will likely remain that way until a cooperative agreement desirable for both sides, especially the Greek Cypriots, is reached.⁷²

C. Aegean Sea Dispute

A similar dispute between Turkey and Greece involves the status of the Aegean Sea. This dispute was discussed at the 48th Meeting of the EU-Turkey Association Council in 2010.⁷³ The dispute revolves around the question of who controls the territorial waters, the airspace, and the

64. ERIC FAUCOMPRET & JOZEF KONINGS, *TURKISH ACCESSION TO THE EU: SATISFYING THE COPENHAGEN CRITERIA* 177 (2008).

65. A. Marco Turk, *The Negotiation Culture of Lengthy Peace Processes: Cyprus as an Example of Spoiling that Prevents a Final Solution*, 31 *LOY. L.A. INT’L & COMP. L. REV.* 327, 330 (2009).

66. *Id.*

67. VAN COUFOUDAKIS, *INTERNATIONAL AGGRESSION AND VIOLATIONS OF HUMAN RIGHTS* 17 (2008)

68. *Id.*

69. Tasos Papadopoulos was succeeded by Dimitris Christofias in 2008. *Christofias Wins Cyprus Presidential Election*, *USA TODAY*, Feb. 24, 2008, http://www.usatoday.com/news/world/2008-02-24-cyprus-elections_N.htm.

70. FAUCOMPRET & KONINGS, *supra* note 64, at 179.

71. TEU art. 49.

72. Turk, *supra* note 65.

73. *See 48th Session of the Turkey-EC Association Council*, UE-TR 4806/10, at 19 (May 12, 2010) (statement by Mr. Ahmet Davutoğlu & H.E. Mr. Egemen Bağış), available at <http://register.consilium.europa.eu/pdf/en/10/st04/st04806.en10.pdf> [hereinafter *48th Session of Turkey-EC Association Council*].

continental shelf.⁷⁴ Greece's position on this issue is that it should be able to extend its dominion over the Aegean Sea to the limit established by the 1982 Convention on the Law of the Seas (LOS), which says that "[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with [the] Convention."⁷⁵ Currently, it only claims six nautical miles of the Sea.⁷⁶ Furthermore, it argues that pursuant to LOS and the 1958 Geneva Convention on the Continental Shelf, it should have the right to exploration and exploitation of the continental shelf up to two hundred nautical miles from its coastal and island baselines.⁷⁷ Turkey, on the other hand, argues that "much of the Aegean seabed is . . . a prolongation of the Anatolian land mass that is part of Turkey."⁷⁸

While actions in furtherance of normalizing relations have been taken by both Greece and Turkey, including those involving international arbitration and cases taken to the International Court of Justice, improvements have been minimal.⁷⁹ Several resolutions have been proposed, including a maritime joint development regime. This would involve the parties themselves deciding the appropriate level of cooperation. It has been suggested that a joint organizational structure for the exploration and exploitation of natural resources in the seabed should be established. The absence of politics in the regime would also be beneficial.⁸⁰ At the 2010 meeting of the EU-Turkey Association Council, the Council noted that Turkey is "ready to continue to work with Greece towards the settlement of [this issue] through peaceful means in accordance with international law."⁸¹

1. Conclusions on Turkey's Disputes with Greece over Cyprus and the Aegean Sea

While it is understandable that Greece is using its presence in the EU in a self-interested fashion to keep out Turkey, a question arises: would it not

74. ARIKAN, *supra* note 39, at 150.

75. UN Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, art. 3 [hereinafter Law of the Sea].

76. Michael N. Schmitt, *Aegean Angst: A Historical and Legal Analysis of the Greek-Turkish Dispute*, 2 ROGER WILLIAMS U. L. REV. 15, 16 (1996). It should be noted that the international standard for sea extension is three nautical miles. *Id.* at 24.

77. Law of the Sea, *supra* note 75, art. 76(1) & (4).

78. Chip Arvantides, *Disputing the Continental Shelf Region in the Aegean Sea: The Environmental Implications of the Greek--Turkish Standoff*, AMERICAN UNIVERSITY, <http://www1.american.edu/ted/ice/aegean.htm> (last visited Nov. 17, 2011).

79. Yucel Acer, *A Proposal for a Joint Maritime Development Regime in the Aegean Sea*, 37 J. MAR. L. & COM. 49, 50 (2006).

80. *Id.* at 76.

81. *48th Session of Turkey-EC Association Council*, *supra* note 73, at 19; see also Press Release 12353/09 (Presse 228), at 11, Council of the EU, 2957th Council Meeting, General Affairs and External Regulations (July 27, 2009), available at <http://register.consilium.europa.eu/pdf/en/09/st12/st12353.en09.pdf>.

benefit Greece to have Turkey as a member? It is quite obvious that since 1981 “Greece has pursued a policy, which implies that improvement in the EU-Turkey relations, and Turkey’s accession to the EU, should depend upon the settlement of disputes between Greece and Turkey.”⁸² But is Greece taking the correct approach? Would it not make more sense for Greece to support Turkey’s accession and advance its policies of dispute resolution after Turkey becomes an EU member? Turkey as an EU member would probably be an “easier neighbor to deal and live with than [one that is] alienated, fundamentalist and militaristic.”⁸³ While Turkey may be reluctant to settle these international border disputes until all other issues are resolved and until it gains EU membership, there seems to be a paradox here—resolving these disputes amounts to a condition of membership, at least according to the EU’s annual progress reports on Turkey.⁸⁴ On the other hand, Turkey has little incentive to do what the Commission recommends with respect to these issues because, from its perspective, the EU is reluctant to offer it full membership anyway,⁸⁵ so why should it concede first? However, the EU has nothing to lose by not offering Turkey full membership. In fact, several European leaders, most notably Nicolas Sarkozy and Angela Merkel, are against Turkish membership.⁸⁶ Europe is

82. ARIKAN, *supra* note 39, at 47.

83. Bulen Aras, *The Importance of Turkey to Relations Between Europe and the Turkic Republics of the Former Soviet Union*, 2 UCLA J. INT’L L. & FOREIGN AFF. 91, 109 (1997) (quoting Seyfi Tashan, *A Turkish Perspective on Europe-Turkey Relations on the Eve of the IGC*, 20 FOREIGN POL’Y (Ankara) 61-64 (1996)).

84. See 2010 Progress Report, *supra* note 9, at 37 (noting the requirement that Turkey “commit unequivocally to good neighbourly relations and to a peaceful settlement of disputes in accordance with the United Nations Charter”).

85. See *A Mediterranean Maelstrom*, ECONOMIST, Dec. 10, 2009, http://www.economist.com/node/15065921?story_id=15065921; http://www.economist.com/node/15065921?story_id=15065921; see also Stephen Kinzer, *Turkey, Rejected, Will Freeze Ties to European Union*, N.Y. TIMES, Dec. 15, 1997, <http://www.nytimes.com/1997/12/15/world/turkey-rejected-will-freeze-ties-to-european-union.html?sec=&spon=&pagewanted=all>; *Turkey Warns EU Becoming ‘Christian Club,’* EUBUSINESS (Jan. 30, 2011), <http://www.eubusiness.com/news-eu/davos-economy-meet.8d9>.

86. See David Charter, *Leave Turkey’s Bid to Join EU to Us, Nicolas Sarkozy Warns Barack Obama*, SUNDAY TIMES (London), <http://www.timesonline.co.uk/tol/news/world/europe/article6041404.ece>; *French President Sarkozy Visits Turkey*, RIA NOVOSTI (Moscow) (Feb. 25, 2011), <http://en.rian.ru/world/20110225/162749832.html>. See also Patrick R. Hugg, *Accession Aspirations Degenerate: A New Chapter for Turkey and the EU*, 9 WASH. U. GLOB. STUD. L. REV. 225, 236 (2010); *Charlie Rose: A Conversation with French Interior Minister, Nicolas Sarkozy* (PBS television broadcast July 13, 2007) [hereinafter *Charlie Rose*]; Craig Smith, *European Union Formally Opens Talks on Turkey’s Joining*, N.Y. TIMES, Oct. 4, 2005, http://www.nytimes.com/2005/10/04/international/europe/04turkey.html?_r=2&ex=1286078400&en=5190c31623f6ec33&ei=5088&partner=rssnyt&emc=rss; Bruno Waterfield, *EU President Herman Van Rompuy Opposes Turkey Joining*, TELEGRAPH (London), Nov. 19, 2009, <http://www.telegraph.co.uk/news/worldnews/europe/eu/6600570/EU-president-Herman-Van-Rompuy-opposes-Turkey-joining.html>.

concerned about dealing with a country that is “too big, too poor, too undemocratic—as well as too Muslim and non-European.”⁸⁷ So, would it not make the most logical sense that Turkey, rather than the EU, make amends in furtherance of EU membership?

D. Denial of Armenian Genocide

The EU Parliament has encouraged Turkey to recognize the Armenian Genocide.⁸⁸ The Genocide took place in 1915 and resulted in the deaths of 1,500,000 Armenians.⁸⁹ While this act of genocide was committed by the Ottoman Turks and not the government in place today, the modern government still has an obligation to acknowledge what its predecessor did nearly a century ago. The modern government stepped into power in the early 1920s when the Ottoman Empire was dissolved and a modern Republic of Turkey was created and recognized by the Treaty of Lausanne.⁹⁰ A major difference between the Ottoman Turkish government and the modern Turkish government is secularism. The new government transformed the nation into a secular state and instilled in it democratic practices.

The United Nations Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as:

[A]ny of a number of acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group; killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.⁹¹

The Armenian genocide meets this definition.⁹² In fact, many advanced, industrialized nations, as well as individuals, have recognized the Armenian

87. Shada Islam, *A Reluctant Embrace*, YALEGLOBAL (Dec. 16, 2004), <http://yaleglobal.yale.edu/content/reliant-embrace>.

88. Resolution on the Opening of Negotiations with Turkey, EUR. PARL. DOC. P6_TA (2005) 0350, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2005-0350+0+DOC+PDF+V0//EN>; EUR. PARL. DOC. 46 (2004) [hereinafter Written Declaration] (declaring that recognition of the Genocide is a precondition to the opening of negotiations with Turkey).

89. U.N. GAOR, 57th Sess., 17th plen. mtg. at 28, U.N. Doc. A/57/PV.17 (Sept. 19, 2002).

90. See Treaty of Peace Between the Allied Powers and Turkey (Treaty of Lausanne), July 24, 1923, 28 L.N.T.S. 11, reprinted in 18 AM. J. INT'L L. 1 (Supp. 1924).

91. Convention on the Prevention and Punishment of the Crime of Genocide art. II, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

92. REMEMBRANCE AND DENIAL 14 (Richard G. Hovannisian ed., 1998).

Genocide,⁹³ including Russia, Argentina, France, Greece, and even the Pope.⁹⁴ Thus far, about twenty countries have recognized the 1915 massacre as “genocide.”⁹⁵ Turkey, in contrast, has historically denied and continues to deny what its predecessor government did ninety-six years ago.⁹⁶ To be clear, Turkey’s primary argument is that there were no killings. Alternatively, it argues that if killings occurred, they did not amount to genocide.⁹⁷ However, there is unambiguous evidence along with academic scholarship proving that the massacre of more than 1,000,000 Armenians took place.⁹⁸

On September 28, 2005, the European Parliament urged Turkey to recognize the Genocide.⁹⁹ This took place around the time negotiations with Turkey began. More recently, an amendment has been added to the 2010 Progress Report on Turkey, which “[u]rges Turkey to ratify the protocols with Armenia, to open the border with this neighbor unconditionally and to acknowledge the genocide of Armenians, Greeks and Assyrians.”¹⁰⁰ Turkey has its reasons for denying the genocide, two of which relate to its concern about how it will be perceived in the international community and to avoid giving Armenia back its territory. But if Turkey were to acknowledge the genocide, it is doubtful it would lose the respect of the international community. Instead, recognition would most likely lead to cooperation between Turkey and Armenia, provide closure to both countries, and most importantly, bring Turkey one step closer to EU membership.

E. Satisfying the Copenhagen Economic Criteria

Under the Copenhagen standards, a candidate country must show two things to satisfy the economic criteria: (1) “existence of a functioning market economy; and (2) “capacity to cope with competitive pressure and market forces within the EU.”¹⁰¹ According to the 2010 Progress Report on

93. AIDA ALAYARIAN, CONSEQUENCES OF DENIAL: THE ARMENIAN GENOCIDE 125 (2008).

94. *Id.*

95. Harut Sassounian, *Genocide Recognition and a Quest for Justice*, 32 LOY. L.A. INT’L & COMP. L. REV. 115, 117 (2010).

96. *Id.* at 122.

97. *See 60 Minutes: Battle Over History* (CBS television broadcast Feb. 28, 2010), available at <http://www.cbsnews.com/video/watch/?id=6253043n> [hereinafter *Battle over History*].

98. *See id.*; see also REMEMBRANCE AND DENIAL, *supra* note 92, at 272.

99. Written Declaration, *supra* note 88.

100. Eur. Parl., Draft Motion for a Resolution, Amendments 1-315 on Turkey’s Progress Report, amend. 200 (Jan. 25, 2011), available at [http://www.europarl.europa.eu/RegData/commissions/afet/amendments/2011/456654/AFET_AM\(2011\)456654_EN.pdf](http://www.europarl.europa.eu/RegData/commissions/afet/amendments/2011/456654/AFET_AM(2011)456654_EN.pdf) [hereinafter Amendments].

101. 2010 Progress Report, *supra* note 9, at 38.

Turkey, the Commission concluded that Turkey has made adequate progress in this area.¹⁰²

In comparative terms, Turkey is doing no worse than Bulgaria and Romania when they were in the negotiation stages.¹⁰³ Turkey has, however, along with the rest of the world, suffered from the recent economic crisis, which has delayed certain aspects of its economic progress.¹⁰⁴ Turkey's economic problems are addressed not by the EU, but by the International Monetary Fund (IMF) and the World Bank.¹⁰⁵

To briefly summarize the EU Commission's conclusions on the existence of a functioning market economy in Turkey, the 2010 Progress Report stated that the "consensus on economic policy essentials has been preserved" but "better planning, coordination and communication" would help boost the confidence in the "government's economic policy."¹⁰⁶ In addition, the government's privatization efforts have helped Turkey's economy considerably.¹⁰⁷

With respect to the economy's "capacity to cope with competitive pressure and market forces within the Union," the Commission in 2010 gave Turkey mixed reviews.¹⁰⁸ It stated that while Turkey is recovering from the economic crisis, the opportunities for structural reforms, due to the strong fundamental pillars that the government has been creating since 1980, and low interest rates are available.¹⁰⁹ It also stated that Turkey's growth is delayed due to "high inactivity and insufficiently broad-based productivity growth."¹¹⁰ It concluded, however, that the crisis did not negatively affect the market mechanism functions.¹¹¹

All this is relevant to Turkey's accession because the EU wants member nations to be able to adjust to the EU economy, which obviously is much bigger than the economy of a single nation. In doing so, it expects candidates to improve and align their economic policies with the policies of the EU so that its populace can compete with the citizens of the EU. There

102. *Id.* at 38-44.

103. Compare *id.* with *Bulgaria 2005 Comprehensive Monitoring Report*, COM (2005) 534 final (Oct. 25, 2005), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/sec1352_cmr_master_bg_college_en.pdf [hereinafter *Bulgaria 2005 Comprehensive Report*], *Romania 2005 Comprehensive Monitoring Report*, COM (2005) 534 final (Oct. 25, 2005), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/sec1354_cmr_master_ro_college_en.pdf, and *Comprehensive Monitoring Report on Cyprus's Preparations for Membership* (2003), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_cy_final_en.pdf.

104. *2010 Progress Report*, *supra* note 9, at 38.

105. *Id.* at 67.

106. *Id.* at 38.

107. *Id.* at 41.

108. *See generally id.* at 38-44.

109. *Id.* at 41-42.

110. *2010 Progress Report*, *supra* note 9, at 43.

111. *Id.*

is an *acquis* chapter on this aspect called the Freedom of Movement of Workers.¹¹² It takes into account, among other things, the educational system in a candidate country, literacy rates, and corruption levels.¹¹³ The Turkish government is participating in the EU's education and youth programs to better prepare its young generation for competition in the workforce in the EU.¹¹⁴ Fifteen new universities were established in a period of one year.¹¹⁵ Turkey has also taken aggressive steps to fight corruption. For example, it approved the Conventions of the European Council towards fighting against corruption.¹¹⁶ It also became a member of the Group of States against Corruption (GRECO) and ratified the United Nations Convention against Corruption.¹¹⁷ In 2009, it ranked 61st out of 180 countries on the corruption scale, scoring 61 out of 100 points.¹¹⁸

Some numeric factors, including GDP, inflation rates, income inequality, human development, unemployment, and foreign direct investment can show a lot about how a country is doing economically. Eurostat, the official EU statistics database, compares countries' GDP per capita relative to one another and relative to the EU itself whose average (accounting for all 27 members) is set to one hundred. Turkey received a score of 47 in 2008, the latest year for which GDP information for Turkey is available.¹¹⁹ Romania also received a score of 47, while Bulgaria got 43 points.¹²⁰ Turkey's

112. *Id.* at 48.

113. The literacy rate in Turkey was over ninety-five percent for men and nearly eighty percent for women in 2004. CIA, *Turkey*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html> (last visited Nov. 17, 2011) [hereinafter CIA, *Turkey*]. Compare these numbers with the literacy rate in Bulgaria: 98.7% for men and 97.7% for women in 2001. CIA, *Bulgaria*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/bu.html> (last visited Nov. 17, 2011) [hereinafter CIA, *Bulgaria*]. The literacy rate was 98.4% for men and 96.3% for women in Romania in 2002. CIA, *Romania*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html> (last visited Nov. 17, 2011) [hereinafter CIA, *Romania*].

114. *2010 Progress Report*, *supra* note 9, at 88-89.

115. Ninth Development Plan (2007-2013), Law No.: 877, at 49, June 28, 2006, available at <http://ekutup.dpt.gov.tr/plan/ix/9developmentplan.pdf> [hereinafter Ninth Development Plan].

116. *Id.* at 59.

117. See generally *Group of States against Corruption*, COUNCIL OF EUROPE, http://www.coe.int/t/dghl/monitoring/greco/default_en.asp (last visited Nov. 17, 2011); *UN Convention Against Corruption*, UN OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/index.html> (last visited Mar. 25, 2011).

118. TRANSPARENCY INT'L, ANNUAL REPORT 2009, at 48-49 (July 2010), available at http://www.transparency.org/publications/annual_report [hereinafter ANNUAL REPORT 2009] (follow "Transparency International's Annual Report 2009" hyperlink). Only three current EU member states are behind Turkey: Bulgaria, Romania, and Greece (all ranking at 71). See *id.*

119. See European Commission, *GDP Per Capita in Purchasing Power Standards*, EUROSTAT, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsieb010> (last visited Nov. 17, 2011).

120. *Id.*

inflation rate was 8.6% in 2010, while Bulgaria's was 3% and Romania's was 6.1%.¹²¹ The inflation rate in Cyprus was 2.6% in 2010.¹²²

Income inequality is measured by the GINI index on a scale of one to one hundred, with one representing no inequality and one hundred representing the maximum amount of inequality. Turkey and Romania received a score of 39.7 and 31.2 in 2008, respectively, while Bulgaria received a score of 45.3 in 2007, the latest year for which information for Bulgaria was available.¹²³ The human development index measures the "level of human development of people in a society that accounts for inequality."¹²⁴ The 2010 report revealed that Turkey was in 83rd place while Bulgaria and Romania took 58th and 50th place, respectively.¹²⁵ If Turkey were a member of the EU, it would rank last out of all current EU members.

Turkey's unemployment rate in 2010 was 12%, while Bulgaria's was 9.5%, and Romania's was 6.9%.¹²⁶ Foreign direct investment is also a useful measure of how strong a country's economy is. It is defined as "an investment made to acquire lasting interest in enterprises operating outside of the economy of the investor."¹²⁷ The EU Commission believed that Turkey's ability to diversify its trading had an effect on alleviating the impact of the economic crisis.¹²⁸ The United Nations Report indicated that as a percentage of gross fixed capital formation, Turkey's FDI inward flow in 2009 was 7.3%, while its outward flow was 1.5%.¹²⁹ Comparatively, as a percentage of gross fixed capital formation, Bulgaria's FDI inward flow in 2009 was 38.3%, while its outward flow was -1.2%.¹³⁰ Finally, Romania's

121. European Commission, *HICP—Inflation Rate: Annual Average Rate of Change (%)*, EUROSTAT, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tsieb060&tableSelection=1&footnotes=yes&labeling=labels&plugin=1%20> (last visited Nov. 17, 2011).

122. *Id.*

123. CIA, *Distribution of Family Income—Gini Index*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2172.html> (last visited Dec. 2, 2011).

124. UN Development Programme, *The Inequality-Adjusted HDI (IHD)*, UNDP, <http://hdr.undp.org/en/statistics/ihti/> (last visited Nov. 17, 2011).

125. UN Development Programme, *Table 3, Inequality-Adjusted Human Development Index*, UNDP, http://hdr.undp.org/en/media/HDR_2010_EN_Table3_reprint.pdf (last visited Nov. 17, 2011).

126. CIA, *Unemployment Rate (%)*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2129.html> (last visited Nov. 25, 2011). Surprisingly, unemployment in these three countries is about average. Lithuania's, Estonia's, and Latvia's unemployment rates were 17.8%, 16.9%, and 18.4%, respectively. *Id.*

127. *Foreign Direct Investment (FDI)*, UNCTAD, <http://www.unctad.org/Templates/Page.asp?intItemID=3146&lang=1> (last visited Nov. 17, 2011).

128. *2010 Progress Report*, *supra* note 9, at 44.

129. U.N. CONF. ON TRADE & DEV., WORLD INVESTMENT REPORT 2010, COUNTRY FACT SHEET: TURKEY, http://www.unctad.org/sections/dite_dir/docs/wir10_fs_tr_en.pdf.

130. U.N. CONF. ON TRADE & DEV., WORLD INVESTMENT REPORT 2010, COUNTRY FACT SHEET: BULGARIA, http://www.unctad.org/sections/dite_dir/docs/wir10_fs_bg_en.pdf.

FDI inward flow in 2009 was 15.3% of gross fixed capital formation, while its outward flow was at 0.5%.¹³¹

The conclusions to be drawn from these numerical indicators are that Turkey, for the most part, is near the bottom in almost all categories relative to other EU member-states. Nonetheless, the latest Progress Report indicated that Turkey is relatively well aligned with EU policies in meeting the economic criteria.¹³² The Commission also found that there was “strong economic interdependence between the EU and Turkey.”¹³³ While the EU is impressed with some aspects of Turkey’s economy, it is awaiting more improvements in some specific areas. For example, the government still needs to implement structural reforms, including investing in human capital and providing social benefits. It should implement legislation to equalize the playing field for women so they can compete fairly with men for jobs.¹³⁴ Turkey also needs to attract more foreign direct investment. To do so, it needs to modify its judicial system, manage its corruption, and develop its physical infrastructure.¹³⁵ It is clear, however, that Turkey is much closer to meeting the Copenhagen economic criteria than it is to meeting the Copenhagen political criteria as well as satisfying the requirement to adhere to the entire EU law.

F. *Acquis Communautaire*

The third non-negotiable condition of EU accession is adherence to the *acquis communautaire* (the entire EU law). The aspiring EU state must have the “ability to take on the obligations of full membership,” including the administrative, judicial, and legislative aspects of the EU law.¹³⁶ The phrase has a broad definition and includes “all the real and potential rights and obligations of the EU system and its institutional framework.”¹³⁷ For Turkey, this means supporting the “UN Secretary General’s effort to bring the process of finding a comprehensive settlement of the Cyprus problem to a successful conclusion.”¹³⁸ Upon accession, this 80,000 page document

131. U.N. CONF. ON TRADE & DEV., WORLD INVESTMENT REPORT 2010, COUNTRY FACT SHEET: ROMANIA, http://www.unctad.org/sections/dite_dir/docs/wir10_fs_ro_en.pdf.

132. 2010 Progress Report, *supra* note 9, at 38-44.

133. *Id.* at 44.

134. FAUCOMPRET & KONINGS, *supra* note 64, at 91.

135. 2010 Progress Report, *supra* note 9, at 42, 77. See also Ninth Development Plan, *supra* note 115, at 36.

136. ARIKAN, *supra* note 39, at 44.

137. Heather Grabbe, *European Union Conditionality and the “Acquis Communautaire,”* 23 INT’L POL. SCI. REV. 249, 253 (2002) (quoting Carlo Gialdino, *Some Reflections on the Acquis Communautaire*, 32 COMMON MKT. L. REV. 1089 (1995).

138. *Id.* at 71.

must be adopted and translated into the applicant country's language.¹³⁹ In Turkey's case, only 20% of it has been translated.¹⁴⁰

The process of negotiations is as follows: First, the non-problematic chapters, such as Science and Research, are disposed of.¹⁴¹ Once a country aligns its policies with a certain chapter, the chapter is then presented to the Council for its adoption by a unanimous vote.¹⁴² If a chapter poses problems for a country, the country has the option to ask for "transitional measures, opt-outs and/or derogations."¹⁴³ In response, the Commission "would [create] a Draft Common Position (CP) for the EU and send [it] to the Council."¹⁴⁴ The Council will then engage in a screening process during which it will adopt a common negotiating document.¹⁴⁵ The CP is then presented to the applicant state and, if it accepts, its acceptance "would be decided as an Article of Accession Treaty."¹⁴⁶ If it does not, the Commission and Council will modify the CP as many times as needed before the applicant state accepts its provisions.¹⁴⁷ In the 2010 Progress Report on Turkey, the Commission addressed Turkey's adherence to each of the 33 *acquis* chapters.¹⁴⁸ A summary is presented below.

<i>Acquis</i> Chapter	Turkey's Status on Alignment
Free movement of goods	Limited progress has been made; Turkey has not yet incorporated the requirements of the <i>acquis</i>
Freedom of movement for workers	Alignment is at an early stage
Right of establishment and freedom to provide services	Alignment is at an early stage
Free movement of capital	Some alignment has been made
Public procurement	Some aspects are in the advanced stage of alignment
Company law	Limited alignment
Intellectual property law	High level of alignment
Competition policy	High level of alignment
Financial Services	Some alignment has been made
Information society and media	Some alignment has been made
Agriculture	Limited alignment

139. TURKEY-EU RELATIONS 143 (Meltem Müftüleri-Baç & Yannis A. Stivachtis eds., 2008).

140. *Id.* at 143.

141. *Id.* at 123.

142. *Id.*

143. *Id.*

144. *Id.*

145. TURKEY-EU RELATIONS, *supra* note 139, at 123.

146. *Id.*

147. *Id.*

148. *See generally* 2010 Progress Report, *supra* note 9, at 44-98. In this paper, I address only some of these chapters.

Food safety, veterinary and phytosanitary policy	Progress has been made, but further efforts are necessary
Fisheries	Some alignment has been made
Transport policy	Some alignment has been made with the exception of the railway sector
Energy	High level of alignment
Taxation	Some alignment has been made
Economic and monetary union	Some alignment has been made
Statistics	High level of alignment
Social policy and employment	Some alignment has been made
Enterprise and industrial policy	Sufficient level of alignment
Trans-European networks	Sufficient to high level of alignment
Regional policy and coordination of structural instruments	Some alignment has been made
Judiciary and fundamental rights	Alignment in certain areas of the judiciary have been made
Justice, freedom, and security	Alignment is at an early stage with regard to migration; further efforts are needed with regard to external borders & Schengen; alignment is at an early stage with regard to judicial cooperation in criminal and civil matters; further efforts are needed with regard to police cooperation, customs cooperation, and the fight against drugs
Science and research	High, but incomplete level of alignment
Education and culture	Good progress on education and culture, but lacking legislative alignment
Environment	Limited alignment on horizontal legislation; limited alignment on air quality; high level of alignment on waste management; little alignment on water quality; no alignment on nature protection; limited alignment on industrial pollution control and risk management; limited alignment on chemicals and climate change; high level of alignment on noise;
Consumer and health protection	Low alignment in the area of consumer protection; some alignment in the area of public health
Customs union	High level of alignment in certain aspects
External relations	High, but incomplete level of alignment
Foreign, security, and defense policy	Some alignment has been made
Financial control	Limited alignment
Financial and budgetary provisions	Limited alignment ¹⁴⁹

From the foregoing, it appears that either Turkey has a long way to go before it can align its policies with all of these chapters, unless it can ask for a transitional measure or an opt-out, or that the Commission is intentionally raising its standards to delay Turkey's accession.

III. LEGAL IMPEDIMENTS

Article 49 of the Maastricht Treaty is procedural in nature and outside the control of a candidate country in that the decision whether to allow admission lies with the European Union Council, Parliament, and member-states. Furthermore, because the *acquis communautaire* is everything the EU did prior to a candidate's accession, it, too, is outside the candidate's control. Because adopting the *acquis* is a condition of membership, a candidate has no other choice than to accept its substance. The development and stability of a nation's economy is also subject to external conditions. However, the political criteria—the presence of human rights and freedoms, respect for a nation's minority populations, and the rule of law—are all within the candidate country's control, and it is the country's constitution that sets the foundation for these items. Moreover, because it is in the government's discretion to provide or take away these rights and freedoms, the political criteria should weigh more heavily. Each country has its own unique facts; what may be standing in the way of one may not be an issue for another. According to previous progress reports, Turkey has many deficiencies in this area. Some issues cannot be resolved as easily as the government enacting a law, such as with Cyprus, the Aegean Sea dispute, or the functionality of a market economy. The same is not true, however, when it comes to Turkey's domestic policies and relations with its citizens. In 2010, Turkey has demonstrated this is so: Turkey's legal system underwent major reforms when its Constitution was amended through a public referendum,¹⁵⁰ the Law on Fundamental Principles of Elections and Electoral Rolls was amended to allow for language other than Turkish to be used in election campaigns,¹⁵¹ and a Kurdish department at a university was established.¹⁵² It appears that after five decades of being an applicant, Turkey is finally liberating itself from a longstanding history of archaic traditions and aligning itself with the political requirement of the Copenhagen criteria.¹⁵³ This section will focus on the specific issues regarding Turkey's constitutional and other legal reforms and their flaws. This is only one aspect of the Copenhagen political criteria; there are a total

150. *Id.* at 7.

151. *Id.* at 31-32.

152. *Id.* at 31.

153. *Turkey's Pre-accession Strategy*, EUROPA, http://europa.eu/legislation_summaries/enlargement/ongoing_enlargement/e40113_en.htm (last visited Nov. 17, 2011).

of three requirements to satisfy the political criteria—democracy, rule of law, and respect for human rights and protection of minorities.¹⁵⁴

A. Constitutional Provisions

Modern Turkey has had three constitutions: the 1924 Constitution; the 1961 Constitution, which brought developments in the parliamentary system; and the 1982 Constitution, which remains in effect today.¹⁵⁵ The 1982 Constitution gave great powers to the executive¹⁵⁶ and formed the basis of the Turkish legal system and its defects. After the 1982 Constitution went into effect and prior to the referendum of 2010,¹⁵⁷ the government was severely criticized as undemocratic. Though amendments were made in 2010, the Constitution remains an impediment to Turkey's accession to the EU because it fails to provide the rights it guarantees. Even more undemocratic and controversial is the Turkish Penal Code, which infringes upon the rights of its citizens and gives the government great powers to suppress and punish those with whom it disagrees.

First, Article 14 of the Turkish Constitution takes away what it provides in later articles. It says, “[n]one of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.”¹⁵⁸ What this seems to mean is that although citizens have certain fundamental rights, they cannot be exercised if they threaten to violate Turkey's integrity. The second part of the provision presumes that inherent in Turkey's integrity is democracy, secularism, and human rights protections. Several modern examples demonstrate this is not the case. One is Turkey's ban on certain political parties.¹⁵⁹ Another is a law that makes it illegal to use any language other than Turkish in political life.¹⁶⁰ The government has used this law to prosecute violators. For example, in

154. *2010 Progress Report*, *supra* note 9, at 6.

155. *Constitution of the Republic of Turkey*, REPUBLIC OF TURKEY MINISTRY OF FOREIGN AFFAIRS, <http://www.mfa.gov.tr/constitution-of-the-republic-of-turkey.en.mfa> (last visited Nov. 17, 2011).

156. *Id.*

157. *2010 Progress Report*, *supra* note 9, at 7, 8.

158. TÜRKİYE CUMHURİYETİ ANAYASAS [CONSTITUTION OF THE REPUBLIC OF TURKEY] (1982), art. 14, available at http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf.

159. Pinar Aydınli, *Turkey Reform Article Rejected in Blow to Govt*, REUTERS, May 3, 2010, available at <http://www.reuters.com/article/2010/05/03/us-turkey-constitution-vote-idUSTRE6423S020100503>. See also *2010 Progress Report*, *supra* note 9, at 21.

160. Sabrina Tavernise, *Kurd's Speech Defies Turkish Taboo*, N.Y. TIMES, Feb. 24, 2009, <http://www.nytimes.com/2009/02/25/world/europe/25turkey.html>. This law is different from the Law on Fundamental Principles of Elections and the Electoral Registry, which, since April 2010, allows the use of the Kurdish language in election campaigns. See *2010 Progress Report*, *supra* note 9, at 31-32.

1991, Leyla Zana took her oath for Parliament in Kurdish. She also dared “to speak Kurdish and wear the Kurdish colors in the ribbons in her headband in Parliament.”¹⁶¹ For this she spent 10 years in prison.¹⁶² The policy that no language other than Turkish may be used in political life still exists today.¹⁶³ More recently, Turkey’s Parliament Speaker reminded a party chairman of this policy after a political party chairman “addressed party representatives in Kurdish for 10 minutes during [a] meeting.”¹⁶⁴ Although the chairman was not jailed, he was reminded that legal action would be taken against anyone who does not comply with the law.¹⁶⁵

Related to this is a nationwide policy that the Kurdish language cannot be taught in schools. However, for the first time in the country’s history, a Turkish university “established the first Kurdish . . . language department[], and started to accept students to post-graduate programmes organised by these departments.”¹⁶⁶ Despite this one development, “Kurdish language training in public schools is, in fact, illegal.”¹⁶⁷

The second controversial provision in Turkey’s constitution is Article 26, which says

Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. . . .

. . . . The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation¹⁶⁸

The reason this provision is controversial is because, like many others, in practice it has proven to be false; citizens who have attempted to express

161. *Kurdish Political Prisoner Leyla Zana Released After a Decade in Jail*, DEMOCRACY NOW! (June 10, 2004), http://www.democracynow.org/2004/6/10/kurdish_political_prisoner_leyla_zana_released.

162. *Id.*

163. *2010 Progress Report*, *supra* note 9, at 33.

164. *Turkish Parliament Speaker Warns BDP About Speaking Kurdish*, HURRIYET DAILY NEWS (Turk.), Nov. 10, 2010, <http://www.hurriyetdailynews.com/n.php?n=bdp8217s-kurdish-speech-deemed-8216illegal8217-by-parliament-speaker-2010-11-10>.

165. *Id.*

166. This was at Mardin Artuklu University. See *2010 Progress Report*, *supra* note 9, at 32.

167. *Id.* at 33.

168. TÜRKİYE CUMHURİYETİ ANAYASAS [CONSTITUTION OF THE REPUBLIC OF TURKEY] (1982), art. 26. This copy of the Constitution does not reflect the 2010 amendments, which, for the purposes of this discussion, are irrelevant.

their thoughts in public have been punished.¹⁶⁹ Despite its alleged protection in the Constitution, freedom of expression is lacking.¹⁷⁰ While the 2010 Progress Report on Turkey indicated the media is enjoying greater freedoms than ever before, it also mentioned that a substantial number of lawsuits have been brought against journalists.¹⁷¹ There is “[u]ndue political [pressure] on the media,” which greatly hinders the exercise of freedom of the press.¹⁷² An important illustration of this is the case of Hrant Dink,¹⁷³ which serves as an example of Turkey’s lack of freedom of expression as well as radical measures taken by its society for the purpose of denying the Armenian Genocide.¹⁷⁴ Dink was an editor of an Armenian newspaper called *Agos* published in Turkey. He was a human rights activist and debated “openly and critically issues of Armenian identity and official versions of history in Turkey relating to” the Armenian Genocide.¹⁷⁵ Even after receiving death threats for his views, he continued to write until he was murdered.¹⁷⁶ Before his death he was prosecuted three times for writing about the Genocide. He was charged with insulting the Turkish identity under Section 301 of Turkey’s Penal Code¹⁷⁷ and was “handed a six-month suspended prison sentence.”¹⁷⁸

In 2010, the European Court of Human Rights issued a judgment holding that Turkey failed to protect Hrant Dink’s life.¹⁷⁹ Specifically, the Court found that the Turkish government was in violation of Articles 2, 10, and 13 of the Convention de sauvegarde des droits de l’homme et des libertés fondamentales.¹⁸⁰ These articles are the right to life, freedom of expression,

169. See, e.g., *Dink v. Turkey*, App. Nos. 2668/07, 6102/08, 30079/08, 7072/09 & 7124/09, Eur. Ct. H.R. (2010) (unpublished) (text of this judgment is available only in French).

170. See, e.g., AMNESTY INT’L, AMNESTY INTERNATIONAL REPORT 2009: STATE OF THE WORLD’S HUMAN RIGHTS-TURKEY 36, 330 (2009), available at <http://report2009.amnesty.org/sites/report2009.amnesty.org/files/documents/air09-en.pdf> (describing an incident in Turkey involving the imprisonment of children for their participation in demonstrations).

171. *Progress Report 2010*, *supra* note 9, at 21.

172. *Id.* at 78.

173. *Dink*, ¶¶ 8–17.

174. See *Battle Over History*, *supra* note 97.

175. *Turkey: Murder of Journalist Deplored*, AMNESTY INT’L (Jan. 19, 2007), http://amnesty.org.uk/news_details.asp?NewsID=17235.

176. *Battle Over History*, *supra* note 97.

177. *Turkish-Armenian Writer Shot Dead*, BBC NEWS (Jan. 19, 2007), <http://news.bbc.co.uk/2/hi/europe/6279241.stm>.

178. *Turkey ‘Failed to Protect’ Slain Journalist Hrant Dink*, BBC NEWS (Sept. 14, 2010), <http://www.bbc.co.uk/news/world-europe-11301412>.

179. See generally *Dink v. Turkey*, App. Nos. 2668/07, 6102/08, 30079/08, 7072/09 & 7124/09, ¶¶ 139-45, Eur. Ct. H.R. (2010); Yigal Schleifer, *In Turkey, Hundreds of Minors Imprisoned on ‘Terrorism’ Charges*, CHRISTIAN SCI. MONITOR (May 26, 2009), <http://www.csmonitor.com/World/Middle-East/2009/0526/p06s01-wome.html>.

180. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

and the right to an effective remedy, respectively.¹⁸¹ Accordingly, the Court ordered the Turkish government to pay Dink's family 105,000 euros in compensation.¹⁸² Turkey's response to this incident is somewhat surprising in that it said it would not appeal the Court's judgment. Immediately following the shooting, Turkey promised to bring those responsible for the murder to justice. To be clear, there is no evidence that the government itself was responsible for Dink's murder. Nonetheless, the government was aware that Dink had received death threats and did nothing to protect him.¹⁸³ It is not for the act of murder that the EU reprimanded Turkey; rather it is for its failure to protect the journalist prior to the murder.¹⁸⁴ It is also worth reiterating that the government prosecuted him for his expressions.

B. Other Laws and Their Use Against the Kurds

The Kurds are a large minority group in Turkey and comprise about eighteen percent of Turkey's total population.¹⁸⁵ The Kurds claim that Turkey's Constitution discriminates against them¹⁸⁶ and specifically point to Articles 3, 42, and 66.¹⁸⁷ Article 3 provides "[t]he Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish."¹⁸⁸ Article 66 in relevant part provides, "[e]veryone bound to the Turkish state through the bond of citizenship is a Turk. The Child of a Turkish father or a Turkish mother is a Turk."¹⁸⁹ Therefore, the Kurds argue that they are intentionally left out of the Constitution.¹⁹⁰

In response to the Turkish government leaving the Kurds powerless, the Kurdistan Workers' Party (PKK) was formed in 1984.¹⁹¹ It sought Kurdish independence and an independent Kurdish state.¹⁹² Since the PKK's formation, the Turkish government has taken steps to restrain its

181. *See id.* arts. 3, 10, 13.

182. *Dink*, ¶ 150.

183. *Turkey 2009 Progress Report Accompanying the Communication from the Commission to the European Parliament and the Council*, at 12, COM (2009) 533 (Oct. 14, 2009), available at http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf.

184. *Europe's Next Frontiers*, *supra* note 46.

185. CIA, *Turkey*, *supra* note 113 (data from 2008).

186. *Have Your Say: Lack of Kurdistan Identity in Turkish Constitution*, KURDISH MEDIA (Sept. 13, 2006), <http://www.kurdmedia.com/article.aspx?id=13220>.

187. *Id.*

188. TÜRKİYE CUMHURİYETİ ANAYASAS [CONSTITUTION OF THE REPUBLIC OF TURKEY] (1982), art. 3.

189. *Id.* art. 66.

190. *Have Your Say: Lack of Kurdistan Identity in Turkish Constitution*, *supra* note 186.

191. HENRI J. BARKEY & GRAHAM E. FULLER, *TURKEY'S KURDISH QUESTION* 15 (1998).

192. *Id.*

influence.¹⁹³ Between 1984 and 1999, the Turkish military used its Anti-Terror laws to suppress the PKK. The Anti-Terror laws lay out the government's emergency powers. Article One of the Law to Fight Terrorism (Act No. 3713) defines terrorism:

Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat. An organization for the purposes of this Law is constituted by two or more persons coming together for a common purpose. The term "organization" also includes formations, associations, armed associations, gangs or armed gangs as described in the Turkish Penal Code and in the provisions of special laws.¹⁹⁴

From this definition, it appears that because the PKK desires an independent Kurdistan, its aim must be to change the characteristics of the Republic of Turkey. It must logically follow that the PKK is a terrorist organization.

Furthermore, under Article Eight of this Act, "written and oral propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity of the Turkish Republic with[in] its territory and nation are forbidden, regardless of the methods, intentions and ideas behind such activities."¹⁹⁵ Under this Act, the government has closed pro-Kurdish newspapers; banned political parties; and jailed politicians, journalists, and human rights activists.¹⁹⁶ Moreover, in 2009 and 2010, 350 children as young as 12 were characterized as terrorists by the government because they attended a demonstration organized by the PKK.¹⁹⁷ They were

193. FAUCOMPRET & KONINGS, *supra* note 64, at 177.

194. Law No. 3713 ("Terörle Mücadele Kanunu"), Official Gazette, No. 20842, art. 1, Apr. 12, 1991, available at http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/20843_1.pdf&main=http://www.resmigazete.gov.tr/arsiv/20843_1.pdf (Turk.) [hereinafter Anti-Terror Law].

195. *Id.* art 8.

196. ARIKAN, *supra* note 39, at 126; see, e.g., Dink v. Turkey, App. Nos. 2668/07, 6102/08, 30079/08, 7072/09 & 7124/09, Eur. Ct. H.R. (2010).

197. Jonathan Head, *Young, Kurdish, and Jailed in Turkey*, BBC NEWS (May 24, 2010), <http://www.bbc.co.uk/news/10146284>; Press Release, Amnesty Int'l, Turkey Must Stop Unfair Child Prosecutions Under Anti-Terrorism Laws, Says Amnesty International (June 17, 2010), available at <http://www.amnestyusa.org/document.php?id=ENGUSA20100617001&lang=e&rss=recentnewshttp://www.amnestyusa.org/document.php?id=ENGUSA20100617001&lang=e&rss=recentnews>.

convicted under Act 3713, and serve in adult prisons.¹⁹⁸ Mere presence at such demonstrations renders these children PKK members.¹⁹⁹ There is a presumption that all Kurdish protests are organized by the PKK.²⁰⁰

Turkey is making progress with respect to applying this anti-terror law to children and prosecuting them as adults. For example, in 2010 the legislature adopted the law for stone-throwing children, the purpose of which was to ease punishment for children charged under the Anti-Terror Laws.²⁰¹

Another reform is the repeal of Articles 141 and 142 of its Penal Code (Act No. 765).²⁰² The repeal came from Article 23 of the Law to Fight Terrorism Act.²⁰³ These two articles “banned any form of association or propaganda with the purpose of establishing communist, dictatorial or racist regimes.”²⁰⁴ In addition, Article 163 of the Penal Code was repealed. This Article “banned any kind of association or propaganda with the aim of transforming Turkey’s basis social or political order in conformity with any religious principles and beliefs.”²⁰⁵ Moreover, controversial Article 301 of the Turkish Penal Code was amended in 2005. Originally, Article 301 said:

(1) Anyone who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey shall be punished with imprisonment of from six months to three years.

(2) Anyone who publicly insults the Government of the Republic of Turkey, the judicial bodies of the state, the military or police shall be punished with imprisonment of from six months to two years.

(3) Where a Turkish citizen denigrates Turkishness in a foreign country, the penalty shall be increased by one third.

198. Head, *supra* note 197.

199. *Id.*

200. *Id.*

201. *Some 50 ‘Stone-Throwing Children’ Released From Prison in Turkey*, HURRIYET DAILY NEWS (Turk.), July 26, 2010, <http://www.hurriyetdailynews.com/n.php?n=five-stone-throwing-children-released-from-prison-as-new-law-is-enacted-2010-07-26>.

202. TÜRK CEZA KANUNU [TURKISH PENAL CODE], art. 312(2), *available at* <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2004/10/20041012.htm&main=http://www.resmigazete.gov.tr/eskiler/2004/10/20041012.htm> (Turk.).

203. Anti-Terror Law, *supra* note 194, art. 23.

204. ARIKAN, *supra* note 39, at 126.

205. *Id.*

(4) Expressions of opinion with the intention of criticism shall not incur punishment.²⁰⁶

Following the amendment, Article 301 says:

(1) A person who publicly denigrates Turkish Nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey or the judicial bodies of the State, shall be sentenced a penalty of imprisonment for a term of six months and two years.

(2) A person who publicly denigrates the military or security structures shall be punishable according to the first paragraph.

(3) Expressions of thought intended to criticize shall not constitute a crime.

(4) The prosecution under this article shall be subject to the approval of the Minister of Justice.²⁰⁷

In effect, the new Article 301 reduced the term of imprisonment and eliminated the provision increasing the penalty by one third if denigration of “Turkishness” is carried out in a foreign country. It appears that the government liberalized Article 301 to a certain extent. Nevertheless, it still remains illegal to insult Turkey since both adults and children are being punished for expressing themselves through such democratic practices as demonstrations.

1. Conclusion

It is no easy task to reform an entire Constitution to align it with the policies of the EU. There are major differences in philosophy, culture, and politics between the EU as a whole and Turkey as an individual nation. Aligning itself with the EU will require a transformation of principles that have historically guided Turkish life. However, the aforementioned issues with Turkey’s legal policies require some flexibility on Turkey’s part. While it can be commended for its progress so far, it is doubtful that Turkey will be at a disadvantage if it simply agrees to recognize the Kurds, allows

206. TÜRK CEZA KANUNU [TURKISH PENAL CODE], art. 301, available at http://www.tuerkeiforum.net/enw/index.php/Translation_of_selected_Articles_of_the_Turkish_Penal_Code#Section_9:_Offences_against_Privacy.

207. The new Article 301 is reprinted in Bülent Algan, *The Brand New Version of Article 301 of Turkish Penal Code and the Future of Freedom of Expression Cases in Turkey*, 9 GERMAN L. J. 2237, 2239-40 (2008).

them to exercise their traditions and speak their language.²⁰⁸ As with recognizing the Armenian Genocide, it will only bring Turkey closer to EU membership.

IV. A COMPARISON WITH OTHER RECENTLY JOINED EU MEMBERS: BULGARIA AND ROMANIA

In general, after eleven years of negotiations, Turkey has only aligned itself marginally with the EU, and has shown the greatest improvement in its economic development.²⁰⁹ While it can be argued that recently-joined EU member states were not in any better shape at the time of their accession than Turkey is today, a closer look shows that, in fact, they were. While Turkey's liberalized trading enables it to compete better with advanced nations, certain other factors, including its geographic location, political and judicial internal policies, as well as tense relations with its neighbors, are what were absent from Bulgaria and Romania. It is important to bear in mind that decisions are made by representatives of countries that are similarly situated.²¹⁰ Their decisions do not necessarily reflect what is best for the EU; they are based on the national interests of those who have power to effect policy.²¹¹ After all, intergovernmental organizations are only as strong as their strong member-states want them to be.²¹² While Romania and Bulgaria may be less economically-modernized than Turkey, they really were better candidates for EU membership than Turkey is today as evidenced by the EU trend of offering membership to countries that are predominantly Christian and share European philosophy and culture.

208. Perhaps the Turkish government is concerned that if it begins to concede, the Kurds will unreasonably ask for more rights.

209. For a comparative analysis of the economic alignment of Turkey and other recently joined countries, see *supra* Part III(e).

210. Those that were historically strong have the most voting power today.

211. For example, consider Germany and France's reluctance to support Turkey in its quest for EU membership. Germany's opposition concerns the shift in voting power in the European Parliament due to Turkey's large population, which will eventually outnumber Germany's. See Smith, *supra* note 86 (noting that Turkey's large voting power in the EU Parliament could sway Europe's agenda); *Population at 1 January*, EUROSTAT, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1> (last visited Nov. 17, 2011). In addition, Germany is worried about immigration and the cultural dissimilarities. See Damien McElroy, *Angela Merkel Win Ends Turkey's EU Hopes*, TELEGRAPH (London), Sept. 29, 2009, <http://www.telegraph.co.uk/news/worldnews/europe/turkey/6244276/Angela-Merkel-win-ends-Turkeys-EU-hopes.html>. Similarly, Nicolas Sarkozy, speaking for France, has said that he has "always been opposed to [Turkey's] entry and . . . remains[s] opposed." See Charter, *supra* note 86. He is concerned with Turkey's geographic location and the potential of destabilization of Europe if Turkey becomes a member. See *Charlie Rose*, *supra* note 86. Perhaps Bulgaria and Romania were offered membership because they did not present threats of this sort to powerful members.

212. Roger Durham, Chair & Professor of Political Science, Class Lecture at Aquinas College (Oct. 22, 2007).

One important comparison point is the level of democracy in Turkey, Bulgaria, and Romania. Of those three countries, only Turkey bans political parties. Only in Turkey are there constitutional provisions that infringe upon the rights of minorities by explicitly denying them citizenship. And only Turkey imprisons children because they attend demonstrations. On a positive note, however, in all three nations there is a general presence of 1) a pluralistic government system; 2) fair elections, and 3) peaceful transfers of power.²¹³ There are also similarities on the issue of minority protection: In both Bulgaria and Romania, there is a big problem relating to the treatment of the Roma population who does not receive equal protection from the governments. In fact, since their accession, the Roma from both nations have been immigrating to Western Europe.²¹⁴ Turkey's treatment of the Kurds has also caught the Commission's attention, which urges Turkey to provide the Kurds fundamental rights.

With respect to individual freedoms, in 2005 the Commission identified Bulgaria's freedom of expression situation as having improved. Examples of this include the Bulgarian courts' interpretation of "the law in a manner that favoured journalistic expression" and the absence of restrictions in the audio and visual media sector.²¹⁵ Additionally, the Commission praised the Bulgarian government for its progress in the area of freedom of association. There was an increase in the number of non-governmental organizations operating in Bulgaria throughout the early 2000s. This was also true in Romania. On the issue of freedom of religion, in its 2004 Progress Report the Commission noted there were some issues relating to "procedural guidelines in the Law of Denominations" in Bulgaria, while the Romanian government actually did provide freedom of religion both through its Constitution and in practice.²¹⁶ Additionally, the Commission pointed out that while there was some mistreatment on the part of law enforcement agents toward certain groups of people, including the Roma, children, homosexuals, and prisoners, "Romania aligned its legislation with European practice and standards."²¹⁷

On the issue of human rights violations, both Bulgaria and Romania played a role in the Holocaust²¹⁸ but both have recognized the Holocaust

213. TURKEY-EU RELATIONS, *supra* note 139, at 282.

214. The French government, however, has made their stay unwelcome. There have been massive deportations of the Roma out of France. *See France Faces Showdown on Roma at European Union Summit*, BBC NEWS (Sept. 16, 2010), <http://www.bbc.co.uk/news/world-europe-11323053>.

215. *Bulgaria 2005 Comprehensive Monitoring Report*, *supra* note 103, at 13.

216. *2004 Regular Report on Romania's Progress Towards Accession*, COM (2004) 657 final (Oct. 6, 2004), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/tr_ro_2004_en.pdf [hereinafter *Romania 2004 Report*].

217. TURKEY-EU RELATIONS, *supra* note 139, at 290.

218. *See generally Executive Summary: Historical Findings and Recommendations*, YAD VASHEM, http://www1.yadvashem.org/yv/en/about/events/pdf/report/english/EXECUTIVE_SUMMARY.pdf (last visited Nov. 25, 2011) (discussing the issue of

and claimed responsibility. Turkey, in contrast, fails to recognize the Armenian genocide despite the existence of evidence that it did, in fact, take place.

On the issue of transnational disputes, Turkey compares only to Romania: There was a dispute between Romania and Ukraine involving Serpent Island and the Black Sea maritime boundary delimitation.²¹⁹ In addition, “Romania . . . opposes Ukraine’s reopening of a navigation canal from the Danube border through Ukraine to the Black Sea.”²²⁰ Turkey’s transnational disputes involve Greece (over the Island of Cyprus and the Aegean Sea),²²¹ Syria (over Turkish hydrological projects),²²² Armenia (over the area of Nagorno-Karabakh),²²³ and Iraq (over Iraq’s support of the PKK).²²⁴ Bulgaria has no transnational disputes.²²⁵

Some similarities are also found in the economic sectors. The EU Commission found that Bulgaria and Romania suffered from economic fluctuations during the same time Turkey suffered from its economic crises.²²⁶ Ultimately, the Commission found their economic policies were on par with what the EU expected.²²⁷

Another comparison point is the judicial systems of the three countries. It is true that both Bulgaria and Romania rank lower on the corruption scale than Turkey, but it is also true that there are widespread corruption practices in all three countries at all levels. In Turkey, for example, the judicial branch lacks independence from political pressure,²²⁸ reflected by the practice of judges reporting to the Ministry of Justice. Prosecutors also

responsibility); U.S. Holocaust Memorial Museum, *Bulgaria*, HOLOCAUST ENCYCLOPEDIA, <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005355> (last visited Nov. 25, 2011).

219. CIA, *Romania*, *supra* note 113. *See also Romania 2004 Report*, *supra* note 216, at 127. The resolution of Romania’s dispute with Ukraine was not a condition of EU membership, however. The dispute was resolved by the International Court of Justice in 2009, two years after Romania’s accession. *See Maritime Delimitation in the Black Sea (Rom. v. Ukr.)*, 2009 I.C.J. 61 (Feb. 3).

220. CIA, *Romania*, *supra* note 113.

221. *See 2010 Progress Report*, *supra* note 9, at 37.

222. CIA, *Turkey*, *supra* note 113.

223. *Status Quo of Nagorno-Karabakh is not an Option, President of European Commission Says*, NEWS.AM (March 16, 2011), <http://www.news.am/eng/news/51527.html>; *Romania 2004 Report*, *supra* note 216, at 127; *see also Amendments*, *supra* note 100, amend. 201 (the EU urging Turkey “to continue its efforts towards the resolution of the Nagorno-Karabakh conflict”).

224. *See Regular Report on Turkey’s Progress Towards Accession*, at 152-53, COM (2004) 656 final (Oct. 6, 2004), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/tr_tr_2004_en.pdf; *Turkey 2009 Progress Report*, at 86, COM (2009) 533 final (Oct. 14, 2009), available at http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf; *2010 Progress Report*, *supra* note 9, at 34-35.

225. CIA, *Bulgaria*, *supra* note 113.

226. *Bulgaria 2005 Comprehensive Monitoring Report*, *supra* note 103, at 18-25.

227. *Id.* For further comparisons, see *supra* Part III(e).

228. TURKEY-EU RELATIONS, *supra* note 139, at 285.

have close connections with judges and magistrates. In Bulgaria's case, the government was able to improve its judiciary, but the Commission urged it to better prosecute organized crime and corruption.²²⁹ While corruption presented a major setback, the government was able to make significant progress by 2007.²³⁰ From 1998 to 2006, the Commission rated Romania's progress in reforming the judiciary as insufficient; it was only in 2006 that the Commission noticed some progress in this area.²³¹

What is apparent from these comparisons is that each potential candidate has its own unique problems, but what can be concluded is that the problems specific to Bulgaria and Romania, even collectively, do not reach the number and significance of Turkey's problems. While Turkey is capable of aligning itself with the EU, if the EU is really delaying the process because it just does not want Turkey as a member, it will find ways to delay membership further.²³² The problems presented in this paper do not address all problems the EU has found with Turkey and only scratch the surface of the major ones.

CONCLUSION

Turkey needs to be recognized for the reforms it has made so far. These reforms did not come easy for Turkey, a nation that is less-European, both culturally and historically, than any EU member today. The EU does not necessarily require a candidate-nation to "Europeanize" since there are no religious or cultural conditions. Instead, what it requires is what every nation in the twenty-first century should already have respect for those living within its borders, respect for human rights, a stable economy, a functioning legal system, and at least passable relations with its neighbors. These are reasonable expectations. What is unreasonable, however, is member-states using their voting and veto powers to serve their own

229. *Id.* at 286.

230. Bulgaria was admitted on January 1, 2007. Ironically, Bulgaria is the most corrupt country in the EU today. See Doreen Carvajal & Stephen Castle, *Mob Muscles its way Into Politics in Bulgaria*, N.Y. TIMES, Oct. 15, 2008, <http://www.nytimes.com/2008/10/16/world/europe/16bulgaria.html?scp=1&sq=Mob%20Muscles%20its%20way%20Into%20Politics%20in%20Bulgaria&st=cse>; ANNUAL REPORT 2009, *supra* note 118, at 49.

231. See generally *Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania*, COM (2006) 549 final (Sept. 26, 2006), available at http://ec.europa.eu/enlargement/pdf/key_documents/2006/sept/report_bg_ro_2006_en.pdf.

232. It has taken Turkey longer than any other current member to become a member since first submitting its application. It has been 24 years since Turkey submitted its application for EU membership. Bulgaria and Romania applied in 1995 and accessed in 2007. The Czech Republic applied in 1996 and assessed in 2004, and Cyprus applied in 1990 and assessed in 2004. See *European Commission, Enlargement, Negotiations*, EUROPA, http://ec.europa.eu/enlargement/archives/enlargement_process/future_prospects/negotiations/eu10_bulgaria_romania/index_en.htm (last visited Nov. 17, 2011). These statistics demonstrate that the EU is taking an unreasonably long time to admit Turkey into the Union.

interests. The EU's mission is to promote peace, and with that aim in mind it should rationally decide whether Turkey has met the EU's accession requirements.

From Turkey's perspective, it should weigh all the benefits of EU membership against the burdens of meeting the Copenhagen criteria. But Turkey has not been fighting for admission for the past twenty-four years to just simply give up. This shows that it is dedicated to its quest for admission. The reality is, Turkey has quite a bit of domestic problems and transnational disputes to resolve, and has a ways to go until it reaches true democracy. Until it does, the EU will be hesitant to move forward. This article ends with the statement that most articles on this issue end: Turkey has a long road ahead.